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APR 07 2021

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

**OFFICE OF HEARING EXAMINERS  
STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE COMPLAINT  
FILED BY MAGELLAN MIDSTREAM  
PARTNERS, TULSA, OK AGAINST  
DONARSKI LAWNCARE AND  
LANDSCAPE, SPEARFISH, SD, FOR AN  
INCIDENT OCCURRING ON NOVEMBER  
3, 2020 AT 816 COPPERFIELD DRIVE,  
RAPID CITY, SD.

OHE 21-04  
OC20-088

**NOTICE OF HEARING**

On November 20, 2020, the South Dakota One Call Board received a Complaint filed by Magellan Midstream Partners, Limited Partnership, (herein "Claimant"), against Joe Donarski d/b/a Donarski Lawncare and Landscape (herein "Respondent"), for an incident occurring on November 3, 2020, at 816 Copperfield Drive, Rapid City, SD. The Complaint alleges violations of administrative rules 20:25:03:04(6) and 20:25:03:10.02 when Respondent installed a fiber cable 15 feet away from the pipeline. Claimant alleges several attempts were made to request that a representative of Claimant be on site during excavation, and Respondent did not respond to those communication attempts. Therefore, Claimant alleges Respondent is in violation of Claimant's procedures by not having a representative on site during excavation.

A copy of the Complaint was sent to Respondent on November 23, 2020. The deadline to respond was December 15, 2020. Respondent had not answered the Complaint as of December 17, 2020.

On December 17, 2020, the Enforcement Panel (herein "Panel") convened pursuant to the authority present in SDCL 49-7A. The Panel does find probable cause that an intentional violation of 20:25:03:10.02 occurred. The Panel does not find probable cause that a violation of 20:25:03:04(6) occurred as the administrative rule states a phone number is to be provided but does not state it has to be answered.

The panel assessed a \$3,000 penalty and suspended \$1,000 if the respondent met conditions as set by the panel. On January 12, 2021, the panel recommendation was sent to the Complainant and Respondent. On January 25, 2021, Respondent filed a request for hearing.

The board has jurisdiction over this matter pursuant to SDCL Chapter 49-7A and ARSD Chapter 1-26.

A hearing on this matter shall be held on May 5, 2021, from 8:30 a.m. to 10:45 a.m. CDT. The hearing will be conducted via Zoom. All persons testifying will be subject to cross examination by the parties.

The issues to be heard at the above date and time shall be: (1) whether Joe Donarski d/b/a Donarski Lawncare and Landscape failed to meet his responsibilities under 20:25:03:10.02 by not contacting claimant and (2) if Joe Donarski d/b/a Donarski Lawncare and Landscape had such an obligation, whether penalties shall be imposed by the board pursuant to SDCL 7A-18 and/or 49-7A-19, and if so, what those penalties shall be.

The hearing shall be an adversarial proceeding conducted pursuant to SDCL Chapter 1-26. All parties have the right to be present and to be represented by an attorney. These rights and other due process rights shall be forfeited if not exercised at the hearing. If you or your representative fail to appear at the time and place set for hearing, the final decision will be based solely on the testimony and evidence provided, if any, during the hearing. If you or your representative fail to appear at the time and place set for hearing, a final decision may be issued by default pursuant to SDCL 1-26-20. After the hearing, the board will consider all evidence and testimony that was presented at the hearing. The board will then enter Findings of Fact, Conclusions of Law, and a final decision regarding this matter. As a result of the hearing, the board shall determine whether Joe Donarski d/b/a Donarski Lawncare and Landscape violated any statute or rule of the board, and, if so, whether any penalties shall be imposed.

The board's final decision may be appealed by the parties to the State Circuit Court and the State Supreme Court as provided by law.

Dated this 6th day of April, 2021.

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

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#### CERTIFICATE OF SERVICE

Cody Honeywell of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 6th day of April, 2021, he electronically filed and served via email and/or first class mail, postage prepaid, a true and correct copy of the foregoing in the above-captioned action to the following at:

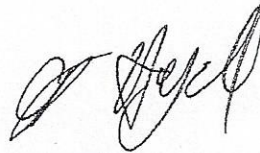
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