

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.

Thursday, September 24, 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 Board 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:

OC20-050 - In the Matter of the Complaint filed by Montana Dakota Utilities (MDU) Rapid City, South Dakota against Dowden Creative Construction (Dowden) Sturgis, South Dakota for an incident occurring on July 29, 2020 at 1724 Russell Street in Spearfish, South Dakota.

Deadline to Respond was August 31, 2020. Response was received August 26, 2020. There is previous history with Dowden: OC19-025 was dismissed by the Panel.

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

OC20-051 - In the Matter of the Complaint filed by Montana Dakota Utilities (MDU) Rapid City, South Dakota against Toby Karn (Karn) Rapid City, South Dakota for an incident occurring on August 2, 2020 at 3117 Conservation Way, Rapid City, South Dakota.

Deadline to Respond was September 2, 2020. As of September 17, 2020 no response has been received. There is no previous history with Karn.

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

OC20-052 In the Matter of the Complaint filed by Montana Dakota Utilities (MDU) Rapid City, South Dakota against Legacy Enterprises, Inc. (Legacy) Spearfish, South Dakota for an incident occurring on July 30, 2020 at 21268 Ruby's Way in Lead, South Dakota.

Deadline to Respond is September 9, 2020. Response was received on September 8, 2020. There is previous history with Legacy: OC19-063 – Unintentional violation of 49-7A-8 and 49-7A-12, \$1,000 with \$250 suspended with Legacy the standard requirements. Legacy paid the full penalty payment within the thirty days of the Board Order and the docket was closed.

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?

OC20-053 In the Matter of the Complaint filed by Montana Dakota Utilities (MDU) Rapid City, South Dakota against Lind Exco, Inc. (Lind), Rapid City, South Dakota for an incident occurring on August 4, 2020 at 0 Flormann Street, Rapid City, South Dakota.

Deadline to Respond was September 9, 2020. Response was received September 9, 2020. There is previous history with Lind Exco:

OC14-007 Lind met the requirements and paid the assessed penalty. Docket was closed.

OC18-005 Lind met the requirements and paid the assessed penalty. Docket was closed.

OC18-020 Complaint was dismissed and the docket was closed.

OC19-053 Lind met the requirements and paid the assessed penalty. Docket was closed.

OC20-020 Unintentional violation of 49-7A-5, \$2,000 with \$1,500 suspended with standard requirements. Dismissed 49-7A-8. Order was approved on August 27, 2020.

OC20-021 Unintentional violation of 49-7A-8 - \$1,000 with \$750 suspended. Order was approved by the Board of Directors on August 27, 2020.

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

OC20-054 In the Matter of the Complaint Filed by Montana Dakota Utilities, Rapid City, SD against Riley Homes, Spearfish, SD for an incident occurring on August 12, 2020 at 671 South Street, Whitewood, SD.

Deadline to Respond is September 21, 2020. As of September 17, 2020 no response has been received. There is no previous history with Riley Homes.

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

OC20-055 In the Matter of the Complaint Filed by Montana Dakota Utilities, Rapid City, SD against JMD Excavating, Black Hawk, SD for an incident occurring on August 12, 2020 at 0 Downing Street, Rapid City, SD.

Deadline to Respond is September 21, 2020. As of September 17, 2020 no response has been received. There is previous history with JMD Excavating, OC20-045 unintentional violation of 49-7A-8 with \$1,000 with \$750 suspended with JMD meeting five standard requirements. Panel recommendations sent on 9/19/2020.

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

OC20-056 In the Matter of the Complaint Filed by Montana Dakota Utilities, Rapid City, SD against CE Landscapes, Rapid City, SD for an incident occurring on August 20, 2020 at 650 Enchanted Pines Dr, Rapid City, SD.

Deadline to Respond is September 21, 2020. As of September 17, 2020 no response has been received. There is no previous history with CE Landscapes.

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

OC20-057 In the Matter of the Complaint Filed by Montana Dakota Utilities, Rapid City, SD against Oftedal Construction, Casper, WY for an incident occurring on August 21, 2020 at Sheridan Lake Road and Spring Canyon Trail, Rapid City, SD.

Deadline to Respond is September 21, 2020. As of September 17, 2020 no response has been received. There is previous history with Oftedal Constrction. OC20-043, filed by CenturyLink, Panel found an unintentional violation of 49-7A-8 and recommended a penalty in the amount of \$1,000 with \$750 suspended with Oftedal meeting five standard requirements.

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