

Appendix C

Meeting Minutes

Minutes of the
First Meeting of the Underground Pipeline Task Force
Matthew Training Center
523 East Capitol
Pierre, South Dakota

August 14, 2008
10:00 a.m. CST

CALL MEETING TO ORDER: Chairman Gary Hanson called the meeting to order. A quorum was present.

BOARD MEMBERS PRESENT: Gary Hanson, Troy Styer, Daniel Holli, Dennis Davis, Gordon Woods, Mark Anderson, and Pete Bullene.

OTHERS PRESENT: See attached attendance sheet.

INFORMATIONAL PRESENTATIONS

South Dakota One Call System

Larry Englerth, Executive Director of South Dakota One Call presented information on the South Dakota One Call System. This was a general presentation providing an overview of the One Call System, the purpose of the system and information and examples on how the system works.

South Dakota Public Utilities Commission – Pipeline Safety

John Smith, Legal Counsel for the Public Utilities Commission (PUC) presented information on the PUC's pipeline safety program. The presentation provided an overview of the program's authority, gas statistics for South Dakota, information on federal regulatory authority and a definition for interstate pipelines.

Oil Spill Liability Trust Fund

Brian Walsh, Hydrology Specialist with DENR, provided a general overview of the federal Oil Pollution Liability Trust Fund, which has an estimated 2008 end of year balance of approximately 1 billion dollars. In addition, Greg Buie with the U.S. Coast Guard, provided information to the task force on the status of the federal response fund and how it operates.

South Dakota Regulated Substance Response Fund

Kim McIntosh, Environmental Senior Scientist with DENR, provided an overview of the South Dakota Regulated Substance Response Fund. The presentation included information on the history of the fund, the use of the fund, and the current fund status.

Pipeline Hazardous Materials Safety Administration (PHMSA)

Harold Winnie, an Outreach Community Assistance & Technical Services Project Manager with the federal Pipeline Hazardous Materials Safety Administration, Central Region, provided an overview of PHMSA and the Office of Pipeline Safety. The presentation included discussion on the jurisdiction of the Central Region and information on best practices for pipeline safety.

TASK FORCE DISCUSSION

Brian Walsh provided an overview of the pre-meeting packet of information briefly outlining the topics addressed in the draft findings report.

The task force discussed issues including the federal code restrictions on state authority to implement safety regulations on interstate pipelines plus the cost and availability of pollution liability insurance. The task force then proposed several possible recommendations for further consideration and directed DENR staff to prepare additional information for the next task force meeting.

Possible Recommendations for Further Consideration

The task force is considering recommending South Dakota One Call create a high profile designation in their database. Facilities such as hazardous material pipelines would be designated as high profile facilities. When a call ticket was processed near a high profile facility, the facility owner or operator would have to sign-off on the ticket before it is cleared. In addition, the high profile facility owner or operator would be required to have staff present at the excavation site until the excavation is complete.

The task force is considering recommending South Dakota One Call require mandatory damage reporting. If implemented, excavators must report any damage done during an excavation to South Dakota One Call.

The task force is considering a recommendation to expand or make mandatory that all municipalities and counties adopt Wellhead Protection ordinances for regulated public drinking water systems.

The task force is considering recommending the South Dakota Public Utilities Commission attempt to acquire the liquids program for intrastate pipelines.

Direction to DENR Staff

Prepare all pre-meeting documents and meeting handouts for placement on DENR's website. In addition, create links on the website leading to Legislative Research Council's webpage and the federal pipeline laws and rules.

Provide the task force with a historical budget of the South Dakota Regulated Substance Response Fund.

Provide the task force with information on the legality of creating a bond or placing a fee on an interstate pipeline running through South Dakota.

Investigate and provide the task force with information on the availability and cost of pollution liability insurance for public and private entities. Include information on current coverages for water and waste water systems in South Dakota.

Investigate and provide the task force with information on other states' cleanup funds or bonds/fees on oil transporters. Compare methods for funding cleanups.

Make available to the task force the voluntary state Wellhead Protection Law.

