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MINUTES

**South Dakota One Call Notification Board
Enforcement Panel Conference Call
Location: Watertown Municipal Utilities
901 4TH Ave. SW, Watertown, SD 57201**

**Tuesday, May 20, 2014
2:30 PM Central Time, 1:30 PM Mountain Time**

Roll Call:

Enforcement Panel Members in attendance: Fay Jandreau ; Ed Anderson; Todd Chambers. Also attending: Legal Counsel, Kristen Edwards; Executive Director, Larry Janes.

Others in attendance:

Mike Volosin, Lind Exco
Wade Jutilla, Montana-Dakota Utilities Co.

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. A probable cause determination will be made based only on the written documentation received from both parties in the complaint. Both parties 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.

OC14-006 - In the Matter of the Complaint Filed by Montana-Dakota Utilities Company (MDU), Rapid City, South Dakota, Against Brewer Construction, Inc. (Brewer), Piedmont, South Dakota, for an Incident Occurring on March 26, 2014, at 6782 Cambridge Ct., Summerset, S.D.

On April 9, 2014, MDU filed a complaint alleging that Brewer dug without a locate request and damaged a 40 psi gas line.

Brewer responded to the Complaint on April 30, 2014, stating that there was no locate ticket, but the line was placed only 4" below grade not the 18" it is supposed to be laid at. Brewer also stated that it now has a policy in place that there will be no reason accepted for not having locates called in prior to a dig.

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

PROBABLE CAUSE DISCUSSION:

Fay Jandreau made a motion that there is probable cause that Brewer violated SDCL 49-7A-5. Ed Anderson seconded the motion. **Motion carried unanimously upon a roll call vote.**

DISCUSSION OF INTENT:

Fay Jandreau made a motion that this was an intentional violation. Todd Chambers seconded the motion. **Motion carried unanimously upon a roll call vote.**

PENALTY DISCUSSION:

For discussion purposes Fay Jandreau suggested that a penalty in the amount of \$750 with \$500 could apply in this case. Todd Chambers brought up the factors to be considered in determining the amount of the penalty described in SDCL 49-7A-26: 1. The amount of damage, degree of threat to public safety, and inconvenience caused. 2. The responders plans and procedures to insure future compliance with statute and rules. 3. Any history of previous violations. 4. Other matters as justice requires. Fay Jandreau stated that 4" of depth is a poor practice for an operator to place a gas line, although it is not a factor in this. Todd Chambers mentioned that he doubted it was placed at 4", and that we cannot consider depth. The violation is due to not having a locate ticket. Fay Jandreau made a motion that Brewer be assessed a penalty amount of \$750 with \$500 suspended, with the following requirements: Brewer 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, Brewer must attend a Spring Excavator meeting in 2015, and Brewer 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. Ed Anderson seconded the motion. **Motion carried unanimously upon a roll call vote.**

OC14-007 - In the Matter of the Complaint Filed by Montana-Dakota Utilities Company (MDU), Rapid City, South Dakota, Against Lind Exco, Rapid City, South Dakota, for an Incident Occurring on March 27, 2014, at 1851 Discovery Circle, Rapid City, SD.

On April 9, 2014, Montana-Dakota Utilities Company filed a complaint alleging that Lind Exco damaged a 40 psi gas line while digging with an expired locate ticket.

Lind Exco responded on April 28, 2014, by stating that the ticket had expired, but an abandoned gas line had been marked, not the active gas line. Lind Exco has made changes to its best practices as a reminder to update tickets while work is taking place.

