

MINUTES

South Dakota One Call Notification Board Enforcement Panel Conference Call

Friday, January 28, 2022 at 2:00PM CT (1:00 PM MT)

Panel Members: Jim Scull, Dan Kaiser, Bleau LaFave

Also in attendance: Cody Honeywell, Legal Counsel; Codi Gregg, Executive Director.

There were no other guests in attendance.

A brief description of the Enforcement Panel process: This was a legal proceeding and no comments were taken by any of the parties involved in the Complaints during this call. A probable cause determination was made based only on the written documentation received from the parties in the complaints. All parties will be given the opportunity to request a hearing before the full South Dakota One Call Notification Board, if there is disagreement with the recommendation of the Panel. If a hearing is requested, each party must be represented by legal counsel at the hearing. 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 Board Order will be mailed to each party after that Board Meeting. Please note, no payment is due until the final order is issued.

Factors to be considered in determining the amount of the penalty, if assessed shall be:

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

49-7A-18. Penalties. Except as provided in § 49-7A-19 and in addition to all other penalties provided by law, any person who violates or who procures, aids, or abets in the violation of § 49-7A-2, 49-7A-5, 49-7A-8, or 49-7A-12, or any rules promulgated pursuant to § 49-7A-2, 49-7A-5, or 49-7A-8 **may be assessed a penalty of up to one thousand dollars for the first violation and up to five thousand dollars for each subsequent violation that occurs within twelve months of the initial violation.**

49-7A-19. Penalties for intentional violations. In addition to all other penalties provided by law, any person who intentionally violates or who intentionally procures, aids, or abets in the violation of § 49-7A-2, 49-7A-5, 49-7A-8, or 49-7A-12, or any rules promulgated pursuant to § 49-7A-2, 49-7A-5, or 49-7A-8 **may be assessed a penalty of 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.**

49-7A-20. Each violation as separate offense. **Each violation of any statute or rule of the Statewide One-Call Notification Board constitutes a separate offense. In the case of a continuing violation, each day that the violation continues constitutes a separate violation.**

The Enforcement Panel of the South Dakota One Call Notification Board met to consider the following South Dakota One Call Complaints:

OC21-013 In the Matter of the Complaint filed by Watertown Municipal Utilities (Watertown) Watertown, South Dakota against LL and Sons Excavating, Inc. (LL and Sons), Hazel, South Dakota for an incident occurring on July 2, 2021 at 54th Street and South Lake Drive in Watertown, South Dakota.

Deadline to Respond is January 25, 2022. As of January 28, 2022 no response has been received.

There is previous history with LL and Sons from 2017 and will not be considered.

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

Watertown Municipal Utilities withdrew the complaint per an email to Codi Gregg on Monday, January 24, 2022, posted to the complaint docket online. Bleau LaFave made the motion to dismiss the complaint, as requested by Watertown Municipal. Jim Scull seconded the motion.

Motion carried unanimously upon a roll call vote.

Having no further business, Jim Scull made the motion to adjourn the call. Dan Kaiser seconded the motion. **Motion carried unanimously upon a roll call vote.**

Please note: This was a legal proceeding and only written information provided by the Complainants and the written response from the Defendants was considered per SDCL 49-7A-25. No comments from the parties involved in the complaints were taken during this call.