

MINUTES

South Dakota One Call Notification Board Enforcement Panel Conference Call

Thursday, August 29, 2024 at 2PM (1PM MT)

This meeting was hosted via ZOOM.

Panel Members: Ryan Barr, Loren Beld and Jim Wedin

Guests in attendance: Melissa Hanson, MDU; Brent Pingel, MDU; Kelly Simunek, KD Construction; Kristi Slack Leisinger, Bubba's Digging; Ethan Wurdeman, USIC; Jeff Twombly, USIC; Amanda Grimes, Dave's Construction; Vaughn Beck, Vaughn Law Office; Kevin Gabriel, Blackburn Foundation Repair

Also in attendance: Codi Gregg, Executive Director, Mandy Benson, Executive Assistant, Cody Honeywell, Board Legal Counsel

A brief description of the Enforcement Panel process: This was a legal proceeding, and no comments were provided by any of the parties involved in the Complaints during this call. A probable cause determination was made based only on the written documentation received from the parties involved in the complaints. All parties will be given the opportunity to request a hearing before the full South Dakota One Call Notification Board, if there is disagreement with the recommendation of the Panel. If a hearing is requested, each party must be represented by legal counsel at the hearing. If a hearing is not requested, the Enforcement Panel recommendation will be presented to the South Dakota One Call Board of Directors for acceptance at the next Board Meeting. A Board Order will be mailed to each party after that Board Meeting. Please note, no payment is due until the final order is issued.

Factors to be considered in determining the amount of the penalty, if assessed shall be:

1. The amount of damage, degree of threat to public safety and the inconvenience caused.
2. The respondent's plan and procedures to ensure future compliance with statutes and rules.
3. Any history of previous violations.
4. Other matters as justice requires.

49-7A-18. Penalties. Except as provided in § 49-7A-19 and in addition to all other penalties provided by law, any person who violates or who procures, aids, or abets in the violation of § 49-7A-2, 49-7A-5, 49-7A-8, or 49-7A-12, or any rules promulgated pursuant to § 49-7A-2, 49-7A-5, or 49-7A-8 **may be assessed a penalty of up to one thousand dollars for the first violation and up to five thousand dollars for each subsequent violation that occurs within twelve months of the initial violation.**

49-7A-19. Penalties for intentional violations. In addition to all other penalties provided by law, any person who intentionally violates or who intentionally procures, aids, or abets in the violation of § 49-7A-2, 49-7A-5, 49-7A-8, or 49-7A-12, or any rules promulgated pursuant to § 49-7A-2, 49-7A-5, or 49-7A-8 **may be assessed a penalty of up to five thousand dollars for the first violation and up to ten thousand dollars for each subsequent violation that occurs within twelve months of the initial violation.**

49-7A-20. Each violation as separate offense. **Each violation of any statute or rule of the Statewide One-Call Notification Board constitutes a separate offense. In the case of a continuing violation, each day that the violation continues constitutes a separate violation.**

The Enforcement Panel of the South Dakota One Call Notification Board met to consider the following South Dakota One Call Complaints:

OC23-010 In the matter of the complaint filed by City of Hecla, Hecla, South Dakota against Tyler Thayer, Hecla, SD for an incident occurring October 4, 2023 at 702 Howard Street in Hecla.

Deadline to Respond was December 12, 2023. Response was received on December 13, 2023.

There is no previous history with Thayer.

The City of Hecla has withdrawn the complaint. Today, shall the Enforcement Panel of South Dakota One Call Notification Board find that there is probable cause that Thayer violated any statute or rule under the jurisdiction of the Board, and if so, shall a civil penalty be assessed?

Ryan Barr opened discussion for the panel stating the request to withdraw the complaint was received. He did not have any issues accepting the request. Ryan Barr made the motion to withdraw the complaint as requested by the complainant. Jim Wedin seconded the motion.

Motion carried unanimously upon a roll call vote.

OC24-011 In the matter of the complaint filed by Magellan Midstream Partners, LP, Tulsa, OK against Quality Real Estate, Oral, SD for an incident occurring April 8, 2024 at East Anamosa and Concourse Drive in Rapid City.

Deadline to Respond was May 24, 2024. Response was received on May 15, 2024.

There is no previous history with Quality Real Estate.

