

## MINUTES

### South Dakota One Call Notification Board

#### Enforcement Panel Conference Call

Location: Heavy Constructors

4101 Deadwood Avenue, North

Rapid City, South Dakota

Friday, June 16, 2017 at 9:00 AM Central Time (8:00 AM Mountain)

**The Enforcement Panel of the South Dakota One Call Board met to consider the following South Dakota One Call Complaints:**

#### **Roll Call:**

Enforcement Panel Members in attendance: John Ward, Kurt Pfeifle, Dan Kaiser, Fay Jandreau, Ed Anderson. Also attending: Amanda Reiss, Legal Counsel; Larry Janes, Executive Director, Codi Gregg, Executive Assistant.

#### **Other attendees:**

Jake Jones, Davison Rural Water; Josh Spilde, Spilde Electric; John Shoemaker, Webster Scale; Mark Meyer, Watertown Municipal Utilities; Chad Schwerdtfeger and Paula Schwerdtfeger, Underground Communications; Bill Kemmis, Midco; Erin Hayes, Midco

**OC16-011** – In the Matter of the Complaint filed by Northern Natural Gas (Northern), Omaha, Nebraska against Ernest Fryer (Fryer), Hartford, South Dakota for an incident occurring on November 5, 2016 at Minnehaha County – Aberdeen Mainline M471B at MP81.51.

On November 16, 2016, Northern filed a complaint against Fryer alleging that Fryer damaged a water line, while working with no locate request.

Fryer responded on April 15, 2017 that the work was completed as a favor to the landowner, and he was not a contractor for hire. Fryer further stated that the property had been located by the homeowner when new gas lines were installed. Fryer has paid \$2,134.45 to repair the damage to the waterline, per the response.

Today, shall the Enforcement Panel of South Dakota One Call Notification Board find that there is probable cause that Fryer 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 a violation of SDCL 49-7A-5 did occur. Dan Kaiser seconded the motion. **Motion carried unanimously upon a roll call vote.**

#### **Discussion of Intent:**

Fay Jandreau made a motion that this was not an intention violation. Ed Anderson seconded the motion. **Motion carried unanimously upon a roll call vote.**

#### **Penalty Discussion:**

Fay Jandreau asked about the complaint being filed by Northern (gas company) when the damage occurred to a water line. Fay Jandreau made a motion to assess a penalty amount of \$250 with \$250 suspended with the following requirements: Fryer 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, Fryer must attend a Damage Prevention meeting in 2018, and Fryer must conduct an in-house safety meeting to discuss South Dakota One Call laws. Detail of the discussion material, date and length of the meeting, along with the printed and signed names of attendees will 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. Kurt Pfeifle seconded the motion. **Motion carried unanimously on a roll call vote.**

**OC16-012** – In the Matter of the Complaint filed by David A Geyer, Esq, on behalf of Mr. and Mrs. Bartz (Geyer), Sisseton, South Dakota against Dakota Fence (Dakota), Fargo, North Dakota, for an incident occurring on October 3, 2016 at 12924 Zach Road, Browns Valley, Minnesota. This is considered in South Dakota.

On December 30, 2016 Geyer filed a complaint alleging Dakota damaged a buried line to a pole light.

Dakota responded by the May 1 deadline with proof of a locate ticket.

Geyer further responded in dismissing the complaint on April 28, 2017.

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

**Probable Cause Discussion:**

In a statement provided by David A. Geyer, Esq, dated April 28, 2017, it was proved that Dakota had a valid locate. John Ward made a motion to dismiss the complaint against Dakota. Dan Kaiser seconded the motion. **Motion carried unanimously upon a roll call vote.**

**OC17-001** – In the matter of the Complaint filed by Davison Rural Water (Davison), Mitchell, South Dakota against Drake Underground, LLC. (Drake), Fond du Lac, Wisconsin for an incident occurring December 3, 2016 at the intersection of 406<sup>th</sup> Avenue and 254<sup>th</sup> Street in Letcher, South Dakota.

On January 31, 2017, Davison filed a complaint alleging Drake damaged water lines while boring under invalid locate tickets.

