

MAY ADAM

— Since 1881 —

ROBERT B. ANDERSON
TIMOTHY M. ENGEL
MICHAEL F. SHAW
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JUSTIN L. BELL
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CODY L. HONEYWELL

WWW.MAYADAM.NET

December 18, 2020

WARREN W. MAY 1920-2018
THOMAS C. ADAM 1935-2019
BRETT A. WILBUR 1949-2006

TELEPHONE
605 224-8803
FAX
605 224-6289
E-MAIL
brett@mayadam.net

Johns & Kosel, Prof. LLC
Attn: Timothy R. Johns
203 W Main St
Lead SD 57754
tjohns@johnskosellaw.com

RE: OC20-059 Montana Dakota Utilities v. William Service
MAGT File: 7525

Dear Tim:

I am in receipt of your letter of December 8 asking for hearing for Williams. Williams' Complaint went before the Enforcement Panel for a proposed resolution. I have enclosed that entire Complaint and the Resolution for your information.

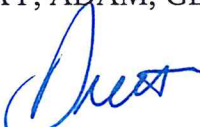
The next step in the process would be to request a full hearing in front of the Board. I am presuming you would like that for no earlier than next March or April. No findings or conclusions have been entered because no evidence was taken. That is the next step in the process. I do look forward to hearing from you as to your preferred scheduling.

This matter will be likely referred to the Office of Hearing Examiners, Mrs. Catherine Williamson presiding, as I will have a conflict in proceeding further. Happy to help get it scheduled and then hand it off to Katie. Let me know your wishes.

Merry Christmas!

Very truly yours,

MAY, ADAM, GERDES & THOMPSON LLP


BRETT KOENECKE
BK | jrw
Enclosure
CC: client

MAY, ADAM, GERDES & THOMPSON LLP
503 SOUTH PIERRE STREET • P.O. BOX 160
PIERRE, SOUTH DAKOTA 57501-0160



TO: Williams Services

FROM: SOUTH DAKOTA ONE CALL NOTIFICATION BOARD

DATE: September 9, 2020

RE: NOTICE OF COMPLAINT; DEADLINE FOR ANSWER

In the Matter of the Complaint OC20-059 Filed by Montana Dakota Utilities vs Williams Services.

You are hereby notified that the enclosed complaint as referenced above has been filed with the South Dakota One Call Notification Board against Williams Services. Pursuant to SDCL 49-7A-23 & SDCL 49-7A-24, **you are required** to answer this complaint in writing, no later than the close of business on September 29, 2020 by filing the original copy of the answer electronically at <http://sdonecall.com/OneCallReplyForm.aspx>. This site can also be found by going to www.sdonecall.com, clicking on Complaints, Forms, and then the Online Reply form. **OR** You may also file your response at the address listed below **and** by serving a copy on the complainant.

South Dakota One Call Notification Board
PO Box 187
Rapid City, South Dakota 57709

Your answer should be as thorough and detailed as possible and should include any documentation that supports your position e.g. witness statements, pictures, etc. We would encourage you to specifically address the alleged violation referenced in the complaint.

The One Call Board will make a determination of probable cause based on the complaint and associated response. If probable cause is determined, penalties may be recommended under SDCL 49-7A-18 or SDCL 49-19.

If any financial penalties are assessed in response to the complaint, the amount will be based on the factors noted in SDCL 49-7A-26 which are as follows:

1. The amount of damage, degree of threat to the public safety, and inconvenience caused;
2. The respondent's plans and procedures to insure future compliance with statute and rules;
3. Any history of previous violations;
4. Other matters as justice requires.

You may address any of these items in your response, if you believe it would be of value to the Board when this complaint is considered.

Pursuant to SDCL 15-6-55, failure to answer this complaint could result in a default judgment being issued against you. Appropriate liens and other legal collection actions could result. **You are strongly urged to reply to this Notice** in the time frame described above **and** to obtain the advice of counsel should you have any legal questions.

A copy of the Operations Manual for Facility Operators and Excavators, the South Dakota One Call Statute and associated Administrative Rules are available on our web site www.sdonecall.com.

Procedural questions may be directed to Codi Gregg, Deputy Director, South Dakota One Call Notification Board, at 605-863-0951 or by email to deputydirector@sd811.com. I would request that you do not contact any members of the South Dakota One Call Notification Board to discuss this complaint, since they may be involved in the Enforcement Panel review and/or a Chapter 1-26 hearing to resolve the complaint. They have been advised by legal counsel not to discuss any pending complaint before the Board.

