

Oregon Administrative Rules Committee Minutes

Date: Monday, May 1, 2023

Time: 1 – 3 p.m.

Members: Jessica Epley, Micah Brown, Melanie Lewis, Alba Vogland, Jaimie Lemke, Connor Toney, Megan Moore, Lee Tumminello, Andy Crocker, and Dale Bramaghin.

Non-Voting Members: Josh Thomas, Kitty O’Keefe, and Scott Gallegos

Guests: Jim Walton/Linescape and Justin Buchanan/City of Portland.

1. Announcements and Introductions

- a. Announcements and Guest sign-in
- b. Meeting Minutes from 04.04.2023 approved. Kitty to post on website
- c. Comments from the Chair Jessica welcomed members and guests and reminded members to come prepared to each meeting. Focus on decision making.

2. OAR Committee Updates on Rulemaking Process

- a. Discussion of next steps for rulemaking process with changes approved by the board:
 - i. OAR 952-001-0050 (2) – relating to non-invasive excavation within a defined enclosure.
 - ii. OAR 952-001-0010(10) – defining ‘large area.’

Committee Actions: Rulemaking to be consolidated with the outcomes today’s meeting. Will take 90 days at a minimum to complete.

3. Old Business

a. OAR Committee Review of Proposed Rulemaking

- i. OAR 952-001-0040 – amending language for requiring excavators to pre-mark all proposed excavation in white paint.

Existing language: (1) Except as provided in section (2) of this rule, prior to notifying the Oregon Utility Notification Center, an excavator must pre-mark with the color white the immediate area of the proposed excavation within both the public rights-of-way and underground easements.

(2) An excavator need not pre-mark as required in section (1) of this rule if:

- (a) The operator can determine precisely the direction, length and location of the proposed excavation by referring to a locate ticket; or
- (b) Before the beginning of the proposed project, the excavator and the operator met at the construction site to exchange the information required under section (1) of this rule.

Proposed language:

(1) Any excavator providing notice of a proposed excavation to the Oregon Utility Notification Center under OAR 952-001-0050 must provide the Center with a description of the physical limits of the proposed excavation with sufficient detail to enable the operators and designated agents to ascertain the location of the proposed excavation or provide the Center with confirmation that it has provided a description to the operators and designated agents as specific in (b), (d) & (e) below. The specific location of the proposed excavation may be described in the following manner:

- (a) Submission to the Oregon Utility Notification Center of GPS coordinates taken at a single point where work is planned, or GPS coordinates taken to delineate a line, multi-segment line, or polygon. When providing a single point, line, or multi-segment line, the excavator providing notice must include an area measured in feet from the coordinates that describe the work area. If a polygon is used, the proposed work area must be inside the polygon. GPS nomenclatures used for providing coordinates to the notification center must be in a format accepted by the Center;

(b) White lining on site by the excavator providing notice to delineate the physical bounds of the area where excavation will take place. For single point excavation, the area must be marked using dots, dashes, or white flags to show the operators the area of excavation. If utility markings are desired outside a white lined area, the excavator must provide clear instructions, to include the distance in feet outside the white lined area, to the notification center. For continuous excavations, such as trenching and boring, the excavator must mark the center line of excavation by the use of dots or dashes. The excavation width, in feet, must be indicated on either side of the center line in legible figures or noted in the marking instructions given to the notification Center;

(c) Submission to the Oregon Utility Notification Center of white lining to delineate the physical bounds of the area where excavation will take place that is performed by electronic means using aerial imagery. White lining performed by electronic means must meet the same requirements as listed in subdivision (b) of this subsection;

(d) Submission to the Oregon Utility Notification Center of reference to the two nearest intersecting streets, if available, or driving directions to the address of the location; or

(e) The excavator arranges to meet an operator or designated agent required to locate underground facilities at the site prior to the start of the proposed excavation and the excavator identifies for the operator or designated agent the physical limits of the proposed excavation with sufficient detail to enable the operator or designated agent to ascertain the location of the proposed excavation.

