

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) unsuspending 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