

BEFORE THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD

IN THE MATTER OF THE COMPLAINT)	ENFORCEMENT PANEL
FILED BY CROOKS MUNICIPAL)	RECOMMENDATION TO
UTILITIES, CROOKS, SOUTH DAKOTA,)	THE SD ONE CALL BOARD
AGAINST MITCHELL CONSTRUCTION,)	
COLTON, SOUTH DAKOTA, FOR AN)	
INCIDENT OCCURRING ON)	OC13-027
OCTOBER 11, 2013, AT 25778 DAWSON)	
AVE., SIOUX FALLS, S.D.)	

On October 21, 2013, the South Dakota Public Utilities Commission received a complaint from Crooks Municipal Utilities, Crooks, South Dakota against Mitchell Construction of Colton, South Dakota. The complaint alleges that on or about October 11, 2013, Mitchell Construction dug without a valid locate ticket.

A copy of the complaint was sent to Mitchell Construction on October 22, 2013. An Amended Notice of Complaint was sent to Mitchell Construction on October 24, 2013. Mitchell Construction did not respond to the Complaint.

On December 18, 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 occurred. Specifically, the Panel found Mitchell Construction failed to obtain a locate ticket prior to excavation. Rather, Mitchell Construction utilized a local ticket obtained by Haug Steel Construction, resulting in damage to a gas line operated by Crooks Municipal Utilities. The Panel did find the violation to be intentional.

The Panel found it proper to assess a \$1,000 penalty for this first time offense, based upon the factors listed in 49-7A-26. Based, however, on Mitchell Construction's safe excavation history, the Panel found it proper to suspend \$750 of the penalty under the following conditions:

- (i) Mitchell Construction shall make payment of the **\$250 unsuspending portion** of the penalty within 30 days of issuance of the final SD One Call Board Order.
- (ii) Mitchell Construction shall attend an excavating seminar in the spring of 2014.
- (iii) Mitchell Construction 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) Mitchell Construction must not commit another violation of a One Call rule or regulation within the 12 months following the final Board Order.

If any of the conditions are not met, the entire \$1,000 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 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 12-18-2013

**REQUEST FOR A HEARING
COMPLAINT OC13-027**

**I REJECT THE PANEL RESOLUTION TO COMPLAINT OC13-027 AND
REQUEST A HEARING.**

Signature – Mitchell Construction

Date

**I REJECT THE PANEL RESOLUTION TO COMPLAINT OC13-027 AND
REQUEST A HEARING.**

Signature – Crooks Municipal Utilities

Date

**YOUR REQUEST FOR A HEARING MUST BE SENT TO ALL OTHER
PARTIES INCLUDING:**

**SOUTH DAKOTA ONE CALL NOTIFICATION BOARD
C/O SOUTH DAKOTA PUBLIC UTILITIES COMMISSION
500 E. CAPITOL AVE.
PIERRE, SD 57501-5070**

**Failure to request a hearing will result in acceptance of the Enforcement Panel's
Recommendation by the South Dakota One Call Board. The Board will then
Order the Recommendation as the final disposition of this Complaint.**