

## 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

Tuesday, July 16, 2019 at 10:00AM CT (9:00AM MT)

#### Panel Board Members in Attendance:

Fay Jandreau

Erin Hayes

Lloyd Rave

Loren Beld

Mark Meier

#### Also in attendance:

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

#### Others in Attendance:

Kristina Good, Montana Dakota Utilities; Don Bohle, Montana Dakota Utilities;

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.**

At the start of the Panel Conference Call, Fay Jandreau asked for clarification of 49-7A-12. The change in the law went in to effect on July 1, 2018 stating that 911 must also be called if there is an escape of a hazardous or flammable liquid.

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

**OC19-014** – In the Matter of the Complaint filed by Montana Dakota Utilities (MDU) Rapid City, South Dakota against Green Tree Landscape (Green Tree) Rapid City, South Dakota for an incident occurring on June 4, 2019 at 6207 Timberline Road SW, Rapid City, South Dakota.

Deadline to Respond was July 1, 2019. No response was received.  
No previous complaint history with Green Tree.

Today, shall the Enforcement Panel of South Dakota One Call Notification Board find that there is probable cause that Green Tree 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 members, mainly the lack of a response from Green Tree. Green Tree showed no regard to safety in this incident. Equipment was used in the tolerance zone of a utility, a gas line was struck, no calls were made to 911 or 811 to alert of the damage.

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 if Green Tree meets the following requirements:

1. Green Tree 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. Green Tree must attend a Damage Prevention meeting in 2020.
4. Green Tree 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. Green Tree 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. Further discussion was held on whether or not a penalty should be suspended if the defendant chooses to not submit a response, as suggested. Listed on the first page of the minutes are the state laws that govern penalty assessment. **Motion carried unanimously upon a roll call vote.**

**OC19-015** – In the Matter of the Complaint filed by Montana Dakota Utilities (MDU) Mobridge, South Dakota against Briggs Construction (Briggs) Fort Pierre, South Dakota for an incident occurring on June 7, 2019 at 406 East 8<sup>th</sup> Avenue, Fort Pierre, South Dakota.

Deadline to Respond was July 3, 2019. Response was received on June 23, 2019.  
No previous complaint history with Briggs.

Today, shall the Enforcement Panel of South Dakota One Call Notification Board find that there is probable cause that Briggs 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 in the violation of 49-7A-5, the violation was intentional and a recommended a penalty in the amount of \$500 with \$500 suspended, if Briggs meets the following requirements:

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

Discussion was held on the recommendation. Per all submitted information, the locates were done and flags were placed. Briggs did not wait the full 48 hours to dig. There was a response received from Briggs, 911 and 811 were not called with gas blowing. Even though the locates were completed, and would probably not affect the outcome of digging early, 49-7A-5 states excavators have to allow locators forty eighty hours, and excavation is not to happen in that time frame.

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

**OC19-016** – In the Matter of the Complaint filed by Montana Dakota Utilities (MDU) Rapid City, South Dakota against EcoScapes (EcoScapes) Rapid City, South Dakota for an incident occurring on June 10, 2019 at 841 Bayonet Drive, Box Elder, South Dakota.

Deadline to Respond is July 9, 2019. No response was received.  
No previous complaint history with EcoScapes.

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

Erin Hayes opened the discussion of this complaint by stating that EcoScapes did not file a response.

Erin Hayes made a motion that probable cause did exist in the violation of 49-7A-8, this violation was egregiously intentional. Per the complaint filed by MDU, the excavator admitted the locators were completed, and they failed to expose the facility. Equipment was used in the tolerance zone, 911 was not contacted with gas blowing. Erin Hayes recommended a penalty in the amount of \$1,000 with \$500 suspended if EcoScapes meets the following requirements:

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

Fay Jandreau seconded the motion. **Motion carried unanimously upon a roll call vote.**

**OC19-017** – In the Matter of the Complaint filed by Montana Dakota Utilities (MDU) Mobridge, South Dakota against Underground Solutions, Inc. (Underground) Sioux Falls, South Dakota for an incident occurring on June 19, 2019 at 115 Lee Hill Road, Pierre, South Dakota.

Deadline to Respond was July 15, 2019. Underground filed a response July 8, 2019. No previous complaint history with Underground Solutions, Inc.

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

Fay Jandreau opened the discussion on this complaint. The challenge with this complaint after reviewing the documentation was the marks were not clear. Per the pictures supplied, the bore machine was set up to intentionally miss the electrical lines indicating Underground was paying attention to the marks. Underground was working under a valid locate, and did contact 911 when the gas line damage occurred. Fay Jandreau made a motion that probable cause did not exist of a violation, and recommended dismissing this complaint. Loren Beld seconded the motion. **Motion carried unanimously upon a roll call vote.**

Having no further business, Fay Jandreau made a motion to dismiss the Panel. Erin Hayes 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.