

BEFORE THE SOUTH DAKOTA  
ONE CALL NOTIFICATION BOARD

<p>IN THE MATTER OF THE COMPLAINT FILED BY LL &amp; SONS INC, WATERTOWN, SD AGAINST MIDCONTINENT COMMUNICATIONS, SIOUX FALLS, SD FOR AN INCIDENT OCCURRING ON NOVEMBER 16, 2023 AT MARINA BAY DRIVE IN WATERTOWN, SD.</p>	<p><b>ENFORCEMENT PANEL RECOMMENDATION TO THE SOUTH DAKOTA ONE CALL BOARD</b></p> <p>OC24-003</p>
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On January 15, 2024, the South Dakota One Call Notification Board received a Complaint filed by LL & Sons, Inc, (herein “Claimant”) against Midcontinent Communications (herein “Respondent”) for an incident occurring on November 16, 2023, at Marina Bay Drive in Watertown, SD. The Complaint alleges a violation of SDCL 49-7A-8 when Respondent did not mark the line all the way to house. Claimant alleges they called for a respot, and Respondent stated their line turned and followed the power line. Claimant alleges they continued digging and hit Respondent’s line fifteen inches off their marks.

A copy of the Complaint was sent to Respondent on March 28, 2024. The deadline to respond was April 22, 2024. Respondent answered the Complaint on April 3, 2024. Respondent does dispute that a violation of South Dakota One Call law occurred and the allegation of the unintentional nature. Respondent alleges Claimant’s photos do not show Respondent’s markings inaccurate and that Claimant measured the vertical distance rather than horizontal distance.

On May 21, 2024, 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-8 occurred.

Based upon the evidence presented in the filings, the Panel recommends a penalty of \$750.00 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 **\$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 2025.
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.