

South Dakota



**Know what's below.
Call before you dig.**

August 12, 2020

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

Mr. Bret Oleson
Heavy Constructors
4101 Deadwood Avenue North
Rapid City, South Dakota 57702

Re: OC20-037 Montana Dakota Utilities vs. Heavy Constructors

Under the authority granted by SDCL-49-7A-22, the Enforcement Panel of the South Dakota One Call Notification Board met on July 31, 2020 to determine whether there is probable cause to believe a One Call violation occurred in Complaint Docket OC20-037. 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 September 2, 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 OC20-037**

**I REJECT THE PANEL RESOLUTION TO COMPLAINT OC20-037 AND
REQUEST A HEARING.**

Signature – Montana Dakota Utilities

Date

**I REJECT THE PANEL RESOLUTION TO COMPLAINT OC20-037 AND
REQUEST A HEARING.**

Signature – Heavy Constructors

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 CO., RAPID CITY, SD
AGAINST HEAVY CONSTRUCTORS,
RAPID CITY, SD, FOR AN INCIDENT
OCCURRING ON JUNE 24, 2020 AT E
MALL DRIVE, BOX ELDER, SD.

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

OC20-037

On June 30, 2020, the South Dakota One Call Board received a Complaint filed by Montana Dakota Utilities Co. (herein "MDU"), against Heavy Constructors, Inc., (herein "Respondent") for an incident occurring on June 24, 2020, at E Mall Drive, Box Elder, SD. The Complaint alleges a violation of SDCL 49-7A-5 and 49-7A-8 when Respondent was excavating and hit the 2" gas main. MDU alleges Respondent potholed the 4" gas main across the road at 4 feet deep and assumed the 2" main would be the same. MDU also alleges that Respondent punctured the 2" gas main with a tooth on the bucket and the Respondent's locate was expired at the time of damage. Gas was blowing, and 911 and 811 were notified.

A copy of the Complaint was sent to Respondent on July 1, 2020. The deadline to respond was July 23, 2020. Respondent had not answered the Complaint as of July 31, 2020.

On July 31, 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-5 and 49-7A-8 occurred.

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