Investigate and provide information to the task force on whether the South Dakota Regulated Substance Response Fund is sufficiently funded to respond to a pipeline release. Provide to the task force information on how DENR responds and regulates a typical spill.

Create and provide to the task force a map showing the streams that would be eligible for funding from the federal Oil Pollution Liability Trust Fund.

Provide information to the task force on what happens when private property is contaminated and what options the property owner would have to recover damages.

Arrange a presentation on the impacts of petroleum on plastic waterlines.

Schedule the next task force meetings. Consider the following dates for September, the 22, 29, and 30. Tentatively schedule the October meeting for October 23.

MEETING ADJOURNED – 3:30 pm

Minutes of the
Second Meeting of the Underground Pipeline Task Force
Matthew Training Center
523 East Capitol
Pierre, South Dakota

September 22, 2008
9:00 a.m. CDT

CALL MEETING TO ORDER: Chairman Gary Hanson called the meeting to order. A quorum was present.

BOARD MEMBERS PRESENT: Gary Hanson, Troy Styer, Daniel Holli, Dennis Davis, Gordon Woods, Mark Anderson, and Pete Bullene.

OTHERS PRESENT: See attached attendance sheet.

INFORMATIONAL PRESENTATIONS

Source Water Protection and Wellhead Protection Program

Tom Brandner, Natural Resources Engineering Director with the DENR, provided the task force with an overview of the Source Water and Wellhead Protection Program. Included in the presentation was a description of the legal authority for the Wellhead Protection Program and a description of how local governments can administer the program.

Legality of a State Imposing a Fee or Bond on an Interstate Pipeline

Joe Nadenicek, Staff Attorney with the DENR, discussed the Dormant Commerce Clause and Federal Preemption as they relate to the imposition of a per barrel cleanup fee on interstate pipeline systems.

Examples of Other States Cleanup Funds

Brian Walsh, Hydrology Specialist with the DENR, presented the task force with information on other states' cleanup funds. The other states examined included: Alaska, California, Colorado, Iowa, Minnesota, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Texas and Wyoming.

Historical Budget of the Regulated Substance Response Fund

Brian Walsh, Hydrology Specialist with the DENR, presented the task force with a table detailing the historical budget of South Dakota's Regulated Substance Response Fund.

Review of Pipeline Accident Costs

Brian Walsh, Hydrology Specialist with the DENR, provided information to the task force on the cost of pipeline incidents in South Dakota, surrounding states and the United States as a whole. The source of the data is the Pipeline Hazardous Material Safety Administration's significant incident database.

Availability and Cost of Liability Insurance for Public and Private Entities

Gary Joyce, Account Executive with Howalt-McDowell Insurance, Inc., provided the task force with an overview of the availability of pollution liability insurance and explained why most business in South Dakota did not have coverage. In addition, he informed the task force that most general liability policies exclude pollution coverage.

DENR Spill Response procedures

Kim McIntosh, Environmental Senior Scientist with the DENR, presented information to the task force on the DENR's typical spill response procedures.

What Happens When Private Property is Contaminated?

Brian Walsh, Hydrology Specialist with the DENR, discussed the options an impacted private property owner would have in the event of damages to him or his property due to a pipeline release. He explained to the task force South Dakota's Regulated Substance Response Fund can only pay for cleanup costs. In some instances, the federal Oil Spill Liability Trust Fund may reimburse for downstream damages from an oil release. However, in many cases, the impacted individual's only recourse to recover damages may be to sue the responsible party.

Oil Spill Liability Trust Fund-Eligible Areas in South Dakota

Brian Walsh, Hydrology Specialist with the DENR, presented a map to the task force showing the national hydrography dataset for South Dakota. The U.S. Coast Guard uses this data set to help determine if an oil spill is eligible for reimbursement under the federal Oil Spill Liability Trust Fund. He further indicated there is no single map available showing whether an oil spill is eligible for reimbursement under the federal fund. The U.S. Coast Guard determines eligibility on a case-by-case basis.