Today, shall the Enforcement Panel of South Dakota One Call Notification Board find that there is probable cause that Quality Real Estate violated any statute or rule under the jurisdiction of the Board, and if so, shall a civil penalty be assessed?

Loren Beld opened discussion with mining permit requirements. 49-7A-1 defines excavation, mining is not exempted. There was a locate ticket called in with the purchase of the land and the mining permit. Having a continual locate request is impractical. Cody Honeywell addressed Admin Rule 20:25:03:05:01, reviewing that a written and extensive agreement could be made between excavator and utility if work would continue the past 21 day window of a ticket. The Panel understood not having a locate, as long as the mining permit is active, as the mining permit makes the owner aware of utility activity by variance.

Loren Beld recommended the Panel dismiss the complaint as no probable cause existed to move forward with the complaint. Ryan Barr seconded the motion. Jim Wedin stated this needs to be brought before the Board for discussion. **Motion carried unanimously upon a roll call vote.**

OC24-014 In the matter of the complaint filed by City of Crooks, Crooks, SD against Bubba's Digging, Sioux Falls, SD for an incident occurring May 9, 2024 at 303 E Main Street in Crooks.

Deadline to Respond was July 3, 2024. Response was received July 2, 2024.

There is no previous history with Bubba's Digging.

Today, shall the Enforcement Panel of South Dakota One Call Notification Board find that there is probable cause that Bubba's Digging violated any statute or rule under the jurisdiction of the Board, and if so, shall a civil penalty be assessed?

Loren Beld opened discussion on this complaint, stating there was no locate prior to excavation, agreeing there was a violation of SDCL 49-7-5. Loren Beld made the recommendation probable cause did exist in the violation of 49-7A-5, the violation was unintentional and recommended a penalty in the amount of \$750 with \$500 suspended with Bubba's meeting the conditions listed below:

1. Respondent must not be found guilty of a One Call violation within twelve (12) months of the Board Order being issued.
2. The penalty payment must be made to the South Dakota One Call Notification Board, PO Box 187, Rapid City, South Dakota 57709 within thirty (30) days of the Board Order being issued.
3. Respondents must attend a Damage Prevention Meeting in 2025.
4. Respondents must conduct an in-house safety meeting to discuss South Dakota One Call laws. Details 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. The meeting is to take place within thirty (30) days of the Board Order being issued.

Discussion was held on SDCL 49-7A-10 has listed in the complaint. 49-7A-10 does not carry a cause of action for the Board of Directors, Loren Beld made the motion to dismiss the violation of 49-7A-10. Ryan Barr seconded the motion. **Motion carried unanimously.**

OC24-016 In the matter of the complaint filed by Magellan Midstream Partners, LP, Tulsa, OK against Paradigm Construction, Black Hawk, SD for an incident occurring May 14, 2024 on Jim Street in Rapid City.

Deadline to respond was July 3, 2024. No response was received.

There is no previous history with Paradigm Construction.

Today, shall the Enforcement Panel of South Dakota One Call Notification Board find that there is probable cause that Paradigm Construction violated any statute or rule under the jurisdiction of the Board, and if so, shall a civil penalty be assessed?

Ryan Barr opened discussion on this complaint, clarifying there was no response on the complaint. Codi Gregg confirmed there was no response received on this complaint. Panel discussed no response, stating that is a lack of care shown to the process and potential admitting fault and potential of an Intentional violation. Ryan Barr made the motion that probable cause did exist in the intentional violation of 49-7A-5 and recommended a penalty in the amount of \$1,500 with \$500 suspended with Paradigm meeting the conditions listed below. After discussion, Ryan Barr amended the motion that probable cause did exist in the unintentional violation of 49-7A-5 and recommended a penalty in the amount of \$1,000 with \$250 suspended with Paradigm meeting the conditions listed:

1. Respondent must not be found guilty of a One Call violation within twelve (12) months of the Board Order being issued.

2. The penalty payment must be made to the South Dakota One Call Notification Board, PO Box 187, Rapid City, South Dakota 57709 within thirty (30) days of the Board Order being issued.

3. Respondents must attend a Damage Prevention Meeting in 2025.

4. Respondents must conduct an in-house safety meeting to discuss South Dakota One Call laws. Details 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. The meeting is to take place within thirty (30) days of the Board Order being issued.

Jim Wedin seconded the motion. **Motion carried unanimously.**

OC24-017 In the matter of the complaint filed by Magellan Midstream Partners, LP, Tulsa, OK against Paradigm Construction, Black Hawk, SD for an incident occurring May 20, 2024 at Creekside Apartments in Rapid City.

