

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.	<b>ORDER ADOPTING ENFORCEMENT PANEL RECOMMENDATION TO THE SOUTH DAKOTA ONE CALL BOARD</b>  OC20-037
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On June 30, 2020, the South Dakota One Call Board received a Complaint filed by Montana Dakota Utilities Co. (herein "Claimant"), 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. Claimant alleges Respondent potholed the 4" gas main across the road at 4 feet deep and assumed the 2" main would be the same. Claimant 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 Claimant 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.

On August 12, 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 November 17, 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.

**ORDERED**, that if the penalty is not paid, that the Board shall pursue any rights it has under the law regarding collections.

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 10<sup>th</sup> day of December 2020.

BY ORDER OF THE SOUTH DAKOTA  
ONE CALL NOTIFICATION BOARD:

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