Enclosures: Copy of complaint
Operations Manual for Facility Operators and Excavators

cc: Mr. Marcus Christensen
Montana Dakota Utilities

South Dakota

Know what's below.
Call before you dig.



September 9, 2020

In the Matter of the Complaint OC20-059 filed by Montana Dakota Utilities against Williams Service for an incident occurring at 313 Grand Avenue in Lead, South Dakota on August 25, 2020.

A complaint has been filed against Williams Service by Montana Dakota Utilities. One Call staff has reviewed the complaint and determined that the complaint states a case, that you've had no prior violations and that no personal injury occurred as a result.

If you agree, at your option, you may choose to accept the following with no further process:

1. A \$250 penalty payment must be made within 30 days of the Board Order.
2. You will arrange a face to face meeting with Montana Dakota Utilities to review the damage, the dangers while working around utilities, and will discuss excavation best practices. This meeting is to take place within 30 days of the Board Order issued after the next Board meeting. Documentation of this meeting will be signed and dated by both parties and returned to exedir@sdonecall.com or be received at P.O. Box 187, Rapid City, SD 57709 within the 30 day time frame.
3. You must conduct an in-house safety meeting with employees 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 30 days of the Board Order at exedir@sdonecall.com.
4. You must attend a Damage Prevention meeting in 2021. Meeting dates will be provided.

If you consent, this matter will be forwarded to the South Dakota One Call Board for approval at the next Board Meeting.

Please understand that it is your right to reject this offer, and request the Enforcement Panel of the One Call Board to review this complaint docket, at which time the Panel will make a Recommendation to the Board for approval. Williams Service may also reject the Panel Recommendation and request a Hearing before the Board. Rejection of the Executive Committee Recommendation will have no impact on the Panel Recommendation.

Questions or concerns are to be emailed to exedir@sdonecall.com.

Larry Janes

Larry Janes
Executive Director
South Dakota One Call Notification Board

**ACCEPTANCE
OC20-059**

I ACCEPT RESOLUTION OF THIS MATTER BY AGREEING TO THE PENALTY AMOUNT ASSESSED AND AGREEING TO COMPLETE THE FOUR REQUIREMENTS LISTED.

(Name of Company)

Printed Name

Signed Name

DATE

**REQUEST FOR ENFORCEMENT PANEL REVIEW
OC20-059**

I REJECT THE OFFER TO RESOLVE COMPLAINT OC20-059 AND REQUEST THE COMPLAINT TO BE HEARD BY THE ENFORCEMENT PANEL OF THE ONE CALL BOARD. I HAVE BEEN MADE AWARE OF THE ONLINE RESPONSE FORM AND THE RESPONSE DUE DATE. I UNDERSTAND RECOMMENDATIONS FROM THE PANEL MAY VARY IF IT IS BELIEVED THAT A VIOLATION OCCURRED.

(Name of Company)

Printed Name

Signed Name

DATE

**South Dakota One Call Notification Board
PO Box 187
Rapid City, SD 57709**

IMPORTANT: This form is provided only as assistance in preparing your South Dakota One Call Complaint. Although it is not required, we encourage you to use this form. Please be as thorough as possible to assist the Enforcement Panel in making its determination. You may include additional information as necessary.

Complaint filed on behalf of or by: Montana Dakota Utilities

Contact Person: Marcus Christensen

Phone: (605) 355-4035

Name or Company Name: Montana Dakota Utilities

Street Address or PO Box: PO Box 1060
Rapid City, South Dakota 57709
United States

Email: marcus.christensen@mdu.com

Date: Sep 02, 2020

Name of excavator / facility operator: Allen Williams

Phone: (605) 580-0413

Name or Company Name: WILLIAMS SERVICES

Street Address or PO Box: 904 Grandview Dr
Lead, South Dakota 57754
United States

Email: LORDBULLIFY@GMAIL.COM

Is this party aware of your allegations? No

ALL SPECIFIC STATUTES AND ADMINISTRATIVE RULES MUST BE STATED:
49-7A-5. Notification of proposed excavation.

No excavator may begin any excavation without first notifying the one-call notification center of the proposed excavation. The excavator shall give notice by telephone or by other methods approved by the board pursuant to rules promulgated pursuant to chapter 1-26 to the one-call notification center at least forty-eight hours prior to the commencement of the excavation, excluding Saturdays, Sundays, and legal holidays of the state. The board may promulgate rules to reduce the forty-eight-hour interval for emergency or subsequent inquiries to the original locate request and may lengthen the forty-eight-hour interval for nonexcavation requests

Other information to support your position:

Contractor did not have a valid locate ticket at the time of damage. Contractor was excavating to install a retaining wall when they dropped a rock on a service line causing it to blow. 811 and 911 were both notified.

