

MINUTES

South Dakota One Call Notification Board Enforcement Panel Conference Call

Thursday, June 27, 2024 at 10AM CT (9PM MT)

This meeting was hosted via ZOOM.

Panel Members: Lloyd Rave, Loren Beld, Ryan Barr

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

Guests in attendance:

Chase Jons, Pro Contracting; Corey Lunquist, Combined Pool and Spa Inc; Nancy Mitchell, USIC; Brad Wenande, NorthWestern Energy; Frank Luczak, NorthWestern Energy; Steve Barnett, South Dakota Rural Electric Association; Jeff Twombly, USIC; Lauri Kane, NuStar Energy; Ethan Wurdeman, USIC.

A brief description of the Enforcement Panel process: This was a legal proceeding, and no comments were taken 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 is meeting to consider the following South Dakota One Call Complaints:

OC24-007 In the matter of the complaint filed by NuStar Energy L.P., San Antonio, TX against Hoogendoorn Construction, Canton, SD for an incident occurring March 5, 2024 at the intersection of 284th Street and 478th Street in Canton.

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

There is no previous history with Hoogendoorn Construction.

Today, shall the Enforcement Panel of South Dakota One Call Notification Board find that there is probable cause that Hoogendoorn Construction 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 by clarifying by county to clear the ditch back to its original depth. He questions if the cleaning of the ditch falls under the nature of normal grade level by cleaning the ditch back to its original depth or if it falls under excavation. It is still excavation under the definition. Ryan Barr moved the discussion that he did not believe the violation was intentional and the alleged violator was aware the line was there and that they should have made the call to have a valid ticket.

Ryan Barr motioned that a violation of 49-7A-5 did exist, the violation was unintentional and recommended a penalty in the amount of \$1,000 with \$750 suspended with Hoodendorn Construction meeting the requirements 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 of \$250 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.

Lloyd Rave seconded the motion. **Motion carried unanimously upon a roll call vote.**

OC24-008 In the matter of the complaint filed by NorthWestern Energy, Mitchell, SD against Pro Contracting, Mitchell, SD for an incident occurring March 20, 2024 at 816 W 16th Street in Mitchell.

Deadline to Respond was May 24, 2024. Response was received on May 17, 2024.

There is no previous history with Pro Contracting.

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

Lloyd opened the discussion if the yellow marking was there originally or after the sod dropped. Loren offered his thought that the yellow marking was original with an intentional violation. The homeowner had the original locate ticket. Pro Contracting was excavating using the homeowner's ticket and not their own valid locate ticket.

Lloyd Rave motioned that a violation of 49-7A-5 and 20:25:03.05.03 did exist, the violation was intentional and recommended a penalty in the amount of \$1500 with \$750 suspended with Pro Contracting meeting the requirements 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 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.

Loren Beld seconded the motion. **Motion carried unanimously upon a roll call vote.**

OC24-009 In the matter of the complaint filed by Magellan Midstream Partners, LP, Tulsa, OK against Chad Zandstra Construction, Rapid City, SD for an incident occurring April 3, 2024 at Jim Street in Rapid City.

Deadline to respond was May 24, 2024. Response was received on May 24, 2024.

There is previous history with Chad Zandstra Construction from 2020 and therefore cannot be considered in the assessment of a penalty if one is assigned.

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

Loren Beld opened the discussion of whether the alleged violator was backfilling or excavating and was working 60ft of the ROW which they alleged violator knew was there. This opened discussion if the alleged violator was performing excavation work. The panel discussed the burn

pile was established in previous construction and the spoils were being replaced into the hole that was dug. The panel questioned if the complaint should be dismissed or a motion of the violation with no fine. With a suspended fine, they must be suspended with conditions. The panel agreed that continuing education is important, and the five requirements should be met.

Ryan Barr motioned that a violation of 20:25:03: 05:01 did exist, the violation was unintentional and recommended a penalty in the amount of \$500 with \$500 suspended with Chad Zandstra Construction meeting the requirements 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 of \$0 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.