Drake did not respond to the complaint before the May 1 deadline.

Today, shall the Enforcement Panel of South Dakota One Call Notification Board find that is probable cause that Drake 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 a violation of SDCL 49-7A-5 did occur. Fay Jandreau seconded the motion. **Motion carried unanimously on a roll call vote.**

**Discussion of Intent:**

Dan Kaiser made a motion that this was an intentional violation referencing the complaint from Davison. Damage was reported on December 3, 2016 with the locate being called in December 2, 2016 at 13:38. Valid ticket start date was December 6, 2016. Fay Jandreau seconded the motion. **Motion carried unanimously on a roll call vote.**

**Penalty Discussion:**

Dan Kaiser made a motion to assess a penalty amount of \$1,000 with \$500 suspended with the following requirements: Drake 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, Drake must attend a Damage Prevention meeting in 2018, and Drake must conduct an in-house safety meeting to discuss South Dakota One Call laws. Detail of the discussion material, date and length of the meeting, along with the printed and signed names of attendees will 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. Kurt Pfeifle seconded the motion. **Motion carried unanimously on a roll call vote.**

**OC17-002** In the matter of the Complaint filed by Larson Digging, Inc. (Larson) Iroquois, South Dakota against Spilde Electric (Spilde), Arlington, South Dakota, for an incident occurring April 3, 2017 at Highway 14 and 453<sup>rd</sup> Avenue in Arlington.

On April 5, 2017, Larson filed a complaint alleging Spilde failed to register privately owned utilities in a public ROW.

Spilde responded on May 1, 2017 that the wire buried in the ROW was not installed or buried by Spilde.

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

**Probable Cause Discussion:**

After discussing the complaint, the Board felt this complaint was filed against the wrong entity, Spilde did not bury, install or own the wire in the ROW. Dan Kaiser made a motion to dismiss the complaint. Fay Jandreau seconded the motion. **Motion carried unanimously on a roll call vote.**

**OC17-003** – In the matter of the Complaint filed by NorthWestern Energy (NorthWestern), Huron, South Dakota against Webster Scale, Inc. (Webster), Webster, South Dakota, for an incident occurring April 21, 2017 at the intersection of Hwy 12 and Hwy 37 in Groton.

On May 1, 2017, NorthWestern filed a complaint alleging Webster damaged a gas line while digging within 18” of the marks.

Webster responded by the May 22, 2017 stating that NEW advised there were no conflicts in the excavation area.

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

**Probable Cause Discussion:**

Discussion was held on the information provided in the complaint. Finding no probable cause, Dan Kaiser made a motion to dismiss the complaint. Fay Jandreau seconded the motion. **Motion carried unanimously on a roll call vote.**

**OC17-004** – 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 May 16, 2017 at 1301 3<sup>rd</sup> Street NE in Watertown.

On May 17, 2017, Watertown filed a complaint alleging Underground dug prior to the 48-hour notice, not hand excavating within 18 inches of a marked facility and not providing a precise description of the specific excavation area.

The response deadline for Underground was June 8, 2017.

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?

**After discussion with Amanda Reiss, Legal Counsel, the Enforcement Panel agreed to accept the response submitted after the deadline of June 8, 2017. The submitted response is responding to OC17-004, OC17-005, OC17-007, OC17-008, OC17-009, OC17-010 and OC17-011.**

**Probable Cause Discussion:**

Fay Jandreau made a motion that there was probable cause that a violation of 49-7A-5 did occur. Dan Kaiser seconded the motion. **Motion carried unanimously on a roll call vote.**

Fay Jandreau made a motion that there was probable cause that a violation of 20.25.03.05.03 did occur. Dan Kaiser seconded the motion. **Motion carried unanimously on a roll call vote.**

Dan Kaiser made a motion that there was probable cause that a violation of 20.25.03.04(8) did occur. Fay Jandreau seconded the motion. **Motion carried unanimously on a roll call vote.**

**Discussion of Intent:**

Fay Jandreau made a motion that this was an intentional violation of 49-7A-5. Dan Kaiser seconded the motion. **Motion carried unanimously on a roll call vote.**

