

MINUTES

South Dakota One Call Notification Board Enforcement Panel Conference Call

Thursday, October 24, 2024 at 10AM CT (9AM MT)

This meeting was hosted via ZOOM.

Panel Members: Lloyd Rave, Loren Beld and Kay Braaten

Guests: Steve Barnett

Also in attendance: Mandy Benson, Executive Assistant, Brett Koenecke, Legal Counsel,

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 met to consider the following South Dakota One Call Complaints:

OC24-020 In the matter of the complaint filed by Site Works Specialists, Rapid City, SD against Accurate Locating Services, Rapid City, SD for an incident occurring May 30, 2024 at Three Rivers Drive Country Road in Rapid City.

Deadline to Respond was August 30, 2024. Response was received on August 29, 2024.

There is previous history with Accurate Locating, complaint dismissed.

Panel members opened discussion on who is held responsible for utilities in the ground. Discussion continued with the Operator being responsible for the utilities.

Lloyd Rave motioned to dismiss the complaint with the option to refile the complaint listing the Operator as the alleged violator. Loren Beld seconded the motion. **Motion carried unanimously upon a roll call vote.**

OC24-021 In the matter of the complaint filed by City of Box Elder, Box Elder, SD against ERE LLC, Spearfish, SD for an incident occurring July 30, 2024 at 401 Main Street in Box Elder.

Deadline to Respond was August 27, 2024. No response has been received as of October 4, 2024.

There is no previous history with ERE, LLC.

Lloyd opened discussion viewing the violation as intentional using an emergency ticket to go to work instead of using the proper procedures. All panel members agreed.

Lloyd Rave motioned probable cause did exist in the violation of 20:25:03:04.03, the violation was intentional and recommended a penalty in the amount of \$1,000 with \$500 suspended with ERE, LLC meeting the conditions 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 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.

Loren Beld seconded the motion. **Motion carried unanimously upon a roll call vote.**

With no further discussion, Loren Beld motioned to adjourn. Lloyd Rave seconded the motion. **Motion carried unanimously.**

Please note: This is 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.