

## MINUTES

South Dakota One Call Notification Board  
Enforcement Panel Conference Call  
Location: Watertown Municipal Utilities  
901 4<sup>th</sup> Avenue, SW  
Watertown, South Dakota 57201  
Monday, August 12, 2019 at 2PM CT (1PM MT)

### Panel Board Members in Attendance:

Fay Jandreau                  Erin Hayes                  Ed Anderson                  John Ward                  Mark Meier

### Also in attendance:

Kara Semmler, Legal Counsel; Larry Janes, Executive Director; Codi Gregg, Deputy Director

### Others in Attendance:

Soren Leiseth; Chase and Elaine Saftner, Cable Communications Services.

A brief description of the Enforcement Panel process: This was a legal proceeding and no comments were taken by any of the parties involved in the Complaints during this call. A probable cause determination was 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 after that Board Meeting. Please note, no payment is due until the final order is issued.

Factors to be considered in determining the amount of the penalty, if assessed shall be:

1. The amount of damage, degree of threat to public safety and the inconvenience caused.
2. The respondent's plan and procedures to insure future compliance with statutes and rules.
3. Any history of previous violations.
4. Other matters as justice requires.

**49-7A-18. Penalties.** Except as provided in § 49-7A-19 and in addition to all other penalties provided by law, any person who violates or who procures, aids, or abets in the violation of § 49-7A-2, 49-7A-5, 49-7A-8, or 49-7A-12, or any rules promulgated pursuant to § 49-7A-2, 49-7A-5, or 49-7A-8 **may be assessed a penalty of up to one thousand dollars for the first violation and up to five thousand dollars for each subsequent violation that occurs within twelve months of the initial violation.**

**49-7A-19. Penalties for intentional violations.** In addition to all other penalties provided by law, any person who intentionally violates or who intentionally procures, aids, or abets in the violation of § 49-7A-2, 49-7A-5, 49-7A-8, or 49-7A-12, or any rules promulgated pursuant to § 49-7A-2, 49-7A-5, or 49-7A-8 **may be assessed a penalty of up to five thousand dollars for the first violation and up to ten thousand dollars for each subsequent violation that occurs within twelve months of the initial violation.**

**49-7A-20. Each violation as separate offense. Each violation of any statute or rule of the Statewide One-Call Notification Board constitutes a separate offense. In the case of a continuing violation, each day that the violation continues constitutes a separate violation.**

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

**OC19-018** – In the Matter of the Complaint filed by Montana Dakota Utilities (MDU) Rapid City, South Dakota against Plum Creek Homes (Plum Creek) Rapid City, South Dakota for an incident occurring on June 27, 2019 at 3035 Olive Grove Court, Rapid City, South Dakota.

Deadline to Respond was July 29, 2019. No response received as of August 5, 2019.  
No previous complaint history with Plum Creek.

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

Fay Jandreau made a motion that probable cause did exist in the violation of 49-7A-5 and 49-7A-12, and recommended a penalty in the amount of \$1,000 with \$500 suspended. Erin Hayes stated the penalty needed to be higher due to the serious consequences that could have easily resulted in the actions of the excavator. Larry Janes asked for clarification on intent of this violation. Fay Jandreau amended his motion, stating the violation was intentional. The Panel members held discussion on the recommended penalty. Mark Meier offered an amended motion that probable cause did exist in the violation of 49-7A-5 and 49-7A-12, the violations to be intentional and recommended a penalty in the amount of \$2,500 with \$1,000 suspended if Plum Creek meets the following requirements:

1. Plum Creek must not be found guilty of a One Call violation within 12 months of the final Board Order,
2. The penalty payment must be made within 30 days of the final Board Order,
3. Plum Creek must attend a Damage Prevention meeting in 2020.
4. Plum Creek 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 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.
5. Plum Creek will arrange a face to face meeting with MDU to review the damage, dangers while working around utilities and safe practices. This meeting is to take place within 30 days of the final Board Order being issued.

Erin Hayes seconded the motion.

The Panel held more discussion on the difference in the two penalty amounts. Due to the serious risk to public safety, the higher penalty was recommended. A damaged gas line left blowing overnight can migrate which can easily cause a home to explode. Contractors need to report damages and know the laws of the state they operate in. 911 and 811 should have been called immediately per state law. Also, the utility is the only entity that should be making repairs to ensure proper repairs.

**Motion carried unanimously upon a roll call vote.**

**OC19-019** – In the Matter of the Complaint filed by Montana Dakota Utilities (MDU) Rapid City, South Dakota against Rapid Foundation Repair (Rapid Foundation) Rapid City, South Dakota for an incident occurring on July 9, 2019 at 2521 Prairie Avenue, Rapid City, South Dakota.

Deadline to Respond was August 5, 2019. Response was received on August 5, 2019.  
No previous complaint history with Rapid Foundation.

