



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

December 12, 2003

Jerry Ogan
1808 Flag Mountain Drive
Pierre, SD 57501

Jim Mann
Montana-Dakota Utilities Co.
P. O. Box 1060
Rapid City, SD 57701

Under the authority granted by SDCL 49-7A-22, the Enforcement Committee of the South Dakota One Call Notification Board met on December 12, 2003, to determine whether there is probable cause to believe that a violation has occurred relative to Complaint OC03-012 filed by Montana-Dakota Utilities against Jerry Ogan.

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 (A)

The Enforcement Committee found that there was probable cause that Jerry Ogan had violated SDCL 49-7A-5 by commencing excavation without providing the required notice to the South Dakota One Call System.

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.

Alleged Violation of SDCL 49-7A-12 (B)

The Enforcement Committee found that there was probable cause that Jerry Ogan had violated SDCL 49-7A-12 by failing to notify the South Dakota One Call System or Montana-Dakota Utilities of the damage to an underground facility.

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.

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 of the violations alleged in this complaint. Your decision should be reflected in the shaded section of the attachment. **Please return the signed form by January 7, 2004 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 the allegation (s) alleged in OC03-012. 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

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

FOR ENFORCEMENT COMMITTEE USE ONLY

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.

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.

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 8363

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

PIERRE SD 57501 OFFICIAL USE

Postage	\$ 0.37	0501 06 Postmark Here
Certified Fee	\$2.30	
Return Receipt Fee (Endorsement Required)	\$1.75	
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 4.42	02/11/2004

<i>Sent To</i>	
<i>Street, Apt. No.; or PO Box No.</i>	Jerry Ogan 1808 Flag Mountain Drive
<i>City, State, ZIP+4</i>	Pierre, SD 57501
PS Form 3800, June 2002 See Reverse for Instructions	

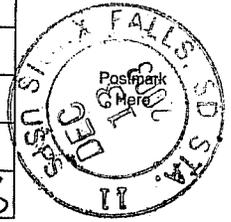
7002 2410 0006 0451 8387

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$ 1.00
Certified Fee	2.30
Return Receipt Fee (Endorsement Required)	1.75
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 4.65



Sent To
 Jerry Ogan
 Street, Apt. No., or PO Box No. 1808 Flag Mountain Drive
 City, State, ZIP+4 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
 1808 Flag Mountain Drive
 Pierre, SD 57501

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 Jerry Ogan Addressee

B. Received by (Printed Name) C. Date of Delivery
Jerry Ogan *11/27/02*

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.

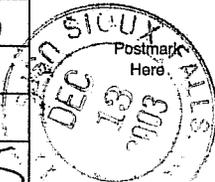
4. Restricted Delivery? (Extra Fee) Yes

7002 2410 0006 0451 8394

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$ 4.60	
Certified Fee	2.30	
Return Receipt Fee (Endorsement Required)	1.75	
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$ 4.65	

Sent To Jim Mann
 Montana-Dakota Utilities Co.
 P. O. Box 1060
 Rapid City, SD 57701

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:

Jim Mann, MDU
 P. O. Box 1060
 Rapid City, SD 57701

2. Article Number
 (Transfer from service label)

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 Addressee

B. Received by (Printed Name) C. Date of Delivery

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

7002 2410 0006 0451 8394