

BEFORE THE SOUTH DAKOTA
ONE CALL NOTIFICATION BOARD

<p>IN THE MATTER OF THE COMPLAINT FILED BY MONTANA DAKOTA UTILITIES, RAPID CITY, SD AGAINST DOWDEN CREATIVE CONSTRUCTION, STURGIS, SD, FOR AN INCIDENT OCCURRING ON JULY 29, 2020 AT 1724 RUSSELL STREET, SPEARFISH, SD.</p>	<p>ENFORCEMENT PANEL RECOMMENDATION TO THE SOUTH DAKOTA ONE CALL BOARD</p> <p>OC20-050</p>
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On August 5, 2020, the South Dakota One Call Board received a Complaint filed by Montana Dakota Utilities Co. (herein “Claimant”), against Dowden Creative Construction, LLC (herein “Respondent”), for an incident occurring on July 29, 2020, at 1724 Russell Street, Spearfish, SD. The Complaint alleges violations of SDCL 49-7A-5 and 49-7A-8 when Respondent was digging without a valid locate ticket and not maintaining a minimum of 18 inches of separation from the utility.

A copy of the Complaint was sent to Respondent on August 10, 2020. The deadline to respond was August 31, 2020. Respondent has answered the Complaint as of August 26, 2020 and does not dispute that a violation of South Dakota One Call law occurred. Respondent alleges the gas line was not marked properly and that the gas line was hit at a depth of 12”.

On September 24, 2020, the Enforcement Panel (herein “Panel”) convened pursuant the authority present in SDCL 49-7A. The Panel does find probable cause that intentional violations of SDCL 49-7A-5 and SDCL 49-7A-8 occurred.

Based upon the evidence presented in the filings, the Panel recommends a penalty of \$1,000 with \$750 suspended for the violation of SDCL 49-7A-5 and a penalty of \$1,000 with \$750 suspended for the violation of SDCL 49-7A-8 for a total 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.**
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 (**\$1,500**) 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 (20) 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.