

Safety & Damage Prevention

...Putting it all together

Stakeholder Advocacy

CGA
Common Ground Alliance

Case Study In Damage Prevention Advocacy: Michigan

The following is a case study developed by the Common Ground Alliance (CGA) Stakeholder Advocacy Committee on the effort to rewrite Michigan's damage prevention law (most commonly referred to as the MISS DIG law), which was signed into law in November 2013. The case study is based on a conversation with several individuals who helped write and pass the new legislation, including: Bruce Campbell (MISS DIG), Rob Coppersmith (Michigan Infrastructure & Transportation Association or MITA), Dirk Dunham (Consumers Energy), David Hall (AT&T), Christine Stenzel (DTE Gas) and Eric Urbain (MISS DIG). It's intended to serve as a resource for individuals and organizations conducting or planning to undertake advocacy activity related to state one call and damage prevention legislation.

ORIGIN: What was the basis for advocacy?

Stakeholders formed the Michigan Damage Prevention Board (MDPB) in 2000, following several lawsuits related to confusion about the current state damage prevention law as well as a call by MITA to strengthen and update the state's safe digging legislation. At that time, the legislature was not interested in working on the nation's first safe digging law (passed in 1974) or trying to pass a new MISS DIG law, preferring that the stakeholders work out issues amongst themselves. The law, which had been amended only once in its history, lacked even the most basic definitions of terms.

The MDPB was convened with the goal of creating a contract establishing best practices in damage prevention that would be agreed upon and signed by major stakeholders like facility owners and excavators. That contract (called Michigan Best Practices), which was implemented in 2004 and amended for the last time in 2005, formed the framework for the updates to the MISS DIG law that would become law in 2013. The recent successful legislative effort began in 2010, and although the draft bills did not make it through the legislature in 2012, they did pass unanimously in the 2013 session.

LEGISLATIVE STRATEGY: How did you identify and entice lawmakers to champion the legislative proposal? What materials did you use to advocate?

The MDPB used a consensus-based process in crafting the Michigan Best Practices contract, which set the standard for safe excavation in the state. Once it was clear that the Michigan Best Practices were working well for stakeholders, the MDPB began working on legislation based on the contract. An important part of the legislative strategy was being able to point to the success of the Michigan Best Practices – both in terms of being a document agreed upon by major stakeholders in the state as well as its implementation in day-to-day excavation – as a justification for the proposed legislation and proof that it was workable.

The chairman of the Senate Energy and Technology Committee signed on as the legislative sponsor. In 2012, the updated MISS DIG bills were introduced and although they passed the senate, they did not make it through the house as a result of objections by farmers. So in 2013, the MDPB made every effort to meet with each senator and representative to educate them prior to the bill's introduction, including hosting a well-attended legislative day at the state capitol. Every member of the legislature received a joint letter from all the MDPB leaders and several industry associations endorsing the bill. Other leave-behind materials used in meetings included information about MISS DIG, the current MISS DIG law, a breakdown of the Michigan Best Practices, the most recent DIRT Report, information about Michigan Virtual Private DIRT, one-pagers about pipeline incidents and a case study from Marathon Pipe Line about an incident involving a Michigan farmer.

Coalitions: Was this an effort of an industry and/or government coalition?

How was it formed and who were the stakeholders?

Were there conflicting goals/positions among coalition members?

The MDPB is comprised of both industry and public stakeholders, including excavators, utilities, MITA, MISS DIG and the Michigan Public Service Commission. The group was formed in 2000 when it first began working on the Michigan Best Practices contract.

There were many differences in points of view among MDPB members, but the structure of the group and the consensus-based process helped them work together productively to create and implement the Michigan Best Practices in 2004 as well as the updated MISS DIG law in 2012/2013.

Key Players: Who were the leaders of the coalition and how were they selected?

Did coalition leaders have political relationships within the legislature?

The MDPB, which was structured as a not-for-profit corporation, established bylaws dictating that major damage prevention stakeholders in the state had voting privileges in the group, while other invited stakeholders had a voice without formal voting rights. As mentioned prior, the leaders of the group included public utilities, MITA, MISS DIG and the Michigan Public Service Commission. Other stakeholders who were invited to the table but were not active in the legislative drafting process included railroad operators, municipalities and the state Department of Transportation. Farmers did not participate in the process, and fought the legislation in both the 2012 and 2013 sessions.

