

MINUTES

**South Dakota One Call Notification Board
Enforcement Panel Conference Call
Thursday, June 17, 2021 at 2:00PM CT (1:00 PM MT)**

Panel Members: Mark Meier, Steve Mohr, Jim Scull

Also in attendance: Cody Honeywell, Legal Counsel; Larry Janes, Executive Director; Codi Gregg, Deputy Director

There were no 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:

OC21-002 In the Matter of the Complaint filed by Montana Dakota Utilities (MDU) Rapid City, South Dakota against Dowden Creative Construction (Dowden), Sturgis, South Dakota for an incident occurring on March 18, 2021 at 7916 Duke Parkway Street in Spearfish, South Dakota.

Deadline to Respond was April 26, 2021. Response was received on April 22, 2021.

There is previous history with Dowden.

OC19-026: Complaint was dismissed, order issued November 22, 2019.

OC20-050: Enforcement Panel found probable cause of an intentional violation of 49-7A-5 and 49-7A-8, recommended \$1,000 with \$750 suspended per violation with Dowden meeting the requirements. The Board Order was issued on December 10, 2020. Conditions have been met on this order and the docket closed.

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

The Panel opened discussion on this complaint, there was a failure to expose the existing facility. As burial depth is not required or specified, all utilities need to be considered buried shallow, potholed and observed in an excavation area. The Panel did not feel those measures were taken.

Mark Meier made the motion that probable cause does exist in the violation of 49-7A-8, the violation was unintentional and recommended a penalty in the amount of \$5,000 with \$3,750 suspended with Dowden meeting the following requirements:

1. Respondent must not be found guilty of a One Call violation within 12 months of the Board Order,
2. The penalty payment must be made within 30 days of the Board Order,
3. Respondent must attend a Damage Prevention meeting in 2022.
4. Respondent must conduct an in-house safety meeting to discuss South Dakota One Call laws. Detail of the discussion material, date and length of the meeting along with printed and signed names of attendees will be submitted to the Executive Director of South Dakota One Call within 30 days of the Board Order.
5. Respondent will arrange a face to face meeting with claimant to review the damage, dangers while working around utilities and safe practices. This meeting is to take place within 30 days of the Board Order being issued.

As this is the second complaint within 12 months, the penalty payment is higher and South Dakota One Call will pursue the suspended amount (\$750) from Complaint OC20-050.

Steve Mohr seconded the motion. **Motion carried unanimously upon a roll call vote.**

OC21-003 - In the Matter of the Complaint filed by City of Crooks, Crooks, South Dakota against Belman Landscaping (Belman) Sioux Falls, South Dakota for an incident occurring on April 13, 2021 at 25760 Packard Lane, Renner, South Dakota.

Deadline to Respond was May 12, 2021. Response was received on April 26, 2021.

There is no previous history with Belman.

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

Discussion was opened on this complaint by Steve Mohr, clarifying Belman has not been involved in a previous complaint. The provided documentation did not clarify who called 911, whether it was the homeowner or Belman. Also, why was there no phone call to 811 to report the damage? As stated in South Dakota One Call law 49-7A-12, 911 is to be called with any escape of toxic or corrosive gas or liquid, 811 is to be contacted, and if known, the utility needs to be called as well. That is the order South Dakota One Call recommends for notifications. It is apparent that Belman Landscaping does not understand one call laws.

- a. As the excavator, a locate ticket needs to be in your name. As the excavator, you are not allowed to use the homeowner's locate or a general contractor's locate. The request needs to be made in your name.
- b. All damages are to be reported, whether there was an escape or not. Nicking a line is a damage and the utility need to be given the opportunity to repair the damage.
- c. Do not bury or cover a damage. That leads to larger problems, such as homes exploding. Report all damages.

Steve Mohr made the motion that probable cause did exist in the violations of 49-7A-5 and 49-7A-12 and that both violations are considered intentional. Steve Mohr continued recommending a penalty in the amount of \$1,000 with \$750 suspended per violation for a total of \$2,000 with \$1,500 if Belman meets the conditions below:

1. Respondent must not be found guilty of a One Call violation within 12 months of the Board Order,
2. The penalty payment must be made within 30 days of the Board Order,
3. Respondent must attend a Damage Prevention meeting in 2022.
4. Respondent must conduct an in-house safety meeting to discuss South Dakota One Call laws. Detail of the discussion material, date and length of the meeting along with printed and signed names of attendees will be submitted to the Executive Director of South Dakota One Call within 30 days of the Board Order.
5. Respondent will arrange a face to face meeting with claimant to review the damage, dangers while working around utilities and safe practices. This meeting is to take place within 30 days of the Board Order being issued.

Jim Scull seconded the motion. **Motion carried unanimously upon a roll call vote.**

OC21-004 In the Matter of the Complaint filed by Montana Dakota Utilities (MDU) Mobridge, South Dakota against R and W Construction (R & W), Pierre, South Dakota for an incident occurring on May 3, 2021 at 610 West Sioux Avenue in Pierre, South Dakota.

This docket was vetted and closed by Larry Janes and Codi Gregg, alleged violations were not stated as required on the complaint form.

Having no further business, Jim Scull made the motion to adjourn the panel and conference call. Steve Mohr 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.