

**South Dakota One Call Notification Board
Enforcement Panel Conference Call**

MINUTES

**Tuesday, May 21, 2024 at 2PM CT (1PM MT)
This meeting was hosted via ZOOM.**

Panel Members: Lloyd Rave, Jim Wedin, Mark Meier

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

Guests on the call: Cindy Wooten, Midco; Melissa Hansen, Montana Dakota Utilities; Jake VanDewater, SDN Communications; Kristen Yates, American Engineering Testing, Inc.; Loren Beld, LL and Sons Excavating, Inc.; Ryan Barr, Midco; Scott Wiese, Otter Tail Power Company; Tammy Soulek, City of Hecla; Randy Pfutzenreuter, City of Hecla; Ted McGee, Midco.

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:

OC23-008 In the matter of the complaint filed by Montana Dakota Utilities, Rapid City, SD against Underground Construction, Rapid City, SD for an incident occurring on August 23, 2023 near 1213 1/2 Quincy Street and 1214 Quincy Street in Rapid City.

Deadline to Respond was December 7, 2023. Response was received December 6, 2023. This docket was delayed as we addressed a conflict of interest. Both parties have signed waivers acknowledged the conflict.

There is previous history with Underground Construction, prior to 2023.

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

Mark Meier opened the discussion that there was no dispute and appreciated that Montana Dakota Utilities performed a live demo and meeting with the contractor and the meeting went well. It is appreciated when parties can get together and have a conversation.

Mark Meier motioned that a violation of 49-7A-8 did exist, the violation was unintentional and recommended a penalty in the amount of \$750 with \$250 suspended with Underground 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 \$500 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 Raved seconded the motion. **Motion carried unanimously upon roll call vote.**

OC23-012 In the matter of the complaint filed by Montana Dakota Utilities, Mobridge, SD against Blackburn Foundation Repair, Pierre, SD for an incident occurring October 4, 2023 at 110 E Scranton Street in Selby.

Deadline to Respond was December 12, 2023. Response was received December 7, 2023. This docket was delayed as we addressed a conflict of interest. Both parties have signed waivers acknowledged the conflict.

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 Repair violated any statute or rule under the jurisdiction of the Board, and if so, shall a civil penalty be assessed?

Mark Meier opened the discussion on this complaint by reviewing the allegations in the complaint. As Montana Dakota Utilities did not identify the statute or Administrative Rule violated, the Panel was unable to hear the complaint. The Panel followed our standard Practice and Mark Meier made the motion to dismiss the complaint. Montana Dakota Utilities can refile the complaint with the statutes violated on the complaint form.

Jim Wedin seconded the motion. **Motion carried unanimously upon a roll call vote.**

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

Deadline to respond was December 12, 2023. Response was received December 13, 2023.

The complaint was heard December 14, 2023, with the Panel requesting additional information from the complainant. No additional information was received.

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

Codi Gregg opened the discussion with the panel letting the panel members know she spoke with the City of Hecla. A continuance was requested as the deadline to respond was missed due to internal employment changes.

Lloyd Rave motioned to allow a 20-day continuance allowing the City of Hecla to reply to the complaint with the response date being June 10th.

Mark Meier seconded the motion. **Motion carried unanimously upon a roll call vote.**

OC23-017 In the matter of the complaint filed by American Engineering Testing, Inc, Rapid City, SD against West River Electric Association, Inc., Rapid City, SD for an incident occurring September 6, 2023 at Lot 3 at the intersection of Isaac Street and E Anamosa Street in Rapid City.

Deadline to respond was April 10, 2024. Response was received on April 9, 2024.

There is no previous history of West River Electric.

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

Mark Meier opened the discussion by stating there could have been a misunderstanding and how there could have been confusion. The locator would not have known the center of the proposed residential lots. Lloyd Rave agreed that the lots were not yet set up. By law, a violation did occur.

Mark Meier motioned that a violation of 20:25:03:05:04 did exist, the violation was unintentional and recommended a penalty in the amount of \$500 with \$500 suspended with West River Electric Association, Inc. with no additional complaints within the next twelve months. Lloyd Raved seconded the motion. **Motion carried unanimously upon roll call vote.**

OC24-001 In the matter of the complaint filed by NorthWestern Energy, Mitchell, SD against Pro Contracting, Mitchell, SD for an incident occurring on December 15, 2023 at 1504 W 20th Street in Mitchell.

Deadline to respond was April 22, 2024. Response was received on April 22, 2024.

There is no previous history for 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 a discussion on which statutes the complaint falls under. Pro Contracting did not call 811 for locates or to report damage but did call NorthWestern Energy. If a locate ticket had been placed with 811; the line would have been located. 49-7A-1 was not listed but defines the term of excavation as any operation in which earth, rock, or other material in or below the ground is moved or otherwise displaced by the means of tools, equipment, or explosives. 49-7A-12 was not listed on the complaint but could have also been listed as the damage was not notified to 911 or 811 due to the damage, dislocation, or disturbance resulting in the escape of any flammable, toxic, or corrosive gas or liquid.

Lloyd Rave motioned that a violation of 49-7A-5 did exist, the violation was intentional and recommended a penalty in the amount of \$1,000 with \$500 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 \$500 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 upon a roll call vote.**

OC24-002 In the matter of the complaint filed by NorthWestern Energy, Mitchell, SD against Pro Contracting, Mitchell, SD for an incident occurring on December 20, 2023 at 1504 W 20th Street in Mitchell.

Deadline to respond was April 22, 2024. Response was received on April 22, 2024.

