

BEFORE THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD

IN THE MATTER OF THE COMPLAINT) ENFORCEMENT PANEL
FILED BY CROOKS MUNICIPAL) RECOMMENDATION TO
UTILITIES AGAINST MAY CONSTRUCTION) THE SD ONE CALL BOARD
MADISON, SOUTH DAKOTA FOR AN)
INCIDENT OCCURING ON APRIL 17, 2012) OC12-005

On April 18, 2012 the South Dakota Public Utilities Commission received a complaint from Crooks Municipal Utilities (herein "Crooks") against May Construction of Madison, South Dakota. The complaint alleges May Construction performed excavation on April 17, 2012 after facility marks were removed. May Construction failed to have facilities re-marked.

A copy of the complaint was sent to May Construction on April 19, 2012. May Construction responded to the Complaint on May 9, 2012. In its response May Construction admits facilities should have been re-marked.

On May 22, 2012, 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. The Panel found sufficient evidence was presented to determine probable cause exists to believe a violation of SDCL 49-7A-8 occurred. Specifically, the Panel found May Construction failed to have facilities re-marked after the original facility flags were removed. The Panel did not find the violation intentional.

The Panel found it proper to assess a Two Thousand Dollar (\$2,000) penalty for this repeat offense. Specifically, May Construction was aware of and admitted its initial One Call violation on April 10, 2012 (See OC12-003). The penalty recommendation is based on the high threat to public safety and the respondent's failure to articulate a plan to prevent future violations. Based, however, on May Construction's safe excavation history, the Panel found it proper to conditionally suspend One Thousand Dollars (\$1,000) of the penalty under the following conditions:

- (i) May Construction shall make payment of the **One Thousand Dollar (\$1,000) unsuspended portion** of the penalty within thirty days of issuance of the final SD One Call Board Order.
- (ii) May Construction must not be found guilty of a One Call violation in the next 12 months.

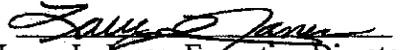
If any of the conditions are not met, the entire Two Thousand Dollar Penalty (\$2,000) will be immediately due and owing.

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 May 23, 2012

MINUTES
SOUTH DAKOTA ONE CALL NOTIFICATION BOARD
ENFORCEMENT PANEL CONFERENCE CALL
May 22, 2012 2 PM Central Time, 1 PM Mountain Time

Roll Call:

Enforcement Panel Members in attendance: John Ward; Erin Hayes; Gene Solseth ; Dan Kaiser; Todd Chambers; Legal Counsel, Kara Semmler; Executive Director, Larry Janes.

In the matter before the South Dakota One Call Notification Board Enforcement Panel

OC12-002 In the Matter of the Complaint filed by Crooks Municipal Utilities, SD against May Construction, Inc. Crooks Municipal Utilities filed a South Dakota One Call Complaint on April 18, 2012 alleging that May Construction, Inc. damaged a 60 psi gas line with a trencher west of 47550 - 258th Street. Crooks Municipal Utilities stated the lines were marked before and after the damage with the marks being unchanged. Pictures were attached. May Construction responded to the Complaint on May 9, 2012, stating the locates were off and provided pictures. **Today, shall the Enforcement Panel of the South Dakota One Call Notification Board find that there is probable cause that May Construction, Inc. violated 49-7A-10 or any other statute or rule under the jurisdiction of the Board, and if so shall a civil penalty be assessed?**

Enforcement Panel Discussion:

Dan Kaiser began the discussion stating that based on the pictures and the written documentation that it was difficult to determine who is right and who is wrong. Todd Chambers stated that measurements, along with the pictures would have been helpful. Erin Hayes stated that there was a lack of information to make a determination. Dan Kaiser made a motion to dismiss this complaint docket due to a lack of evidence. Todd Chambers seconded the motion. **Motion carried unanimously on a roll call vote.**

OC12-003 In the Matter of the Complaint filed by Crooks Municipal Utilities, SD against May Construction, Inc. Crooks Municipal Utilities filed a South Dakota One Call Complaint on April 18, 2012 alleging that May Construction, Inc. damaged a 60 psi gas line at 47518 – 258th Street while pot holing with digging equipment. Pictures were provided. May Construction, Inc. responded on May 9, 2012 and did not deny the statements of the Complaint. May Construction stated that the foreman and the crew need to take more care in excavation. *They have been in business since the mid-70's and have had no previous complaints.* **Today, shall the Enforcement Panel of the South Dakota One Call Notification Board find that there is probable cause that May Construction, Inc. violated 49-7A-10 or any other statute or rule under the jurisdiction of the Board, and if so shall a civil penalty be assessed?**

Enforcement Panel Discussion:

Dan Kaiser mentioned that May Construction admitted guilt, therefore there was probable cause that a violation of SDCL 49-7A-8 did take place. He also stated there have been no previous complaints against May Construction. Erin Hayes stated that it appeared that proper tools were not used to expose the gas line. Gene Solseth made a motion that there is probable cause that May Construction, Inc. violated SDCL 49-7A-8 by failing to expose facilities with hand tools or other non-invasive method when

excavating within 18" of an exposed facility. Todd Chambers seconded the motion. **Motion carried unanimously on a roll call vote.**

Discussion then moved to whether or not this violation was intentional or unintentional. Erin Hayes did not believe the violation was intentional and made a motion stating that. Dan Kaiser seconded the motion. **Motion carried unanimously on a roll call vote.**

During the penalty discussion Kara Semmler stated the factors noted in SDCL 49-7A-26, which must be taken into consideration when considering penalty amounts are as follows:

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

Per SDCL 49-7A-18 a penalty amount up to \$1,000 may be assessed for the first violation.

