

BEFORE THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD

**IN THE MATTER OF THE COMPLAINT
FILED BY SIOUX VALLEY ENERGY,
COLMAN, SOUTH DAKOTA, AGAINST
MIDWEST EXCAVATION, SIOUX
FALLS, SOUTH DAKOTA FOR AN
INCIDENT OCCURRING ON JULY 5,
2013, AT 6804 E. LIMESTONE CIRCLE,
SIOUX FALLS, S.D.**

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OC13-019

**ORDER ADOPTING
ENFORCEMENT PANEL
RECOMMENDATION TO
THE SD ONE CALL BOARD
AND TO PURSUE
COLLECTION ACTION IF
NECESSARY**

On August 19, 2013, the South Dakota Public Utilities Commission received a complaint from Sioux Valley Energy, Coleman, South Dakota against Midwest Excavation of Sioux Falls, South Dakota. The complaint alleges that on or about July 5, 2013, Midwest Excavation performed excavation without a valid locate ticket.

A copy of the complaint was sent to Midwest Excavation on August 19, 2013. Midwest Excavation did not respond to the Complaint.

On September, 27, 2013, 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 a violation of SDCL Chapter 49-7A occurred. The Panel found that two separate violations occurred, a violation of SDCL 49-7A-5 and a violation of SDCL 49-7A-12. Specifically, the Panel found Midwest Excavation performed excavation without valid locates in violation of SDCL 49-7A-5 and failed to report the resulting damage in accordance with SDCL 49-7A-12. The Panel did find the violations to be intentional.

For the violation of SDCL 49-7A-5, the Panel found it proper to assess a penalty of \$1,000.00 with \$250 suspended on certain conditions as listed below. For the violation of SDCL 49-7A-12, the Panel found it proper to assess a penalty of \$2,000.00 with \$500 suspended bases upon the same conditions.

The recommended suspension conditions are as follows:

- (i) Midwest Excavation shall make payment of the **\$2,250.00 portion, which was not suspended**, of the penalty within thirty days of issuance of the final SD One Call Board Order.
- (ii) Midwest Excavation's entire crew shall attend an excavating seminar in the spring of 2014.
- (iii) Midwest Excavation shall conduct an in-house safety meeting for its employees to review the One Call laws, specifically focusing on issues related to power and safety. The meeting shall be held within 30 days of the final One Call Order. Documentation shall include the printed and signed names of meeting

participants, details of the material discussed, and the date and length of the meeting. Documentation shall be submitted to the Executive Director of South Dakota One Call within that 30 day period.

- (iv) Midwest Excavation must not be found guilty of a One Call violation within the next 12 months.

If any of the conditions are not met, the entire Three Thousand Dollar Penalty (\$3,000.00) will be immediately due and owing.

At its regularly scheduled meeting on February 19, 2014, the South Dakota One Call Board, pursuant to 49-7A-27, reviewed the Panel's procedure and approved its findings.

It is therefore:

ORDERED, that the South Dakota One Call Board adopts the recommendations of the Panel as a final resolution of this complaint. The Panel's findings are attached hereto and shall be considered fully incorporated herein; it is further

ORDERED, that if the penalty is not paid, the Board shall pursue any rights it has under the law regarding collection; it is further

The South Dakota One-Call Notification Board has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-7A, specifically SDCL 49-7A-5, 49-7A-18, 49-7A-20, 49-7A-22, and 49-7A-26.

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 March 3, 2014

BY ORDER OF THE SD ONE-CALL BOARD:

Dated at Stouffville, South Dakota
This 21 day of February, 2014


Dan Kaiser, Chairman