Street Address / location of alleged violation: 313 Grand Ave

City Lead

State SD

Date of alleged violation: Aug 25, 2020

Time of alleged violation: 12:10 PM

Describe your allegation:

Contractor did not have a valid locate ticket at the time of damage. Contractor was excavating to install a retaining wall when they dropped a rock on a service line causing it to blow. 811 and 911 were both notified.

Do you believe the alleged violation to be intentional? No

Was a locate requested from SD One Call? No

Did the excavator wait until the start date / time on the ticket before commencing excavation? No

Did the excavator maintain a minimum horizontal clearance of 18 inches between a marked facility and mechanical equipment? No

Explain

With the disturbance of the ground and rocks falling caused the damage. If a locate would have been requested the contractor hopefully would have been more cautious of the buried facilities.

Were buried facilities exposed by hand or non-invasive equipment prior to excavation? No

Were facilities marked? No

Was the marking complete prior to the start time on the ticket? NA

Did the excavator pre-mark with white paint? NA

Was the facility marked accurately (within 18 inches)? NA

Did the excavator use reasonable care to maintain locate marks for the life of project? NA

Type of facility involved: 3/4" (P) Gas Line

Operator of facility (if known): Montana Dakota Utilities

Operator address (Street or PO Box): PO Box 1060
Rapid City, South Dakota 57709
United States

Operator Phone (605) 355-4035

Depth of Cover (If unsure put N/A) ~18"-24"

Pressure: (If none, write none) 50psig

Voltage: (If none, write none) none

of cable pairs: (If none, write none) none

Was the facility damaged? Yes

If yes, provide detail and an estimate of damage:
0.75" plastic Service Line - \$700

Were damages on public right of way or private property? Private

Was anyone injured as a result of facility damage? No

Were there fatalities? No

Was operator service affected? Yes

If yes, provide detail (how many customers for how long):
1 customer - 2 hours

Was the one-call notification center immediately notified of the damage, dislocation, or disturbance?

Yes

Was the operator of the facility immediately notified of the damage, dislocation, or disturbance?

Yes

Was there an escape of any flammable, toxic, or corrosive gas or liquid?

Yes and 911 was contacted by an Excavator

Please provide a Fire Department or Emergency Services incident report, if available

Not Available

Attachment Information

File names should not include symbols. Example:(\$, &, *, % .) etc.



INCIDENT INVESTIGATION #195761



313 Grand Ave, Lead, SD

LOCATION DETAILS

Event Date: 08/25/2020 12:10 PM America/Denver

Right-of-Way: Private Land

AFFECTED FACILITY

Near Miss: No

Type of Operation Affected: Gas

Line Size and Type: 0.75" Plastic

Facility part of joint trench: No

Asphalt or concrete removed: No

Damage Surface Type and Depth: Dirt < 18"

Arrival Date and Time: 08/25/2020 03:31 PM America/Denver



Distance from Ped to Ped: 50ft

Dimensions of Asphalt or Concrete Removed:

Repairs Taking Place Upon Arrival? Yes

Who Performed Repairs: Utility Company

Contractor Representative: Alan Williams

Contractor Representative Phone Number: (605) 580-0413

Personnel On Site: Alan

Vehicles/Equipment Being Used For Repairs: Backhoe 2 trucks

Guards or Barricades On Site:

Facilities Replaced or Repaired: Repaired

Replacement Type: Temporary

Occurred During: Business Hours

Time Occurred:

DAMAGER

Company Name: Williams Services

Contact: Alan

Contact Phone: (605) 580-0413

Type of Work: Retaining wall

Damage Responder: Kenneth, Kauffman

UTILITY INFORMATION

Utility Company Name: Montana Dakota Utilities

Utility Contact Name: Bruce

Utility Contact Phone: (605) 645-1541

Utility Representative: Steve and Chris

Utility Rep Tech#:

Utility Rep. Present on Arrival: Yes

EXCAVATION INFORMATION

Excavator Type: Contractor

Excavation Equipment: Unkown/Other

Work Performed: Landscaping

Excavator downtime? Yes

Downtime hours: No

Downtime cost: No

NOTIFICATION AND LOCATING

One Call Center notified: No

Locator Type:

Work area white-lined: No

Ticket Number:

Date Located:

Located By: ZZ_No Locate Requested

INTERRUPTION AND RESTORATION

Event cause Interruption: Yes

Interruption hours:

