

BEFORE THE SOUTH DAKOTA
ONE CALL NOTIFICATION BOARD

<p>IN THE MATTER OF THE COMPLAINT FILED BY RW CONTRACTING, BROOKINGS, SD AGAINST CITY OF WHITE, WHITE, SD, FOR AN INCIDENT OCCURRING ON JULY 29, 2020, AT 104 E 4TH STREET, WHITE, SD.</p>	<p>ORDER ADOPTING ENFORCEMENT PANEL RECOMMENDATION TO THE SOUTH DAKOTA ONE CALL BOARD</p> <p>OC20-049</p>
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On July 29, 2020, the South Dakota One Call Board received a Complaint filed by RW Contracting (herein "Claimant"), against City of White (herein "Respondent"), for an incident occurring on July 29, 2020, at 104 E 4th Street, White, SD. The Complaint alleges violations of SDCL 49-7A-9, 49-7A-19, and 49-7A20 when Respondent failed to locate the power line.

A copy of the Complaint was sent to Respondent on August 4, 2020. The deadline to respond was August 24, 2020. Respondent has answered the Complaint as of August 26, 2020 and does dispute that a violation of South Dakota One Call law occurred. Respondent alleges the name and address did not match for the property and that the power line that was hit was for the neighboring house.

On August 28, 2020, the Enforcement Panel (herein "Panel") convened pursuant the authority present in SDCL 49-7A. The Panel does find probable cause that an unintentional violation of SDCL 49-7A-9 occurred. The Panel does not find probable cause that violations of 49-7A-19 and 49-7A-20 occurred. Therefore, the Panel recommends the Complaint in regard to 49-7A-19 and 49-7A-20 be dismissed.

Based upon the evidence presented in the filings, the Panel recommends a penalty of \$250 with \$250 suspended for the violation of SDCL 49-7A-9 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 **\$0** must be made to **P.O. Box 187, Rapid City, SD 57709.**
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 thirty (30) days of the Board Order being issued.

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 thirty (30) days of the Board Order being issued.

If any of the above conditions are not met, the suspended penalty (**\$250**) becomes immediately due and payable to **P.O. Box 187, Rapid City, SD 57709.**

On October 7, 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 10th day of December 2020.

BY ORDER OF THE SOUTH DAKOTA
ONE CALL NOTIFICATION BOARD:

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