

DCA NEWS

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Crossbore issue attracting wide interest

There is an increasing awareness of the need to require location and marking of sanitary sewer lines, especially sewer laterals, prior to excavation, boring, or any type of construction activity that disturbs the ground.

What has come to be known as the "crossbore" issue, centers around the danger of unmarked sewer laterals being penetrated by directional drilling and pneumatic piercing tool installations of other utilities without construction crews being aware of what has happened.

The presence in a sewer line of a foreign pipe or cable could remain unnoticed for months or several years and discovered only when a plumber's mechanical clean-out tool is used to clear a reported blockage and cuts through a power cable or ruptures a natural gas pipe inside the sewer pipe. Consequences are potentially disastrous.

Even so, many cities and sewer service districts claim they are not responsible for locating and marking laterals because they cross private property and therefore belong to the property owner. However, Dan Weaklend with NPL Construction Co., a member of DCA's crossbore panel, says that all but a few states do require sewer line

owners to locate and mark buried lines, but lack of enforcement is a primary factor in the issue.

Increased attention to crossbore issues is in a large part due to the efforts of DCA, many DCA members, other associations, and concerned utility contractors.

"We are finding an extreme awareness of the seriousness of the crossbore issue that did not exist before, and it is growing," says Weaklend, a member of DCA's crossbore panel. "DCA has adopted a position statement advocating legislation that would require sewer system owners and operators to locate sewer laterals. The Associated General Contractors (AGC) and National Utility Contractors (NUCA) have taken similar positions."

Weaklend adds that a committee of the Common Ground Alliance (CGA) is studying the crossbore issue and that the North American Society Trenchless Technology (NASTT) provides a continuing forum for discussion and education. He added that the Virginia Corporation Commission considered the issue of crossbores at a meeting last month.

Rod Dyck, P.E., principal pipeline

engineer, Pipeline and Hazardous Material Division of the National Transportation Safety Board, confirmed that the NTSB division is monitoring the crossbore issue.

DCA's resolution says the association believes the presence of unmarked and unidentified sewer laterals is one of the most dangerous threats posed in the underground pipeline industry.

In part, the DCA resolution says: "Laws must be passed and then enforced requiring facility owners/operator to locate all underground utility lines--including sewer mains and sewer service laterals. In addition, the DCA officially supports laws requiring that all new sewer service lines be installed with a positive locating device."

DCA is conducting panel discussions

DCA has adopted a position statement advocating legislation that would require sewer system owners and operators to locate sewer laterals.

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DCA's 47th ANNUAL CONVENTION

February 12-17, 2008

Indian Wells, California | Renaissance Esmeralda

2007 & 2008 Calendar of Events



2007

October 1-5

IPLOCA Annual Convention
Sydney, Australia
www.iploca.com

October 16-18

**International Construction Utility
Equipment Exposition (ICUEE)**
Kentucky Exposition Center
Louisville, Kentucky
www.icuee.com

October 30-31

Fall Board of Directors Meeting
Gaylord Texan Resort & Convention Center
Grapevine, Texas
www.dca-online.org

November 11-13

AEM Conference
The Ritz-Carlton
Naples, Florida
www.aem.org

December 5-6

**10th Annual Damage Prevention
Conference & Expo**
Las Vegas Hilton
Las Vegas, NV
www.damageprevention.com

2008

January 10-12

Associated Equipment Dealers
Hyatt Regency Chicago Hotel
Chicago, Illinois
www.aednet.org

January 29-31

**Underground Construction
Technology (UCT)**
International Conference & Exhibition
Atlanta, Georgia
www.uctonline.com

February 12-17

DCA's 47th Annual Convention
Renaissance Esmeralda Resort
Indian Wells, California

February 20-24

PLCA's 60th Annual Convention
Ritz-Carlton, Kapalua
Maui, Hawaii
www.plca.org

March 11-15

CONEXPO-CON/AGG
Las Vegas, Nevada
www.conexpoconagg.com

April 22-24

DCA's 13th Annual Safety Congress
Gaylord Texan Resort & Convention Center
Grapevine, Texas

July 23-27

DCA's 20th Annual Mid Year Meeting
The Homestead
Hot Springs, Virginia



Wyoming court explains burden of proof for worker misconduct affirmative defense

BNA's Construction Labor Report – BNA's Construction Labor Report – A compliance officer from the Occupational Health and Safety division (WOSHA) of Wyoming's Department of Employment inspected Three Sons's work site and observed three employees in an unprotected trench. WOSHA subsequently cited the employer for trenching violations, including the willful failure to provide cave-in protection.

Three Sons contested the willful violation and two serious violations involving trench shields before a hearing examiner from the state Occupational Health and Safety Commission. The hearing examiner affirmed the citations. The examiner's decision was upheld by the commission. The commission's finding in turn was upheld by a district court.

Three Sons appealed, arguing that the hearing examiner improperly placed the burden on the employer rather than on WOSHA to prove employee misconduct. The employer further argued that it was an error for the hearing examiner to determine WOSHA had established its prima facie case without considering whether

the violations were foreseeable. Finally, the employer argued that it had established its employee misconduct defense.

The Wyoming Supreme Court affirmed the district court and commission's rulings.

The state high court noted that the majority of the federal courts have concluded that employee misconduct is an affirmative defense that the employer carries the burden of proving.

Based on the record, the employees in the trench were new hires who were not trained in trench safety, the court said. The record also showed that Three Sons reprimanded the crew leader for allowing the three workers to enter the unprotected trench.

The testimony of Three Sons's principal supervisor that he told the cited employees not to enter the trench was undermined by the crew leader's actions in allowing the trench entry, the court continued. Under the circumstances, the district court's order affirming the hearing examiner was supported by substantial evidence, the court ruled. ■

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at industry trade shows and will present a discussion of the crossbore issue as part of the educational program at the 2007 ICUEE show at the Kentucky Exposition Center in Louisville.

Scheduled from 10 to 11:15 a.m. on October 17, the session will be moderated by Grady Bell, DCA crossbore panel chairman. Bell is an estimator for Laney Directional drilling. Panelists are DCA members Kevin Miller, president Miller Pipeline; Dan Weakland, chief officer, safety, quality and regulatory affairs, NPL Construction Co.; Dr. Samuel Ariaratnam, associate professor, Del E. Webb School of Construction, Ira A. Fulton School of Engineering, Arizona State University; Greg Dahl, vice president ARB Inc.; and Ken Gabrielse, executive vice president, Gabe's Construction Co. ■

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