

South Dakota

Know what's below.
Call before you dig.



May 8, 2020

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

Mrs. Mandi Schmierer
Lind Exco
1641 Deadwood Avenue
Rapid City, South Dakota 57702

Re: OC20-020 Montana Dakota Utilities vs. Lind Exco

Under the authority granted by SDCL-49-7A-22, the Enforcement Panel of the South Dakota One Call Notification Board met on April 30, 2020 to determine whether there is probable cause to believe a One Call violation occurred in Complaint Docket **OC20-020**. 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 29, 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 \$10,000 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 OC20-020**

**I REJECT THE PANEL RESOLUTION TO COMPLAINT OC20-020 AND
REQUEST A HEARING.**

Signature – Montana Dakota Utilities

Date

**I REJECT THE PANEL RESOLUTION TO COMPLAINT OC20-020 AND
REQUEST A HEARING.**

Signature – Lind Exco

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 MONTANA DAKOTA
UTILITIES, RAPID CITY, SD AGAINST
LIND EXCO, RAPID CITY, SD, FOR AN
INCIDENT OCCURRING ON MARCH 3,
2020 AT ANDERSON ROAD AND
MONDO, RAPID CITY, SD.

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

OC20-020

On March 16, 2020, the South Dakota One Call Board received a Complaint filed by Montana Dakota Utilities Co., (herein “MDU”), against Lind Exco, (herein “Respondent”) for an incident occurring on March 3, 2020, at Anderson Road and Mondo, Rapid City, SD. The Complaint alleges a violation of SDCL 49-7A-5 and 49-7A-8 when Respondent did not call in a new locate ticket to mark the new gas line.

A copy of the Complaint was sent to Respondent on March 24, 2020. The deadline to respond was April 13, 2020. Respondent answered the Complaint as of April 20, 2020 and does not dispute that a violation of South Dakota One Call law. Respondent alleges they were digging up a curb box that was previously installed and needed to be straightened. Respondent states they were following instructions from another supervisor, who was believed to have called in the locate.

On April 30, 2020, the Enforcement Panel (herein “Panel”) convened pursuant the authority present in SDCL 49-7A. The Panel does not find probable cause to believe that a violation of SDCL 49-7A-8 occurred. Therefore, the Panel recommends the Complaint allegation of SDCL 49-7A-8 be dismissed. The Panel does find probable cause to believe that an unintentional violation for SDCL 49-7A-5 occurred.

Based upon the evidence presented in the filings, the Panel recommends a penalty of \$2,000 with \$1,500 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 **\$500** 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 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 (**\$1,500**) 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.