Petroleum Impacts on Plastic Waterlines

Dr. Delvin DeBoer, Professor of Civil and Environmental Engineering and the Director of Water and Environmental Engineering Research Center with South Dakota State University, presented the task force with an overview of the affects of petroleum on plastic waterlines and gaskets.

Attorney General's Opinion Regarding the Municipal Marking of Underground Utilities

Joe Nadenicek, Staff Attorney with the DENR, provided the task force with an explanation of the recent Attorney General's Opinion Regarding the Municipal Marking of Underground Utilities in South Dakota.

TASK FORCE DISCUSSION

Possible Recommendations for Further Consideration

The task force did not make any recommendations at this meeting. Instead, they decided to continue their review of the available information and make their final recommendations at the October 23, 2008 task force meeting.

Direction to DENR Staff

The task force directed DENR staff to revise the minutes from the August 14, 2008 meeting and circulate to the task force members for review and approval at the October 23, 2008 meeting.

The task force directed DENR staff to provide additional information on the fines paid into the South Dakota Regulated Substance Response Fund and to explain the \$567,072 transfer to the fund made in FY 2000.

The task force directed DENR staff to provide information on the tax oil producers pay in South Dakota.

The task force directed DENR staff to provide a breakdown of pipeline incident costs in South Dakota and Minnesota by material released.

The task force directed DENR staff to provide information on the number of petroleum releases in South Dakota by source. Specifically, pipeline releases vs. transportation releases.

The task force directed DENR staff to schedule two additional task force meetings for October 23, 2008 at 9:00 AM and November 13, 2008 at 9:00 AM.

MEETING ADJOURNED – 12:30 P.M.

Minutes of the
Third Meeting of the Underground Pipeline Task Force
Matthew Training Center
523 East Capitol
Pierre, South Dakota

October 23, 2008
9:00 a.m. CDT

CALL MEETING TO ORDER: Chairman Gary Hanson called the meeting to order. A quorum was present.

BOARD MEMBERS PRESENT: Gary Hanson, Troy Styer, Daniel Holli, Dennis Davis, Gordon Woods, Mark Anderson, and Pete Bullene.

OTHERS PRESENT: See attached attendance sheet.

APPROVAL OF MINUTES: Gordon Woods motioned for an approval of the minutes, second by Pete Bullene. Motion carried.

INFORMATIONAL PRESENTATIONS

Additional Information on the South Dakota Regulated Substance Response Fund

Brian Walsh, Hydrology Specialist with DENR, provided the Task Force with additional information on the Regulated Substance Response Fund. Specifically, Mr. Walsh answered two questions asked by Task Force members during the September 22, 2008 meeting. First, Mr. Walsh explained the \$567,072 transfer into the fund in fiscal year 2000 was money returned to the fund because of the removal of a fund CAP that had been in place for the previous five years. Second, Mr. Walsh provided the Task Force information on the amount and type of fines paid into the Regulated Substance Response Fund.

South Dakota Mineral Severance Tax

Brian Walsh, Hydrology Specialist with DENR, provided the Task Force with general information about the South Dakota Mineral Severance Tax. He discussed how revenue is allocated, the amount of revenue collected FY2000 to FY2008 and what drives the amount of the tax collected.

Additional Information on Pipeline Incident Cost Data

Brian Walsh, Hydrology Specialist with DENR, presented additional information to the Task Force on pipeline incident cost data. Specifically, at the request of the Task Force, Mr. Walsh presented a breakdown of pipeline incidents in South Dakota and Minnesota by material released.

Review of South Dakota Petroleum Spills by Source

Brian Walsh, Hydrology Specialist with DENR, presented the Task Force with the number of South Dakota petroleum spills by source. Specifically, at the request of the Task Force, Mr.

Walsh compared the number of transportation petroleum spills to the number of pipeline petroleum spills.

