

MINUTES

South Dakota One Call Notification Board Enforcement Panel Conference Call

Location: Heavy Constructors
4101 Deadwood Avenue, North
Rapid City, South Dakota

Thursday, August 31, 2017 at 2:00 PM Central Time (1:00PM Mountain)

Roll Call:

Enforcement Panel Members in attendance: John Ward, Erin Hayes, Kurt Pfeifle, Bleau LaFave, Doug Larson. Also Amanda Reiss, Legal Counsel, Larry Janes, Executive Director, Codi Gregg, Deputy Director.

Other attendees:

Todd Chambers, Watertown Municipal Utilities
Jay Jorgenson, TM Rural Water
Bob LeLoux, LeLoux Construction
Loren Beld, LL and Sons Excavating

Order of Business:

Larry Janes provided a brief description of the Enforcement Panel process. This is a legal proceeding and that no comments by any of the parties may be taken during this call. A probable cause determination will be made based only on the written documentation received from the parties in the complaints. All parties will be given the opportunity to request a hearing before the full South Dakota One Call Notification Board, if there is disagreement with the recommendation of the Panel. If a hearing is requested, each party must be represented by legal counsel at the hearing. If a hearing is not requested, the Enforcement Panel recommendation will be presented to the South Dakota One Call Board of Directors for acceptance at the next Board Meeting. A final Order will be mailed to each party.

The Enforcement Panel of the South Dakota One Call Notification Board met by conference call to consider the following South Dakota 811 Complaints:

OC17-012 – In the matter of the Complaint filed by Watertown Municipal Utilities (Watertown), Watertown, South Dakota against Kyle's Concrete – Kyle Rieffenberger (Kyle's), Watertown, South Dakota, for an incident occurring June 5, 2017 at 350 38th Avenue South East in Watertown, South Dakota.

On June 6, 2017, Watertown filed a complaint alleging Kyle's was excavating without a locate ticket and damaged a gas line.

The response deadline for Kyle's was June 28, 2017. Kyle's responded June 28, 2017. Kyle's responded by stating he understood the importance of calling, but there should be more education.

There have been no previous complaints filed against Kyle's.

Today, shall the Enforcement Panel of South Dakota One Call Notification Board find that there is probable cause Kyle's violated any statute or rule under the jurisdiction of the Board, and if so shall a civil penalty be assessed?

Probable Cause Discussion:

Kurt Pfeifle made a motion that there is probable cause that Kyle's violated SDCL 49-7A-5. The motion was seconded by Bleau LaFave. **Motion carried unanimously on a roll call vote.**

Discussion of Intent:

John Ward made a motion that this was an intentional violation. Kyle's performed a lot of excavation on this site, without calling 811 which Kyle's is aware of. Kurt Pfeifle seconded the motion. **Motion carried unanimously on a roll call vote.**

Penalty Discussion:

Bleau LaFave made a motion to assess a penalty in the amount of \$1,000 with \$500 suspended. In addition, Kyle's must not be found guilty of a One Call violation within 12 months of the final Board Order, the penalty payment must be made within 30 days of the final Board Order, Kyle's must attend a damage prevention meeting in 2018, and must conduct an in house safety meeting to discuss South Dakota One Call laws. Details of the discussion material, date and length of the meeting along with the printed and signed names of attendees shall be submitted to the Executive Director of South Dakota One Call within 30 days of the final Board Order. If any of these conditions are not met, the entire amount will be immediately due and owing. Doug Larson seconded the motion. **Motion carried unanimously on a roll call vote.**

OC17-014 – In the matter of the Complaint filed by Watertown Municipal Utilities (Watertown), Watertown, South Dakota against Underground Communications (Underground), Waupaca, Wisconsin, for an incident occurring June 4, 2017 at 323 13th Street South West in Watertown, South Dakota.

On June 9, 2017, Watertown filed a complaint alleging Underground failed to expose marked utilities.

The response deadline for Underground was June 29, 2017. Underground responded June 14, 2017. Underground responded by stating this was a clerical error.

This Complaint was amended to include an audio recording of a call between Watertown and Underground.

Today, shall the Enforcement Panel of South Dakota One Call Notification Board find that there is probable cause Underground violated any statute or rule under the jurisdiction of the Board, and if so shall a civil penalty be assessed?

