

**SOUTH DAKOTA ONE CALL BOARD**

**OFFICE OF HEARING EXAMINERS  
PIERRE, SOUTH DAKOTA**

**OHE 20-01**

**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.**

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER**

The above-entitled matter came on for Hearing before a quorum of the South Dakota One Call Board on Tuesday, November 17, 2020. The Hearing was held via Zoom, an internet videoconference. Presiding over the 1-26 Hearing was Catherine Williamson, Chief Hearing Examiner, Office of Hearing Examiners. Askland Construction Co. (Askland), appeared at the hearing. Evidence and testimony was presented by owner Arthur Askland and employee Matthew Askland. Attorney Lindsey Riter-Rapp represented Montana Dakota Utilities (MDU). Also present to present evidence for Montana Dakota Utilities was Marcus Christensen.

**FINDINGS OF FACT**

1. On June 2, 2020 at 3309 Kerry Drive, Rapid City, South Dakota, Askland Construction was excavating a hole for the purpose of repairing a water line.
2. On June 1, 2020, ELM properly marked all utility lines in this location, per the call from Askland to 811 before the excavation or the digging began.
3. The ELM markings were within 18 inches of the gas line.
4. Askland used a shovel to uncover the water line and the 1/2" inch plastic gas line on one side of the drainage culvert.
5. When Askland started to uncover the line on the opposing side of the culvert, Askland did not use a hand shovel but instead used a mechanical excavator.
6. Askland, using the excavator, hit the MDU gas line and broke the line. Gas was escaping from the line as Askland could smell it.
7. After realizing what happened, Askland lowered the excavator bucket and evacuated the site. Askland did not "pinch" the line or touch the line in any way.
8. Askland immediately telephoned 811 and MDU to report the damage.

9. An MDU technician responded immediately and was able to fix the line within the hour.
10. The technician located the broken line under the excavator bucket.
11. Askland did not call 911 to report a gas leak or line break.
12. MDU was later notified by ELM that a possible one-call violation had occurred at 3309 Kerry Drive, Rapid City, South Dakota.
13. ELM sent a damage report to MDU.
14. ELM investigates the damage, takes photos of the scene, and writes notes about the violation.
15. Field Operations Coordinator for MDU, Marcus Christensen reviewed the ELM report and determined that a possible one-call violation had occurred.
16. MDU filed a complaint with the Board on June 8, 2020.
17. The One-Call Enforcement Panel met on July 31, 2020.
18. The Panel found probably cause to believe that an unintentional violation of SDCL 49-7A-8 occurred and that an intentional violation of SDCL 49-7A-12 occurred.
19. In a timely manner, Askland appealed these findings to the Board and requested a hearing be held.
20. Any additional findings of fact included in the Reasoning section of this proposed decision are incorporated by reference.
21. To the extent any of the foregoing are improperly designated and are, instead, conclusions of law, they are hereby redesignated and incorporated herein as conclusions of law.

#### **CONCLUSIONS OF LAW**

1. The Board has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-7A and ARSD 20:25.
2. SDCL 49-7A-8 provides in pertinent part that: "Excavators shall maintain a minimum horizontal clearance of eighteen inches between a marked underground facility and the cutting edge of any mechanical equipment. If excavation is required within eighteen inches, horizontally, the excavator shall

expose the facility with hand tools or noninvasive methods approved pursuant to rule and shall protect and support the facility prior to further excavation with mechanical equipment."

3. SDCL 49-7A-12 provides that: "If any underground facility is damaged, dislocated, or disturbed in advance of or during excavation work, the excavator shall immediately notify the one-call notification center and, if known, the operator of the facility of the damage, dislocation, or disturbance. No excavator may conceal or attempt to conceal any damage, dislocation, or disturbance, nor may that excavator attempt to make any repair to the facility unless authorized by the operator of the facility. If the damage, dislocation, or disturbance results in the escape of any flammable, toxic, or corrosive gas or liquid, the excavator shall immediately report the escape to the authorities by calling the 911 emergency telephone number and notifying the one-call notification center and, if known, the operator of the facility."
4. Askland did not call 911 after the gas line break in violation of SDCL 49-7A-12.
5. Askland inadvertently failed to maintain an 18-inch clearance between a marked underground facility and the cutting edge of their excavator, in violation of SDCL 49-7A-8.
6. Any additional conclusions of law included in the Reasoning section of this proposed decision are incorporated by reference.
7. To the extent any of the foregoing are improperly designated and are, instead, findings of fact, they are hereby redesignated and incorporated herein as findings of fact.

### ORDER

The Board determined that Askland violated SDCL 49-7A-12 and SDCL 49-7A-8. It is the Order of the Board that for the violation of SDCL 49-7A-8, Askland be fined \$1000 with \$750 suspended upon the conditions listed below. It is the Order of the Board that for the violation of SDCL 49-7A-12 that Askland be fined \$1000 with \$750 suspended upon the conditions listed below. The five (5) standard conditions of the Board for are:

1. Askland must not be found guilty of the One Call violation within 12 months of the 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 Board Order.
3. Respondent must attend a Damage Prevention meeting in Calendar Year 2021.
4. Askland must conduct an in-house safety meeting to discuss South Dakota One Call laws. Details 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. Askland 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.

These Findings of Fact and Conclusions of Law and Order are hereby signed and ordered by the South Dakota One Call Notification Board.

Dated this 16th day of December 2020.

  
\_\_\_\_\_  
Board Chairman

**CERTIFICATE OF SERVICE**

I certify that on \_\_\_\_\_, 2020, a true and correct copy of this Findings of Fact, Conclusions of Law, and Order was mailed and e-mailed to each party listed below.

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ASKLAND CONSTRUCTION  
ART ASKLAND & MATT ASKLAND  
PO BOX 9511  
RAPID CITY SD 57709  
ASKLAND94@HOTMAIL.COM

LINDSEY RITER-RAPP  
RITER ROGERS WATTIER & NORTHRUP  
PO BOX 280  
PIERRE SD 57501  
l.riter-rapp@riterlaw.com

## CERTIFICATE OF SERVICE

I certify that on December 16, 2020, at Pierre, South Dakota, a true and correct copy of the unsigned Findings of Fact, Conclusions of Law, and Order was mailed and e-mailed to each party listed below.



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MR LARRY JANES  
EXECUTIVE DIRECTOR  
SD ONE CALL BOARD  
PO BOX 187  
RAPID CITY SD 57709  
[exedir@sdonecall.com](mailto:exedir@sdonecall.com)

MS CODY GREGG  
SD ONE CALL BOARD  
PO BOX 187  
RAPID CITY SD 57709  
[deputydirector@sd811.com](mailto:deputydirector@sd811.com)