

**Minutes**  
**South Dakota One Call Notification Board**  
**Enforcement Panel Conference Call**  
**Location: Venture Communications Co-Op**  
**218 Commercial Ave SE**  
**Highmore, South Dakota 57345**  
**Thursday, January 30, 2020 2:00PM CT (1:00PM MT)**

**Panel Board Members in Attendance:**  
**Dan Kaiser, Steve Mohr, Loren Beld**

**Also in attendance:**  
**Jim Scull, Board Member; Brett Koenecke, Legal Counsel; Larry Janes, Executive Director; Codi Gregg, Deputy Director.**

**Others in Attendance: Scott Zandstra, Zandstra Construction.**

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 met to consider the following South Dakota One Call Complaints:

**OC19- 042** - In the Matter of the Complaint filed by Montana Dakota Utilities (MDU) Rapid City, South Dakota against Zandstra Construction (Zandstra) Rapid City, South Dakota for an incident occurring on August 23, 2019 at 1001 East Mall Drive, Rapid City, South Dakota.

This complaint was continued from the September 26, 2019 Panel Meeting. The complaint included an incorrect mailing address, Zandstra Construction was not made aware of the complaint until Codi Gregg contacted their office about the response. It was discovered then the address was to a different Zandstra Construction. MDU was contacted about the correct address, after which Zandstra filed a response.

Deadline to Respond was September 16, 2019. Response was received on September 24. There is no previous complaint history with this Zandstra Construction.

Today, shall the Enforcement Panel of South Dakota One Call Notification Board find that there is probable cause that Zandstra 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 received response. Codi Gregg reviewed the delays in the hearing the complaint. Due to mailing issues and incorrect addresses, the complaint was delayed. Zandstra Construction did respond to the complaint, after being notified of the first Panel meeting. Because a response had been received, the Panel continued to hear the complaint today.

Steve Mohr opened the discussion on the complaint. There was no evidence of potholing to spot the gas line, adding potholing should have been completed. Steve Mohr made the motion that probable cause did exist in the violation of 49-7A-8, and the violation was unintentional. **Motion carried unanimously upon a roll call vote.** Steve Mohr recommended a penalty in the amount of \$1,500 with \$500 suspended. During discussion of the recommended penalty, Loren Beld stated the gas line should have been below grade. Any contractor that works in subdivision or knows driveways are going in should know the utility should be below grade. Loren Beld stated this was an unfortunate accident and stated the penalty was too steep for this incident. Steve Mohr amended his penalty recommendation to \$1,500 with \$750 suspended with Zandstra meeting the following requirements:

1. Respondent 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. Respondent must attend a Damage Prevention meeting in 2020.
4. Respondent 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. Respondent 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.

Steve Mohr added that experienced contractors will err on the side of caution, but MDU shares the responsibility in this incident. Dan Kaiser seconded the motion. **Motion carried unanimously upon a roll call vote.**

**OC19-066** In the Matter of the Complaint Filed by Montana Dakota Utilities (MDU) Rapid City, SD against Century Sitework (Century) Rapid City, SD, for an incident occurring on October 24, 2019 at 2000 Deadwood Avenue, Rapid City, SD.

Deadline to Respond was December 13, 2019. There was no response received as of January 15, 2020.

There is previous history with Century.

OC19-021 The complaint was dismissed and the docket closed. Order issued 11/19/19.

OC19-034 Century was found to have violated 49-7A-5 and 49-7A-8. A penalty was assessed in the amount of \$1,000 with \$250 suspended, if Century met the five standard requirements.

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?

Discussion was held on the complaint no response was received from the defendant. Dan Kaiser made the motion that probable cause did exist in the violation of 49-7A-5 and 49-7A-8. Dan Kaiser stated that MDU should have added the violation of 49-7A-12 to the complaint. Since the statute was not listed, it cannot be considered. Dan Kaiser continued that he believed the violation was unintentional and recommended a penalty in the amount of \$2,000 with \$1,000 suspended with the respondent meeting the requirements listed below. Further discussion was held regarding the contractor and the previous complaints. After discussion, Dan Kaiser amended the recommended penalty amount to \$2,000 with zero suspended.