(2) In the event that a proposed excavation is planned at a single address at which there are structure(s), the area of proposed excavation may, if geographically feasible, be described by dividing the parcel or property into four quadrants from the perspective of facing the front of the property using the center of the structure as the center point of the four quadrants. If no structure exists on the property, the center of the parcel or property must be used as the center point of the four quadrants. These four quadrants must be referred to as Front Left, Front Right, Rear Left, and Rear Right. If the proposed area consists only of Front Left and Front Right quadrants, the term "Front" is sufficient. If the proposed area of excavation consists only of Rear Left and Rear Right quadrants, the term "Rear" is sufficient. If the proposed area of excavation consists only of Front Left and Rear Left quadrants, the term "Left Side" is sufficient. If the proposed area of excavation consists only of Front Right and Rear Right quadrants, the term "Right Side" is sufficient. If the proposed area of excavation includes three out of the four quadrants, the entire property may be used for the proposed excavation.

Committee Actions: Discussion was had about the proposed language. Committee members voiced concerns about this not being an actionable rule but more of guidance/best practices. Guest – Justin Buchanan (City of Portland) shared concerns over the proposed language. Josh shared feedback from OCC's electric white lining is accurate. Louisiana has mandatory white lining in rule. Committee members voted against accepting the proposed rules. Committee Members then reviewed and discussed previous two proposed language options. Concerns over big projects, treatment of homeowners as an exception and mandatory for excavators was discussed. Desire to modify language to include electronic white paint was raised. Consideration of exclusion for a single parcel of work was considered. Guest - Jim Walton shared what Washington states language for exceptions for homeowners. Jessica read out loud the entire statute from 2011. Committee worked through language options and drafted revisions as follows:

(1) Except as provided in section (2) of this rule, prior to notifying the Oregon Utility Notification Center, an excavator must ~~pre-mark with the color white~~ identify the immediate area of the proposed excavation within both the public rights-of-way and underground easements. ~~This may be accomplished by pre-mark with the color white marking as defined at OAR 952-001-0010 (12), electronic white marking or providing a site plan.~~

(2) An excavator need not pre-mark as required in section (1) of this rule if:

(a) ~~The operator can determine precisely the direction, length and location of the proposed excavation by referring to a locate ticket; or~~

~~(b) Before the beginning of the proposed project, the excavator and the operator met at the construction site to exchange the information required under section (1) of this rule.~~

Motion to recommend these changes (stated above) to the board for rulemaking was made by Micah and 2nd by Alba. Motion passed.

NEXT ACTION: Present Committee recommended language amending OAR 952-001-0040 to the Board of Directors for approval to move to Rulemaking.

- ii. OAR 952-001-0080 – amending rule to provide for design information review.

Existing language: (1) Within 10 business days after a designer notifies the Oregon Utility Notification Center of a proposed project, the operator of the underground facilities must:

a. Mark within 24 inches of the outside lateral dimensions of both sides of all of its locatable underground facilities within the area of proposed excavation. All marks must indicate the name, initials or logo of the operator of the underground facilities, and the width of the facility if it is greater than 2 inches;

b. Provide the excavator the best description available to the operator of the unlocatable underground facilities in the area of the proposed excavation including as-constructed drawings, or other facility maps that are maintained by the facility operator; or

c. Contact the person requesting design information and agree on a time, prior to the beginning of the proposed project, for exchange of the information required under subsection (a) or subsection (b) of this section of this rule.

(2) If a designer intends to perform work at multiple sites or over a large area, the designer must take reasonable steps to work with the facility operators, including preconstruction meetings, so that the operators may locate their facilities at a time reasonably in advance of the actual start of survey or design for each phase of work.

Proposed language: (1) Within 10 business days after a designer notifies the Oregon Utility Notification Center of a proposed project, the operator of the underground facilities must:

a. Mark within 24 inches of the outside lateral dimensions of both sides of all of its ~~locatable~~ underground facilities within the area of proposed excavation. All marks must indicate the name, initials or logo of the operator of the underground facilities, and the width of the facility if it is greater than 2 inches; ~~or~~

b. Provide the excavator the best description available ~~to the operator~~ of the ~~unlocatable~~ underground facilities in the area of the proposed excavation including as-constructed drawings, or other facility maps that are maintained by the facility operator; ~~or~~

~~c. Providing copies of the best reasonably available records by electronic message, mail, facsimile, or other delivery method; or~~

d. Contact the person requesting design information and agree on a time, prior to the beginning of the proposed project, for exchange of the information required under subsection (a) or subsection (b) of this section of this rule.

