

BEFORE THE SOUTH DAKOTA
ONE CALL NOTIFICATION BOARD

<p>IN THE MATTER OF THE COMPLAINT FILED BY MONTANA DAKOTA UTILITIES, RAPID CITY, SD AGAINST LEGACY ENTERPRISES, INC., SPEARFISH, SD, FOR AN INCIDENT OCCURRING ON JULY 30, 2020 AT 21268 RUBY'S WAY, LEAD, SD.</p>	<p>ORDER ADOPTING ENFORCEMENT PANEL RECOMMENDATION TO THE SOUTH DAKOTA ONE CALL BOARD</p> <p>OC20-052</p>
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On August 12, 2020, the South Dakota One Call Board received a Complaint filed by Montana Dakota Utilities Co. (herein "Claimant"), against Legacy Enterprises, Inc. (herein "Respondent"), for an incident occurring on July 30, 2020, at 21268 Ruby's Way, Lead, SD. The Complaint alleges violations of SDCL 49-7A-5 and 49-7A-8 when Respondent was installing a sewer clean out in the same location Respondent had installed the service line. Claimant alleges Respondent admitted they knew the gas line was there and not marked. Claimant alleges there had been recent weather damage from tornados and rain washing out the mark, so a re-spot should have been called in.

A copy of the Complaint was sent to Respondent on August 19, 2020. The deadline to respond was September 9, 2020. Respondent has answered the Complaint as of September 8, 2020 and does not dispute that a violation of South Dakota One Call law occurred. Respondent alleges there was a mix up on office paperwork and the locate was called in for a different property than the site that was hit.

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 \$1,500 with \$750 suspended for the violation of SDCL 49-7A-5 and a penalty of \$1,500 with \$750 suspended for the violation of SDCL 49-7A-8 for a total penalty of \$3,000 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 \$1,500 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:

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Fay Sandman

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