

sd 5/24 - med on Monday - agreed to wait for WEP

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

TO: WES JOHNSON dba CREATE-A-SCAPE LANDSCAPING

FROM: SOUTH DAKOTA ONE CALL NOTIFICATION BOARD

RE: NOTICE OF COMPLAINT; DEADLINE FOR ANSWER;

In the Matter of the Complaint OC04-003 filed by Montana-Dakota Utilities Company against Wes Johnson, dba Create-A-Scape Landscaping, regarding a failure to provide notification of proposed excavation as required by SDCL 49-7A-5 and a failure to expose the marked gas line with hand tools or use non-invasive methods as required by SDCL 49-7A-8..

You are hereby notified that the enclosed complaint as referenced above has been filed with the South Dakota One Call Notification Board against Wes Johnson, dba Create-A-Scape Landscaping. Pursuant to SDCL 49-7A-23 & SDCL 49-7A-24, you are required to answer this complaint in writing, no later than the close of business on May 21, 2004, by filing the original and two copies of the answer at the address listed below and by serving a copy on the complainant.

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

Your answer should be as thorough and detailed as possible and should include any documentation that supports your position e.g. witness statements, pictures, etc. We would encourage you to specifically address the two alleged violations stated in the complaint:

1. Failure to provide notification of the proposed excavation and
2. Failure to properly expose the marked gas facility using hand tools or noninvasive methods e.g. vacuum excavation, etc.

Pursuant to SDCL 49-7A-22 a panel of Board members will make a determination of probable cause based on the complaint and associated response. Failure to respond to this notice will be considered as concurrence that the allegations included in the complaint are accurate. If probable cause is determined, the panel may recommend penalties under SDCL 49-7A-18 or SDCL 49-7A-19. If any financial penalties are assessed in response to Complaint OC04-003, the amount will be based on the factors noted in SDCL 49-7A-26 which are as follows:

1. The amount of damage
2. The degree of threat to the public safety, and
3. The public inconvenience caused;

4. The respondent's plans and procedures to insure future compliance with statute and rules;
5. Any history of previous violations;
6. Other matters as justice requires.

You may address any of these items in your response if you believe it would be of value to the committee when they consider this complaint.

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.

A copy of the Operations Manual for Facility Operators and Excavators is enclosed. The South Dakota One Call Statute is reprinted in this manual starting on page 25 with the penalty section starting at the bottom of page 29. We would encourage you to review this material prior to completing your response.

Procedural questions may be directed to Larry Englerth, Executive Director to the South Dakota One Call Notification Board, at 605-339-0529 or by email to exedir@sdonecall.com.

Enclosure

cc: Jim Mann, Montana-Dakota Utilities Company, Complainant (cover letter only via email)

7002 2410 0006 0451 8325

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

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OFFICIAL USE

Postage	\$ 129
Certified Fee	230
Return Receipt Fee (Endorsement Required)	175
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$5.34

Sent To: Wes Johnson dba
 Create-A-Scape Landscaping
 1323B Sidney Drive
 Rapid City, SD 57701

PS Form 3811, August 2001

Postmark: SD SDN JUL 28 APR 28

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> 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. 	<p>A. Signature <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) _____ C. Date of Delivery <u>4-29-04</u></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No if YES, enter delivery address below: _____</p>
<p>1. Article Addressed to:</p> <p>Wes Johnson dba Create-A-Scape Landscaping 1323B Sidney Drive Rapid City, SD 57701</p>	<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>
<p>2. Article Number (Transfer from service)</p> <p>7002 2410 0006 0451 8325</p>	<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>