

**BEFORE THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD**

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IN THE MATTER OF THE COMPLAINT )	ENFORCEMENT PANEL
BY WATERTOWN MUNICIPAL )	RECOMMENDATION TO
UTILITIES AGAINST DAKOTA )	THE SD ONE CALL BOARD
EXCAVATING )	

OC11-005

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On August 1, 2011, the South Dakota Public Utilities Commission received a complaint from Watertown Municipal Utilities (herein "Watertown") against Dakota Excavating. The complaint alleges Dakota Excavating failed to call in a locate request prior to excavation as is required by law.

Dakota Excavating replied to the complaint on August 23, 2011. The reply does not deny the excavation took place. Rather Dakota Excavating explains it was unaware of the SD One Call laws, learned from the experience and will not let it happen again.

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 probable cause exists to believe a violation of SDCL 49-7A-5 occurred. But, due to the statements made in the reply, does not believe the excavator intentionally violated the law. As such the Panel looked to SDCL 49-7A-18 to determine proper penalties.

**The Panel found it proper to assess Seven Hundred Fifty Dollar (\$750) penalty against Dakota Excavating because: the proximity to the natural gas facilities posed significant risk and it does not appear any action was taken to protect the facilities. The Panel found it proper, however, to suspend Five Hundred Dollars (\$500) of the penalty because: no damage was done, there is no history of previous violations and from the reply it appears that Dakota Excavating intends to comply with One Call laws in the future. See SDCL 49-7A-26. Unless either party contests this recommendation, Two Hundred Fifty Dollars (\$250) is not suspended and shall be paid to SD One Call.**

**The Panel believes an understanding of One Call laws will prevent future One Call violations by Dakota Excavating 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.**

**Finally, the Panel recommends the Board Order the suspended Five Hundred Dollar (\$500) portion of the above penalty become immediately due and payable if: (i) Dakota Excavating is found guilty of an additional violation of SDCL 49-7A or**

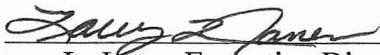
**ARSD Article 20:25 within the twelve months following the date of the final South Dakota One Call Board Order in this matter or (ii) if it fails to attend a One Call excavator educational meeting in the spring of 2012 or (iii) if payment of the remaining Two Hundred Fifty Dollars (\$250) is not made within thirty days from receipt of the final Board Order regarding this matter.**

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