

BEFORE THE SOUTH DAKOTA  
ONE CALL NOTIFICATION BOARD

IN THE MATTER OF THE COMPLAINT  
FILED BY EXCAVATING SPECIALISTS,  
RAPID CITY, SD AGAINST MONTANA  
DAKOTA UTILITIES, RAPID CITY, SD,  
FOR AN INCIDENT OCCURRING ON  
JANUARY 8, 2020 AT 3525 E.  
COLORADO BLVD, SPEARFISH, SD.

**ORDER ADOPTING ENFORCEMENT  
PANEL RECOMMENDATION TO THE  
SOUTH DAKOTA ONE CALL BOARD**

OC20-002

On January 8, 2020, the South Dakota One Call Board received a Complaint filed by Excavating Specialists (herein “Excavating”), against Montana Dakota Utilities, (herein “Respondent”) for an incident occurring on January 8, 2020, at 3525 E. Colorado Blvd, Spearfish, SD. The Complaint alleges a violation of SDCL 49-7A-8 when Excavating hit a gas service line while trenching in a new communications duct. Respondent had not performed locates in the immediate area of the service line that was hit but had marked another service line 20-30 feet away. Excavating states that 911, 811, and MDU-FAST were all contacted.

A copy of the Complaint was sent to Respondent on January 13, 2020. Respondent answered the Complaint on February 4, 2020 and denies a violation of South Dakota One Call law. Respondent alleges the line could not be located by normal means and was located based on measurements in the field. Respondent alleges Excavating had been notified of the issue.

On February 28, 2020, the Enforcement Panel (herein “Panel”) convened pursuant the authority present in SDCL 49-7A. The Panel finds probable cause to believe that an unintentional violation of SDCL 49-7A-8 occurred.

Based upon the evidence presented in the filings, the Panel recommends a penalty of \$5000 with \$3000 suspended upon the conditions listed below. The conditions for the suspended penalty are as follows:

1. Respondent must not be found guilty of a One Call violation within 12 months of the final Board Order,
2. The penalty payment of **\$2000** must be made to **P.O. Box 187, Rapid City, SD 57709**, within 30 days of the final Board Order,
3. Respondent must attend a Damage Prevention meeting in 2021.

If any of the above conditions are not met, the suspended penalty (**\$3000**) becomes immediately due and payable to **P.O. Box 187, Rapid City, SD 57709**.

On April 16, 2020, the Panel's recommendation was sent to the parties to this action. The parties did not request an evidentiary hearing. The Board reviewed the Panel's recommendations at its May 18, 2020 meeting pursuant to SDCL 49-7A-27. The Panel's recommendation was approved by the Board. It is now, therefore:

**ORDERED**, that the South Dakota One Call Board adopts the recommendations of the Panel as a final resolution of this Complaint. The Panel's findings are attached hereto and shall be considered fully incorporated herein.

The South Dakota One Call Notification Board has jurisdiction over this matter pursuant to SDCL 1-26 and 49-7A and ARSD Article 20:25, specifically SDCL 49-7A-5, 49-7A-18, 49-7A-20, 49-7A-22, and 49-7A-26.

Dated this 18<sup>th</sup> day of May 2020.

BY ORDER OF THE SOUTH DAKOTA ONE CALL  
NOTIFICATION BOARD:

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