

South Dakota

**Know what's below.
Call before you dig.**



April 16, 2020

Mr. Ryan Gustafson
Excavating Specialists
PO Box 3239
Rapid City, South Dakota 57709

Mr. Marcus Christensen
Montana Dakota Utilities
PO Box 1060
Rapid City, South Dakota 57709

Re: OC20-002 Excavating Specialists vs. Montana Dakota Utilities

Under the authority granted by SDCL-49-7A-22, the Enforcement Panel of the South Dakota One Call Notification Board met on February 28, 2020 to determine whether there is probable cause to believe a One Call violation occurred in Complaint Docket OC20-002. The Enforcement Panel's findings are enclosed. You may request a hearing according to SDCL-49-7A-27, if you disagree with the Enforcement Panel findings. If you do request a hearing you must be represented by legal counsel at the time you present your case to the One Call Board.

Failure to respond to this notice or request a hearing is considered acceptance of the Enforcement Panel Recommendation. In that case, the Recommendation will be Ordered by the South Dakota One Call Notification Board and your right to hearing is waived.

If you choose to request a hearing you must return the signed and dated form prior to the close of business on May 6, 2020.

South Dakota One Call Notification Board
PO Box 187
Rapid City, South Dakota 57709

Be aware, any future violations of any One Call statute or rule may be subject to additional penalties up to \$5,000 for each subsequent violation that occurs within twelve months of the initial violation. If you have procedural questions relative to this complaint, please contact me at 605-863-0951 or by email at deputydirector@sd811.com. Do Not Contact any members of the South Dakota One Call Notification Board to discuss this complaint since members may be involved in a hearing if one is requested.

Cody M Gregg

Cody M. Gregg
Deputy Director
South Dakota One Call

**REQUEST FOR A HEARING
COMPLAINT OC20-002**

**I REJECT THE PANEL RESOLUTION TO COMPLAINT OC20-002 AND
REQUEST A HEARING.**

Signature – Montana Dakota Utilities

Date

**I REJECT THE PANEL RESOLUTION TO COMPLAINT OC20-002 AND
REQUEST A HEARING.**

Signature – Excavating Specialists

Date

**YOUR REQUEST FOR A HEARING MUST BE SENT TO ALL OTHER
PARTIES INCLUDING:**

**SOUTH DAKOTA ONE CALL NOTIFICATION BOARD
PO BOX 187
RAPID CITY, SOUTH DAKOTA 57709**

**Failure to request a hearing will result in acceptance of the Enforcement Panel's
Recommendation by the South Dakota One Call Board. The Board will then
Order the Recommendation as the final disposition of this Complaint.**

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.

**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 2020.

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.**

The Panel recommends the South Dakota One Call Board accept its findings and recommendations herein. If either party to this Complaint disagrees or objects to the recommendations or findings herein, a hearing may be requested. To request a hearing, a party must reply within twenty days from the date of service of this notice. Failure to request a hearing is considered acceptance of the recommendations and findings herein.

The South Dakota One Call Notification Board has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-7A and ARSD 20:25.