

South Dakota One Call Notification Board



Larry Englerth
Executive Director

1012 North Sycamore Ave.
Sioux Falls, SD 57110

Tel/Fax (605) 339-0529
Email: exedir@sdonecall.com

August 19, 2003

Dan Bell
Midcontinent Communications
3507 S. Duluth Avenue
Sioux Falls, SD 57104

Arnold Gleason
Gleason Instant Tree Company, Inc.
P. O. Box 90034
Sioux Falls, SD 57109-0034

RECEIVED
OCT 08 2003
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Under the authority granted by SDCL 49-7A-22, the Enforcement Committee of the South Dakota One Call Notification Board met on August 14, 2003, to determine whether there is probable cause to believe that a violation has occurred relative to Complaint OC03-004 filed by Midcontinent Communications against Gleason Instant Tree Company.

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

Alleged Violation of SDCL 49-7A-5

1. The Enforcement Committee found that Gleason Instant Tree Company had violated SDCL 49-7A-5 by commencing excavation prior to the start date and time on the seven locate requests identified in the complaint.
2. The Enforcement Committee recommended that under SDCL 49-7A-18 the following penalty be assessed as resolution to this complaint.

The committee recommends a penalty of fifty dollars (\$50.00) for each of the seven (7) tickets with fifty dollars (\$50.00) suspended for each of the seven (7) tickets on the basis that Gleason Instant Tree Company will comply with SDCL 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC03-004. The total of the penalty on this complaint is three hundred fifty dollars (\$350.00) with all three hundred fifty dollars (\$350.00) suspended on the basis that Gleason Instant Tree Company will comply with SDCL 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC03-004.

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

Under SDCL 49-7A-27 either party may reject the recommendation of the Enforcement Committee by requesting a formal hearing on either or both violations alleged in this complaint. Your decision should be reflected in the shaded section of the attachment. Failure to respond to this notice will be considered as concurrence with and acceptance of recommendations of the Enforcement Committee in the matter of resolution to complaint OC03-004. Please return the signed form by September 5, 2003 to:

South Dakota One Call Notification Board
1012 N. Sycamore Avenue
Sioux Falls, SD 57110-5747

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 the Enforcement Committee resolution of either or both of the alleged violations, the South Dakota One Call Notification Board will conduct a hearing as a contested case under Chapter 1-26 to resolve either of both of the allegations alleged in OC03-004. 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.

Pursuant to SDCL 15-6-55, failure to answer this Complaint could result in a default judgment being issued against you. Appropriate liens and other legal collection actions could result. You are strongly urged to reply to this Notice in the time frame described above and to obtain the advise of counsel should you have any legal questions.

Sincerely,

Larry L. Englerth
Executive Director

OCT 08 2003

ENFORCEMENT COMMITTEE ACTION**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION****FOR ENFORCEMENT COMMITTEE USE ONLY****REMARKS:****Alleged Violation of SDCL 49-7A-5 Notification of Proposed Excavation**

This complaint involves seven (7) allegations that Gleason Instant Tree Company commenced and completed excavation prior to the start date and time on the locate request. This complaint and the associated response are similar in nature to OC03-007. At an Enforcement Committee meeting of the South Dakota One Call Notification Board held on August 14, 2003, the committee combined this complaint with OC03-007 for discussion purposes. See OC03-007 for detailed comments on this complaint.

RECOMMENDATION**FOR ENFORCEMENT COMMITTEE USE ONLY****VIOLATION OF SOUTH DAKOTA SDCL 49-7A-5:**

The Committee found that Gleason Instant Tree Company had violated SDCL 49-7A-5 by commencing excavation prior to the start date and time on the seven locate requests identified in the complaint.

PROPOSED PENALTY FOR THIS VIOLATION AUTHORIZED UNDER SDCL 49-7A-18:

The committee recommends a penalty of fifty dollars (\$50.00) for each of the seven (7) tickets with fifty dollars (\$50.00) suspended for each of the seven (7) tickets on the basis that Gleason Instant Tree Company will comply with SDCL 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC03-004. The total of the penalty on this complaint is three hundred fifty dollars (\$350.00) with all three hundred fifty dollars (\$350.00) suspended on the basis that Gleason Instant Tree Company will comply with SDCL 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC03-004.

COMMENTS:

Complaint OC03-007 & OC03-008 are related complaints with a similar infraction. The committee is concerned about the pattern of excavating prior to the start date on the locate requests and encourages Gleason Instant Tree Company to review all statutes and administrative rules associated with the South Dakota One Call System and to follow them diligently in the future.

ACCEPTANCE OR REJECTION BY PARTIES INVOLVED IN COMPLAINT OC03-004

THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO THE VIOLATIONS ALLEGED IN COMPLAINT NUMBER OC03-004

IF BOTH PARTIES INVOLVED IN THIS COMPLAINT ACCEPT THE COMMITTEE RESOLUTION TO THE VIOLATIONS ALLEGED IN COMPLAINT NUMBER OC03-004, THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY SDCL 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT OC03-004.

IF EITHER PARTY INVOLVED IN THIS COMPLAINT REJECT THE COMMITTEE RESOLUTION TO THE VIOLATIONS ALLEGED IN COMPLAINT NUMBER OC03-004, THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD WILL SET UP A HEARING TO RESOLVE THE REJECTED RESOLUTION TO VIOLATION(S) ALLEGED IN COMPLAINT NUMBER OC03-004. 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.

IF YOU DESIRE TO REJECT THE RESOLUTION OF EITHER OF THE ALLEGE VIOLATIONS, YOU SHOULD COMPLETE THE FOLLOWING AND RETURN TO THE ADDRESS BELOW PRIOR TO THE CLOSE OF BUSINESS ON SEPTEMBER 5, 2003.

SOUTH DAKOTA ONE CALL NOTIFICATION BOARD
1012 N. SYCAMORE AVENUE
SIOUX FALLS, SD 57110-5747

FAILURE TO ANSWER THIS RESOLUTION TO COMPLAINT OC03-004 WILL BE CONSIDERED AS ACCEPTANCE OF THE COMMITTEE RESOLUTION OF THE COMPLAINT PURSUANT TO SDCL 15-6-55. FAILURE TO ANSWER THIS COMPLAINT RESOLUTION COULD RESULT IN A DEFAULT JUDGEMENT BEING ISSUED AGAINST YOU. APPROPRIATE LIENS AND OTHER LEGAL COLLECTION ACTIONS COULD RESULT.

VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION

I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC03-004 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION


Signature

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC03-004 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC03-004

Signature

ENFORCEMENT COMMITTEE ACTION

FOR ENFORCEMENT COMMITTEE USE ONLY

REMARKS:

Alleged Violation of SDCL 49-7A-5 Notification of Proposed Excavation

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FOR ENFORCEMENT COMMITTEE USE ONLY

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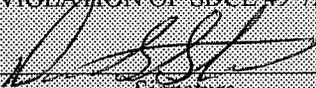
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Signature

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Signature