

AGENDA

South Dakota One Call Notification Board Enforcement Panel Conference Call

Location: Watertown Municipal Utilities
901 4th Avenue, SW

Watertown, South Dakota 57201

Thursday, December 12, 2019 2:00PM CT (1:00PM MT)

A brief description of the Enforcement Panel process: This is a legal proceeding and no comments will be taken by any of the parties involved in the Complaints 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 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 will meet to consider the following South Dakota One Call Complaints:

OC19-058 – This complaint was continued from the November 21, 2019 Agenda.

In the Matter of the Complaint filed by Montana Dakota Utilities (MDU) Rapid City, South Dakota against D and L Lawn and Sprinkler (D and L) Rapid City, South Dakota for an incident occurring on September 27, 2019 at 1102 City Springs Road, Rapid City, South Dakota.

Deadline to Respond was November 12, 2019. Response was received November 11, 2019. There is no previous history with D and L.

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

OC19-061 - In the Matter of the Complaint filed by Montana Dakota Utilities (MDU) Rapid City, South Dakota against Nold Excavation, (Nold) Black Hawk, South Dakota for an incident occurring on October 7, 2019 at 0 Ruby's Way, Lead, South Dakota.

Deadline to Respond was November 12, 2019. No response received as of December 6, 2019. There is no previous history with Nold.

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

OC19-062 - In the Matter of the Complaint filed by Montana Dakota Utilities (MDU) Rapid City, South Dakota against Forgey Construction (Forgey) Spearfish, South Dakota for an incident occurring on October 9, 2019 at 2515 Paramount, Spearfish, South Dakota.

Deadline to Respond was November 12, 2019. Response was received on November 4, 2019. There is no previous history with Forgey.

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

OC19-063 - In the Matter of the Complaint filed by Montana Dakota Utilities (MDU) Rapid City, South Dakota against Legacy Enterprises (Legacy) Spearfish, South Dakota for an incident occurring on October 11, 2019 at 21171 Turkey Trail, Lead, South Dakota.

Deadline to Respond was November 12, 2019. Response received on November 11, 2019. There is no previous history with Legacy.

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

OC19-064 - In the Matter of the Complaint filed by Montana Dakota Utilities (MDU) Rapid City, South Dakota against Avvampato Construction (Avvampato) Rapid City, South Dakota for an incident occurring on October 11, 2019 at 4959 Carriage Hills Drive, Rapid City, South Dakota.

Deadline to Respond was November 14, 2019. Response received on November 13, 2019.
There is no previous history with Avvampato.

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

OC19-065 - In the Matter of the Complaint filed by Montana Dakota Utilities (MDU) Rapid City, South Dakota against Dipiazza Fencing, LLC. (Dipiazza) Sturgis, South Dakota for an incident occurring on October 24, 2019 at 4723 Parkview Drive, Rapid City, South Dakota.

Deadline to Respond was November 26, 2019. Response received on November 6, 2019.
There is no previous history with Dipiazza.

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

OC19-067 - In the Matter of the Complaint filed by Montana Dakota Utilities (MDU) Rapid City, South Dakota against Mick's Electric (Mick's) Rapid City, South Dakota for an incident occurring on November 1, 2019 at 2001 Hope Court, Rapid City, South Dakota.

Deadline to Respond was December 9, 2019. No response received as of December 6, 2019.
There is no previous history with Mick's.

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

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

Note: Please call (605) 863-0951 at least one hour prior to the call for call-in instructions. We have limited ports available on the conference bridge, so if you do plan to call in, we ask that you conference in on one line.