

BEFORE THE SOUTH DAKOTA
ONE CALL NOTIFICATION BOARD

IN THE MATTER OF THE COMPLAINT FILED BY MAGELLAN MIDSTREAM PARTNERS, LP, TULSA, OK AGAINST KENNETH OSMOTHERLY, OELRICHS, SD FOR AN INCIDENT OCCURRING ON MARCH 30, 2023 AT 13871 OLD HIGHWAY 79, OELRICHS, SD.	ORDER ADOPTING ENFORCEMENT PANEL RECOMMENDATION TO THE SOUTH DAKOTA ONE CALL BOARD OC23-004
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On April 3, 2023, the South Dakota One Call Notification Board received a Complaint filed by Magellan Midstream Partners, LP (herein "Claimant") against Kenneth Osmotherly (herein "Respondent") for an incident occurring on March 30, 2024, at 13871 Old Highway 79, Oelrichs, South Dakota. The Complaint alleges a violation of SDCL 49-7A-5 when Respondent did not request a locate and completed excavation approximately 50' north of the pipeline.

A copy of the Complaint was sent to Respondent on November 13, 2023. The deadline to respond to the Complaint was December 6, 2023. Respondent answered the Complaint on November 27, 2023. Respondent does not dispute that a violation of South Dakota One Call law occurred. Respondent alleges he was not aware of the allegations. Respondent also alleges that, at the time of excavation, he was watering 400+ head of catted, his water line broke, and he could not wait for two days or more for a locate. Respondent alleges that he is aware of the pipeline and that he saw the marker a short distance from where the excavation occurred.

On December 14, 2023, 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-5 occurred.

Based upon the evidence presented in the filings, the Panel recommends a penalty of \$1,500.00 with \$1,000.00 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 **\$500.00** 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 2024.
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.
6. Respondent must attend a training regarding emergency tickets.

If any of the above conditions are not met, the suspended penalty **(\$1,000.00)** 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.

On January 10, 2024, 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 April 23, 2024 meeting pursuant to SDCL 49-7A-27. The Panel's recommendation was approved by the Board. It is now, therefore

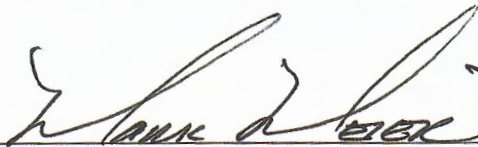
ORDERED that the South Dakota One Call Board adopts the recommendations of the Panel as a final resolution of this Complaint. The Panel's findings are attached hereto and shall be considered fully incorporated herein; and it is therefore

ORDERED that if the penalty is not paid, 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 23rd day of April, 2024.

BY ORDER OF THE SOUTH DAKOTA ONE
CALL NOTIFICATION BOARD:



Mark Meier, Chairman