

BEFORE THE SOUTH DAKOTA
ONE CALL NOTIFICATION BOARD

IN THE MATTER OF THE COMPLAINT
FILED BY MONTANA DAKOTA
UTILITIES, RAPID CITY, SD AGAINST
DOWDEN CREATIVE CONSTRUCTION,
STURGIS, SD, FOR AN INCIDENT
OCCURRING ON MARCH 18, 2021 AT
7916 DUKE PARKWAY ST, SPEARFISH,
SD.

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

OC21-002

On April 6, 2021, the South Dakota One Call Board received a Complaint filed by Montana-Dakota Utilities Co. (herein “Claimant”), against Dowden Creative Construction, LLC (herein “Respondent”), for an incident occurring on March 18, 2021, at 7916 Duke Parkway St, Spearfish, SD. The Complaint alleges a violation SDCL 49-7A-8 when Respondent did not maintain the minimum clearance from underground facilities.

A copy of the Complaint was sent to Respondent on April 6, 2021. The deadline to respond was April 26, 2021. Respondent had answered the Complaint as of April 22, 2021 and does not dispute that a violation of South Dakota One Call law occurred. Respondent alleges they understand a re-spot ticket should have been called once the snow melted. Respondent also alleges the gas line was only buried 8-10” deep.

On June 17, 2021, the Enforcement Panel (herein “Panel”) convened pursuant the authority present in SDCL 49-7A. The Panel does find probable cause that an unintentional violation of SDCL 49-7A-8 occurred.

Based upon the evidence presented in the filings, the Panel recommends a penalty of \$5,000 with \$3,750 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 **\$1,250** 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 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 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 (**\$3,750**) 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.

The South Dakota One Call Notification Board has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-7A and ARSD 20:25.