

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 CONFERENCE CALL.

Thursday, March 26, 2020 at 2PM CT (1PM 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:

OC20-015- In the Matter of the Complaint filed by Montana Dakota Utilities (MDU) Rapid City, South Dakota against Pederson Excavating, (Pederson) Spearfish, South Dakota for an incident occurring on January 22, 2020 at 27th and Windmill Drive, Spearfish, South Dakota.

Deadline to Respond was March 2, 2020. Response was received February 12, 2020. There is no previous history with Pederson.

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

OC20-016 - In the Matter of the Complaint filed by Montana Dakota Utilities (MDU) Rapid City, South Dakota against Dream Construction (Dream) Rapid City, South Dakota for an incident occurring on January 28, 2020 at North Creek Drive and Valley Drive, Rapid City, South Dakota.

Deadline to Respond was March 2, 2020. Response was received February 18, 2020. There is no previous complaint history with Dream.

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

OC20-017 In the Matter of the Complaint Filed by Montana Dakota Utilities (MDU) Rapid City, South Dakota against The Fence Connection, Rapid City, South Dakota for an incident occurring on January 28, 2020 at 114 East Meade Street, Rapid City, South Dakota.

Deadline to Respond was March 2, 2020. No response was received as of March 18, 2020. There is previous history with Fence Connection, OC19-006. Fence was issued a penalty with five requirements. There has been no contact from Fence, and no requirements met. Board Order issued August 14, 2019.

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