



## 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](mailto:exedir@sdonecall.com)

### CORRECTED CORRESPONDENCE REPLACES PREVIOUS ACCEPTANCE NOTIFICATION LETTER

February 11, 2004

Jerry Ogan  
Ogan Trucking and Construction  
1808 Flag Mountain Drive  
Pierre, SD 57501

At the meeting of the South Dakota One Call Notification Board on February 10, 2004, your request to change your response and accept the Enforcement Committees recommended resolution of Complaint OC03-012 was approved. Therefore, the Enforcement Committee recommendation to resolve Complaint OC03-012 has been accepted by both parties involved in the complaint.

Pursuant to the final resolution of complaint OC03-012 a check or money order in the amount of eight- hundred dollars (\$800.00) should be mailed within the next ten days to:

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

Receipt of payment will close all action on this complaint.

Sincerely,

Larry L. Englerth  
Executive Director

Cc: Jim Mann, Montana-Dakota Utilities

*3/5 TW MR OGAN - we mail ✓ this weekend JLE*

**ENFORCEMENT COMMITTEE ACTION**  
**OC03-012 (A & B)**  
**Montana-Dakota Utilities vs. Jerry Ogan**

**RECEIVED**

FEB 09 2004

FOR ENFORCEMENT COMMITTEE USE ONLY

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

**REMARKS:**

**OC03-012 (A)**

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

Allegation is made by Montana-Dakota Utilities that Jerry Ogan commenced excavation on Range Road, north of Pierre, on July 17, 2003, without providing the required notification to the South Dakota One Call System.

The response received from Jerry Ogan did not dispute the facts alleged by Montana-Dakota Utilities in this complaint but did indicate that a conversation took place between MDU and Mr. Ogan that allowed him to excavate on Range Road. Mr. Ogan claims that the conversation with a representative of MDU stating that the line was 3' deep relieved him of the responsibility of making the one-call notification.

In reviewing the information provided by the complainant and the response from Mr. Ogan, the committee determined the following:

- 1) Mr. Ogan did not have a valid ticket to excavate on July 17, 2003
- 2) The definition of excavation in SDCL 49-7A-1 clearly identifies the work done by Mr. Ogan as requiring a one-call notification.
- 3) SD49-7A does not allow for an exemption from notification based on information provided by a facility operator. The fact that an employee of Montana-Dakota Utility may or may not have provided information to Mr. Ogan about the depth of the gas line does not relieve Mr. Ogan of the responsibility to provide notification prior to commencing the excavation.

Based on the information noted above, the Committee found that there was probable cause that Jerry Ogan had violated SDCL 49-7A-5 by commencing excavation without providing prior notification to the South Dakota One Call System.

Note: Both parties reference facts and issues relative to other damages and a previous damage at this location, the committee found all information not related to this specific claim as irrelevant and did not consider any of this information in making the probable cause determination.

**OC03-012 (B)**

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

The complaint alleges that Jerry Ogan damaged an underground facility owned by Montana-Dakota Utilities and failed to provide notification of said damage to either the South Dakota One Call Center or Montana-Dakota Utilities as required by SDCL 49-7A-12.

The response received from Mr. Ogan did not dispute that a line had been damaged and that the damage had not been reported. Mr. Lord, the scraper operator, stated in Mr. Ogan's response that he thought the line was an old line

In reviewing the information provided by complainant and the response from Mr. Ogan, the committee determined the following:

Note: Investigation by the Committee staff indicated that this was a 20 PSI System

- 1) Mr. Lord, a scraper operator working for Mr. Ogan, did strike a gas line when excavating at Range Road north of Pierre.
- 2) Mr. Lord was aware that he had struck a line at Range Road north of Pierre.
- 3) The committee believes that Mr. Lord would be aware via sound or visual means that this was a working line or if he was not, he had an obligation to investigate the damage to determine if it was a working system or not. It is apparent to the committee that a physical inspection of the line by Mr. Lord would have clearly indicated that gas was working as evidenced by the sound, smell, and/or sight of ground material disturbed by gas escaping from the damaged facility.

Based on the information provided by the Complainant and rebuttal information provided by Jerry Ogan, the Committee determined that the scraper operator, Robert Lord, was aware that he had damaged an underground facility and had a legal obligation as required by SDCL 49-7A-12 to report said damage to either the facility operator or the South Dakota One Call Center.

## RECOMMENDATION

### FOR ENFORCEMENT COMMITTEE USE ONLY

#### OC03-012 (A)

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

The Committee found that Jerry Ogan had violated SDCL 49-7A-5 by commencing excavation on July 17, 2003, without providing notification to the South Dakota One Call System as required by SDCL 49-7A-5.

##### 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 Jerry Ogan fully comply with SDCL 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC03-012.

##### COMMENTS:

The committee encourages Jerry Ogan to insure that the proper notification of intent to excavate is provided to the South Dakota One Call Center by himself or his employees and clearly understand that information provided by a third party does not relieve him or his employees of their obligation. This action will bring Mr. Ogan into compliance with statute and provide a safe working for himself and his employees.

