

BEFORE THE SOUTH DAKOTA
ONE CALL NOTIFICATION BOARD

IN THE MATTER OF THE COMPLAINT
FILED BY MONTANA DAKOTA
UTILITIES, RAPID CITY, SD AGAINST
UNDERGROUND CONSTRUCTION,
RAPID CITY, SD, FOR AN INCIDENT
OCCURRING ON MARCH 5, 2020 AT 609
FRANKLIN ST, RAPID CITY, SD.

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

OC20-025

On April 29, 2020, the South Dakota One Call Board received a Complaint filed by Montana Dakota Utilities (herein “MDU”), against Underground Construction, LLC, (herein “Respondent”) for an incident occurring on March 5, 2020 at 609 Franklin St, Rapid City, SD. The Complaint alleges a violation of SDCL 49-7A-8 and 49-7A-12 when Respondent was digging up a damaged phone line and hit the 2” plastic main in the alley. MDU alleges the snow melt and previous excavation had eliminated the locate marks.

A copy of the Complaint was sent to Respondent on May 4, 2020. The deadline to respond was May 25, 2020. Respondent has not answered the complaint as of July 2, 2020.

On July 2, 2020, the Enforcement Panel (herein “Panel”) convened pursuant the authority present in SDCL 49-7A. The Panel does find probable cause to believe that intentional 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 \$1,000 with \$750 suspended for SDCL 49-7A-8 and \$1,500 with \$750 suspended for SDCL 49-7A-12 for a total recommended penalty of \$2,500 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 Board Order,
2. The penalty payment of **\$1,000** must be made to **P.O. Box 187, Rapid City, SD 57709**, within 30 days of the 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 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 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.


On August 4, 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 August 27, 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 23th day of September 2020.

BY ORDER OF THE SOUTH DAKOTA ONE CALL
NOTIFICATION BOARD:

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