

BEFORE THE SOUTH DAKOTA
ONE CALL NOTIFICATION BOARD

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.

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

OC20-050

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.**

On October 26, 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:

DocuSigned by:

Ray Jandreau

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