



**TENNESSEE UNDERGROUND UTILITY DAMAGE PREVENTION BOARD
EXECUTIVE COMMITTEE MEETING
Meeting on July 26, 2017**

MINUTES

The Executive Committee meeting of the Tennessee Underground Utility Damage Enforcement Board commenced at 10:09 a.m. in the Ground Floor Meeting Room of 500 Deaderick Street, Nashville, Tennessee 37243.

Executive Committee Members Present:

Bob Lambert
Steven Raper
Kevin Tubberville, Chairman

Tennessee 811 Members Present:

Bill Turner

TPUC Staff Present:

Stacy Balthrop
Jaclyn Hammons
Slayde Warren
Aaron Conklin
Ryan McGehee
Sharla Dillon

Sharla Dillon opened the meeting, and the Committee considered the Minutes of the meeting of June 28, 2017. There were no corrections, and the Minutes were approved on a voice vote.

Presentation of Investigation of Complaints:

The Committee heard and ruled on the following complaints:

EB16-0058 –

Alleged Violator: AT&T

Equipment Used: unknown

Root Cause: excavating beyond 15-day expiration

Facts: A number of notices were sent, but that was because of the size of the company and the difficulty in determining the proper contact person. The complainant was not sure if the damage was done by hand digging or mechanized equipment, but he thought perhaps it was mechanized equipment because there was a piece of equipment at the damage site. AT&T reported that they did not call in a second locate because they weren't using mechanized equipment. There were no pictures available.

Recommendation: no violation

Finding: no violation

EB17-0013 –

Alleged Violator: Santiago Estrada, Pine Enterprises

Equipment Used: mini excavator

Root Cause: obvious facility present; failed to make second call to mark

Facts: This is a second complaint, and they are in compliance with the last complaint. The second complaint occurred before the training was completed on the first violation, but it is the same alleged excavator. Although the owner has been unresponsive, there has been contact with someone in the accounting department. Pictures were provided, the locate did say "clear, no conflict," but a pedestal was also damaged.

Recommendation: find a violation

Finding: there was a violation; assess a civil penalty in the amount of \$625 for a second violation

EB17-0015 –

Alleged Violator: AT&T

Equipment Used: boring machine

Root Cause: excavating beyond the 15-day expiration

Recommendation: training

Finding: there was a violation; training for the service technician for Network Services

EB17-0018 –

Alleged Violator: Mickey Cochran, Thornhill Lawn Care

Complainant: Atmos Energy

Equipment Used: backhoe

Root Cause: failure to contact One Call

Recommendation: training for Mickey Cochran

Finding: there was a violation for no notification to 811; training for Mickey Cochran

EB17-0029 –

Alleged Violator: Justin Stewart

Equipment Used: auger

Root Cause: no notification to Tennessee 811 prior to excavation

Facts: Everyone needs to understand that they are responsible for their own locate.

Finding: there was a violation of no notification to 811; training for Justin Stewart

EB17-0031 (see also EB17-0045) –

Alleged Violator: Fenix Underground, Hector Pita, owner

Complainant: OSP

Equipment Used: unknown

Root Cause: failure to use reasonable care in the tolerance safety zone

Facts: A response was never received on this complaint or the second complaint in EB17-0045. The two complaints were at different addresses. Because Fenix Underground is a Texas company, it is possible they are unfamiliar with Tennessee law and thus did not understand that OSP's collection for damages did not meet all the requirements.

Recommendation: training

Finding: consolidate Complaint Nos. 17-0031 and 17-0045; there was a violation for failure to use reasonable care; training for Hector Pita

EB17-0034 –

Alleged Violator: City of Millersville

Equipment Used: mini excavator

Root Cause: failure to use reasonable care in the tolerance zone

Facts: Pictures were included, and this was definitely outside the 3-foot zone.

Recommendation: no violation

Finding: no violation

EB17-0043 –

Alleged Violator: Grade A Construction, LLC

Equipment Used: track hoe

Root Cause: excavating before locate ticket was valid

Recommendation: training for the field person

Finding: there was a violation for excavating before the locate ticket was valid; training for Chris Neely, the supervisor

EB17-0045 (see also EB17-0031) –

Alleged Violator: Fenix Underground, Hector Pita, owner

Complainant: OSP

Equipment Used: unknown

Root Cause: failure to use reasonable care in the tolerance safety zone

Facts: A response was never received on this complaint or the second complaint in EB17-0031. The two complaints were at different addresses. Because Fenix Underground is a Texas company, it is possible they are unfamiliar with Tennessee law and thus did not understand that OSP's collection for damages did not meet all the requirements.