Fay Jandreau made a motion that this was an intentional violation of 20.25.03.05.03. Dan Kaiser seconded the motion. **Motion carried unanimously on a roll call vote.**

Fay Jandreau made a motion that this was an intentional violation of 20.25.03.04 (8). Dan Kaiser seconded the motion. **Motion carried unanimously on a roll call vote.**

**Penalty Discussion:**

Dan Kaiser made a motion to assess a penalty amount of \$1,000 with \$500 suspended for violation of 49-7A-5. Underground must all meet the following requirements: 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 Underground must conduct an in-house safety meeting to discuss South Dakota One Call laws. Detail of the discussion material, date and length of the meeting, along with the printed and signed names of attendees will 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.**

Dan Kaiser made a motion to assess a penalty amount of \$500 with \$400 suspended for violation of 20.25.03.05.03. **Motion carried unanimously on a roll call vote.**

Fay Jandreau made a motion to assess no penalty amount on the violation of 20.25.03.04(8). Motion failed due to lack of a second after discussion. Dan Kaiser made a subsequent motion to assess a penalty of \$100 with \$100 suspended, if all the requirements are met. Fay Jandreau seconded the motion. **Motion carried unanimously on a roll call vote.**

**OC17-005** – 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 May 16, 2017 at 1313 17<sup>th</sup> Street NE in Watertown.

On May 17, 2017, Watertown filed a complaint alleging Underground dug prior to the 48-hour notice, not hand excavating within 18 inches of a marked facility and not providing a precise description of the specific excavation area.

The response deadline for Underground is June 8, 2017.

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:***

Ed Anderson made a motion that there was probable cause that a violation of 49-7A-5 did occur. Fay Jandreau seconded the motion. **Motion carried unanimously on a roll call vote.**

Ed Anderson made a motion that there was probable cause that a violation of 20.25.03.05.03 did occur. Fay Jandreau seconded the motion. **Motion carried unanimously on a roll call vote.**

Ed Anderson made a motion that there was probable cause that a violation of 20.25.03.04(8) did occur. Fay Jandreau seconded the motion. **Motion carried unanimously on a roll call vote.**

***Discussion of Intent:***

Fay Jandreau made a motion that this was an intentional violation of 49-7A-5. Dan Kaiser seconded the motion. **Motion carried unanimously on a roll call vote.**

Fay Jandreau made a motion that this was an intentional violation of 20.25.03.05.03. Dan Kaiser seconded the motion. **Motion carried unanimously on a roll call vote.**

Fay Jandreau made a motion that this was an intentional violation of 20.25.03.04 (8). Dan Kaiser seconded the motion. **Motion carried unanimously on a roll call vote.**

***Penalty Discussion:***

Fay Jandreau made a motion to assess a penalty amount of \$1,600 with \$1,000 suspended for the violations of 49-7A-5, 20.25.03.05.03 and 20.25.03.04(8).

Ed Anderson made a subsequent motion to assess a penalty amount of \$5,000 with \$0 suspended. Dan Kaiser seconded the motion. Motion failed on a roll call vote.

Following Robert's Rule, the first motion was restated and seconded by John Ward. **Motion carried unanimously on a roll call vote.**

**OC17-006** – In the matter of the Complaint filed by Midco (Midco), Sioux Falls, South Dakota against Underground Communications (Underground), Waupaca, Wisconsin, for an incident occurring May 16, 2017 at 151 18<sup>th</sup> Avenue SW in Watertown.

On May 23, 2017, Midco filed a complaint alleging Underground dug prior to the 48-hour notice.

The response deadline for Underground is June 13, 2017.

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:**

Dan Kaiser made a motion that there is probable cause that a violation occurred of SDCL 49-7A-5. John Ward seconded the motion. **Motion carried unanimously on a roll call vote.**

**Discussion of Intent:**

John Ward made a motion that this was an intentional violation. Ed Anderson seconded the motion. **Motion carried unanimously on a roll call vote.**

**Penalty Discussion:**

Ed Anderson made a motion to assess a penalty amount of \$1,600 with \$1,000 suspended if the following requirements are met: 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 Underground must conduct an in-house safety meeting to discuss South Dakota One Call laws. Detail of the discussion material, date and length of the meeting, along with the printed and signed names of attendees will 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. John Ward, Kurt Pfeifle, Ed Anderson and Dan Kaiser voted in favor of the motion, Fay Jandreau voted nay.

