

BEFORE THE ONE CALL BOARD  
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE COMPLAINT  
FILED BY MONTANA DAKOTA  
UTILITIES CO., RAPID CITY, SD  
AGAINST ASKLAND CONSTRUCTION,  
RAPID CITY, SD, FOR AN INCIDENT  
OCCURRING ON JUNE 2, 2020 AT 3309  
KERRY DR, RAPID CITY, SD.

**OC20-031**

**NOTICE OF HEARING**

On June 8, 2020, the South Dakota One Call Board received a Complaint filed by Montana Dakota Utilities Co. (herein “MDU”), against Matt Askland d/b/a Askland Construction, (herein “Respondent”) for an incident occurring on June 2, 2020, at 3309 Kerry Dr, Rapid City, SD. The Complaint alleges a violation of SDCL 49-7A-8 and 49-7A-12 when Respondent damaged a gas line while doing water line repair. MDU alleges Respondent did not leave enough room to dig safely in the area using an excavator. MDU alleges that the gas line was accurately located, as seen in the picture, and that once the gas line was hit, the contractor used the bucket of the equipment to pinch the gas line and stop the flow of gas.

A copy of the Complaint was sent to respondent on June 16, 2020. The deadline to respond was June 29, 2020. Respondent had not answered the Complaint as of July 31, 2020. On July 31, 2020, pursuant to the procedure established in SDCL 49-7A-22, the One Call enforcement panel (herein “panel”) met to determine whether the Complainant sufficiently demonstrated probable cause that violations of One Call law found in SDCL 49-7A occurred.

The panel found sufficient evidence was presented to determine probable cause to believe a violation of SDCL 49-7A-8 occurred. However, the panel found the violation to be unintentional. The panel assessed a \$1,000 penalty and suspended \$750 if the respondent met conditions as set by the panel. The panel found sufficient evidence was presented to determine probable cause to believe a violation of SDCL 49-7A-12 occurred. However, the panel found the violation to be intentional. The panel assessed a \$1,500 penalty and suspended \$750 if the respondent met conditions as set by the panel. Therefore, the panel assessed a total \$2,500 penalty and suspended \$1,500 if the respondent met conditions as set by the panel. On August

12, 2020, the panel recommendation was sent to the Complainant and Respondent. On August 27, 2020, Respondent filed a request for hearing.

The board has jurisdiction over this matter pursuant to SDCL Chapter 49-7A and ARSD Chapter 1-26.

A hearing on this matter shall be held on November 17, 2020, at 1:00 o'clock p.m. CST. The hearing will be conducted via Zoom. All persons testifying will be subject to cross examination by the parties. All witnesses to be called, and all exhibits to be placed in evidence must be identified in advance and disclosed to the other parties. A prehearing conference shall be held by telephone conference on October 30 at 11am CDT.

The issues to be heard at the hearing shall be: (1) whether Matt Askland d/b/a Askland Construction had a responsibility to maintain the minimal horizontal clearance of eighteen inches between a marked underground facility and the cutting edge of any mechanical equipment; (2) whether Matt Askland d/b/a Askland construction had a responsibility to not conceal or attempt to conceal any damage, dislocation, or disturbance, or make any repair to the facility; and (3) if Matt Askland d/b/a Askland Construction had such an obligation, whether penalties shall be imposed by the board pursuant to SDCL 7A-18 and/or 49-7A-19, and if so, what those penalties shall be.

The hearing shall be an adversarial proceeding conducted pursuant to SDCL Chapter 1-26. All parties have the right to be present and to be represented by an attorney. These rights and other due process rights shall be forfeited if not exercised at the hearing. If you or your representative fail to appear at the time and place set for hearing, the final decision will be based solely on the testimony and evidence provided, if any, during the hearing. If you or your representative fail to appear at the time and place set for hearing, a final decision may be issued by default pursuant to SDCL 1-26-20. After the hearing, the board will consider all evidence and testimony that was presented at the hearing. The board will then enter Findings of Fact, Conclusions of Law and a final decision regarding this matter. As a result of the hearing, the board shall determine whether Matt Askland d/b/a Askland Construction violated any statute or rule of the board, and, if so, whether any penalties shall be imposed.

The board's final decision may be appealed by the parties to the State Circuit Court and the State Supreme Court as provided by law.

Dated this 30 day of September 2020.

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

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### CERTIFICATE OF SERVICE

30 Brett Koenecke of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 30 day of Sept, 2020, he electronically filed and served via email and/or first class mail, postage prepaid, a true and correct copy of the foregoing in the above-captioned action to the following at:

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