Customers Affected (approx.): 1

ROOT CAUSE

Damage within described dig area: No

Damage within legal time of request limit: No

Marks destroyed by construction: No

Marks destroyed by weather: No

Whiskers or flags used: No

Offsets were used on hard surfaces: No

Line was on prints: No

At Fault: Excavator

Documentation Issue: No

Documentation Issue Comments:

Tolerance Zone: No

Marking Standards: No

Marking Standards Comments:

Locate Requested: No

Damage with Tolerance Zone: No

No Locates on Facility: Yes

Damage Exposed Facility: No

COMMENTS

Assessment Comments: Bruce with MDU Called me at 12 58 To inform me of gas blowing at 313 Grand Avenue in lead South Dakota contractor/home owner did not have a ticket he did call 911 and 811 and MDU. Contractor is preparing to put in a retaining wall he was moving rocks out of the way and drop the rock on the line. MDU Stopped the leak and will repair the line At a later date they will need to make the line deeper for the retaining wall 3/4 inch plastic service was damaged

NEW INCIDENT PHOTOS



Date: 08/25/2020 03:31 PM
America/Denver

Latitude: 44.348211

Longitude: -103.769861

Heading: 347 degrees

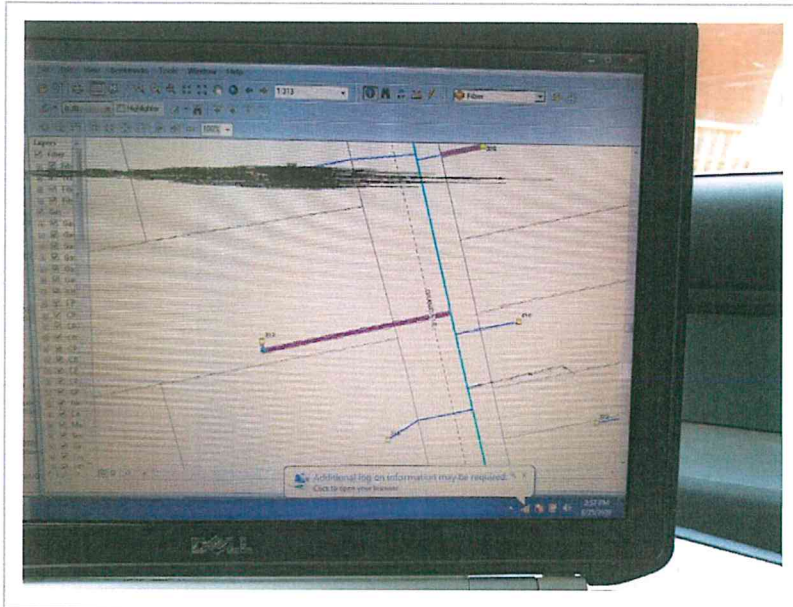


Date: 08/25/2020 03:31 PM
America/Denver

Latitude: 44.348231

Longitude: -103.769832

Heading: 322 degrees



Date: 08/25/2020 03:31 PM
America/Denver

Latitude: 44.348486

Longitude: -103.769793

Heading: 134 degrees



Date: 08/25/2020 03:31 PM
America/Denver

Latitude: 44.348351

Longitude: -103.769829

Heading: 343 degrees

TICKET 2023889003



Ticket Number: 2023889003 Old Ticket:
Source: Voice Type: Damage
Date: 8/25/2020 2:18 PM
Update By: 9/11/2020 3:15 PM Expires On: 9/15/2020 3:15 PM

RESPONSE STATUS AS OF WEDNESDAY, SEPTEMBER 02, 2020 10:18 AM

STATUS CODE NAME FACILITIES

COMPANY INFORMATION

WILLIAMS SERVICES
904 GRANDVIEW DR
LEAD, SD 57754

Phone: (605) 580-0413
Fax:
Type: Contractor

	<u>Name</u>	<u>Phone</u>	<u>Email</u>
Caller	ALAN WILLIAMS	(605) 580-0413	LORDBULLIFY@GMAIL.COM
Contact	ALAN WILLIAMS	(605) 580-0413	LORDBULLIFY@GMAIL.COM
Alt Phone		(605) 580-0413	

WORK INFORMATION

State: SD
County: LAWRENCE
Place: LEAD
Street: 313 GRAND AVE
Intersection: MCCLELLAN ST
Nature of Work: DAMAGE
Meet Requested: False
TRSQ:

Work Date: 8/25/2020 3:15 PM
Done For: ALAN WILLIAMS
Duration: 1 WEEK
Explosives: False
Right of Way: False
Tunnel/Bore: False
Meet Date/Time:
Depth: 6 INCHES

DRIVING DIRECTIONS

REMARKS

DAMAGE - MOVING ROCK FROM A RETAINING TO ANOTHER RETAINING WALL
PLEASE LOCATE THE FRONT YARD
Utilities must respond within 2 hours M-F and within 4 hours after working hours.