**OC17-007** – In the matter of the Complaint filed by Midco (Midco), Sioux Falls, South Dakota against Underground Communications (Underground), Waupaca, Wisconsin, for an incident occurring May 16, 2017 at 517 C Avenue NE in Watertown.

On May 24, 2017, Midco filed a complaint alleging Underground dug prior to the 48-hour notice.

The response deadline for Underground is June 13, 2017.

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:**

Dan Kaiser made a motion that there is probable cause that a violation occurred of SDCL 49-7A-5. Kurt Pfeifle seconded the motion. **Motion carried unanimously on a roll call vote.**

**Discussion of Intent:**

Dan Kaiser made a motion that this was an intentional violation. Ed Anderson seconded the motion. **Motion carried unanimously on a roll call vote.**

**Penalty Discussion:**

Dan Kaiser made a motion to assess a penalty amount of \$1,600 with \$1,000 suspended if the following requirements are met: 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 Underground must conduct an in-house safety meeting to discuss South Dakota One Call laws. Detail of the discussion material, date and length of the meeting, along with the printed and signed names of attendees will 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. Ed Anderson seconded the motion. **Motion carried unanimously on a roll call vote.**

**OC17-008** – In the matter of the Complaint filed by Midco (Midco), Sioux Falls, South Dakota against Underground Communications (Underground), Waupaca, Wisconsin, for an incident occurring May 16, 2017 at 1913 10<sup>th</sup> Avenue SW in Watertown.

On May 24, 2017, Midco filed a complaint alleging Underground dug prior to the 48-hour notice.

The response deadline for Underground is June 13, 2017.

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:**

Dan Kaiser made a motion that there is probable cause that a violation occurred of SDCL 49-7A-5. Kurt Pfeifle seconded the motion. **Motion carried unanimously on a roll call vote.**

**Discussion of Intent:**

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

**Penalty Discussion:**

Dan Kaiser made a motion to assess a penalty amount of \$1,600 with \$1,000 suspended if the following requirements are met: 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 Underground must conduct an in-house safety meeting to discuss South Dakota One Call laws. Detail of the discussion material, date and length of the meeting, along with the printed and signed names of attendees will 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. Ed Anderson seconded the motion. **Motion carried unanimously on a roll call vote.**

**OC17-009** – In the matter of the Complaint filed by Midco (Midco), Sioux Falls, South Dakota against Underground Communications (Underground), Waupaca, Wisconsin, for an incident occurring May 16, 2017 at 3425 13<sup>th</sup> Avenue SW in Watertown.

On May 24, 2017, Midco filed a complaint alleging Underground dug prior to the 48-hour notice.

The response deadline for Underground is June 13, 2017.

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:**

Kurt Pfeifle made a motion that there is probable cause that a violation occurred of SDCL 49-7A-5. Fay Jandreau seconded the motion. **Motion carried unanimously on a roll call vote.**

**Discussion of Intent:**

Dan Kaiser made a motion that this was an intentional violation. John Ward seconded the motion. **Motion carried unanimously on a roll call vote.**

**Penalty Discussion:**

Ed Anderson made a motion to assess a penalty amount of \$1,600 with \$1,000 suspended if the following requirements are met: 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 Underground must conduct an in-house safety meeting to discuss South Dakota One Call laws. Detail of the discussion material, date and length of the meeting, along with the printed and signed names of attendees will 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. Dan Kaiser seconded the motion. **Motion carried unanimously on a roll call vote.**

**There being no further business, Larry Janes asked for a motion to adjourn.** Ed Anderson so moved. Kurt Pfeifle seconded the motion. **Motion carried unanimously on a roll call vote.**

**Meeting adjourned.**

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

Minutes of this meeting were prepared by Codi Gregg, Executive Assistant of South Dakota One Call Notification Board.