

BEFORE THE SOUTH DAKOTA
ONE CALL NOTIFICATION BOARD

IN THE MATTER OF THE COMPLAINT
FILED BY MONTANA DAKOTA
UTILITIES, RAPID CITY, SD AGAINST
TOBY KARN, RAPID CITY, SD, FOR AN
INCIDENT OCCURRING ON AUGUST 2,
2020, AT 3117 CONSERVATION WAY,
RAPID CITY, SD.

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

OC20-051

On August 5, 2020, the South Dakota One Call Board received a Complaint filed by Montana Dakota Utilities Co. (herein “Claimant”), against Toby Karn (herein “Respondent”), for an incident occurring on August 2, 2020, at 3117 Conservation Way, Rapid City, SD. The Complaint alleges violations of SDCL 49-7A-5 and 49-7A-8 when Respondent was installing a sprinkler system for a home owner and working off the home owner’s expired locate ticket. Claimant alleges Respondent hit the gas service line in multiple spots while trenching directly on top of the gas line. Gas was not blowing due to an Excess Flow Valve.

A copy of the Complaint was sent to Respondent on August 12, 2020. The deadline to respond was September 2, 2020. Respondent has answered the Complaint as of September 22, 2020 and does dispute that a violation of South Dakota One Call law occurred. Respondent alleges performing the trenching according to the MDU flags that were placed in the yard. Respondent also believed the trencher was far enough away from the flags. Respondent stated the respect for the danger of natural gas.

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 unintentional 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.