

## South Dakota One Call Notification Board



Larry Englerth  
Executive Director

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Sioux Falls, SD 57110

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May 5, 2003

Ginny Beck  
Crooks Municipal Utilities  
P. O. Box 785  
Crooks, SD 57020

Troy Simonson  
Simonson Excavating  
705 Park Blvd.  
Hurley, SD 57036

Under the authority granted by SDCL 49-7A-22, the Enforcement Committee of the South Dakota One Call Notification Board met on May 1, 2003, to determine whether there is probable cause to believe that a violation has occurred relative to Complaint OC03-001 filed by Crooks Municipal Utilities against Troy Simonson (Simonson Excavating).

By a unanimous vote of the Enforcement Committee, the recommended resolution of this complaint was determined to be as follows:

1. The Enforcement Committee found that there was probable cause that a violation of SDCL 49-7A-5 had occurred as claimed in this complaint.
2. The Enforcement Committee recommended that under SDCL 49-7A-18 the following penalty be assessed as resolution of this complaint:  
Simonson Excavating be assessed a penalty of five hundred dollars (\$500.00) with three hundred dollars (\$300.00) suspended on the basis that Simonson Excavating will comply with SDCL-49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC03-001.

The findings and recommendation of the Enforcement Committee are summarized on the attached form.

You are required by statute to either accept or reject the recommendation of the Enforcement Committee. Your decision should be reflected in the shaded section of the attachment. Please return the signed form by May 23, 2003, to:

South Dakota One Call Notification Board  
500 East Capitol Avenue  
Pierre, SD 57501-5070

If both parties accept this resolution, the South Dakota One Call Notification Board is required to accept the resolution and close this complaint. If either party rejects this resolution, the South Dakota One Call Notification Board will conduct a hearing as a contested case under Chapter 1-26. Following this hearing, the Board shall either render a decision dismissing the complaint for insufficient evidence or shall impose a penalty pursuant to SDCL 49-7A-18.

Sincerely,

Larry L. Englerth  
Executive Director

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>		A. Signature <input checked="" type="checkbox"/> <i>Ginny Beck</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
1. Article Addressed to: GINNY BECK P.O. BOX 785 CROOKS, SD 57020		B. Received by (Printed Name)	C. Date of Delivery 5-9-03
2. Article Number (Transfer from service label)		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
PS Form 3811, August 2001		Domestic Return Receipt	102595-02-M-1540

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>		A. Signature <input checked="" type="checkbox"/> <i>Troy A. Simonson</i> <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee	
1. Article Addressed to: TROY SIMONSON 705 PARK BLVD HURLEY, SD 57036		B. Received by (Printed Name)	C. Date of Delivery 5-9-03
2. Article Number (Transfer from service label)		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
PS Form 3811, August 2001		Domestic Return Receipt	102595-02-M-1540

**ENFORCEMENT COMMITTEE ACTION**

**RECEIVED**

MAY 14 2003

**FOR ENFORCEMENT COMMITTEE USE ONLY**

**REMARKS:**

**SOUTH DAKOTA PUBLIC UTILITIES COMMISSION**

In making its determination of a statutory violation relative to Complaint OC03-001, the Enforcement Committee found that Simonson Excavating acknowledged they had violated the South Dakota Statute by conducting excavation activity without contacting the South Dakota One Call System. The lack of notification to facility operators of the proposed excavation activity does not allow for the proper marking of these facilities prior to the start of the proposed excavation. . This failure to provide notification to underground faculty operators places their facilities, the excavator, and the public in an unsafe situation.

**RECOMMENDATION**

**FOR ENFORCEMENT COMMITTEE USE ONLY**

**VIOLATION OF SOUTH DAKOTA STATUTE (S) OR RULES (S):**

A violation of SDCL 49-7A-5 was found to have occurred

**PROPOSED PENALTY AUTHORIZED UNDER SDCL 49-7A-18:**

The committee recommends a penalty of five-hundred dollars (\$500.00) with three-hundred dollars (\$300.00) suspended on the basis that Simonson Excavating will comply with SDCL 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC03-001.

**COMMENTS:**

The committee finds this a very serious violation but does note that Simonson Excavating has responded that they will provide proper notification on all future excavation activity.

