



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

September 16, 2003

Ray DeJong
Sioux Valley Energy
P.O. Box 216
Colman, SD 57017

Ernie Huizenga
First Rate Excavate
1500 East 39th St. North
Sioux Falls, SD 57104

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 September 12, 2003, to determine whether there is probable cause to believe that a violation has occurred relative to Complaint OC03-009 filed by Sioux Valley Energy against First Rate Excavate.

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

Alleged Violation of SDCL 49-7A-5

1. The Enforcement Committee found that there was probable cause that First Rate Excavate had violated SDCL 49-7A-5 by commencing excavation prior to the start date and time on ticket number 031910295 identified in the complaint.
2. The Enforcement Committee found that there was probable cause that the employees of First Rate Excavate were aware that the start date and time on ticket number 031910295 had not passed when they commenced excavation activity.
3. The Enforcement Committee recommended that under SDCL 49-7A-19 the following penalty be assessed as resolution to this complaint.

The committee recommends a penalty of one thousand dollars (\$1000.00) with six hundred dollars (\$600.00) suspended on the basis that First Rate Excavate fully comply with SDCL 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC03-009.

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 the violation alleged in this complaint. Your

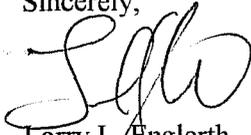
decision should be reflected in the shaded section of the attachment. **Please return the signed form by October 9, 2003 to:**

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 the alleged violation, the South Dakota One Call Notification Board will conduct a hearing as a contested case under Chapter 1-26 to resolve the allegation alleged in OC03-009. 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 or SDCL 49-7A-19..

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

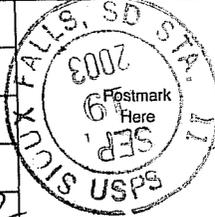
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OFFICIAL USE

7002 2410 0006 0451 7083

Postage	\$ 1.37
Certified Fee	2.30
Return Receipt Fee (Endorsement Required)	1.75
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 4.42



Sent To	Sioux Valley Energy
Street, Apt. No., or PO Box No.	Att: Ray DeJong
City, State, ZIP+4	P.O. Box 216 Colman, SD 57017

PS Form 3800, June 2002

See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Sioux Valley Energy
 Att: Ray DeJong
 P.O. Box 216
 Colman, SD 57017

2. Article Number
 (Transfer from service label)

7002 2410 0006 0451 7083

PS Form 3811, August 2001

Domestic Return Receipt

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 Leslie J. Milos Addressee

B. Received by (Printed Name) C. Date of Delivery
Leslie J. Milos 9-23-03

D. Is delivery address different from item 1? Yes
 if YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2ACPRI-03-Z-0985

ENFORCEMENT COMMITTEE ACTION**Complaint OC03-009****Sioux Valley Energy vs. First Rate Excavate****RECEIVED**

OCT 08 2003

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

Allegation is made by Sioux Valley Energy that First Rate Excavate commenced excavation on ticket number 031910295 prior to 2:05 PM on July 10th. The locate request associated with this ticket was completed by the South Dakota One Call Center at 11:00 AM on July 10th and had a start date of July 14th at 10:53 AM. The alleged action on the part of First Rate Excavation caused damage to an underground power facility operated by Sioux Valley Energy.

The response received from First Rate Excavate did not dispute the facts alleged by Sioux Valley Energy in this complaint but did provide background information on the process followed by the firm when dispatching the workers in this instance. The committee was concerned with two issues contained in the response. 1) The process did not reflect any administrative controls that would insure that a valid ticket was in place prior to the start of excavation activity and 2) The response indicated that if marks were present the field forces would assume that the excavation site had been marked...no consideration was given to the fact that multiple excavators can be working at a single site and that specific marking instructions may differ from those desired by First Rate Excavate. In this instance, the response indicated that marks were present at the site so First Rate Excavate employees commenced excavation without verification that the remarks were associated with ticket number 031910295.

Based on the information provided by Sioux Valley Energy and the fact that the response did not dispute the facts presented, the Committee found that there was probable cause that First Rate Excavate had violated SDCL 49-7A-5 by commencing excavation activity prior to the start date on ticket number 031910295.

Request to apply penalties under SDCL 49-7A-19 Penalties for Intentional Violation

To insure fair application of this statute, the committee first reviewed the definition of intentional... "done with intent or on purpose" or "pertaining to intention or purpose". This definition was used in the discussion and application of this statute.

In the complaint document, Sioux Valley Energy included a statement from an employee of First Rate Excavate who was present at the site of the damaged facility. In response to an inquiry by a Sioux Valley Energy technician as to whether First Rate Excavate had a one-call ticket for the excavation activity, the employee of First Rate Excavate stated "it was a fresh one". This would appear to indicate that the First Rate Excavate employee at the excavation site knew that the one-call ticket was recently called in to the South Dakota One Call Center.

