

AGENDA

South Dakota One Call Notification Board Enforcement Panel Conference Call

DUE TO CORONAVIRUS OUTBREAK – THIS MEETING CAN NOT BE ATTENDED IN PERSON. WE ENCOURAGE ALL PARTIES INVOLVED TO JOIN VIA ZOOM WEB CONFERENCE CALL. CONTACT CODI GREGG AT DEPUTYDIRECTOR@SD811.COM FOR ACCESS TO CALL.

Thursday, November 4, 2021 at 2:00PM CT (1:00 PM MT)

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 will be 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 will meet to consider the following South Dakota One Call Complaints:

OC21-007 In the Matter of the Complaint filed by CenturyLink (CenturyLink) Sioux Falls, South Dakota against Winter Contracting (Winter), Volga, South Dakota for an incident occurring on June 8, 2021 at 33rd Street and Minnesota Avenue in Sioux Falls, South Dakota.

There is no previous history with Winter Contracting.

The Panel opened discussion on this complaint, there is a lot happening in this complaint. The amount of damage and the disregard to the utilities is concerning. Steve Mohr stated the photos in the complaint do not show if the locates were completed and lead to more questions than answers. Fay Jandreau commented he agreed, what was not said in the documentation? There is cause to believe the locates weren't performed but the contractor was advised of the utilities. On the response, there was a locate ticket identified but not submitted. Both forms state to submit the locate ticket. The Panel does not have the authority to seek out documentation, it has to be provided. A verification should have been called in by the excavator prior to work starting. This docket was deferred and a letter requesting further documentation was sent to both parties, with a deadline for the information to be received by Codi Gregg and Larry Janes by November 2, 2021.

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

OC21-010 In the Matter of the Complaint filed by NorthWestern Energy (NorthWestern) Huron, South Dakota against Alliance Construction (Alliance), Sioux Falls, South Dakota for an incident occurring on June 9, 2021 at 27220 472nd Avenue in Harrisburg, South Dakota.

Deadline to Respond was July 23, 2021. Response was received on July 20, 2021.

There is no previous history with Alliance.

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

OC21-011 In the Matter of the Complaint filed by NorthWestern Energy (NorthWestern) Huron, South Dakota against MP NexLevel, LLC (MP), Maple Lake, Minnesota for an incident occurring on July 28, 2021 at 309 North 2nd Street in Groton, South Dakota.

Deadline to Respond was August 23, 2021. No response has been received as of October 28, 2021.

There is previous history with MP NexLevel from 2012 and 2021 that cannot be considered.

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

OC21-012 In the Matter of the Complaint filed by NorthWestern Energy (NorthWestern) Huron, South Dakota against MP NexLevel, LLC (MP), Maple Lake, Minnesota for an incident occurring on August 24, 2021 at 602 North 3rd Street in Groton, South Dakota.

Deadline to Respond was September 23, 2021. No response has been received as of October 28, 2021.

There is previous history with MP NexLevel from 2012 and 2021 that cannot be considered.

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

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

Note: Please call (605) 863-0951 at least one hour prior to the call for call-in instructions. We have limited ports available on the conference bridge, so if you do plan to call in, we ask that you conference in on one line.