

**BEFORE THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD**

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IN THE MATTER OF THE COMPLAINT	)	ENFORCEMENT PANEL
FILED BY MITCHELL TELECOM,	)	RECOMMENDATION TO
MITCHELL, S.D., AGAINST	)	THE SD ONE CALL BOARD
SCHOENFELDER CONSTRUCTION,	)	
MITCHELL, S.D., FOR AN INCIDENT	)	OC14-013
OCCURRING ON JUNE 10, 2014, AT NORTH	)	
IOWA AVE AND WEST 8TH AVE.,	)	
MITCHELL, S.D.	)	

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On June 25, 2014, the South Dakota Public Utilities Commission received a complaint from Mitchell Telecom, Mitchell, South Dakota against Schoenfelder Construction (Schoenfelder) of Mitchell, South Dakota. The complaint alleges that on or about June 10, 2014, Schoenfelder engaged in excavation without maintaining a minimum horizontal clearance of eighteen inches between a marked facility.

A copy of the complaint was sent to Schoenfelder on June 26, 2014. Schoenfelder responded to the Complaint on July 17, 2014. In its response, Schoenfelder denied responsibility for the incident.

On July 30, 2014, 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-8 occurred. Specifically, the Panel found Schoenfelder performed excavation without maintaining the required horizontal clearance of eighteen inches, resulting in damage to a fiber optic cable operated by Mitchell Telecom. The Panel did find the violation to be intentional.

The Panel found it proper to assess a \$750.00 penalty for this offense. The Panel found it proper to suspend \$500.00 of the penalty under the following conditions:

- (i) Schoenfelder shall make payment of the **\$250.00 unsuspended portion** of the penalty within 30 days of issuance of the final SD One Call Board Order.
- (ii) Schoenfelder shall attend an excavating seminar in the spring of 2015.
- (iii) Schoenfelder 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) Schoenfelder 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 \$750.00 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 8-6-2014

**REQUEST FOR A HEARING  
COMPLAINT OC14-013**

**I REJECT THE PANEL RESOLUTION TO COMPLAINT OC14-013 AND  
REQUEST A HEARING.**

\_\_\_\_\_  
**Signature – Schoenfelder Construction**

\_\_\_\_\_  
**Date**

**I REJECT THE PANEL RESOLUTION TO COMPLAINT OC14-013 AND  
REQUEST A HEARING.**

\_\_\_\_\_  
**Signature – Mitchell Telecom**

\_\_\_\_\_  
**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.**