The committee then reviewed the timeline of the ticket: 1) Locate Request completed at the South Dakota One Call Center at 11:00 AM on July 10th 2) Damage discovered by Sioux Valley Energy around 2:00 PM on July 10th 3) Start date of July 14th at 10:53 AM. This would indicate that the interval between the call to the South Dakota One Call Center and the commencement of excavation was less than 3 hours. This timeline would appear to confirm the statements made by the First Rate Excavate employee.

The response from First Rate Excavate did not dispute any of the information provided by Sioux Valley Energy and did not provide any other explanation of the comments made by their employee at the site.

Based on the information provided, the Committee found that there was probable cause that the employees of First Rate Excavate knew that they were commencing excavation prior to the start date and time on the ticket. In the opinion of the committee, this demonstrated that the action met the definition of intentional and that the penalties should be determined based on SDCL 49-7A-19.

RECOMMENDATION

FOR ENFORCEMENT COMMITTEE USE ONLY

VIOLATION OF SOUTH DAKOTA SDCL 49-7A-5:

The Committee found that First Rate Excavate had violated SDCL 49-7A-5 by commencing excavation prior to the start date on the ticket and that the employees of First Rate Excavate knew that the locate request was not valid when they commenced the excavation activity.

PROPOSED PENALTY FOR THIS VIOLATION AUTHORIZED UNDER SDCL 49-7A-19:

The committee recommends a penalty of one thousand dollars (\$1000.00) with six hundred dollars (\$600.00) suspended on the basis that First Rate Excavate fully comply with SDCL 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC03-009.

COMMENTS:

The Committee would strongly urge First Rate Excavate to review its administrative procedures and employee training to insure that their operational processes meet or exceed the requirements of SDCL 49-7A, ARSD Article 20:25 and all OSHA requirements. This will eliminate future violations of the statute while improving the safety to their employees and the general public.

ACCEPTANCE OR REJECTION BY PARTIES INVOLVED IN COMPLAINT OC03-009

THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC03-009.

IF BOTH PARTIES INVOLVED IN THIS COMPLAINT ACCEPT THE COMMITTEE RESOLUTION OF THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC03-009, THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY SDCL 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT OC03-009.

IF EITHER PARTY INVOLVED IN THIS COMPLAINT REJECT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC03-009, THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD WILL SET UP A HEARING TO RESOLVE THE REJECTED RESOLUTION TO VIOLATION ALLEGED IN COMPLAINT NUMBER OC03-009. 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 THE ALLEGE VIOLATION, YOU SHOULD COMPLETE THE FOLLOWING AND RETURN TO THE ADDRESS BELOW PRIOR TO THE CLOSE OF BUSINESS ON OCTOBER 9, 2003.

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

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 OC03-009 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION.

[Handwritten Signature]
Signature

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC03-009 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC03-009

Signature

RECOMMENDATION

FOR ENFORCEMENT COMMITTEE USE ONLY

VIOLATION OF SOUTH DAKOTA SDCL 49-7A-5:

The Committee found that First Rate Excavate had violated SDCL 49-7A-5 by commencing excavation prior to the start date on the ticket and that the employees of First Rate Excavate knew that the locate request was not valid when they commenced the excavation activity.

PROPOSED PENALTY FOR THIS VIOLATION AUTHORIZED UNDER SDCL 49-7A-19:

The committee recommends a penalty of one thousand dollars (\$1000.00) with six hundred dollars (\$600.00) suspended on the basis that First Rate Excavate fully comply with SDCL 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC03-009.

COMMENTS:

The Committee would strongly urge First Rate Excavate to review its administrative procedures and employee training to insure that their operational processes meet or exceed the requirements of SDCL 49-7A, ARSD Article 20:25 and all OSHA requirements. This will eliminate future violations of the statute while improving the safety to their employees and the general public.

ACCEPTANCE OR REJECTION BY PARTIES INVOLVED IN COMPLAINT OC03-009

THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC03-009.

IF BOTH PARTIES INVOLVED IN THIS COMPLAINT ACCEPT THE COMMITTEE RESOLUTION OF THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC03-009, THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY SDCL 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT OC03-009.

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IF YOU DESIRE TO REJECT THE RESOLUTION OF THE ALLEGE VIOLATION, YOU SHOULD COMPLETE THE FOLLOWING AND RETURN TO THE ADDRESS BELOW PRIOR TO THE CLOSE OF BUSINESS ON OCTOBER 9, 2003.

SOUTH DAKOTA ONE CALL NOTIFICATION BOARD
1012 N. SYCAMORE AVENUE
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VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION

I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC03-009 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION.

Sioux Valley Energy Ray DeLong Signature

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC03-009 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC03-009

Signature

FIRST RATE EXCAVATE INC.
1500 E. 39TH ST., N.
SIOUX FALLS, SD 57104
605-331-5626

No 32204

9-29 2003

78-859/914
101566W-CS-J

PAY TO THE
ORDER OF

SOUTH DAKOTA ONE CALL

\$ 400⁰⁰

THE SUM 400 00 00

DOLLARS



First Premier Bank, N.A.
P.O. Box 1348
Sioux Falls, S.D. 57101

[Signature]

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