#### OC03-012 (B)

##### VIOLATION OF SOUTH DAKOTA SDCL 49-7A-12:

The Committee found that Robert Lord, an employee of Jerry Ogan's, had violated SDCL 49-7A-12 by failing to notify the South Dakota One Call Center or Montana-Dakota Utilities of the damage to underground facilities.

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

The committee recommends a penalty of one-thousand dollars (\$1000.00) with four-hundred dollars (\$400.00) suspended on the basis that Jerry Ogan fully comply with SDCL 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC03-012.

##### COMMENTS:

The committee finds this a significant violation of excavation practices that endangers the safety of the workers and the public. Mr. Lord's actions also had a negative impact on sixteen customers of Montana-Dakota Utilities who had to manage their lives without the gas service for an extended period of time. Furthermore, if Mr. Lord did not know that the line was working, he had a clear obligation to investigate the damage to insure that the line was not in service. The magnitude of his failure should not be underestimated.

**ACCEPTANCE OR REJECTION BY PARTIES INVOLVED IN COMPLAINT OC03-012**

THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO EACH OF THE VIOLATIONS ALLEGED IN COMPLAINT NUMBER OC03-012.

IF BOTH PARTIES INVOLVED IN THIS COMPLAINT ACCEPT THE COMMITTEE RESOLUTION TO EACH OF THE VIOLATIONS ALLEGED IN COMPLAINT NUMBER OC03-012, THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY SDCL 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT OC03-012.

IF EITHER PARTY INVOLVED IN THIS COMPLAINT REJECT THE COMMITTEE RESOLUTION TO ANY OF THE VIOLATIONS ALLEGED IN COMPLAINT NUMBER OC03-012. THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD WILL SET UP A HEARING TO RESOLVE THE REJECTED RESOLUTION TO VIOLATION(S) ALLEGED IN COMPLAINT NUMBER OC03-012. 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 ALLEGE VIOLATIONS, YOU SHOULD COMPLETE THE FOLLOWING AND RETURN TO THE ADDRESS BELOW PRIOR TO THE CLOSE OF BUSINESS ON JANUARY 7, 2004.

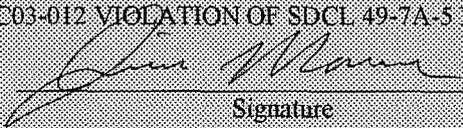
SOUTH DAKOTA ONE CALL NOTIFICATION BOARD  
1012 N. SYCAMORE AVENUE  
SIOUX FALLS, SD 57110-5747

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.

**OC03-012 (A)**

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

I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC03-012 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION

 12/16/03  
Signature

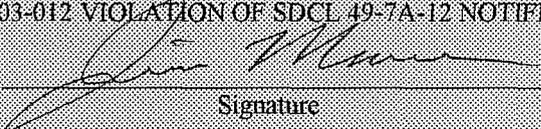
I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC03-012 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC03-012.

\_\_\_\_\_  
Signature

**OC03-012 (B)**

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

I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC03-012 VIOLATION OF SDCL 49-7A-12 NOTIFICATION OF DAMAGE TO UNDERGROUND FACILITY.

 12/16/03  
Signature

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC03-012 VIOLATION OF SDCL 49-7A-12 NOTIFICATION OF DAMAGE TO UNDERGROUND FACILITY AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC03-012.

\_\_\_\_\_  
Signature

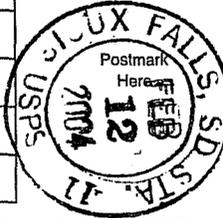
7002 2410 0006 0451 8295

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Sent To

Street, Apt. No., or PO Box No. Jerry Ogan  
Ogan Trucking and Const.

City, State, ZIP+4 1808 Flag Mountain Drive  
Pierre, SD 57501

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:

Jerry Ogan  
Ogan Trucking and Construction  
1808 Flag Mountain Drive  
Pierre, SD 57501

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  Agent  Addressee  
*Jerry Ogan*

B. Received by (Printed Name)  Agent  Addressee  
*Jerry Ogan*

C. Date of Delivery  
**FEB 24 2004**

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

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

4. Restricted Delivery? (Extra Fee)  Yes

2. Article Number (Transfer from service) 7002 2410 0006 0451 8295



**OGAN CONSTRUCTION AND TRUCKING COMPANY**

BOX 221 PH. 962-6245  
BLUNT, SD 57522

21832

78-257/914

DATE 3-10-04

SD One Call \$ 800.00

Hundred Dollars &.00-----DOLLARS

515

OGAN CONSTRUCTION AND TRUCKING COMPANY



**DAKOTA STATE BANK**

Box 208 - 211 N. Main      Box 700 - 316 S. Free St.  
Blunt, South Dakota 57522      Pierre, South Dakota 57501

*Jimmy Ogan*

⑈021832⑈ ⑆091402578⑆ 71051001⑈