

BEFORE THE SOUTH DAKOTA
ONE CALL NOTIFICATION BOARD

IN THE MATTER OF THE COMPLAINT
FILED BY NORTHWESTERN ENERGY,
BROOKINGS, SD AGAINST H & W
CONTRACTING, LLC, SIOUX FALLS, SD
FOR AN INCIDENT OCCURRING ON
APRIL 22, 2022 AT 407TH AVE AND
HARMON DRIVE, MITCHELL, SD.

**ORDER ADOPTING ENFORCEMENT
PANEL RECOMMENDATION TO THE
SOUTH DAKOTA ONE CALL BOARD**

OC22-003

On April 28, 2022, the South Dakota One Call Notification Board received a Complaint filed by NorthWestern Energy (herein “Claimant”) against H & W Contracting, LLC, (herein “Respondent”) for an incident occurring on April 22, 2022, at 407th Ave and Harmon Drive, Mitchell, SD. The Complaint alleges violations of ARSD 20:25:03:02 and ARSD 20:25:03:05.03 when Respondent dug through an electric primary cable and covered up correct locate marks.

A copy of the Complaint was sent to Respondent on May 5, 2022. The deadline to respond was May 27, 2022. Respondent answered the Complaint on June 2, 2022. Respondent does dispute that violations of South Dakota One Call law occurred. Respondent alleges they did not report the damage and did not know that it needed to be reported. Respondent further alleges minimal markings were preserved and were hand dug in the area. Respondent further alleges the damage is accurate and disputes their negligence in the matter.

On August 16, 2022, the Enforcement Panel (herein “Panel”) convened pursuant to the authority present in SDCL 49-7A. The Panel does find probable cause that intentional violations of ARSD 20:25:03:02 and ARSD 20:25:05.03 occurred.

Based upon the evidence presented in the filings, the Panel recommends a penalty of \$1,000 with \$250 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 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, P.O. Box 187, Rapid City, SD 57709*** within thirty (30) days of the Board Order being issued.
3. Respondent must attend a Damage Prevention meeting in 2023.
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 (**\$250**) becomes immediately due and payable to **South Dakota One Call Notification Board, P.O. Box 187, Rapid City, SD 57709.**

The Panel recommends the South Dakota One Call Notification Board accept its findings and recommendations herein. If either party to this Complaint disagrees or objects to the recommendations or findings herein, a hearing may be requested. To request a hearing, a party must reply within twenty (20) days from the date of service of this notice. Failure to request a hearing is considered acceptance of the recommendations and findings herein.

On September 27, 2022, 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 10, 2022 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 20:25, specifically SDCL 49-7A-5, 49-7A-18, 49-7A-20, 49-7A-22, and 49-7A-26.

Dated this ____ day of November, 2022.

BY ORDER OF THE SOUTH DAKOTA ONE
CALL NOTIFICATION BOARD:

Fay Jandreau, Chairman