BEFORE THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD

IN THE MATTER OF THE COMPLAINT FILED BY MID-DAKOTA RURAL WATER SYSTEM, INC., MILLER, SOUTH DAKOTA, AGAINST FINK EXCAVATION, ZELL, SOUTH DAKOTA FOR AN INCIDENT OCCURRING ON AUGUST 23, 2013, AT 18576 375TH AVE., TULARE, S.D.	)	ENFORCEMENT PANEL RECOMMENDATION TO THE SD ONE CALL BOARD OC13-020

On August 23, 2013, the South Dakota Public Utilities Commission received a complaint from Mid-Dakota Rural Water Systems, Inc. (Mid-Dakota), Miller, South Dakota against Fink Excavation of Tulare, South Dakota. The complaint alleges that on or about August 23, 2013, Fink Excavation performed excavation without a valid locate ticket.

A copy of the complaint was sent to Fink Excavation on August 23, 2013. Fink Excavation did not respond to the Complaint. On August 26, 2013, Mid-Dakota requested the complaint be withdrawn.

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 the request to withdraw the complaint should be approved and whether probable cause exists to believe the violation occurred as described in the complaint. The Panel determined that it was not appropriate to allow Mid-Dakota to withdraw 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 Fink Excavation failed to obtain a locate ticket prior to excavation. The Panel did find the violation to be intentional.

For the violation of SDCL 49-7A-5, the Panel found it proper to assess penalty of $500.00 for this first time offense. Based, however, on Fink Excavation's safe excavation history, the Panel found it proper to conditionally suspend the entire $500.00 penalty under the following conditions:

(i) Fink Excavation shall attend an excavating seminar in the spring of 2014.
(ii) Fink 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.

(iii) Fink 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 $500 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, 2013