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

PROBABLE CAUSE DISCUSSION:

Fay Jandreau made a motion that there is probable cause that Lind Exco violated SDCL 49-7A-5 and Administrative Rule 20:25:03:05.01. Ed Anderson seconded the motion. Todd Chambers seconded the motion. **Motion carried unanimously upon a roll call vote.**

DISCUSSION OF INTENT:

Fay Jandreau stated that he did not feel this was an intentional violation of the law. The excavator has competent processes in place. The true damage was the facility was not located. Ed Anderson read through several times and said he agrees. Just look at the way the contractor chose to respond. Todd Chambers stated he tends to agree, but he knew he should have gotten locates. A second locate might have located the facility. Lind Exco was aware they should have called in, but they didn't. Ed Anderson stated that from a strict interpretation of the law, he agrees. Fay stated that he stands firm that this was unintentional, that it was just a lapse of existing practices. Todd Chambers read through Kristen Edwards' earlier interpretation of Intent, which basically says "did you know it was wrong, and did you do it anyway". Kristen Edwards stated that it can't be intentional if you don't know the law. Ed Anderson said that based on a strict interpretation of the definition of intent, he would make a motion that this was an intentional violation. Todd Chambers seconded the motion. **Motion carried upon a roll call vote, with Fay Jandreau voting against.**

PENALTY DISCUSSION:

Ed Anderson made a motion that a \$750 penalty apply and that \$750 be suspended based on the response by Lind Exco, that the company has already addressed the issues. He went on to include in the motion that the normal requirements should be waived. Fay Jandreau seconded the motion and stated the concerning factor was the active gas line was not located. With MDU's policy of filing complaints that there should be an equal effort in marking their lines properly and not put the public at risk. If filed within 90 days of the occurrence Lind Exco could in turn file a complaint against MDU. After further discussion Ed Anderson amended the motion requirement to state that Lind Exco must not be found guilty of to have committed an intentional violation of a One Call rule or regulation within 12 months of the Board Order. If the condition is not met, then the entire \$750 will be immediately due and owing. **Motion carried unanimously upon a roll call vote.**

OC14-008 - In the Matter of the Complaint Filed by Montana-Dakota Utilities Co., Rapid City, South Dakota, Against Warax Excavating Inc. (Warax), Rapid City, South Dakota, for an Incident Occurring on April 11, 2014, at 616 Watts Ln., Rapid City, S.D.

On April 9, 2014, Montana-Dakota Utilities Company filed a complaint alleging that Warax damaged a 50 psi gas line while digging on an expired locate ticket.

Warax has not responded to the Complaint at this time.

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

PROBABLE CAUSE DISCUSSION:

Fay Jandreau made a motion that there is probable cause that Warax violated SDCL 49-7A-5. Todd Chambers seconded the motion. **Motion carried unanimously upon a roll call vote.**

DISCUSSION OF INTENT:

Fay Jandreau asked if Warax had responded. Larry Janes stated that Warax had not. Some discussion ensued about postal delivery. Larry Janes stated that a Notice of Complaint and the Enforcement Panel Agenda were both sent via Priority Mail to the address indicated in the complaint and neither had been returned by USPS. Ed Anderson said we have to assume the address is correct based on the information received. Warax chose not to respond to the Complaint. Todd Chambers made a motion stating this was an intentional violation. Ed Anderson seconded the motion. **Motion carried unanimously upon a roll call vote.**

PENALTY DISCUSSION:

Todd Chambers stated that based on the lack of response by Warax that this warrants a harsher penalty amount. An intentional violation could be up to \$5,000. This lack of the response along with no plans to comply need to be considered. He suggested for discussion purposes, a penalty assessment of \$1,500 with \$750 suspended. Ed Anderson stated that by hitting a 2" gas main, it was lucky no one was hurt, that there could have been a significant injury or damage. Warax;s not responding to the Complaint is bothersome. Ed Anderson said he could support the penalty amount suggested by Todd Chambers. Fay Jandreau stated that there were 8 customers affected, and the difference between the expiration date on the locate ticket and the work date is significant. Todd Chambers mad a motion that Warax be assessed a penalty amount of \$1,500, with \$750 suspended with the following requirements: Warax 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, Warax must attend a Spring Excavator meeting in 2015, and Warax 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. Ed Anderson seconded the motion. **Motion carried unanimously upon a roll call vote.**

There being no further business, Larry Janes asked for a motion to adjourn. Fay Jandreau so moved. Todd Chambers 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
Executive Director
South Dakota One Call/South Dakota 811



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