Several MDPB members had extensive experience working with the legislature prior to the recent MISS DIG law change effort, including specific lobbying expertise.

Process/Ground Rules: What ground rules were necessary to keep the coalition together?

How did the group identify key components of the legislation?

Was existing legislation used as a template?

The coalition (MDPB) had a standing monthly meeting that voting and non-voting stakeholders were invited to attend. Despite conflicting opinions among MDPB members, each stakeholder knew that they needed to be a part of the discussion and most were committed to working through individual issues to create a stronger MISS DIG law.

Several key components of new legislation were identified. In particular, the prior MISS DIG act did not contain any definitions of terms, which created confusion among stakeholders. Adding enforcement to the law was also a necessity.

The Michigan Best Practices contract, which had been in practice since 2004, was used as a template for the draft legislation.

CGA Best Practices and “Nine Elements”: Were the Best Practices a central tool of the effort?

Were the Nine Elements of the PIPES Act considered?

The CGA Best Practices were referenced often as the coalition worked on crafting definitions for the new law, and helped clear up points of contention among stakeholders. For example, prior to the 2013 law change, Michigan used different color code marking standards than are recommended by the CGA Best Practices. The new law brings Michigan in line with the APWA marking standards, as recommended by CGA. The enforcement mandate of the Nine Elements was a focus of the new law.

Role of lobbyists: Did professional lobbyists participate in the effort, and if so, who did they represent? Did lobbyists help or hurt the effort?

Several lobbyists participated in the effort, although the coalition itself did not formally employ a lobbyist. MISS DIG, MITA and several industry associations employed lobbyists and attorneys who worked on the effort. Lobbyists were helpful throughout the process in educating lawmakers and reviewing bill drafts.

Legislative Process: Did your legislative strategy prepare you adequately once the bill started moving?

For the most part, the group’s legislative strategy did prepare it well following the introduction of the bills. It was helpful throughout the process to be able to point to the already-in-practice Michigan Best Practices as a model that was working in the state. Following farmers’ obstruction of the MISS DIG bills in 2012, MDPB launched an extensive shoe-leather lobbying campaign of outreach to legislators prior to the bill’s introduction in the 2013 legislative session – which ultimately proved effective.

Challenges: Where were the roadblocks encountered during the legislative process? How were they addressed and ultimately overcome?

Yes, there were a few challenges that came up during the legislative process. The bill's sponsor, a state senator, sought certain changes to the draft bills that the MDPB had to navigate without alienating its legislative champion. There were also certain groups like railroads, municipalities, the state Department of Transportation and county sewer departments, which were granted certain exemptions under the new MISS DIG law.

Farming stakeholders, who have tremendous political capital in Michigan, once again opposed the bill at the start of the 2013 legislative session. The MDPB had to work through subcommittees and state representatives to make the case that farmers should not have the across-the-board exemptions from safe digging practices. Eventually a large meeting was convened to address farmers' issues, which involved the Farm Bureau, PHMSA, MDPA and the senator sponsoring the MISS DIG law. Ultimately, a compromise was reached that provided free "agricultural memberships" to the MISS DIG system to farmers, enabling them to receive notifications about proposed dig sites near their properties in exchange for their participation in the call before you dig process (with certain small exemptions).

State Executive Branch: Was the Governor's office involved in the process? How were state agency representatives to work with?

The Governor was involved in a limited way. MISS DIG's legislative sponsor in the senate ran draft bills by the executive branch for review. On at least two occasions, the executive branch had issues with the proposed bills, including asking that the Michigan Department of Transportation be exempted from the law. Eventually, MDPB and the executive branch reached a compromise on the issue, as the MDPB was concerned about losing possible PHMSA funding if such a broad exemption were included in the law.

Lessons Learned: Name a key success and something you would never do again from this experience.

A key success was having the Michigan Best Practices contract in practice before attempting to propose legislation. Other key successes included the strength and perseverance of the MDPB, which achieved the passage of the updated MISS DIG law after a 13-year process.

A key challenge was navigating major MDPB stakeholders' individual legal departments. Often the group would finally achieve consensus on a definition or issue, and then hear shortly afterwards that a certain stakeholder's legal department could not agree without some adjustments. Although this lengthened the overall consensus process, it did mean that once the MDPB had a finished bill draft, it had already been thoroughly vetted and reviewed by members' attorneys and was agreeable to all.