(2) If a designer intends to perform work at multiple sites or over a large area, the designer must take reasonable steps to work with the facility operators, including preconstruction meetings, so that the operators may locate their facilities at a time reasonably in advance of the actual start of survey or design for each phase of work.

Alternative Proposed language: (1) Within 10 business days after a designer notifies the Oregon Utility Notification Center of a proposed project, the operator of the underground facilities must:

- a. Mark within 24 inches of the outside lateral dimensions of both sides of all of its **locateable** underground facilities within the area of proposed excavation. All marks must indicate the name, initials or logo of the operator of the underground facilities, and the width of the facility if it is greater than 2 inches; **or**
- b. Provide the excavator the best description available to the operator of the **unlocateable** underground facilities in the area of the proposed excavation including as-constructed drawings, or other facility maps that are maintained by the facility operator; or
- c. Contact the person requesting design information and agree on a time, prior to the beginning of the proposed project, for exchange of the information required under subsection (a) or subsection (b) of this section of this rule.

Committee Actions: Jessica asked members for feedback on proposed and alternative proposed language.

Motion by Micah to recommend language change to the board as noted in Proposed language above. Lee 2nd the motion. Motion passed.

NEXT ACTION: Present Committee recommended language amending OAR 952-001-0080 to the Board of Directors for approval to move to Rulemaking.

4. New Business

- a. OAR 952-001-0100 – Relating to record keeping for abandoned facilities (Kyle Thomas)

Committee Action: Remove this item from OAR worklog.

- b. Creating a damage ticket (Melanie Lewis)

Existing language: None

Proposed language: Damage Reporting: The immediate reporting to a one-call center and the facility owner/operator of any damage caused or discovered in the course of excavation or demolition work; to immediately alert the occupants of premises as to any emergency that such person may create or discover at or near such premises; to contact emergency responders, if necessary, as quickly as practical.

Committee Action: Tabled

- c. OAR 952-001-0090 - Reducing 45-day ticket life (Jaimie Lemke)

Existing language: (23) "Ticket life" means the 45 calendar day period after an excavator provides notice to the Oregon Utility Notification Center under OAR 952-001-0050(1) and the Center opens a ticket for a locate request based on this notice.

Proposed language: (23) "Ticket life" means the **28** calendar day period after an excavator provides notice to the Oregon Utility Notification Center under OAR 952-001-0050(1) and the Center opens a ticket for a locate request based on this notice.

Committee Action: Members discussed how 45 days has no value if paint washes away. AGA White Paper recommends 28 calendar days. By lowering the days, could prevent damages. Motion by Micah to recommend to the board; change it to 30 calendar day for 'Ticket life'. 2nd by Lee. Motion passed. Melanie voted no.

NEXT ACTION: Present Committee recommended language amending OAR 952-001-0090 to the Board of Directors for approval to move to Rulemaking.

- d. OAR 952-001-0010 - define noninvasive tools (Jaimie Lemke)

Existing language: (13) “Non invasive methods” means using a practice to expose an underground facility that does not damage any part of the facility.

Proposed language: (13) “Non invasive methods” means using a practice to expose an underground facility that does not damage any part of the facility; **including the use of hand digging, tools, air cutting, vacuum excavation or hydro vacuum excavation.**

Committee Action: Members discussed the term used for hand tools; do we remove ‘tools’? Use ‘digging’ in place of tools.
Motion by Jaimie to recommend to the board the proposed language discussed. Dale 2nd and motion passed.

NEXT ACTION: Present Committee recommended language amending OAR 952-001-0010 (13) to the Board of Directors for approval to move to Rulemaking.

5. All remaining items were retained as old business for the next OAR meeting.