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

Erin Hayes made a motion that probable cause did exist in the violation of 49-7A-8, the violation was intentional and recommended a penalty in the amount of \$1,000 with \$500 suspended with Rapid Foundation meeting the following standard requirements:

1. Rapid Foundation must not be found guilty of a One Call violation within 12 months of the final Board Order,
2. The penalty payment must be made within 30 days of the final Board Order,
3. Rapid Foundation must attend a Damage Prevention meeting in 2020.
4. Rapid Foundation 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 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.
5. Rapid Foundation will arrange a face to face meeting with MDU to review the damage, dangers while working around utilities and safe practices. This meeting is to take place within 30 days of the final Board Order being issued.

Mark Meier seconded the motion. **Motion carried unanimously upon a roll call vote.**

**OC19-020** – In the Matter of the Complaint filed by Montana Dakota Utilities (MDU) Rapid City, South Dakota against CCS (CCS) Black Hawk, South Dakota for an incident occurring on July 9, 2019 at 460 Main Street, Deadwood, South Dakota.

Deadline to Respond was August 5, 2019. Response was received on July 30, 2019.  
No previous complaint history with CCS.

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

The panel held discussion on the complaint and the response. Mark Meier stated the locates did not appear accurate. There were locates showing the utility in a straight line, but a bend in the facility was acknowledged. Fay Jandreau agreed.

Fay Jandreau made the motion that no probable cause existed and moved to dismiss the complaint. John Ward seconded the motion. **Motion carried unanimously upon a roll call vote.**

**OC19-021** – In the Matter of the Complaint filed by Montana Dakota Utilities (MDU) Rapid City, South Dakota against Century Sitework (Century) Rapid City, South Dakota for an incident occurring on July 12, 2019 at 0 Creek Drive, Rapid City, South Dakota.

Deadline to Respond was August 6, 2019. No response was received.  
No previous complaint history with Century.

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

The Panel discussed the complaint and the violation listed. Fay Jandreau stated there was not a violation of 49-7A-8, as stated in the complaint. Per legal counsel, the burden is on the complainant to provide the statute or rule violated. If the Panel does not feel the statute listed was violated, the complaint can be dismissed without prejudice, allowing the Complainant to refile within in ninety days of discovery as stated in 49-7A-21.

John Ward made the motion to dismiss the complaint without prejudice, as probable cause did not exist in the violation of the statute listed. Fay Jandreau seconded. **Motion carried unanimously upon a roll call vote.**

**OC19-022** Midco vs. Askland Ditching has been added to the September Agenda due to incorrect mailing address.

**OC19-023** – In the Matter of the Complaint filed by City of Crooks (Crooks) Crooks, South Dakota against Leiseths (Leiseths) Crooks, South Dakota for an incident occurring on July 13, 2019 at 121 Winterberry Circle, Crooks, South Dakota.

Deadline to Respond is August 12, 2019. No response received as of August 5, 2019.  
No previous complaint history with Leiseths.

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

Fay Jandreau made the motion that probable cause did not exist in this complaint under the definition of Excavator, Item C and moved to dismiss the complaint. Hand tools were used, the trees were placed at sixteen inches and within the right of way. John Ward seconded the motion. **Motion carried unanimously upon a roll call vote.**

**OC19-024** – In the Matter of the Complaint filed by Montana Dakota Utilities (MDU) Rapid City, South Dakota against GTI Group (GTI) Lead, South Dakota for an incident occurring on July 16, 2019 at Mill Street, Lead, South Dakota.

Deadline to Respond is August 12, 2019. No response received as of August 5, 2019.  
Previous complaint history with GTI. OC18-028.

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

John Ward made the motion to dismiss the complaint, as MDU had requested. Mark Meier seconded the motion. **Motion carried unanimously upon a roll call vote.**

Fay Jandreau asked that MDU complete research prior to filing a complaint. Also, with no statute or rule listed the complaint is incomplete. Asking for a complaint to be dismissed after the fact and submitting an incomplete complaint adds workload to One Call and the Panel Members.

**OC19-025** – In the Matter of the Complaint filed by Montana Dakota Utilities (MDU) Rapid City, South Dakota against Donarsk Lawn Care (Donarsk) Spearfish, South Dakota for an incident occurring on July 12, 2019 at 20014 Ridgefield, Spearfish, South Dakota.

Deadline to Respond is August 12, 2019. No response received as of August 5, 2019. No previous complaint history with Donarsk.

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

John Ward made a motion that probable cause did not exist, as no statute or violation was listed. John Ward moved the complaint be dismissed without prejudice allowing the Complainant to refile the complaint in its entirety. Erin Hayes seconded the motion. **Motion carried unanimously upon a roll call vote.**

Having no further business, Mark Meier made the motion to adjourn the call. John Ward seconded. **Motion carried unanimously upon 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.