

South Dakota One Call Notification Board



Larry Englerth
Executive Director

1012 North Sycamore Ave.
Sioux Falls, SD 57110

Tel/Fax (605) 339-0529

August 19, 2003
Email: execdir@sdonecall.com

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 OC03-007 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 request 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 five hundred dollars (\$500.00) with three hundred dollars (\$300.00) suspended on the basis that Gleason Instant Tree Service will comply with SDCL 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC03-007.

Alleged Violation of SDCL 49-7A-12

1. The Committee dismissed the alleged violation of SDCL 49-7A-12 based on the lack of supporting evidence provided by Midcontinent Communications to substantiate that Gleason Instant Tree Service knowingly failed to report damage to an underground facility

Alleged Violation of SDCL 49-7A-19

1. The Enforcement Committee dismissed the alleged violation of SDCL 49-7A-19 based on the lack of supporting evidence provided by Midcontinent Communications to substantiate that the violations of SDCL 49-7A-5 were intentional.

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 OC03-007. 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 OC03-007. 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 an allegation that Gleason Instant Tree Company commenced excavation prior to the start date and time on the locate request.

In the response to the complaint, Gleason Instant Tree Company does not dispute that they had commenced excavation prior to the start date and time on the locate request. Circumstances described in the response were as follows:

Gleason Tree Service used the facility markings provided for a different excavator to identify the location where he planned to excavate for the placement of trees. The underground facility markings and the excavation site marking were subsequently removed by a third party. While the committee commends excavators for the advance marking of the excavation site, this does not allow Gleason Tree Service to circumvent the One Call System and utilize the marking of other excavators as a means to bypass the forty-eight hour interval required.

Alleged Violation of SDCL 49-7A-12 Notification of Damage to Underground Facility

The complaint alleges that Gleason Instant Tree Company damaged and underground facility owned by Midcontinent Communications. This allegation requires that evidence be presented that would indicate that the excavator causing the damage had knowledge that the damage had occurred and failed to report the incident to Midcontinent Communications or the South Dakota One Call Center. The only evidence presented in the complaint was a statement that wires were sticking out of the ground. There was no evidence, such as pictures or witness statements, presented by Midcontinent Communications that would substantiate that Gleason Tree Company knowingly failed to report the damage.

Alleged Violation of SDCL 49-7A-19 Penalties for Intentional Violation

This complaint involves an allegations that Gleason Instant Tree Company intentionally disregarded SDCL 49-7A-5 by commencing excavation prior to the start date and time on the locate requests. The complaint identifies a conversation between an employee of Midcontinent and an employee of Gleason Instant Tree Company regarding the concern of Midcontinent to the violation of SDCL 49-7A-5 by Gleason Instant Tree Company. There was no evidence presented by Midcontinent Communications, such as witness statements or correspondence, that would provide support for the allegation.

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 locate request identified in the complaint.

PROPOSED PENALTY FOR THIS VIOLATION 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 Gleason Instant Tree Company will comply with SDCL 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC03-007.

COMMENTS:

The penalties associated with similar allegations on Complaint OC03-004 & OC03-008 were 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 the Complaints. The Enforcement Committee was extremely concerned with the frequency of the violation and elected to suspend a majority

of the penalty with the trust that Gleason Instant Tree Company would take appropriate action to insure compliance with the statute and administrative rules on all future excavation projects.

NO VIOLATION OF SOUTH DAKOTA SDCL 49-7A-12:

The Committee dismissed the alleged violation of SDCL 49-7A-12 based on the lack of supporting evidence provided by Midcontinent Communications to substantiate that Gleason Instant Tree Company knowingly failed to report damage to an underground facility.

NO VIOLATION OF SOUTH DAKOTA SDCL 49-7A-19:

The Committee dismissed the alleged violation of SDCL 49-7A-19 based on the lack of supporting evidence provided by Midcontinent Communications to substantiate that the violations of SDCL 49-7A-5 were intentional.

ACCEPTANCE OR REJECTION BY PARTIES INVOLVED IN COMPLAINT OC03-007

THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO EACH OF THE VIOLATIONS ALLEGED IN COMPLAINT NUMBER OC03-007.

IF BOTH PARTIES INVOLVED IN THIS COMPLAINT ACCEPT THE COMMITTEE RESOLUTION TO EACH OF THE VIOLATIONS ALLEGED IN COMPLAINT NUMBER OC03-007, THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY SDCL 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT OC03-007.

IF EITHER PARTY INVOLVED IN THIS COMPLAINT REJECT THE COMMITTEE RESOLUTION TO ANY OF THE VIOLATIONS ALLEGED IN COMPLAINT NUMBER OC03-007, THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD WILL SET UP A HEARING TO RESOLVE THE REJECTED RESOLUTION TO VIOLATION(S) ALLEGED IN COMPLAINT NUMBER OC03-007. 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.

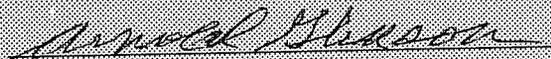
IF YOU DESIRE TO REJECT THE RESOLUTION OF ANY OF THE ALLEGED VIOLATIONS, YOU SHOULD COMPLETE THE FOLLOWING AND RETURN TO THE ADDRESS BELOW PRIOR TO THE CLOSE OF BUSINESS ON SEPTEMBER 5, 2003.

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

FAILURE TO ANSWER THIS RESOLUTION TO COMPLAINT OC03-007 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 OC03-007 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION.

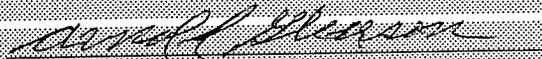

Signature

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC03-007 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC03-007.

Signature

VIOLATION OF SDCL 49-7A-12 NOTIFICATION OF DAMAGE TO UNDERGROUND FACILITY

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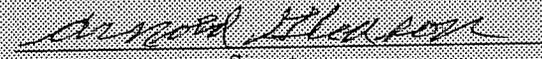

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VIOLATION OF SDCL 49-7A-19 PENALTIES FOR INTENTIONAL VIOLATIONS

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ENFORCEMENT COMMITTEE ACTION

FOR ENFORCEMENT COMMITTEE USE ONLY

REMARKS:

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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 locate request identified in the complaint.

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

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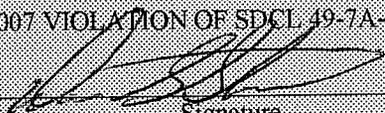
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Signature

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GLEASON INSTANT TREE CO., INC.
P.O. BOX 90034 PH. 605-368-2678
SIOUX FALLS, SD 57109-1011

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