Recommendation: training

Finding: consolidate Complaint Nos. 17-0031 and 17-0045; there was a violation for failure to use reasonable care; training for Hector Pita

EB17-0050 –

Alleged Violator: Memphis Light, Gas and Water

Equipment Used: boring machine

Root Cause: failure to use reasonable care in the tolerance safety zone

Facts: There were pictures with the complaint, but it was difficult to tell what the pictures were attempting to show. There was no clear indication that the area was adequately marked, and the piece of equipment used is not real accurate. They had to go under three driveways, and it's difficult to stay in a straight line. It appears that they did attempt to locate things.

Finding: no violation

EB17-0054 –

Alleged Violator: Charles Plemons

Complainant: a property owner - the next door neighbor

Equipment Used: backhoe

Root Cause: failure to call Tennessee 811

Facts: There was no damage to an underground utility, but the neighbor alleged there was damage to his property. He provided photos which clearly show a backhoe near or on his property that did some substantial excavating. Mr. Plemons basically responded that the complaint was from a disgruntled neighbor. There was no response to requests for additional information from the neighbor, and no locate ticket was found.

Recommendation: training for Mr. Plemons

Finding: there was a violation for no notification of 811; training for Charles Plemons

EB17-0055 –

Alleged Violator: Memphis Light, Gas and Water

Equipment Used: borer

Root Cause: failure to use reasonable care in the tolerance zone

Facts: This complaint is identical to the complaint filed in EB17-0050.

Finding: no violation

EB17-0057 –

Alleged Violator: Pinnacle Constructors, Inc.

Complainant: OSP/Comcast

Equipment Used: backhoe

Root Cause: failure to use reasonable care in the tolerance and safety zone

Facts: There were pictures of the locate marks, but no pictures of the actual damage that occurred. The pictures showed orange marks everywhere, demonstrating that they located, but the pictures didn't demonstrate that they located accurately. Mr. Webb with Pinnacle stated that they hand-dug for three days, but several of the lines weren't properly marked. He indicated that they were paying for the damages. OSP and Comcast didn't provide clear evidence that it was located accurately.

Finding: no violation

EB17-0062 –

Alleged Violator: Bakers Asphalt and Concrete

Equipment Used: BobCat grading equipment

Root Cause: no notification made to Tennessee 811 prior to excavating

Facts: No formal response was received. Rick Baker indicated that they normally call in an 811 ticket, but they were only grading in this instance so he didn't think they needed one.

Finding: there was a violation for no notification to 811; training for Rick Baker

EB17-0066 –

Alleged Violator: Danny Johnson, Johnson Property Service

Complainant: OSP/Comcast

Equipment Used: backhoe

Root Cause: failure to use reasonable care

Facts: Mr. Johnson admitted that he could have used more reasonable care.

Finding: there was a violation for failure to use reasonable care; training for Danny Johnson

EB17-0068 –

Alleged Violator: David Shanks, Shanks Properties

Complainant: Atmos Energy

Equipment Used: backhoe

Root Cause: failure to contact Tennessee 811

Recommendation: training for Mr. Shanks

Finding: there was a violation for no notification to 811; training for David Shanks

EB17-0071 –

Alleged Violator: Memphis Light, Gas and Water

Equipment Used: trencher

Root Cause: no notification made to Tennessee 811 prior to excavating

Recommendation: no violation

Finding: no violation

EB17-0073 –

Alleged Violator: Landon Simmons, Southern Greens Lawn Care

Complainant: OSP/Comcast

Equipment Used: auger

Root Cause: excavating beyond the 15-day expiration

Facts: There was a locate ticket, and it had been properly marked.

Finding: there was a violation for excavating beyond the 15-day expiration; training for Landon Simmons

EB17-0074 –

Alleged Violator: Tobias Walker, Diversified Networking Solutions

Complainant: Comcast

Equipment Used: boring drill

Root Cause: failure to call Tennessee 811

Facts: There was a locate ticket, and pictures were provided. The pictures were not adequate enough to find a violation.

Finding: no violation

EB17-0083 –

Alleged Violator: Juan Gomez, Palm Beach Grading

Equipment Used: backhoe

Root Cause: no notification made to Tennessee 811 prior to excavating

Facts: This is a second offense for this company. They are in compliance and have completed training from their previous violation. They attended training after this complaint was filed.

