

BEFORE THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD

IN THE MATTER OF THE COMPLAINT)	ENFORCEMENT PANEL
FILED BY SIOUX VALLEY ENERGY,)	RECOMMENDATION TO
COLMAN, SOUTH DAKOTA, AGAINST)	THE SD ONE CALL BOARD
MIDWEST EXCAVATION, SIOUX FALLS,)	
SOUTH DAKOTA FOR AN INCIDENT)	OC13-019
OCCURRING ON JULY 5, 2013,)	
AT 6804 E. LIMESTONE CIRCLE, SIOUX)	
FALLS, S.D.)	
)	

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 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 and a violation of SDCL 49-7A-12 occurred. Specifically, the Panel found Midwest Excavation failed to obtain a locate ticket prior to excavation, resulting in damage to a primary electrical line and temporary loss of service to 147 customers, which was not reported in accordance with SDCL 49-7A-12. The Panel did find the violation of each statute to be intentional.

Violation of SDCL 49-7A-5

For the violation of SDCL 49-7A-5, the Panel found it proper to assess penalty of \$1,000.00 for this first time offense. Based, however, on Midwest Excavation's safe excavation history, the Panel found it proper to conditionally suspend \$250 of the penalty under the following conditions:

- (i) Midwest Excavation shall make payment of the **\$750 portion, which was not suspended**, of the penalty within thirty days of issuance of the final SD One Call Board Order.
- (ii) Midwest Excavation 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. 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 \$1,000 penalty will be immediately due and owing.

Violation of SDCL 49-7A-12

For the violation of SDCL 49-7A-12, the Panel found it proper to assess penalty of \$2,000.00. Based, however, on Midwest Excavation's safe excavation history, the Panel found it proper to conditionally suspend \$500 of the penalty under the following conditions:

- (v) Midwest Excavation shall make payment of the **\$1,500 portion, which was not suspended,** of the penalty within thirty days of issuance of the final SD One Call Board Order.
- (vi) Midwest Excavation's entire crew shall attend an excavating seminar in the spring of 2014.
- (vii) 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.
- (viii) 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 \$2,000 penalty 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 a party 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 Sept. 27, 2012