**ACCEPTANCE OR REJECTION BY PARTIES INVOLVED IN COMPLAINT OC03-001**

UNDER THE RECOMMENDATION SECTION OF THIS FORM, THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO COMPLAINT NUMBER OC03-001 AFTER REVIEWING THIS RECOMMENDED RESOLUTION, YOU ARE REQUIRED TO COMPLETE THE FOLLOWING.

**CROOKS MUNICIPAL UTILITIES**  ACCEPTS  REJECTS (Circle One) **THE COMMITTEE RESOLUTION OF THIS COMPLAINT**

SIGNATURE OF AUTHORIZED PARTY Henry Beck DATE: 5-9-03

**SIMONSON EXCAVATING**  ACCEPTS  REJECTS (Circle One) **THE COMMITTEE RESOLUTION OF THIS COMPLAINT**

SIGNATURE OF AUTHORIZED PARTY \_\_\_\_\_ DATE: \_\_\_\_\_

IF BOTH PARTIES INVOLVED IN THIS COMPLAINT ACCEPT THE COMMITTEE RESOLUTION, THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY SDCL 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT OC03-001.

IF EITHER PARTY INVOLVED IN THIS COMPLAINT REJECT THE COMMITTEE RESOLUTION, THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD WILL SET UP A HEARING TO RESOLVE THE COMPLAINT. THIS HEARING SHALL BE CONDUCTED AS A CONTESTED CASE UNDER CHAPTER 1-26. FOLLOWING THE HEARING, THE BOARD SHALL EITHER RENDER A DECISION DISMISSING THE COMPLAINT FOR INSUFFICIENT EVIDENCE OR SHALL IMPOSE A PENALTY PURSUANT TO THE PROVISIONS OF SDCL 49-7A-18 OR SDCL 49-7A-19.

# ENFORCEMENT COMMITTEE ACTION

## FOR ENFORCEMENT COMMITTEE USE ONLY

### REMARKS:

In making its determination of a statutory violation relative to Complaint OC03-001, the Enforcement Committee found that Simonson Excavating acknowledged they had violated the South Dakota Statute by conducting excavation activity without contacting the South Dakota One Call System. The lack of notification to facility operators of the proposed excavation activity does not allow for the proper marking of these facilities prior to the start of the proposed excavation. This failure to provide notification to underground facility operators places their facilities, the excavator, and the public in an unsafe situation.

## RECOMMENDATION

### FOR ENFORCEMENT COMMITTEE USE ONLY

#### VIOLATION OF SOUTH DAKOTA STATUTE (S) OR RULES (S):

A violation of SDCL 49-7A-5 was found to have occurred

#### PROPOSED PENALTY AUTHORIZED UNDER SDCL 49-7A-18:

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#### COMMENTS:

The committee finds this a very serious violation but does note that Simonson Excavating has responded that they will provide proper notification on all future excavation activity.

## ACCEPTANCE OR REJECTION BY PARTIES INVOLVED IN COMPLAINT OC03-001

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**CROOKS MUNICIPAL UTILITIES** ACCEPTS REJECTS (Circle One) THE COMMITTEE RESOLUTION OF THIS COMPLAINT

SIGNATURE OF AUTHORIZED PARTY \_\_\_\_\_

DATE: \_\_\_\_\_

**SIMONSON EXCAVATING** ACCEPTS REJECTS (Circle One) THE COMMITTEE RESOLUTION OF THIS COMPLAINT

SIGNATURE OF AUTHORIZED PARTY JAS

DATE: 6-4-03

IF BOTH PARTIES INVOLVED IN THIS COMPLAINT ACCEPT THE COMMITTEE RESOLUTION, THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY SDCL 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT OC03-001.

IF EITHER PARTY INVOLVED IN THIS COMPLAINT REJECT THE COMMITTEE RESOLUTION, THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD WILL SET UP A HEARING TO RESOLVE THE COMPLAINT. THIS HEARING SHALL BE CONDUCTED AS A CONTESTED CASE UNDER CHAPTER 1-26. FOLLOWING THE HEARING, THE BOARD SHALL EITHER RENDER A DECISION DISMISSING THE COMPLAINT FOR INSUFFICIENT EVIDENCE OR SHALL IMPOSE A PENALTY PURSUANT TO THE PROVISIONS OF SDCL 49-7A-18 OR SDCL 49-7A-19.