

BEFORE THE SOUTH DAKOTA
ONE CALL NOTIFICATION BOARD

<p>IN THE MATTER OF THE COMPLAINT FILED BY MONTANA DAKOTA UTILITIES, RAPID CITY, SD AGAINST LIND-EXCO, INC., RAPID CITY, SD, FOR AN INCIDENT OCCURRING ON AUGUST 4, 2020 AT 0 FLORMANN STREET, RAPID CITY, SD.</p>	<p>ORDER ADOPTING ENFORCEMENT PANEL RECOMMENDATION TO THE SOUTH DAKOTA ONE CALL BOARD</p> <p>OC20-053</p>
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On August 13, 2020, the South Dakota One Call Board received a Complaint filed by Montana Dakota Utilities Co. (herein "Claimant"), against Lind-Exco, Inc. (herein "Respondent"), for an incident occurring on August 4, 2020, at 0 Flormann Street, Rapid City, SD. The Complaint alleges violations of SDCL 49-7A-5 and 49-7A-8 when Respondent was digging with a mini excavator and hit the 3" gas main. 811 and 911 were both notified of the blowing gas. Claimant alleges locate markings were gone due to construction and weather and that new locates should have been requested. Claimant also alleges the damage ticket was submitted under an expired locate ticket.

A copy of the Complaint was sent to Respondent on August 19, 2020. The deadline to respond was September 9, 2020. Respondent has answered the Complaint as of September 9, 2020 and does dispute that a violation of South Dakota One Call law occurred. Respondent alleges operating under an active locate ticket. Respondent also alleges that the main was first located behind the curb and located a second time in the pan and behind the curb. Therefore, Respondent did not believe the gas was where it was struck in the street.

On September 24, 2020, 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-8 occurred.

Based upon the evidence presented in the filings, the Panel recommends a penalty of \$5,000 with \$2,500 suspended for the violation of SDCL 49-7A-5 and a penalty of \$5,000 with \$2,500 suspended for the violation of SDCL 49-7A-8 for a total penalty of \$10,000 with \$5,000 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 \$5,000 must be made to 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 (\$5,000) becomes immediately due and payable to P.O. Box 187, Rapid City, SD 57709.

On October 26, 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 November 17, 2020 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 10th day of December 2020.

BY ORDER OF THE SOUTH DAKOTA
ONE CALL NOTIFICATION BOARD:

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