

South Dakota

Know what's below.
Call before you dig.



April 17, 2020

Mr. Patrick Mastel
Midcontinent Communications
3901 North Louise Avenue
Sioux Falls, South Dakota 57107

Mr. Mike Brown
Sod Buster Inc. and B Green
46919 Cody Trail
Tea, South Dakota 57064

Re: OC20-008 Midcontinent Communications vs. Sod Busters, Inc. and B Green

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 OC20-008. 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 8, 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 OC20-008**

**I REJECT THE PANEL RESOLUTION TO COMPLAINT OC20-008 AND
REQUEST A HEARING.**

Signature – Midcontinent Communications

Date

**I REJECT THE PANEL RESOLUTION TO COMPLAINT OC20-008 AND
REQUEST A HEARING.**

Signature – Sod Busters Inc and B Green

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 MIDCONTINENT
COMMUNICATIONS, SIOUX FALLS, SD
AGAINST SOD BUSTERS INC. AND B
GREEN, TEA, SD, FOR AN INCIDENT
OCCURRING ON AUGUST 30, 2019 AT
5816 S. BOUNTY PL., SIOUX FALLS, SD.

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

OC20-008

On January 22, 2020, the South Dakota One Call Board received a Complaint filed by Midcontinent Communications (herein "Midco"), against Sod Busters Inc. and B Green, (herein "Respondent") for an incident occurring on August 30, 2019, at 5816 S. Bounty Pl., Sioux Falls, SD. The Complaint alleges a violation of SDCL 49-7A-8 and 49-7A-12 when Respondent did perform locates but did not expose cable with hand tools or noninvasive methods and did not contact Midco after cables were cut.

A copy of the Complaint was sent to Respondent on January 28, 2020. Respondent answered the Complaint on February 18, 2020 and denies a violation of South Dakota One Call law. Respondent alleges they do hand dig, but Midco's lines are so close to the surface that they are being hit by the shovels.

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 unintentional violations of SDCL 49-7A-8 and 49-7A-12 occurred.

Based upon the evidence presented in the filings, the Panel recommends a penalty of \$250 with \$250 suspended for SDCL 49-7A-8 and \$1,000 with \$750 suspended for SDCL 49-7A-12 for a total recommended penalty of \$1,250 with \$1,000 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 **\$250** 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,

4. Respondent must conduct an in-house safety meeting to discuss South Dakota One Call laws. Detail of the discussion material, date and length of the meeting along with printed and signed names of attendees will be submitted to the Executive Director of South Dakota One Call within 30 days of the final Board Order.
5. Respondent will arrange a face-to-face meeting with Midco to review the damage, dangers while working around utilities, and safe practices. This meeting is to take place within 30 days of the final Board Order being issued.

If any of the above conditions are not met, the suspended penalty (**\$1,000**) 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.