

AGENDA

South Dakota One Call Notification Board Enforcement Panel Conference Call

Wednesday, November 30, 2022 at 10:00AM CT (9:00AM MT).

This meeting can be attended via ZOOM. Please contact Codi Gregg at (605) 863-0951 for access to the meeting.

A brief description of the Enforcement Panel process: This is a legal proceeding and no comments will be 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 ensure 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 meeting to consider the following South Dakota One Call Complaints:

OC22-010 In the matter of the complaint filed by **Hunts Family Construction**, Spearfish, SD against **BluePeak**, Spearfish, SD for an incident occurring June 18, 2022 at 338 Evans Lane, Lot 13 in Spearfish.

Deadline to Respond was September 29, 2022. Response was received on September 21, 2022.

There is no previous history with BluePeak.

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

OC22-011 In the Matter of the Complaint filed by **NorthWestern Energy**, Mitchell, South Dakota against **Wagner Building Supply**, Wagner, South Dakota for an incident occurring on July 19, 2022 at 602 White Swan Lake in Lake Andes, South Dakota.

Deadline to Respond was August 31, 2022. Response was received on September 8, 2022.

There is no previous history with Wagner Building Supply.

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

OC22-012 In the Matter of the Complaint filed by **NorthWestern Energy**, Mitchell, South Dakota against **Wagner Building Supply**, Wagner, South Dakota for an incident occurring on July 28, 2022 at 310 Wendy Avenue in Wagner, South Dakota.

Deadline to Respond was September 1, 2022. Response was received on August 30, 2022.

There is no previous history with Wagner Building Supply.

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

OC22-013 In the Matter of the Complaint filed by Elliott Construction, Yankton, South Dakota against Lake Madison Sanitary District, Madison, South Dakota for an incident occurring on June 4, 2021 at 6582 Peninsula Point in Lake Madison, South Dakota.

Deadline to Respond was October 13, 2022. Response was received on October 13, 2022.

There is no previous history with Lake Madison Sanitary District.

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

OC22-014 In the Matter of the Complaint filed by Elliott Construction, Yankton, South Dakota against Lake Madison Sanitary District, Madison, South Dakota for an incident occurring on June 4, 2021 at 6606 Peninsula Point in Lake Madison, South Dakota.

Deadline to Respond was October 13, 2022. Response was received on October 13, 2022.

There is no previous history with Lake Madison Sanitary District.

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

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 will be taken during this call.