

BEFORE THE SOUTH DAKOTA
ONE CALL NOTIFICATION BOARD

IN THE MATTER OF THE COMPLAINT
FILED BY MONTANA DAKOTA
UTILITIES CO., RAPID CITY, SD
AGAINST DONARSKI LAWN CARE,
SPEARFISH, SD, FOR AN INCIDENT
OCCURRING ON JUNE 2, 2020 AT 1400
NORTH AVE, SPEARFISH, SD.

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

OC20-030

On June 8, 2020, the South Dakota One Call Board received a Complaint filed by Montana Dakota Utilities Co. (herein “MDU”), against Shawn Bogart d/b/a Donarski Lawn Care and Landscaping, (herein “Respondent”) for an incident occurring on June 2, 2020, at 1400 North Ave, Spearfish, SD. The Complaint alleges a violation of SDCL 49-7A-5 and 49-7A-8 when Respondent was repairing an irrigation system for a customer when Respondent bored through a 3” gas main. MDU alleges Respondent did not have a valid locate ticket at the time of the incident and that locate marks show in pictures are from the damage ticket. MDU alleges that 911 and 811 were both notified as gas was blowing.

A copy of the Complaint was sent to Respondent on June 9, 2020. The deadline to respond was June 29, 2020. Respondent had not answered the Complaint as of July 30, 2020.

On July 30, 2020, the Enforcement Panel (herein “Panel”) convened pursuant the authority present in SDCL 49-7A. The Panel does find probable cause to believe that an unintentional violation of SDCL 49-7A-5 occurred. The Panel does not find probable cause to believe that a violation of SDCL 49-7A-8 occurred, as it is not possible to be aware of a tolerance zone to avoid it without a valid locate ticket or marks, and dismissed the violation.

Based upon the evidence presented in the filings, the Panel recommends a penalty of \$1,000 with \$00 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 (~~\$0~~) 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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