1. Respondent 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. Respondent must attend a Damage Prevention meeting in 2020.
4. Respondent 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. Respondent 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.

Loren Beld seconded the motion. **Motion carried unanimously upon a roll call vote.**

**OC19-070** In the Matter of the Complaint filed by Watertown Municipal Utilities (WMU) Watertown, South Dakota against Fink Plumbing (Fink) Redfield, South Dakota for an incident occurring on October 22, 2019 at 208 4<sup>th</sup> Avenue, NE, Watertown, South Dakota.

This Complaint was continued from December 19 Agenda due to an incorrect mailing address. Complaint was mailed to the dissolved business owner.

Deadline to Respond was December 27, 2019. No response was received as of January 15, 2020. There is no previous history with Fink.

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

Codi Gregg relayed information discovered after the complaint was filed. Per Jessi Fink, Fink Plumbing, the business had been dissolved as of December 31, 2018. This was verified with the State of South Dakota. The person listed on the locate ticket had been operating under the dissolved business name. The Panel discussed the complaint and information. Dan Kaiser made the motion to dismiss the complaint, having no mode of collecting or pursuing the complaint any further. Steve Mohr seconded the motion to dismiss due to no probable cause. **Motion carried unanimously upon a roll call vote.**

**OC19-075** In the Matter of the Complaint filed by Montana Dakota Utilities (MDU) Rapid City, South Dakota against Enviro Scapes, LLC. (Enviro) Rapid City, South Dakota for an incident occurring on November 27, 2019 at 5567 Wildwood Drive, Rapid City, South Dakota.

Deadline to Respond was December 27, 2019. Response was received January 29, 2020. There is no previous history with Enviro Scapes.

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

Codi Gregg clarified that all panel members had received and reviewed the response that was received. Two panel members had not reviewed the response. Dan Kaiser made the motion to continue to the complaint until the next panel call to allow proper consideration of the response. Steve Mohr seconded the motion. **Motion carried unanimously upon a roll call vote.**

**OC19-076** In the Matter of the Complaint filed by Montana Dakota Utilities (MDU) Rapid City, South Dakota against Wirkus Transport (Wirkus) Black Hawk, South Dakota for an incident occurring on December 3, 2019 at 8109 South Bluxberg Drive, Sturgis, South Dakota.

Deadline to Respond was January 13, 2020. No response was received as of January 15, 2020. There is no previous history with Wirkus.

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

Discussion was held by the panel on the lack of response from Wirkus. Working under another entities locates is not allowed and does not cover the actual excavator. No response admits guilt in the eyes of the panel also. Steve Mohr made the motion that probable cause did exist in the violation of 49-7A-5, 49-7A-8 and 49-7A-12. Steve Mohr noted all violations he believed to be intentional. The Panel held discussion on the definition of intent. After discussion, Steve Mohr amended his recommendations to the following:

Probable cause did exist in the violation of 49-7A-5 and 49-7A-8, the violations are believed to be intentional and recommended a penalty in the amount of \$1,000 with \$250 suspended per violation, totaling \$2,000 with \$500 suspended with Wirkus meeting the following requirements:

1. Respondent 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. Respondent must attend a Damage Prevention meeting in 2020.
4. Respondent 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. Respondent 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.

Included in the amended motion, Steve Mohr dismissed the violation of 49-7A-12, stating that no probable cause existed due to inconsistency in the complaint and supplied documentation from MDU.

Steve Mohr further noted that Iseman Homes needs to be aware of South Dakota One Call as well. The gas line was extended per their request and the new line was not located prior to excavation. There was gas blowing in this incident, 911 should have been notified immediately. Incidents like these cause buildings to explode. One Call should be known by all parties involved. Loren Beld seconded the amended motion. **Motion carried unanimously upon a roll call vote.**

Having no further business, Loren Beld made the motion to dismiss the panel and the conference call. Dan Kaiser seconded the motion. **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.