

BEFORE THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD

IN THE MATTER OF THE COMPLAINT)	ENFORCEMENT PANEL
BY NUSTAR PIPELINE OPERATING)	RECOMMENDATION TO
PARTNERSHIP LP DBA NUSTAR)	SD ONE CALL BOARD
ENERGY, AGAINST OAKLANE)	
COLONY)	

OC11-004

On August 1, 2011, the South Dakota Public Utilities Commission received a complaint from NuStar Pipeline Operating Partnership LP d/b/a NuStar Energy (herein "NuStar") against the Oaklane Colony, Martin Wipf and Mark Wipf. The complaint alleges the named parties did not wait the statutorily required time prior to excavation. Specifically, NuStar arrived on site on May 5, 2011 to locate facilities pursuant to a locate ticket with an excavation start date of May 6, 2011. At that time, on May 5, 2011 the excavation already occurred.

Martin Wipf replied to the complaint on August 23, 2011. He explains that he was not aware of nor personally involved with the excavation. He does allege, however, that Jake Wipf, on behalf of the Oaklane Colony, was excavating in the area. Martin Wipf further states, he made the 811 call after Jake Wipf discovered pipeline notices in the excavation area. He did not deny the fact a One Call violation occurred.

On August 30, 2011, pursuant to SDCL 49-7A-22 a panel of five One Call Board members (herein "Panel") convened. The Panel met to determine whether probable cause exists to believe the violation occurred as described in the complaint and whether a penalty is appropriate.

The Panel found, based on Martin Wipf's reply that probable cause exists to believe the Oaklane Colony violated SDCL 49-7A-5. Specifically, excavation occurred before a One Call locate request was made. The Board did not find, however, based on the information provided, that any Oaklane Colony representative intentionally violated the law. In fact, it was proper to cease all excavation activities and call One Call, just as Colony representatives did, as soon as a potential One Call issue was identified. As such the Panel looked to SDCL 49-7A-18 to determine proper penalties.

The Panel found it proper to assess Five Hundred Dollar (\$500) penalty against the Oaklane Colony because: the response did not indicate any plan or procedure to insure future compliance. The Panel found it proper, however, to suspend Five Hundred Dollars (\$500) of the penalty because: no damage was done nor was there an unusual degree of threat to the public nor are there previous compliance issues. See SDCL 49-7A-26. No penalty is due and owing at this time.

The Panel believes an understanding of One Call laws will prevent future One Call violations by the Oaklane Colony and requests a representative attend a One Call

excavator educational meeting in the spring of 2012. The One Call Board will send notice of the meetings.

Although the penalty was not intentional, the Panel recommends the Board Order the suspended Five Hundred Dollar (\$500) penalty become immediately due and payable if: (i) The Oaklane Colony is found guilty of an additional violation of SDCL 49-7A or ARSD Article 20:25 within the twelve months following the date of the final South Dakota One Call Board Order or (ii) if it fails to attend a One Call excavator educational meeting in the spring of 2012.

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 you must reply within twenty 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.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile by first class mail, or by other electronic means.


Larry L. Janes, Executive Director

Date 8-31-2011