

BEFORE THE SOUTH DAKOTA
ONE CALL NOTIFICATION BOARD

IN THE MATTER OF THE COMPLAINT
FILED BY NORTHWESTERN ENERGY
AGAINST WAGNER BUILDING SUPPLY
FOR AN INCIDENT OCCURRING ON
JULY 28TH, 2022 AT 310 WENDY
AVENUE IN WAGNER.

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

OC22-012

On August 2, 2022, the South Dakota One Call Notification Board received a Complaint filed by NorthWestern Energy (herein “Claimant”) against Wagner Building Supply (herein “Respondent”) for an incident occurring on July 28, 2022, at 310 Wendy Avenue, in Wagner, South Dakota. The Complaint alleges a violation of SDCL 49-7A-12 when Respondent failed to immediately notify the one-call notification center, and if known, the operator of the facility of the damage, dislocation, or disturbance.

A copy of the Complaint was sent to Respondent on August 11, 2022. The deadline to respond was September 1, 2022. Respondent answered the Complaint on August 30, 2022. Respondent does dispute that a violation of South Dakota One Call law occurred. Respondent alleges operator, NorthWestern Energy, was immediately notified following damage to the utility.

On December 19, 2022, the Enforcement Panel (herein “Panel”) convened pursuant to the authority present in SDCL 49-7A. The Panel does find probable cause that an unintentional violation of SDCL 49-7A-12 occurred.

Based upon the evidence presented in the filings, the Panel recommends a penalty of \$500.00 with \$250.00 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 **\$250.00** 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 (**\$250.00**) 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.

The South Dakota One Call Notification Board has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-7A and ARSD 20:25.