

BEFORE THE SOUTH DAKOTA
ONE CALL NOTIFICATION BOARD

IN THE MATTER OF THE COMPLAINT
FILED BY CITY OF CROOKS, CROOKS,
SD AGAINST BELMAN LANDSCAPING,
SIOUX FALLS, SD, FOR AN INCIDENT
OCCURRING ON APRIL 13, 2021 AT
25760 PACKARD LANE, RENNER, SD.

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

OC21-003

On April 14, 2021, the South Dakota One Call Board received a Complaint filed by City of Crooks (herein "Claimant"), against Belman's Landscaping LLC (herein "Respondent"), for an incident occurring on April 13, 2021, at 25760 Packard Lane, Renner, SD. The Complaint alleges violations of SDCL 49-7A-5 and 49-7A-12 when Respondent was constructing a chain link fence and made post holes with an auger which struck the gas line. Respondent allegedly covered the hole after hitting line. Claimant alleges Respondent stated they were told to do so in past projects. Claimant further alleges that the homeowner called 911 and the Claimant's Helpline to report the damage as the Respondent was not sure who to contact.

A copy of the Complaint was sent to Respondent on April 22, 2021. The deadline to respond was May 12, 2021. Respondent had answered the Complaint as of April 26, 2021 and does not dispute that a violation of South Dakota One Call law occurred. Respondent alleges the homeowner and they called 911. Respondent further alleges they did not request a locate because the homeowner stated the previous company had called in a locate.

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 intentional violations of SDCL 49-7A-5 and SDCL 49-7A-12 occurred.

Based upon the evidence presented in the filings, the Panel recommends a penalty of \$1,000 with \$750 suspended for the violation of SDCL 49-7A-5 and a penalty of \$1,000 with \$750 suspended for the violation of SDCL 49-7A-12 for a total penalty of \$2,000 with \$1,500 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 \$500 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 (\$1,500) becomes immediately due and payable to South Dakota One Call Notification Board, P.O. Box 187, Rapid City, SD 57709.

On September 2, 2021, 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 November 17, 2021 meeting pursuant to SDCL 49-7A-27. The Panel's recommendation was approved by the Board. It is now, therefore:

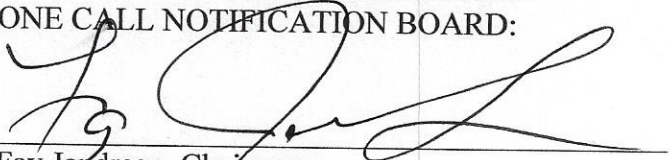
ORDERED, that the South Dakota One Call Board adopts the recommendations of the Panel as a final resolution of this Complaint. The Panel's findings are attached hereto and shall be considered fully incorporated herein.

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 17th day of November, 2021.

BY ORDER OF THE SOUTH DAKOTA
ONE CALL NOTIFICATION BOARD:


Fay Jandreau, Chairman