

BEFORE THE SOUTH DAKOTA  
ONE CALL NOTIFICATION BOARD

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| <p>IN THE MATTER OF THE COMPLAINT<br/>FILED BY MONTANA DAKOTA<br/>UTILITIES CO., RAPID CITY, SD<br/>AGAINST PEDERSON EXCAVATING,<br/>SPEARFISH, SD, FOR AN INCIDENT<br/>OCCURRING ON JANUARY 22, 2020 AT<br/>27<sup>TH</sup> AND WINDMILL DRIVE,<br/>SPEARFISH, SD.</p> | <p><b>ORDER ADOPTING ENFORCEMENT<br/>PANEL RECOMMENDATION TO THE<br/>SOUTH DAKOTA ONE CALL BOARD</b></p> <p>OC20-015</p> |
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On February 7, 2020, the South Dakota One Call Board received a Complaint filed by Montana Dakota Utilities Co., (herein “MDU”), against Pederson Excavating, (herein “Respondent”) for an incident occurring on January 22, 2020, at 27<sup>th</sup> and Windmill Drive, Spearfish, SD. The Complaint alleges a violation of SDCL 49-7A-8 when Respondent was beginning to do work by removing the top layer of soil. The top layer being frozen, MDU alleges the Respondent used a backhoe instead of using less invasive means.

A copy of the Complaint was sent to Respondent on February 10, 2020. Respondent answered the Complaint on February 12, 2020 and admits the allegation that it violated SD One Call law. Respondent alleges the initial excavation began with an excavator to break the frost on the top of the ground.

On March 26, 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 \$1,000 with \$750 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 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 MDU 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 (**\$750**) becomes immediately due and payable to **P.O. Box 187, Rapid City, SD 57709**.


On April 1, 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 20<sup>th</sup> day of May 2020.

BY ORDER OF THE SOUTH DAKOTA ONE CALL  
NOTIFICATION BOARD:

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