

MINUTES

South Dakota One Call Notification Board Enforcement Panel Conference Call

Thursday, December 19, 2024 at 10AM CT (9:00AM MT).

This meeting will be hosted via ZOOM.

Panel Members: Jim Scull, Lloyd Rave and Ryan Barr

Guests: Kelly Seibrecht, Dakota Directional; Amanda Grimes, Dave's Construction; Jim Wedin, CenturyLink; Jason Topp, CenturyLink; Ethan Wurdeman, USIC; Ryan White, RW Fencing; John Lunde and Aaron Erickson, Watertown Municipal Utilities; Steve Barnett, South Dakota Rural Electrical Assoc.;

Also in attendance: Codi Gregg, Executive Director, Mandy Benson, Executive Assistant, Cody Honeywell, legal counsel.

A brief description of the Enforcement Panel process: This is a legal proceeding, and no comments will be taken by any of the parties involved in the Complaints during this call. A probable cause determination will be 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 meting to consider the following South Dakota One Call Complaints:

OC24-023 In the matter of the complaint filed by Watertown Municipal Utilities, Watertown, SD against Gerhold Brothers, Castlewood, SD for an incident occurring September 5, 2024 at 3015 Air Haven Drive in Watertown.

Deadline to Respond was December 13, 2024. Response was received on December 11, 2024.

There is no history with Gerhold.

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

Lloyd Rave opened the discussion, stating the damaged line was not reported and 911 was not called as per South Dakota 811 laws. As an excavator in the state, Gerhold needs to be aware of the laws and the requirements. Homeowners reported the damage. Lloyd Rave made the motion that probable cause did exist in the intentional violation of 49-7A-5 and recommended a penalty in the amount of \$1,000 with \$500 suspended with Gerhold meeting the 5 requirements listed below. Lloyd continued the motion, stating an intentional violation of 49-7A-12 did exist and recommended a penalty in the amount of \$2,000 with \$1,000 suspended with the conditions being met:

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 of \$750 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.

Ryan Barr seconded the motion. **Motion carried unanimously.**

OC24-025 In the matter of the complaint filed by Dave's Construction, Sioux Falls, SD against Century Link/Lumen, Sioux Falls, SD for an incident occurring June 6, 2024 at 4100 E 49th St in Sioux Falls.

This complaint was not heard at this meeting. This complaint will be added to a later agenda.

OC24-026 In the matter of the complaint filed by Watertown Municipal Utilities, Watertown, SD against J & J Earthworks, Milbank, SD for an incident occurring September 10, 2024 at 2330 Challenger Way in Watertown.

Deadline to Respond is December 13, 2024. Response was received on December 13, 2024.

There is no previous history with J & J Earthworks.

Today, shall the Enforcement Panel of South Dakota One Call Notification Board find that there is probable cause that J&J Earthworks 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 acknowledging J and J had a gross error in this excavation. Ryan stressed that damages do need to be reported, as addressed in the response from J & J. Ryan Barr made the motion that probable cause did exist in the violation of 49-7A-12 and recommended a penalty in the amount of \$250 with \$250 suspended with J & J meeting the conditions stated above. The panel was reminded that a penalty needed to be assessed in order for the conditions to be met. Ryan Barr amended his motion, probable cause did exist in the violation of 49-7A-12, the violation was unintentional and recommended a penalty in the amount of \$500 with \$250 suspended with J & J meeting the conditions listed. Jim Scull seconded this amended motion. **Motion carried unanimously.**

Lloyd Rave made the motion probable cause did exist in the violation of 49-7A-5, the violation was unintentional and recommended a penalty in the amount of \$500 with \$500 suspended with J & J meeting the conditions. Ryan Barr seconded the motion. **Motion carried unanimously.**

OC24-027 In the matter of the complaint filed by RW Contracting, Brookings, SD against Brookings Municipal Utilities, Brookings, SD for an incident occurring July 16, 2024 at 1910 Oriole Trl in Brookings.

Deadline to Respond is December 13, 2024. Response was received as of December 13, 2024.

There is no previous history with Brookings Municipal Utilities.

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

Discussion was opened by clarifying that the Panel did not have the authority to take action on the violation as stated, under 49-7A-17, causes of action. The Panel is only allowed to act on violations of 49-7A-2, 5, 8 and 12. Discussion continued on the complaint being filed against the homeowner, as this is potentially a private utility that the homeowner was aware of.

Jim Scull made the motion to dismiss the complaint. Lloyd Rave seconded the motion. **Motion carried unanimously.**

OC24-028 In the matter of the complaint filed by Watertown Municipal Utilities, Watertown, SD against Dakota Directional, Redfield, SD for an incident occurring October 8, 2024 at 54th St. & 4th Ave. SW in Watertown.

Deadline to Respond was December 13, 2024. Response was received on December 4, 2024.

There is no previous history with Dakota Directional.

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

Lloyd Rave opened discussion on this complaint addressing potential soil conditions and bore rod displacement. If the conditions were as described, the bore rod could move easily, per the panel members. The excavator did work to properly expose the utility and met due diligence. Ryan Barr agreed stating the excavator was working to do things correctly. Lloyd Rave made the motion that probable cause did exist in the violation of 49-7A-8, the violation was unintentional and recommended a penalty in the amount of \$500 with \$250 suspended with Dakota meeting the conditions listed. Ryan Barr seconded the motion. **Motion carried unanimously.**

Having no further business, Jim Scull made the motion to adjourn the panel and dismiss the call. Lloyd Rave 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.