Review of Regulated Response Fund and DENR Spill Response Procedures

Per Chairman Hanson's request, Kim McIntosh, DENR, reviewed DENR's spill response procedures and the use of the Regulated Substance Response Fund. Specifically, Ms. McIntosh informed the task force the state's Regulated Substance Response Fund and the federal Oil Spill Liability Trust Fund could be used simultaneously.

TASK FORCE DISCUSSION

Task Force member discussion focused on the development and approval of final recommendations to be included in the Task Force report to the Governor.

Recommendations Considered for Inclusion in the Final Task Force

The first recommendation considered by the Task Force concerned South Dakota One Call creating a high profile designation for facilities such as hazardous materials pipelines. Once designated as high profile, additional steps would need to be taken before One Call would clear an excavation ticket near one of the high profile facilities. Task Force members were in agreement with this recommendation however, they did not feel the high profile designation should be limited to hazardous material pipelines. In addition, the Task Force did not want to dictate in their recommendation what additional steps Once Call would require excavators and facility operators to undertake. Based on the Task Force's discussion members made and approved the following recommendation for inclusion in the final report.

The South Dakota Underground Pipeline Task Force supports South Dakota One Call in the development of a high profile database identifying high profile underground facilities.

The second recommendation considered by the Task Force concerned South Dakota One Call mandatory damage reporting. Discussion on this topic included what enforcement would be taken if excavators did not report damage or failed to contact One Call prior to excavation. Task Force members agreed that issue was for One Call to manage. Based on the Task Force's discussion members made and approved the following recommendation for inclusion in the final report.

The Task Force recommends South Dakota One Call require mandatory damage reporting.

The third recommendation considered by the Task Force concerned making mandatory for counties or municipalities adoption of wellhead protection ordinances for regulated public drinking water systems. Although Task Force members agreed in general with this recommendation, there was discussion on whether it was appropriate for the Task Force to recommend implementation be mandatory. Task Force members thought this might be viewed as requiring an unfunded mandate or may place unachievable requirements on some counties. Based on the Task Force's discussion members made and approved the following recommendation for inclusion in the final report.

The Task Force recommends municipalities and counties adopt and/or create wellhead protection areas for their public water supply systems.

The fourth recommendation considered by the Task Force concerned the South Dakota Public Utilities Commission attempt to acquire the liquids program for intrastate pipelines from the federal Department of Transportation. Discussion on this issue centered on whether the Task Force should recommend the Commission acquire this program not knowing the necessary staffing needs and budget constraints of the Commission. Based on the Task Force's discussion members made and approved (via a 4-3 vote) the following recommendation for inclusion in the final report.

The Task Force recommends the South Dakota Public Utilities Commission examine acquiring the liquids program for intrastate pipelines from the federal Department of Transportation.

The fifth recommendation considered by the Task Force concerned having the DENR develop guidance on how to encase plastic waterlines that cross under other pipelines. Discussion on this issue include whether this task was within DENR's scope as a regulatory agency. Also discussed was what if the guidance became a standard and existing plastic waterlines crossing hazardous material pipelines required encasement or retrofitting to meet the standard could this become a burden on the water systems in South Dakota. Based on the Task Force's discussion members did not support this recommendation for inclusion in the final report.

The sixth recommendation considered by the Task Force concerned having the DENR become involved with Dr. Delvin DeBoer, Director of the Water & Environmental Engineering Research Center at SDSU, in his research on the impact of petroleum products on plastic waterlines. Discussion on this issue included what was meant by the word involved. Task Force members felt it was unlikely DENR could fund the study. In addition, Task Force members asked DENR staff if Dr. DeBoer had contacted DENR and requested their involvement. DENR staff said he had not and Task Force members questioned if they should try to force cooperation that did not seem to be developing on its own. Based on the Task Force's discussion members made and approved the following recommendation for inclusion in the final report.

The Task Force recommends DENR explore its ability to assist Dr. DeBoer with South Dakota State University in his research on the impact of petroleum products on plastic waterlines.

The seventh recommendation considered by the Task Force concerned having the South Dakota Department of Revenue and Regulation, Division of Insurance review the availability of pollution liability insurance in South Dakota especially for water and waste water systems. There was only limited discussion on this issue and the Task Force members were in support of the recommendation. Based on the Task Force's discussion members made and approved the following recommendation for inclusion in the final report.