Dan Kaiser made a motion of a penalty amount of \$500 with \$400 suspended. Discussion was made that there was a threat to public safety. Erin Hayes suggested a higher penalty amount was more appropriate. Dan Kaiser withdrew his motion. Erin Hayes made a motion to assess a \$1,000 penalty, with \$750 suspended, if the following conditions are met. A representative from May Construction must attend a SD One Call Spring Meeting, payment of the penalty must be made within 30 days of the final Order, and there can be no further violations within one year of the issuance of the final Order. Dan Kaiser seconded the motion. **Motion carried unanimously on a roll call vote.**

OC12-004 In the Matter of the Complaint filed by Crooks Municipal Utilities, SD against May Construction, Inc. Crooks Municipal Utilities filed a South Dakota One Call Complaint on April 18, 2012 alleging that May Construction, Inc damaged a 400 psi gas line at the corner of 475th and the northeast corner of 258th Avenue. Pictures were provided. May construction responded on May 9, 2012 by stating that it was unfortunate that this damage occurred, since care was taken in exposing the line prior to excavation. May Construction further stated that it has been in business for over 30 years with no prior complaints. **Today, shall the Enforcement Panel of the South Dakota One Call Notification Board find that there is probable cause that May Construction, Inc. violated 49-7A-10 or any other statute or rule under the jurisdiction of the Board, and if so shall a civil penalty be assessed?**

Enforcement Panel Discussion:

Todd Chambers mentioned this alleged violation occurred just six days after the damage occurred on OC12-003. Todd Chambers made a motion that there is probable cause that a violation of SDCL 49-7A-8 occurred. Erin Hayes seconded the motion. Upon a roll call vote, Erin Hayes, John Ward, Dan Kaiser, and Todd Chambers voted in favor. Gene Solseth abstained stating that he thought the violation was 49-7A-10. **Motion Carried.**

Todd Chambers did not believe the violation was intentional. He stated that it appeared that May Construction had worked around the gas line, but the damage was due to an error. Todd then made a motion stating the damage was unintentional. John Ward seconded the motion. **Motion carried unanimously on a roll call vote.**

Gene Solseth made a motion that a penalty amount of \$1,000, with \$250 suspended be assessed, if payment is received within 30 days of the final Order, if no further violations occur within one year of the issuance of the final Order, and if a documented gas safety meeting be held with the crew of May Construction within 30 days of the final Order and submitted to the Executive Director of South Dakota One Call, which includes the printed and signed names of the participants, detailed discussion materials, along with the date and length of the meeting. Dan Kaiser seconded the motion. **Motion carried unanimously on a roll call vote.**

OC12-005 In the Matter of the Complaint filed by Crooks Municipal Utilities, SD against May Construction, Inc. Crooks Municipal Utilities filed a South Dakota One Call Complaint on April 18, 2012 alleging that May Construction, Inc damaged a 60 psi gas line at 47558 – 258th Street after the locate flags had been removed. Pictures were provided. May construction responded on May 9, 2012 by stating that a re-spot ticket should have been called in. May Construction further stated that the employee was cooperative, and there have been no past violations for May Construction. They further stated that they need to be more aware and take more time and care in excavation. **Today, shall the Enforcement Panel of the South Dakota One Call Notification Board find that there is probable cause that May Construction, Inc. violated 49-7A-10 or any other statute or rule under the jurisdiction of the Board, and if so shall a civil penalty be assessed?**

Enforcement Panel Discussion:

Dan Kaiser made a motion that there is probable cause that a violation of SDCL 49-7A-8 occurred. Todd Chambers seconded the motion.

Erin Hayes stated that the response from May Construction was lacking and that a re-spot ticket should have been requested. John Ward mentioned that by not calling in for a re-spot, May Construction was not thinking ahead in their work processes. Dan Kaiser made a motion stating that this was an unintentional violation. John Ward seconded the motion. **Motion carried unanimously on a roll call vote.**

Erin Hayes reiterated that a re-spot ticket should have been requested, especially because they knew they were working around gas lines and had been involved in recent damages. Erin Hayes made a motion to recommend a penalty of \$1,000, with \$0 suspended. Todd Chambers stated that this was just 6 days after damage to a 400 psi gas line, that there had been repeated damages, and that the response from May Construction indicated no plans for future compliance. Dan Kaiser stated he felt the penalty amount should be \$2,000, with \$1,000 suspended. Erin Hayes agreed and withdrew her motion. Dan Kaiser then made a motion to assess a penalty of \$2,000, with \$1,000 suspended due to the repeated violations, if payment is received within 30 days of the final Order, and if there are no violations within one year of the final Order. John Ward seconded the motion. **Motion carried unanimously on a roll call vote.**

Larry Janes asked if there was any further discussion. Upon being none, he asked for a motion to adjourn. Erin Hayes so moved. Todd Chambers seconded. **Motion carried unanimously on a Roll Call vote.**

Meeting Adjourned

**REQUEST FOR A HEARING
COMPLAINT OC12-005**

**I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC12-005
AND REQUEST A HEARING.**

Signature – May Construction, Inc.

Date

**I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC12-005
AND REQUEST A HEARING.**

Signature – Crooks Municipal Utilities

Date

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

**SOUTH DAKOTA ONE CALL NOTIFICATION BOARD
C/O SOUTH DAKOTA PUBLIC UTILITIES COMMISSION
500 E. CAPITOL AVE.
PIERRE, SD 57501-5070**

**Failure to request a hearing, results in acceptance of the Enforcement
Committee's recommendation. In that case, the One Call Board will Order the
recommendation**