Probable Cause Discussion:

Under SDCL 49-7A-20, the complaint was discussed as two allegations. John Ward made a motion that there was a violation of ARSD 20:25:03:05:03. Erin Hayes seconded the motion. **Motion carried unanimously upon a roll call vote.**

Kurt Pfeifle made a motion that there was a violation of ARSD 20:25:03:04:(8). John Ward seconded the motion. **Motion carried unanimously on a roll call vote.**

Discussion of Intent:

John Ward made a motion that the violation of ARSD 20:25:03:05:03 was intentional. Bleau LaFave seconded the motion. **Motion carried unanimously upon a roll call vote.**

John Ward made a motion that the violation of ARSD 20:25:03:04(8) was intentional. Erin Hayes seconded the motion. **Motion carried unanimously upon a roll call vote.**

Penalty Discussion:

John Ward made a motion to assess a penalty in the amount of \$1,600 with \$1,000 suspended for violation of ARSD 20:25:03:05:03. In addition, Underground must not be found guilty of a One Call violation within 12 months of the final Board Order, the penalty payment must be made within 30 days of the final Board Order, Underground must attend a damage prevention meeting in 2018 and must

conduct an in house safety meeting to discuss South Dakota One Call laws. Details of the discussion material, date and length of the meeting along with the printed and signed names of attendees shall be submitted to the Executive Director of South Dakota One Call within 30 days of the final Board Order. If any of these conditions are not met, the entire amount will be immediately due and owing. Doug Larson seconded the motion. **Motion carried unanimously on a roll call vote.**

Kurt Pfeifle made a motion to assess a penalty in the amount of \$500 with \$250 suspended for violation of ARSD 20:25:03:04(8). In addition, Underground must not be found guilty of a One Call violation within 12 months of the final Board Order, the penalty payment must be made within 30 days of the final Board Order, Underground must attend a damage prevention meeting in 2018 and must conduct an in house safety meeting to discuss South Dakota One Call laws. Details of the discussion material, date and length or the meeting along with the printed and signed names of attendees shall be submitted to the Executive Director of South Dakota One Call within 30 days of the final Board Order. If any of these conditions are not met, the entire amount will be immediately due and owing. John Ward seconded the motion. **Motion carried unanimously on a roll call vote.**

OC17-016 – In the matter of the Complaint filed by TM Rural Water District (TM), in Parker, South Dakota against LeLoux Construction (LeLoux), Parker, South Dakota for an incident occurring June 19, 2017 at 45532 280th Street in Hurley, South Dakota.

On June 30, 2017, TM filed a complaint alleging LeLoux damaged services while working outside the scope of the ticket.

The response deadline for LeLoux was July 20, 2017. LeLoux responded on July 24, 2017. LeLoux responded locate ticket was completed, except in the field where there was work also performed.

There have been no previous complaints filed against LeLoux.

Today, shall the Enforcement Panel of South Dakota One Call Notification Board find that there is probable cause LeLoux violated any statute or rule under the jurisdiction of the Board, and if so shall a civil penalty be assessed?

Probable Cause Discussion:

Kurt Pfeifle made a motion that there is probable cause the LeLoux violated SDCL 49-7A-5. John Ward seconded the motion. **Motion carried unanimously on a roll call vote.**

Discussion of Intent:

Kurt Pfeifle made a motion that this was an intentional violation. Doug Larson seconded the motion. **Motion carried unanimously on a roll call vote.**

Penalty Discussion:

Kurt Pfeifle made a motion to assess a penalty in the amount of \$1,000 with \$500 suspended. In addition, LeLoux must not be found guilty of a One Call violation within 12 months of the final Board Order, the penalty payment must be made within 30 days of the final Board Order, LeLoux must attend a damage prevention meeting in 2018 and must conduct an in house safety meeting to discuss South Dakota One Call laws. Details of the discussion material, date and length or the meeting along with the printed and signed names of attendees shall be submitted to the Executive Director of South Dakota One Call within 30 days of the final Board Order. If any of these conditions are not met, the entire amount will be immediately due and owing. Doug Larson seconded the motion. **Motion carried unanimously on a roll call vote.**

Having no further business, John Ward made a motion to adjourn. Kurt Pfeifle seconded the motion. **Motion carried unanimously on a roll call vote.**

Please note: This was a legal proceeding and only written information provided by the Complainants and the written response from the Defendants was considered per SDCL 49-7A-25. No comments from the parties involved in the complaints were taken during this call.