The Task Force recommends the South Dakota Department of Revenue, Division of Insurance review the availability of pollution liability insurance for public and private entities in South Dakota especially for water and waste water systems.

The eighth recommendation considered by the Task Force concerned the preservation of the South Dakota Regulated Substance Response Fund for uses of the fund as outlined in SDCL 34A-12. During the first three task force meetings, there was considerable discussion about who would pay for a cleanup if the responsible party was unable or refused to do so. Task Force members were presented information on the Regulated Substance Response Fund, the Oil Spill Liability Trust Fund and the legality of imposing a fee on interstate pipelines. Based on this information the Task Force did not recommend any fees or fund increases do to the legality of doing so and the coverage already provided by the Regulated Substance Response Fund and the Oil Liability Trust Fund. However, the Task Force thought it was important to preserve the Regulated Substance Response Fund for its intended use. Task Force members agreed to include a recommendation on this issue in the final report and asked DENR staff to develop the specifics of the recommendation.

Direction to DENR Staff

The task force directed DENR staff schedule the final task for meeting and finalize the DRAFT Task Force findings report for review and approval by the Task Force at their final meeting.

MEETING ADJOURNED – 12:23 p.m.

South Dakota Underground Pipeline Task Force

October 23, 2008

Sign-in Sheet

Name	Affiliation	Email Address (include if you would like to be added to the task force LIST SERVE)
Dennis N. Davis	SD Rural Water	dndavis@sdrws.com
Daniel Holli	Plains Pipeline	djhollie@paalp.com
Gordon Woods	SDIP	Gordon@SDIPCO.COM
Kathy Glines	Harding County	kathy.glines@state.sd.us
Robert Johnson	Harding Co	RWJohnson@SPPlains
Dean Wagner	Harding Co	
Rob Latimer	TRANSCANADA	Rob-Latimer@TransCanada.com
Troy Steyer	NuStar Energy	Troy.Steyer@nustarenergy.com
Bill Markley	DENR	
Senator Frank Klucick	#19 Senator	fklucick@hidmail.com
Cecilia O Stern	#19 Candidate	
Bob Mercer	Newspaper	

Minutes of the
Fourth Meeting of the Underground Pipeline Task Force
Capitol Building, Room 464
500 East Capitol
Pierre, South Dakota

November 13, 2008
9:00 a.m. CST

CALL MEETING TO ORDER: Chairman Gary Hanson called the meeting to order. A quorum was present.

BOARD MEMBERS PRESENT: Gary Hanson, Troy Styer, Daniel Holli, Dennis Davis, Gordon Woods, and Mark Anderson.

BOARD MEMBERS ABSENT: Pete Bullene.

OTHERS PRESENT: See attached attendance sheet.

APPROVAL OF MINUTES: Gordon Woods motioned for an approval of the minutes with discussed changes, second by Troy Styer. Motion carried.

TASK FORCE FINAL REVIEW DISCUSSION

After reviewing each recommendation, the Task Force made no changes to the Draft Final Report, except for the correction of a few grammatical errors.

Mark Anderson made a motion to adjourn, second by Gordon Woods, motion carried.

MEETING ADJOURNED – 9:25 a.m.

Chairman Hanson used chairman's privileges to re-open the meeting at 9:35 a.m. No one challenged his privilege.

Members Present – Gary Hanson, Mark Anderson, Gordon Woods, Dan Holli, and Dennis Davis.

Members Absent – Pete Bullene and Troy Styer.

Gordon Woods made a motion to approve the report with changes, second by Dan Holli. No additional discussion, motion carried. Chairman Hanson asked DENR staff to contact absent task force members to confirm their approval of the final report. Gordon Woods made a motion to adjourn, second by Mark Anderson, no discussion, motion carried.

MEETING ADJOURNED – 9:40 a.m.

Note: Both absent task force members approved the report.

