

BEFORE THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD

IN THE MATTER OF THE COMPLAINT) FILED BY MONTANA-DAKOTA) UTILITIES CO., RAPID CITY, SOUTH) DAKOTA, AGAINST HEAVY) CONSTRUCTORS, INC., RAPID CITY,) SOUTH DAKOTA, FOR AN INCIDENT) OCCURRING ON OCTOBER 23, 2013, AT) 2125 JACKSON BLVD., RAPID CITY, S.D.)	ENFORCEMENT PANEL RECOMMENDATION TO THE SD ONE CALL BOARD OC13-030
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On November 19, 2013, the South Dakota Public Utilities Commission received a complaint from Montana-Dakota Utilities Co., Rapid City, South Dakota against Heavy Constructors, Inc. of Rapid City, South Dakota. The complaint alleges that on or about October 23, 2013, Heavy Constructors, Inc. dug without a locate ticket.

A copy of the complaint was sent to Heavy Constructors, Inc. on November 20, 2013. Heavy Constructors, Inc. responded to the Complaint on December 6, 2013. In its response, Heavy Constructors, Inc. asserted that it did not believe a locate ticket was required and that the company did have a locate ticket for water line installation but not for grading operations. Heavy Constructors, Inc. did not produce that locate ticket with its response.

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 Heavy Constructors, Inc. preformed excavation without a valid locate ticket, resulting in damage to a gas line operated by Montana-Dakota Utilities Co. The Panel did find the violation to be intentional.

The Panel found it proper to assess a \$750 penalty for this first time offense. Based, however, on Heavy Constructors, Inc.'s safe excavation history, the Panel found it proper to suspend \$500 of the penalty under the following conditions:

- (i) Heavy Constructors, Inc. 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) Heavy Constructors, Inc. shall attend an excavating seminar in the spring of 2014.
- (iii) Heavy Constructors, Inc. 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) Heavy Constructors, Inc. must not be found to have committed another violation of a One Call rule or regulation within the 12 months of the SD One Call Board Order.

If any of the conditions are not met, the entire \$750 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 OC13-030**

**I REJECT THE PANEL RESOLUTION TO COMPLAINT OC13-030 AND
REQUEST A HEARING.**

Signature – Heavy Constructors, Inc.

Date

**I REJECT THE PANEL RESOLUTION TO COMPLAINT OC13-030 AND
REQUEST A HEARING.**

Signature – Montana-Dakota Utilities Co.

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.**