

BEFORE THE SOUTH DAKOTA  
ONE CALL NOTIFICATION BOARD

IN THE MATTER OF THE COMPLAINT  
FILED BY MONTANA DAKOTA  
UTILITIES CO., RAPID CITY, SD  
AGAINST CK CONSTRUCTION, BLACK  
HAWK, SD, FOR AN INCIDENT  
OCCURRING ON JUNE 24, 2020 AT 3037  
ELDERBERRY BLVD., RAPID CITY, SD.

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

OC20-038

On June 30, 2020, the South Dakota One Call Board received a Complaint filed by Montana Dakota Utilities Co. (herein "Claimant"), against Brandon James Bird d/b/a CK Construction, (herein "Respondent") for an incident occurring on June 24, 2020, at 3037 Elderberry Blvd., Rapid City, SD. The Complaint alleges a violation of SDCL 49-7A-5 and 49-7A-8 when Respondent was digging a trench for a water main project and knew the gas line was there. Claimant alleges Respondent did not have a valid locate ticket at the time of the damage, and it appeared there were old locate flags from a previous locate ticket. Claimant also alleges gas was blowing, and 811 and 911 were called.

A copy of the Complaint was sent to Respondent on July 1, 2020. The deadline to respond was July 23, 2020. Respondent answered the Complaint on July 7, 2020 and does not dispute that a violation of South Dakota One Call law occurred.

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 unintentional 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 \$750 suspended for each violation for a total recommended penalty of \$2,000 with \$1,500 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 **\$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 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 **(\$1,500)** becomes immediately due and payable to **P.O. Box 187, Rapid City, SD 57709.**

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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