

MINUTES

**South Dakota One Call Notification Board
Enforcement Panel Conference Call
Location: Mid-Dakota Rural Water System, Inc.
608 W 14th Street, Miller SD (Conference Room)
Friday, January 31, 2014
2:00 PM Central Time, 1:00 PM Mountain Time**

Roll Call:

Enforcement Panel Members in attendance: Erin Hayes; Ed Anderson; John Ward; Doug Larson; Kurt Pfeifle. Also attending: Executive Director, Larry Janes.

Other attendees:

Sheri Hardman
Eileen Kroupa
Maynard Konechne

Order of Business:

Larry Janes provided a brief description of the Enforcement Panel process, including that this is a legal proceeding and that no comments by either party may be taken during this call. The determination of whether probable cause exists that a violation of South Dakota One Call laws may have, or may not have, occurred will only be made after consideration of the written documentation provided in the complaint and by the rebuttal information received from the defendant. Both parties will be provided the Panel's recommendation in writing. Each party will be given the opportunity to request a hearing before the full South Dakota One Call Notification Board, if either disagrees with the recommendation of the Panel. The request must be received within 20 days of issuance of the recommendation. If a hearing is not requested, the Enforcement Panel recommendation will be presented to the South Dakota One Call Board of Directors for acceptance at the next Board Meeting. A final Order will then be mailed to each party. If a penalty amount is assessed, payment must be made within 30 days of the issuance of the Order.

OC13-031 - In the Matter of the Complaint Filed by Kimball School District (Kimball), Kimball, South Dakota, Against Konechne Digging (Konechne), Kimball, South Dakota, for an Incident Occurring on August 14, 2013, at 300 S. East St., Kimball, S.D.

On December 17, 2013, Kimball filed a complaint against Konechne, alleging that Konechne dug without a locate ticket and hit buried fuel lines on August 14, 2014, which caused 700 gallons of fuel to leak into the ground.

Konechne responded on December 30, 2013 by stating the construction manager said everything was already located. Konechne admitted digging without calling for locates.

Today, shall the Enforcement Panel of the South Dakota One Call Notification Board find that there is probable cause that Konechne Digging violated any statute or rule under the jurisdiction of the Board, and if so shall a civil penalty be assessed?

Larry Janes stated there have been no previous complaints filed against Konechne Digging.

John Ward made a motion that there is probable cause that Konechne violated SDCL 49-7A-5 by not requesting a locates before digging. Kurt Pfeifle seconded the motion. **Motion carried unanimously upon a roll call vote.**

Kurt Pfeifle made a motion that this was an unintentional violation. John Ward stated that Konechne stated that he knew what he was doing was wrong, but he dug anyway. Kurt Pfeifle thought he relied on the school. John Ward stated he felt we should be consistent. Kurt Pfeifle withdrew his motion. Erin Hayes stated that a professional excavator should know what the law is and call in his own locates. Doug Larson agreed. John Ward made a motion that this was an intentional violation. Doug Larson seconded the motion. **Motion carried unanimously upon a roll call vote.**

The Executive Director stated that per SDCL 49-7A-26 the four factors which must be taken into consideration in determining the amount of penalty are:

1. The amount of damage, degree of threat to public safety, and inconvenience caused;
2. The respondent's plans and procedures to insure future compliance with statute and rules;
3. Any history of previous violations;
4. Other matters as justice requires.

John Ward stated that the outcome would not have been different with a locate ticket. Konechne did not have a locate, but even if he would have had one the school would not have located these lines. Erin Hayes agreed. The construction manager should have known. John Ward made a motion to assess a penalty of \$750, with \$500 suspended, with the following requirements: Konechne Digging must not be found guilty of a One Call violation within 12 months of the final Board Order, the penalty payment must be made within 30 days of the final Board Order, Konechne Digging must attend a Spring Excavator meeting. And Konechne Digging must conduct an in-house safety meeting to discuss South Dakota One Call laws. The meeting shall be held within 30 days of the Board Order. Detail of the discussion material, date and length of the meeting, along with the printed and signed names of attendees will be submitted to the Executive Director of South Dakota One Call within 30 days of the final Board Order. If any of these conditions are not met, the entire amount will be immediately due and owing.

OC13-032 - In the Matter of the Complaint Filed by Montana-Dakota Utilities Co. (MDU), Rapid City, South Dakota, Against Professional Excavating, Inc. (Professional), Rapid City, South Dakota, for an Incident Occurring on November 19, 2013, at 4823 Misty Woods Ln., Rapid City, S.D.

On December 18, 2013 MDU filed a complaint against Professional alleging that Professional dug without a locate ticket and damaged a 45 psi natural gas line.

Professional responded on January 6, 2013 and did not dispute the complaint. Professional stated the locate was missed, and it has changed the company policy to make sure no excavation takes place prior to starting a job. The foreman in charge of specific sites has to have a hard copy of the locate ticket prior to starting.

Today, shall the Enforcement Panel of the South Dakota One Call Notification Board find that there is probable cause that Professional Excavating violated any statute or rule under the jurisdiction of the Board, and if so shall a civil penalty be assessed?

Larry Janes stated a previous complaint was filed against Professional in the last 12 months.

Kurt Pfeifle stated the locate was missed, and that procedures were re-evaluated and changed. John Ward made a motion that there is probable cause that a violation of SDCL 49-7A-5 occurred. Doug Larson seconded the motion. **Motion carried unanimously upon a roll call vote.**

Doug Larson made a motion that this was an intentional violation. John Ward seconded the motion. **Motion carried unanimously upon a roll call vote.**

Doug Larson asked about the previous complaint amount and the circumstances. Larry Janes stated a \$500 penalty was assessed, with \$500 suspended. Because this current violation occurred within 12 months of the previous complaint, OC13-004, the \$500 suspended amount in that complaint docket is now immediately due. Ed Anderson asked if the previous violation entered into this penalty. Larry Janes stated that under 49-7A-18, a penalty could be assessed up to \$1,000 for the first violation and up to five thousand dollars for each subsequent violation that occurs within twelve months of the initial violation. When the penalty is considered intentional, a penalty could be assessed up to five thousand dollars for the first violation and up to ten thousand dollars for each subsequent violation that occurs within twelve months of the initial violation. John Ward made a motion to assess a penalty amount of \$1,000 with \$250 suspended with the following requirements: Professional Excavating, Inc. must not be found guilty of a One Call violation within the 12 months of the final Board Order, the penalty payment must be made within 30 days of the final Board Order, Professional Excavating, Inc. must attend a Spring Excavator meeting. And Professional Excavating, Inc. must conduct an in-house safety meeting to discuss South Dakota One Call laws. The meeting shall be held within 30 days of the Board Order. Detail of the discussion material, date and length of the meeting, along with the printed and signed names of attendees will be submitted to the Executive Director of South Dakota One Call within 30 days of the final Board Order. If any of these conditions are not met, the entire amount will be immediately due and owing. Kurt Pfeifle seconded the motion. **Motion carried unanimously upon a roll call vote.**

There being no further business, Larry Janes asked for a motion to adjourn. Doug Larson so moved. John Ward seconded. **Motion carried unanimously upon a roll call vote.**

Minutes of this meeting were prepared by Larry Janes, Executive Director, South Dakota One Call Notification Board.

Larry L. Janes
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