

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

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IN THE MATTER OF THE COMPLAINT            ) ENFORCEMENT PANEL  
FILED BY CHARLES MIX ELEXTRIC, INC.       ) RECOMMENDATION TO  
AGAINST WAGNER BUILDING AND SUPPLY       ) THE SD ONE CALL BOARD,  
WAGNER, SOUTH DAKOTA FOR AN             )  
INCIDENT OCCURRING ON JUNE 5, 2012       )            OC12-008

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On June 13, 2012 the South Dakota Public Utilities Commission received a complaint from Charles Mix Electric, Inc. (herein "Charles Mix") against Wagner Building and Supply of Wagner, South Dakota. The complaint alleges Wagner Building and Supply performed excavation without valid locates.

A copy of the complaint was sent to Wagner Building and Supply on June 13, 2012. Wagner Building and Supply responded to the Complaint on July 3, 2012. In its response Wagner Building and Supply explained it was working under emergency conditions. It believed an emergency ticket had been called in, when in fact it had not. Wagner Building and Supply further explained it will take efforts to prevent this from happening in the future.

On July 25, 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-5 occurred. Specifically, the Panel found Wagner Building and Supply failed to wait the requisite time prior to excavation. The Panel did not find the violation intentional.

The Panel found it proper to assess a Five Hundred Dollar (\$500) penalty. The Panel found it proper, however, to conditionally suspend Two Hundred Fifty Dollars (\$250) of the penalty due to Wagner Building and Supply's response to the Complaint and the efforts it stated it will take in the future to prevent the incident from happening again.

The suspension conditions are as follows:

- (i) Wagner Building and Supply shall make payment of the **Two Hundred Fifty Dollar (\$250) unsuspended portion** of the penalty within thirty days of issuance of the final SD One Call Board Order.
- (ii) Wagner Building and Supply must not be found guilty of a One Call violation in the next 12 months.
- (iii) Wagner Building and Supply shall attend an excavator meeting put on by the SD One Call Board in the spring of 2013.

If any of the conditions are not met, the entire Five Hundred Dollar Penalty (\$500) 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 7-26-2012