

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, January 29, 2021 at 10:00AM CT (9:00AM 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:

OC20-090 In the Matter of the Complaint filed by Montana Dakota Utilities (MDU) Rapid City, South Dakota against CSI (CSI), Sioux Falls, South Dakota for an incident occurring on November 7, 2020 at 23590 Wilderness Canyon Road in Rapid City, South Dakota.

Deadline to Respond was December 22, 2020. No response has been received as of January 18, 2021.

There is previous history with CSI.

OC20-076: Enforcement Panel found probable cause of a violation of 49-7A-5 and 49-7A-8, the violations was intentional and recommended \$1,000 with \$750 suspended per violation for a total of \$2,000 with \$1,500 suspended with CSI meeting the requirements. The One Call Board has not yet met to issue a Board Order on this Docket.

OC20-086: Enforcement Panel found probable cause of a violation of 49-7A-5, the violation was intentional and recommended \$1,000 with \$500 suspended with CSI meeting the requirements. The One Call Board has not met to issue a Board Order on this docket.

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

OC20-092 - In the Matter of the Complaint filed by Montana Dakota Utilities (MDU) Rapid City, South Dakota against Jones Construction Company (Jones) Rapid City, South Dakota for an incident occurring on December 3, 2020 at 5630 Bing, Rapid City, South Dakota.

Deadline to Respond was January 4, 2021. No response was received as of January 18, 2021.

There is no previous history with Jones. Offer of Resolution was sent with the Notice of Complaint, deadline to respond was January 4, 2021. No response to the offer has been received as of January 14, 2021.

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

OC20-093 In the Matter of the Complaint filed by RCS Construction (RCS) Rapid City, South Dakota against Montana Dakota Utilities (MDU) Rapid City, South Dakota for an incident occurring on December 16, 2020 at 1636 E St Patrick Street in Rapid City, South Dakota.

Deadline to Respond is January 14, 2021. Response was received on January 13, 2021.

There is previous history with MDU.

OC19-050: Unintentional violation of 49-7A-8, \$1,000 with \$250 suspended. Board Order was issued on February 20, 2020. Conditions were met and docket closed on April 22, 2020.

OC20-002: Unintentional violation of 49-7A-8, \$5,000 with \$3,000 suspended. Board Order was issued on April 16, 2020. Conditions have not been met as of December 9, 2020.

OC20-039: Dismissed by Panel for no probable cause. Board Order issued in December 9, 2020.

OC20-067: Panel found unintentional violation of 49-7A-9, recommended a penalty of \$1,500 with \$750 suspended with requirements. The Board Order has not been issued to date.

OC20-068: Panel recommended complaint be dismissed. The Board Order has not been issued to date.

OC20-089: Panel found an unintentional violation occurred for 49-7A-8, recommended a penalty of \$3,000 with \$1,500 suspended with MDU meeting requirements. This Board Order has not been issued to date.

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.