

BEFORE THE SOUTH DAKOTA
ONE CALL NOTIFICATION BOARD

IN THE MATTER OF THE COMPLAINT
FILED BY MONTANA DAKOTA
UTILITIES, RAPID CITY, SD AGAINST
HEAVY CONSTRUCTORS, RAPID CITY,
SD, FOR AN INCIDENT OCCURRING ON
SEPTEMBER 17, 2020 AT E MALL
DRIVE, BOX ELDER, SD.

**ORDER ADOPTING ENFORCEMENT
PANEL RECOMMENDATION TO THE
SOUTH DAKOTA ONE CALL BOARD**

OC20-071

On September 28, 2020, the South Dakota One Call Board received a Complaint filed by Montana Dakota Utilities Co. (herein "Claimant"), against Heavy Constructors, Inc. (herein "Respondent"), for an incident occurring on September 17, 2020, at E Mall Drive, Box Elder, SD. The Complaint alleges violations of SDCL 49-7A-5 and 49-7A-8 when Respondent was excavating on E Mall Drive in Box Elder and hit the two-inch (2") gas main. Claimant alleges Respondent did not have a valid locate ticket at the time of the damage in this location. Claimant also alleges gas was blowing, 811 was notified, and 911 was not notified.

A copy of the Complaint was sent to Respondent on September 29, 2020. The deadline to respond was October 22, 2020. Respondent has answered the Complaint as of October 21, 2020 and does not dispute that a violation of South Dakota One Call law occurred.

On October 29, 2020, the Enforcement Panel (herein "Panel") convened pursuant the authority present in SDCL 49-7A. The Panel does find probable cause that an intentional violation of SDCL 49-7A-5 and an unintentional violation of SDCL 49-7A-8 occurred.

Based upon the evidence presented in the filings, the Panel recommends a penalty of \$2,000 with \$1,000 suspended for the violation of SDCL 49-7A-5 and a penalty of \$2,000 with \$1,000 suspended for the violation of SDCL 49-7A-8 for a total penalty of \$4,000 with \$2,000 suspended upon the conditions listed below. The conditions for the suspended penalty are as follows:

1. Respondent must not be found guilty of a One-Call violation within 12 months of the Board Order,
2. The penalty payment of **\$2,000** must be made to **South Dakota One Call Notification Board, P.O. Box 187, Rapid City, SD 57709.**

3. Respondent must attend a Damage Prevention meeting in 2021.
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 thirty (30) days of the Board Order being issued.
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 thirty (30) days of the Board Order being issued.

If any of the above conditions are not met, the suspended penalty (**\$2,000**) becomes immediately due and payable to **South Dakota One Call Notification Board, P.O. Box 187, Rapid City, SD 57709.**

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 (20) days from the date of service of this notice. Failure to request a hearing is considered acceptance of the recommendations and findings herein.

On November 25, 2020, the Panel's recommendation was sent to the parties to this action. The parties did not request an evidentiary hearing. The Board reviewed the Panel's recommendations at its February 19, 2021 meeting pursuant to SDCL 49-7A-27. The Panel's recommendation was approved by the Board. It is now, therefore:

ORDERED, that the South Dakota One Call Board adopts the recommendations of the Panel as a final resolution of this Complaint. The Panel's findings are attached hereto and shall be considered fully incorporated herein.

ORDERED, that if the penalty is not paid, that the Board shall pursue any rights it has under the law regarding collections.

The South Dakota One Call Notification Board has jurisdiction over this matter pursuant to SDCL 1-26 and 49-7A and ARSD Article 20:25, specifically SDCL 49-7A-5, 49-7A-18, 49-7A-20, 49-7A-22, and 49-7A-26.

Dated this 24th day of February, 2021.

BY ORDER OF THE SOUTH DAKOTA
ONE CALL NOTIFICATION BOARD:

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Fay Sandreau
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