

BEFORE THE SOUTH DAKOTA
ONE CALL NOTIFICATION BOARD

<p>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 5709 S. BOUNTY PL., SIOUX FALLS, SD.</p>	<p>ORDER ADOPTING ENFORCEMENT PANEL RECOMMENDATION TO THE SOUTH DAKOTA ONE CALL BOARD</p> <p>OC20-013</p>
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On January 24, 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 5709 S. Bounty Pl., Sioux Falls, SD. The Complaint alleges a violation of SDCL 49-7A-5 and 49-7A-12 when Respondent did not perform locates prior to doing underground sprinkler repair and cut the cable.

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. Respondent states they did not request a locate.

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-5 and 49-7A-12 occurred.

Based upon the evidence presented in the filings, the Panel recommends a penalty of \$1,000 with \$500 suspended for SDCL 49-7A-5 and \$1,000 with \$750 suspended for SDCL 49-7A-12 for a total recommended penalty of \$2,000 with \$1,250 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 **\$750** 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,

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 Midcontinent Communications 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 (**\$1,250**) becomes immediately due and payable to **P.O. Box 187, Rapid City, SD 57709**.

On April 17, 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 20th day of May 2020.

BY ORDER OF THE SOUTH DAKOTA ONE CALL
NOTIFICATION BOARD:

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Fay Sandreau
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