Finding: there was a violation of no notification to 811 prior to excavation; assess a civil penalty in the amount of \$625

EB17-0086 –

Alleged Violator: Robert Combs, franchise owner, Roto-Rooter

Equipment Used: excavator

Root Cause: no notification made to Tennessee 811 prior to excavating

Facts: Mr. Combs refused to respond to the complaint or talk with the investigator. An employee in the claims department was unable to find a locate ticket.

Recommendation: training for Mr. Combs

Finding: there was a violation for no notification to 811 prior to excavation; training for Robert Combs

EB17-0087 –

Alleged Violator: Lester Orsburn, Old Faithful Septic Service

Complainant: Atmos Energy

Equipment Used: backhoe

Root Cause: no notification

Recommendation: training for Mr. Orsburn

Finding: there was a violation of no notification to 811 prior to excavation; training for Lester Orsburn

EB17-0112 –

Alleged Violator: Coffee County Road Department

Complainant: property owner

Equipment Used: backhoe

Root Cause: no notification made to Tennessee 811

Facts: The Road Department was replacing an existing structure at the previous location and depth. It was a ditch job with drain tiles, which was over 25 years old. Pictures were included. By statute, routine road maintenance is granted a buffer zone exception of eighteen inches, and it's deemed not to be excavation. Anything past eighteen inches requires a locate.

Recommendation: no violation

Finding: no violation

EB17-0115 –

Alleged Violator: Lynn Palmer, Palmer Excavating

Equipment Used: backhoe

Root Cause: no notification made to Tennessee 811 prior to excavation

Facts: Red Door Homes actually called in the locate and allowed their subcontractors to work under their locate ticket. A picture of the damage shows that the lines were marked, and the damage was out of the tolerance zone - it was over three feet.

Recommendation: no violation

Finding: no violation

EB17-0137 –

Alleged Violator: Terry Franklin, Franklin Underground Utilities

Complainant: Atmos Energy

Equipment Used: backhoe

Root Cause: failure to use reasonable care

Facts: Mr. Franklin stated that they initially used shovels and then brought in the excavator to break the ground up in order to continue using shovels. He maintained that they took every precaution by initially hand digging. No photos of any significance were submitted.

Recommendation: no violation

Finding: no violation

EB17-0141 –

Alleged Violator: Dominic Kniper, Team Electric

Complainant: Atmos Energy

Equipment Used: backhoe

Root Cause: failure to contact Tennessee 811

Recommendation: training for Mr. Kniper

Finding: there was a violation for notification of 811; training for Dominic Kniper and the field supervisor, Ed Smith

Staff Update on Enforcement

Ryan McGehee stated that he placed this on the agenda in order to discuss potential legislation about enforcement, and he asked if the Executive Committee wants that type of information provided. The Committee indicated that they do, and Mr. McGehee said he would put something in writing for the August meeting and would also share that with the entire Enforcement Board. Aaron Conklin notified the Committee that a third contested case has been received.

Presentation of Cost/Fee Request by Tennessee 811 for Training of Violators

Bill Turner stated that Trent Enterprise, Complaint No. EB17-0093, requested that Tennessee 811 come to their location in Jefferson City, Tennessee. He stated that the proposed cost is \$500 for training, and the mileage reimbursement is \$221.49. He said that although only one person was named in the violation, the company has agreed to include four additional people in the training. The Committee approved the proposed costs and fees by unanimous voice vote.

Mr. Turner then provided an update on the training. He stated that six people were in training that morning at the Tennessee 811 location and that training is going really well overall. He reported that 47 companies, representing 65 individuals, have been found to be in violation. Twenty-three companies, representing 32 people, have completed the training. Nine companies have scheduled training, they have had no contact whatsoever from 12 companies, and one company has made contact but is not scheduled yet. Four companies have exceeded the 60-day time period.

There was some discussion regarding attitudes and feedback regarding the training, and Mr. Turner reported that everyone has been very appreciative and has found the training to be very informative. He stated that this has led to requests for training of other individuals, even those who are not, by definition, diggers.

Topics for Next Executive Committee Meeting

Kevin Tubberville asked if there had been discussions regarding depth requirements in Tennessee when the bill was proposed, and Mr. McGehee stated that although there isn't a lot of legislative history in general, Mr. Turner would probably be the one who could provide the most information. Mr. Tubberville then pointed out some of the issues an excavator runs into when there is no depth requirement. Bob Lambert, speaking as a public utility, discussed the various target depths and issues which are encountered from their standpoint.

The Executive Committee meeting adjourned at 11:22 a.m.