There is no previous history for 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?

The violation was intentional as the excavator knew the line was there and did not have a locating ticket. Although the Panel reviewed two separate complaints against Pro Contracting, both complaints are considered separate as the South Dakota Board of Directors has not yet voted on OC24-001. With the knowledge disclosed in the complaint documentation, it is known that this was the second damage to the same line.

Jim Wedin motioned that a violation of 49-7A-5 did exist, the violation was intentional and recommended a penalty in the amount of \$1,875 with \$500 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 \$1,375 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.

Mark Meier seconded the motion. **Motion carried unanimously upon a roll call vote.**

OC24-003 In the matter of the complaint filed by LL & Sons Inc, Watertown, SD against Midcontinent Communications, Sioux Falls, SD for an incident occurring on November 16, 2023 at Marina Bay Drive in Watertown.

Deadline to respond was April 22, 2024. Response was received on April 3, 2024.

There is no previous history with Midcontinent.

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

Midco did not dispute the line was mislocated and damaged. Clarification was made the Enforcement Panel is only ruling on the statute or violation that occurred. No ruling is occurring for the amount for damages or list of repairs in the complaint and is a legal matter the Enforcement Panel has no authority over.

Mark Meier motioned that a violation of 49-7A-8 did exist, the violation was unintentional and recommended a penalty in the amount of \$750 with \$250 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 \$500 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 upon a roll call vote.**

C24-004 in the matter of the complaint filed by LL & Sons, Inc., Watertown, SD against Midcontinent Communications, Sioux Falls, SD for an incident occurring on October 19, 2023 at 1096 S Lake Drive in Watertown.

Deadline to respond was April 22, 2024. Response was received on April 3, 2024.

There is no previous history with Midcontinent.

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

Mark Meier opened the discussion that no damage occurred. By statute 49-7A-13 states if in the course of excavation, the excavator is unable to locate the underground facility or discovers that the operator of the underground facility has incorrectly located the underground facility, he shall promptly notify the operator, or, if unknown, the one-call notification center. The verification ticket is available to utilize if the utility is not able to be located. The complaint is not justified based on 49-7A-13 being available. The operator or one-call notification center could have been notified to have the utility located.

Mark Meier motioned to dismiss due to 49-7A-13 could have been used to verify the location of the utility and no damage occurred. Lloyd Rave Seconded the motion. **Motion carried unanimously upon a roll call vote.**

OC24-005 In the matter of the complaint filed by LL & Sons, Inc., Watertown, SD against Midcontinent Communications, Sioux Falls, SD for an incident occurring November 6, 2023 at 1096 S Lake Drive in Watertown.

Deadline to respond was April 22, 2024. Response was received on April 3, 2024.

There is no previous history with Midcontinent.

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

Jim Wedin opened the discussion that no damage occurred. The Midco line was not located where it should have been. LL & Sons, Inc. was not the excavator that was digging. The contractor that had the valid ticket should have called in a verification ticket or contacted the operator to locate the utility.

Lloyd Rave motioned to dismiss due to 49-7A-13 could have been used to verify the location of the utility and no damage occurred.

Mark Meier Seconded the motion. **Motion carried unanimously upon a roll call vote.**

OC24-006 In the matter of the complaint filed by DG Utilities, Spearfish, SD against Oak Mountain Country Estates Owners Association, Sturgis, SD for an incident occurring January 3, 2024 at 20760 Ranch Road in Sturgis.

Deadline to respond is May 24, 2022. Response has not been received to date. DG Utilities has requested to withdraw the complaint.

There is no previous history with Oak Mountain Country Estates.

Today, shall the Enforcement Panel of South Dakota One Call Notification Board that there is probable cause that Oak Mountain Country Estates Owners Association violated any statute or rule under the jurisdiction of the Board, and is so, shall a civil penalty be assessed?

DG Utilities has requested to withdraw the complaint after communication has occurred between both parties. Oak Mountain Country Estates Owners Association is working with the one-call notification center to register their utilities.

Mark Meier motioned to dismiss based on DG Utilities request as conflict has resolved between DG Utilities and Oak Mountain Country Estates Owners Association.

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

OC24-011 In the matter of the complaint filed by Magellan Midstream Partners, LP, Tulsa, OK against Quality Real Estate, Buffalo Gap, SD for an incident occurring April 18, 2024 at Jim Street in Rapid City.

Deadline to respond is May 24, 2024. Response was received May 15, 2024.

There is no previous history with Quality Real Estate.

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

Lloyd opened the discussion that the property being worked on, was adjacent to the pipeline. When the property was originally purchased there was a locate ticket and no utilities were listed on the ticket. The ticket states they were mining up to 20ft depth and the reply states excavation was less than 12 inches to remove topsoil which was stockpiled.

Mark asked for clarification if mining permits require a valid One Call ticket. SD DANR would be a resource if there are any restrictions with mining permits. Clarification should be addressed before any penalties are issued. In the South Dakota 811 operations manual, there are no exemptions listed for mining or mining permits. Under South Dakota 811 rules and statutes, excavation with heavy machinery does not fall under exemptions and would be a potential violation.

Lloyd Rave motioned to table the discussion until clarification from Cody Honeywell, Legal Counsel and Codi Gregg, Executive Director is available about mining permits and exemptions during June Enforcement Panel meeting.

Jim Wedin seconded the motion. **Motion carried unanimously upon roll call vote.**

Having no further business, Jim Wedin motioned to dismiss.

Lloyd Rave seconded the motion.

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.