Lloyd Rave seconded the motion. **Motion carried unanimously upon a roll call vote.**

Further discussion continued after the review of OC24-010. Ryan Barr motioned to rescind his previous motion of OC24-009. Loren Beld seconded the motion. **Motion carried unanimously upon a roll call vote.**

Lloyd Rave motioned to dismiss on no grounds of probable cause. Loren Beld seconded the motion. **Motion carried unanimously upon a roll call vote.**

OC24-010 In the matter of the complaint filed by Magellan Midstream Partners, LP, Tulsa, OK against Combined Pool and Spa Inc, Sioux Falls, SD for an incident occurring April 3, 2024 at Jim Street in Rapid City.

Deadline to respond was May 24, 2024. Response was received on May 24, 2024.

There is no previous history for Combined Pool and Spa Inc.

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

Loren Beld opened the discussion that the alleged violator was not digging. The complainant states the alleged violator was digging and the alleged violator states they were pushing rocks. The discussion moved to high profile facilities and the operator has the opportunity and a right to be on site when excavation is happening near their facility. Panel did not find evidence that the excavator was excavating before the start time and date of the ticket.

Ryan Barr motioned an unintentional violation with the condition of meeting the recommended five requirements. The motion failed due to no second motion.

Loren Beld does not feel that there is probable cause in the complaint. This brought to question the definition of excavation and if there are differences between complaints OC24-009 and OC24-010.

Lloyd Rave motioned to dismiss due to no probable cause. Loren Beld seconded the motion.

Motion carried unanimously upon roll call vote.

OC24-012 In the matter of the complaint filed by Jeffrey DeMeglio, East Harland, CT against Flock Safety, Atlanta, GA for an incident occurring April 9, 2024 at 1004 Washington Ave South in Madison.

Deadline to respond was May 24, 2024. An extension for the response was approved on May 14, 2024 and extended to June 10, 2024. Response was received on June 10, 2024.

There is no previous history for Flock Safety.

Today, shall the Enforcement Panel of South Dakota One Call Notification Board find that there is probable cause that Flock Safety 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 that the alleged violator admitted fault due to being familiar with the area with being there before with previous markings.

Lloyd Rave motioned that a violation of 49-7A-5 did exist, th4e violation was unintentional and recommended a penalty in the amount of \$500 with \$250 suspended with Flock Safety meeting the requirements 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 of \$250 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 upon a roll call vote.**

OC24-013 In the matter of the complaint filed by Martin Construction, Dickinson, ND against USIC, Harrisburg, SD for an incident occurring April 25, 2024 at US 12 in Morrystown.

Deadline to respond was May 24, 2024. A request was made to extend the response deadline on June 26, 2024.

There is no previous history for 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 the discussion by stating USIC had ample opportunity to respond to the complaint. The panel continued the discussion by stating if 49-7A-13 is a statute the Enforcement Panel could hear complaints under. The panel also expressed concern if a complaint should be addressed with a locating company or the operator they work for who owns the facility. It was agreed that a violation did occur but not one that was found to move forward on.

Ryan Barr motioned to dismiss with the opportunity to refile by July 25th without prejudice. Lloyd Rave seconded the motion. **Motion carried unanimously upon roll call vote.**

OC24-015 In the matter of the complaint filed by Magellan Midstream Partners, LP, Tulsa, OK against Barker Concrete and Construction, Edgemont, SD for an incident occurring May 14, 2024 at HWY 8 and Coffee Flats in Edgemont.

Deadline to respond was July 3, 2024. Response was received June 18, 2024. Magellan Midstream Partners, LP has requested to withdraw the complaint on June 19, 2024.

There is no previous history with Barker Concrete and Construction.

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

Magellan Midstream Partners, LP requested to withdraw the complaint on June 19, 2024.

Lloyd Rave motioned to dismiss per the request from Magellan Midstream Partners, LP. Loren Beld seconded the motion. **Motion carried unanimously upon a roll call vote.**

Having no further business, Ryan Barr motioned to dismiss. Loren Beld seconded the motion. **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.