

AGENDA

South Dakota One Call Notification Board Enforcement Panel Conference Call

DUE TO CORONAVIRUS OUTBREAK – THIS MEETING CAN NOT BE ATTENDED IN PERSON. WE ENCOURAGE ALL PARTIES INVOLVED TO JOIN VIA ZOOM WEB CONFERENCE CALL. CONTACT CODI GREGG AT DEPUTYDIRECTOR@SD811.COM FOR ACCESS TO CALL.

Friday, July 31, 2020 at 9AM CT (8AM 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:

OC20-031- In the Matter of the Complaint filed by Montana Dakota Utilities (MDU) Rapid City, South Dakota against Askland Construction (Askland) Rapid City, South Dakota for an incident occurring on June 2, 2020 at 3309 Kerry Drive, Rapid City, South Dakota.

Deadline to Respond was June 29, 2020. No response was received as of July 22, 2020. There is previous history with Askland – OC19-022 was dismissed and the docket closed.

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

OC20-034 - In the Matter of the Complaint filed by Montana Dakota Utilities (MDU) Rapid City, South Dakota against Industrial Builders, Inc. (Industrial) Fargo, North Dakota for an incident occurring on June 9, 2020 at Sheridan Lake Road in Rapid City, South Dakota.

Deadline to Respond was July 18, 2020. Response was received July 9, 2020. There is no previous history with Industrial Builders.

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

OC20-037 In the Matter of the Complaint Filed by Montana Dakota Utilities (MDU) Rapid City, South Dakota against Heavy Constructors (Heavy) Rapid City, South Dakota for an incident occurring on June 24, 2020 at E Mall Drive, Box Elder, South Dakota.

Deadline to Respond was July 23, 2020. No response was received as of July 22, 2020.

There is previous history with Heavy.

OC13-030 Conditions met, docket closed.

OC18-014 Conditions met, docket closed.

OC18-019 Conditions met, docket closed.

OC18-040 Conditions met, docket closed.

OC19-046 Complaint filed September 13, 2019. Issued Order on February 20, 2020 on the unintentional violation of 49-7A-5, \$1,500 with \$1,000 suspended with five requirements being met. Conditions were met, docket closed.

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

OC20-038 In the Matter of the Complaint filed by Montana Dakota Utilities (MDU) Rapid City, South Dakota against CK Construction, (CK), Black Hawk, South Dakota for an incident occurring on June 24, 2020 at 3037 Elderberry Blvd, Rapid City, South Dakota.

Deadline to Respond was July 23, 2020. Response was received July 7, 2020.
There is no previous history with CK Construction.

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

OC20-039 In the Matter of the Complaint Filed by Jesse Tippmann / Groundbreaking Construction, (Groundbreaking) Piedmont, South Dakota against Montana Dakota Utilities (MDU) Rapid City, South Dakota for an incident occurring on July 1, 2020 at 4904 Breckenridge Court, Rapid City, South Dakota.

Deadline to Respond is July 27, 2020. No response was received as of July 22, 2020.
There is previous history with MDU.

OC19-050: unintentional violation of 49-7A-8, \$1,000 with \$750 suspended. Unintentional violation of 49-7A-12, \$500 with \$500 suspended. Order was issued March 6, 2020. All conditions were met and the docket closed.

OC20-002: Unintentional violation of 49-7A-8, \$5,000 with \$3,000 suspended if MDU meets three requirements. Order was issued May 18, 2020. Conditions have not been met as of July 22, 2020.

Today, shall the Enforcement Panel of South Dakota One Call Notification Board find that there is probable cause that MDU 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.