

AGENDA

South Dakota One Call Notification Board Enforcement Panel Conference Call

Location: Watertown Municipal Utilities
901 4th Avenue, SW

Watertown, South Dakota 57201

Thursday, September 26, 2019 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:

OC19-034 – In the Matter of the Complaint filed by Montana Dakota Utilities (MDU) Rapid City, South Dakota against Century Sitework (Century) Rapid City, South Dakota for an incident occurring on July 12, 2019 at 0 North Creek Rd, Rapid City, South Dakota.

Deadline to Respond was September 16, 2019. No response received as of September 19, 2019. 2019 Complaint OC19-021 was dismissed.

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?

OC19-035 – In the Matter of the Complaint filed by Montana Dakota Utilities (MDU) Rapid City, South Dakota against Donarsk Lawn Care, (Donarsk) Spearfish, South Dakota for an incident occurring on July 12, 2019 at 20014 Ridgefield Loop, Spearfish, South Dakota.

Deadline to Respond was September 16, 2019. No response received as of September 19, 2019. 2019 Complaint OC19-025 was dismissed.

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

OC19-036 – In the Matter of the Complaint filed by Montana Dakota Utilities (MDU) Rapid City, South Dakota against Complete Concrete, Inc. (Complete) Rapid City, South Dakota for an incident occurring on August 15, 2019 at 11612 Quaal Road, Black Hawk, South Dakota.

Deadline to Respond was September 16, 2016. Response was received on September 12, 2019. There was a previous complaint (OC19-008) with Complete on 5/1/2019. The unsuspended penalty was paid, in house safety meeting held and meeting with utility were held prior to the Order being issued on August 28, 2019.

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

OC19-037 – In the Matter of the Complaint filed by Montana Dakota Utilities (MDU) Rapid City, South Dakota against Second Nature (Second) Rapid City, South Dakota for an incident occurring on August 14, 2019 at 8821 Sheridan Lake Road, Rapid City, South Dakota.

Deadline to Respond was September 16, 2019. No response received as of September 19, 2019. There was a previous complaint filed against Second Nature in 2014 (OC14-022).

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

OC19-038 – In the Matter of the Complaint filed by Montana Dakota Utilities (MDU) Rapid City, South Dakota against Second Nature Landscape (Second) Rapid City, South Dakota for an incident occurring on August 19, 2019 at 8821 Sheridan Lake Road, Rapid City, South Dakota.

Deadline to Respond was September 16, 2019. No response received as of September 19, 2019. There was a previous complaint filed against Second Nature in 2014 (OC14-022).

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

OC19-039 – In the Matter of the Complaint filed by MidAmerican Energy Company (MidAmerican) Urbandale, Iowa against Winter Brothers Underground (Winter) Sioux Falls, South Dakota for an incident occurring on July 15, 2019 at 412 South Elm, Lennox, South Dakota.

Deadline to Respond was September 16, 2019. Response was received on September 13, 2019. 2019 Complaint Docket OC19-028 was dismissed. OC19-030 Winter Brothers was found to have unintentionally violated 49-7A-8 and 49-7A-12. A penalty will be issued in the amount of \$1,000 with \$500 suspended if Winter Brothers meets the five standard requirements.

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

OC19-040 – In the Matter of the Complaint filed by MidAmerican Energy Company (MidAmerican) Urbandale, Iowa against Winter Brothers Underground (Winter) Sioux Falls, South Dakota for an incident occurring on August 23, 2019 at 412 South Elm, Lennox, South Dakota.

Deadline to Respond was September 16, 2019. Response was received on September 13, 2019. 2019 Complaint Docket OC19-028 was dismissed. OC19-030 Winter Brothers was found to have unintentionally violated 49-7A-8 and 49-7A-12. A penalty will be issued in the amount of \$1,000 with \$500 suspended if Winter Brothers meets the five standard requirements.

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

OC19-041 – In the Matter of the Complaint filed by Montana Dakota Utilities (MDU) Rapid City, South Dakota against Mainline Contracting (Mainline) Rapid City, South Dakota for an incident occurring on August 15, 2019 at 4030 ½ Range Road, Rapid City, South Dakota.

Deadline to Respond was September 16, 2019. Response was received on September 14, 2019. There is no previous complaint history with Mainline.

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

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.

Deadline to Respond was September 16, 2019. No response received as of September 19, 2019. There were previous complaints filed against Zandstra in 2012, 2014 and 2019.

Complaint Docket OC12-017 - Zandstra did attend the Spring Damage Prevention Meeting, but did not meet the requirement of holding a documented in-house safety meeting. Full penalty payment was made.

Complaint Docket OC14-001 - Zandstra did not meet the requirements of attending a Damage Prevention Meeting nor did Zandstra hold a documented in-house safety meeting. Full penalty payment was made.

Complaint Docket OC19-001 - Zandstra was found to be in violation of 49-7A-5, the violation was intentional with a penalty of \$1,500 issued with \$500 suspended, if Zandstra met four standard requirements. There has been no response to the Board Order issued June 1, 2019. A demand for payment letter was mailed to Zandstra on July 9, 2018. Full payment was to be paid by August 10, 2019. No payment has been received.

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?

OC19-043 – In the Matter of the Complaint filed by Montana Dakota Utilities (MDU) Rapid City, South Dakota against RCS Construction (RCS) Rapid City, South Dakota for an incident occurring on August 28, 2019 at 2804 Willow Avenue, Rapid City, South Dakota.

Deadline to Respond was September 23, 2019. Response was received on September 17, 2019. There were previous complaints filed against RCS.

OC12-007 – RCS met the requirements and paid the assessed penalty.

OC13-029 – RCS met the requirements and paid the assessed penalty.

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

OC19-044 – In the Matter of the Complaint filed by Montana Dakota Utilities (MDU) Rapid City, South Dakota against John Green (Green) Oral, South Dakota for an incident occurring on August 29, 2019 at 3725 Hillsvie Road, Spearfish, South Dakota.

Deadline to Respond was September 23, 2019. No response received as of September 19, 2019. There is no previous history with Green.

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