Deadline to respond was July 3, 2024. Response was received on July 9, 2024.

There is no previous history with Paradigm Construction.

Today, shall the Enforcement Panel of South Dakota One Call Notification Board find that there is probable cause that Paradigm Construction violated any statute or rule under the jurisdiction of the Board, and if so, shall a civil penalty be assessed?

Jim Wedin opened discussion, stating this was a clear case of no locate prior to excavation. Jim Wedin made the motion that probable cause did exist in the unintentional violation of 49-7A-5 and recommended a penalty in the amount of \$1,000 with \$250 suspended with Paradigm meeting the following conditions:

1. Respondent must not be found guilty of a One Call violation within twelve (12) months of the Board Order being issued.

2. The penalty payment must be made to the South Dakota One Call Notification Board, PO Box 187, Rapid City, South Dakota 57709 within thirty (30) days of the Board Order being issued.

3. Respondents must attend a Damage Prevention Meeting in 2025.

4. Respondents must conduct an in-house safety meeting to discuss South Dakota One Call laws. Details 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. The meeting is to take place within thirty (30) days of the Board Order being issued.

Loren Beld seconded the motion. **Motion carried unanimously.**

OC24-018 In the matter of the complaint filed by Montana Dakota Utilities, Mobridge, SD against Blackburn Foundation Repair, Pierre, SD for an incident occurring October 23, 2023 at 110 E Scranton Street in Selby.

Deadline to respond was July 3, 2024. Blackburn asked the response provided to OC23-012 be used as this docket is a refile of OC23-012. Does the Panel wish to accept this response?

There is no previous history with Blackburn Foundation Repair.

Today, shall the Enforcement Panel of South Dakota One Call Notification Board find that there is probable cause that Blackburn Foundation violated any statute or rule under the jurisdiction of the Board, and if so, shall a civil penalty be assessed?

Cody Honeywell opened discussion on this complaint. This complaint was brought before the Board previously under OC23-012. As MDU is a client of May Adam, South Dakota 811 sought Conflict of Interest forms from both parties prior to hearing the complaint. Both parties acknowledge the conflict of interest and returned the signed forms to Codi Gregg, they are on file. Cody Honeywell abstained from discussion with this complaint.

Codi Gregg informed the Panel the response submitted was from the original complaint docket, OC23-012 and asked for a motion to accept the response. Loren Beld made the motion to accept the response to OC23-012, as Blackburn had requested. Ryan Barr seconded the motion. **Motion carried unanimously.**

Loren Beld stated he believed Blackburn tried to meet requirements with SD811, stating the riser pointer to the street, markings were dull because of the homeowner removing the flags and mowing the yard. Blackburn pot holed, and did their due diligence in safe excavation. Loren Beld stated he felt the fault lies with the homeowner, addressing Blackburn foundation did pay for the repairs to the riser.

Loren Beld made the motion to dismiss this complaint, as there is no probable cause of the violation of 49-7A-8. Ryan Barr seconded the motion. **Motion carried unanimously.**

OC24-019 In the matter of the complaint filed by Dave's Construction, Sioux Falls, SD against USIC, Indianapolis, IN for an incident occurring June 6, 2024 at 4100 E 49th in Sioux Falls.

Deadline to respond was July 23, 2024. No response was received.

There is no previous history against USIC.

Today, shall the Enforcement Panel of South Dakota One Call Notification Board find that there is probable cause that USIC violated any statute or rule under the jurisdiction of the Board, and if so, shall a civil penalty be assessed?

Loren Beld opened discussion acknowledging the lack of response from USIC, to the complaint and to the report of damage. Discussion was held by the Panel about the operator's responsibility as the utility owner.

Loren Beld made the motion to dismiss the complaint, as this needs to be filed against the utility. Loren Beld recommended that Dave's file against the utility rather than locator. Jim Wedin seconded the motion. **Motion carried unanimously.**

Having no further business, Ryan Barr made the motion to adjourn the Panel Meeting and the end the call. Loren Beld seconded. **Motion carried unanimously.**

Please note: This was a legal proceeding and only written information provided by the Complainants and the written response from the Defendants was considered per SDCL 49-7A-25. No comments from the parties involved in the complaints will be taken during this call.