MEMBERS

CODE	NAME
BH3	Black Hills Power and Light Company
UW1	CTLQL-CenturyLink
LDC	City Of Lead
LDD	Lead-deadwood Sanitary District
SDC	Midcontinent Communications
MT4	Montana-Dakota Utilities Company
BHF	Vast Broadband



November 25, 2020

Mr. Marcus Christensen
Montana Dakota Utilities
PO Box 1060
Rapid City, South Dakota 57709

Mr. Allen Williams
Williams Service
904 Grandview Drive
Lead, South Dakota 57754

Re: OC20-059 Montana Dakota Utilities vs. Williams Service.

Under the authority granted by SDCL-49-7A-22, the Enforcement Panel of the South Dakota One Call Notification Board met on October 8, 2020 to determine whether there is probable cause to believe a One Call violation occurred in Complaint Docket OC20-059. The Enforcement Panel's findings are enclosed. You may request a hearing according to SDCL-49-7A-27, if you disagree with the Enforcement Panel findings. If you do request a hearing you must be represented by legal counsel at the time you present your case to the One Call Board.

Failure to respond to this notice or request a hearing is considered acceptance of the Enforcement Panel Recommendation. In that case, the Recommendation will be Ordered by the South Dakota One Call Notification Board and your right to hearing is waived.

If you choose to request a hearing you must return the signed and dated form prior to the close of business on December 17, 2020.

South Dakota One Call Notification Board
PO Box 187
Rapid City, South Dakota 57709

Be aware, any future violations of any One Call statute or rule may be subject to additional penalties up to \$10,000 for each subsequent violation that occurs within twelve months of the initial violation. If you have procedural questions relative to this complaint, please contact me at 605-863-0951 or by email at deputydirector@sd811.com. Do Not Contact any members of the South Dakota One Call Notification Board to discuss this complaint since members may be involved in a hearing if one is requested.

Cody M. Gregg

Cody M. Gregg
Deputy Director
South Dakota One Call

**REQUEST FOR A HEARING
COMPLAINT OC20-059**

**I REJECT THE PANEL RESOLUTION TO COMPLAINT OC20-059 AND
REQUEST A HEARING.**

Signature – Montana Dakota Utilities

Date

**I REJECT THE PANEL RESOLUTION TO COMPLAINT OC20-059 AND
REQUEST A HEARING.**

Signature – Williams Service

Date

**YOUR REQUEST FOR A HEARING MUST BE SENT TO ALL OTHER
PARTIES INCLUDING:**

**SOUTH DAKOTA ONE CALL NOTIFICATION BOARD
PO BOX 187
RAPID CITY, SOUTH DAKOTA 57709**

**Failure to request a hearing will result in acceptance of the Enforcement Panel's
Recommendation by the South Dakota One Call Board. The Board will then
Order the Recommendation as the final disposition of this Complaint.**

BEFORE THE SOUTH DAKOTA
ONE CALL NOTIFICATION BOARD

IN THE MATTER OF THE COMPLAINT
FILED BY MONTANA DAKOTA
UTILITIES, RAPID CITY, SD AGAINST
WILLIAMS SERVICE, LEAD, SD, FOR AN
INCIDENT OCCURRING ON AUGUST 25,
2020 AT 313 GRAND AVENUE, LEAD,
SD.

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

OC20-059

On September 2, 2020, the South Dakota One Call Board received a Complaint filed by Montana Dakota Utilities Co. (herein "Claimant"), against Alan Williams d/b/a Williams Services (herein "Respondent"), for an incident occurring on August 25, 2020, at 313 Grand Avenue, Lead, SD. The Complaint alleges a violation SDCL 49-7A-5 when Respondent was excavating, without a valid locate ticket, to install a retaining wall. A rock was dropped on the service line causing it to blow. 811 and 911 were both notified.

A copy of the Complaint was sent to Respondent on September 2, 2020. The deadline to respond was September 29, 2020. Respondent has not answered the Complaint as of October 8, 2020.

On October 8, 2020, the Enforcement Panel (herein "Panel") convened pursuant the authority present in SDCL 49-7A. The Panel does find probable cause that an intentional violation of SDCL 49-7A-5 occurred.

Based upon the evidence presented in the filings, the Panel recommends a penalty of \$1,000 with \$750 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 **\$250** 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 (**\$750**) 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.