

**BEFORE THE SOUTH DAKOTA
ONE-CALL NOTIFICATION BOARD**

IN THE MATTER OF THE COMPLAINT FILED)	FINDINGS OF FACT AND
BY WATERTOWN MUNICIPAL UTILITIES,)	CONCLUSIONS OF LAW;
WATERTOWN, SOUTH DAKOTA AGAINST)	NOTICE OF ENTRY OF
LAFRAMBOISE CONSTRUCTION,)	ORDER
WATERTOWN, SOUTH DAKOTA REGARDING)	
FAILURE TO NOTIFY OF DAMAGE TO)	OC04-006
UNDERGROUND FACILITY AS REQUIRED BY)	
49-7A-12)	

DECISION

On June 3, 2004 pursuant to SDCL 49-7A-17, the South Dakota One-Call Board (Board) received a complaint filed by Watertown Municipal Utilities of Watertown, South Dakota (Watertown) against LaFramboise Construction of Watertown, South Dakota (LaFramboise). According to the complaint, LaFramboise hit a natural gas service line owned by Watertown while excavating. The complaint alleged that LaFramboise failed to notify the One-Call notification center or the operator of the facility of the damage.

Pursuant to SDCL 49-7A-23 and 49-7A-24, a copy of the complaint was forwarded to LaFramboise via certified mail sent on or around June 7, 2004, advising him that that he must file an answer in writing by June 29, 2004. Return receipt indicated that LaFramboise signed for the notice on June 18, 2004. On June 21, 2004 an answer was filed by LaFramboise. Pursuant to SDCL 49-7A-22, a five member panel (Panel) was appointed by Kevin Kouba, Chairman of the Board, for the purpose of determining whether there was probable cause to believe there had been a violation of any statute or rule of the Board. The Panel met on July 14, 2004. The Panel suspended the meeting and two questions were placed before Watertown and LaFramboise. The questions were forwarded to Watertown and LaFramboise via certified mail on or around July 16, 2004. A response to the Panel's two questions was filed by Watertown on July 23, 2004. A response to the Panel's two questions was filed by LaFramboise on July 27, 2004. Pursuant to SDCL 49-7A-25 the Panel determined by a unanimous vote that there is no probable cause to believe a violation of any statute or rule of the Board.

With regard to the alleged violation of 49-7A-12, the Panel found there was no probable cause to conclude LaFramboise had violated SDCL 49-7A-12 by failing to provide notification to the operator of the facility or the One-Call notification center of damage to an underground gas line. Pursuant to SDCL 49-7A-22 the Panel recommended dismissal of the complaint.

Pursuant to SDCL 49-7A-27, a copy of the Panel's recommendations was sent to the parties on August 9, 2004. On or around August 16, 2004 the Board received an acceptance of the Panel's recommendations from LaFramboise. On or around August 16, 2004, the Board received a rejection of the Panel's recommendations and a request for a hearing from Watertown.

A hearing was held as scheduled on December 1, 2004 at 1:00 p.m. (CDT) in the Auditorium of the NorthWestern Office Building located at 600 Market Street in Huron, South Dakota. The issue at the hearing was whether LaFramboise knowingly damaged a gas line and failed to notify the operator or the One-Call Notification Center in accordance with SDCL 49-7A-12 by its failure to report damage of an underground facility at 324 South Broadway in Watertown, South Dakota.

The Board took a brief recess and when they reconvened a motion was made by Mr. Ed Anderson, a Board member present at the hearing. Mr. Anderson moved that based on the testimony and the evidence submitted today there is insufficient evidence to substantiate a violation of SDCL 49-7A-12. Mr. Pat Gilligan, Board member, provided a second to the motion. Chairman Kevin Kouba called for discussion on the motion. There was no discussion and a roll call vote was taken of all the members. There was a unanimous vote by all the members of the Board present at the hearing in support of the motion. Those members present at the hearing for the vote include: Mr. Steve Lehner, Mr. Todd Chambers, Mr. Gene Solseth, Mr. Pat Gilligan, Mr. Doug Larson, Mr. Jerry Schroeder, Mr. Rod Cundy and Mr. Ed Anderson. Chairman Kouba adjourned the hearing.

Having considered the evidence of record and applicable law, the Board makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Watertown Municipal Utilities (Watertown) filed a complaint with the South Dakota One-Call Board (Board) against LaFramboise Construction of Watertown, South Dakota (LaFramboise). See Exhibit 1. According to the complaint LaFramboise damaged a natural gas service line owned by Watertown while excavating. *Id.* The complaint alleged that LaFramboise failed to notify the operator of the facility of damage to the natural gas service line in violation of SDCL 49-7A-12. *Id.*
2. On the evening of May 26, 2004 LaFramboise was running a blade across the grade from Maple Street to Third Street in Watertown, South Dakota. TR at 33. LaFramboise caught what he thought was a tree root with his blade. *Id.* LaFramboise backed the blade out and continued with the job until 7:00 p.m. (CDT). *Id.*
3. The next morning on May 27, 2004 LaFramboise continued work at 7:15 a.m. (CDT) with a bobcat. TR at 35 & 36. LaFramboise worked for approximately a half and hour before encountering the gas line. *Id.* At that time LaFramboise determined the gas line was bent. TR at 38. After encountering the gas line LaFramboise returned to his pick up in an attempt to call the City, however the locator showed up on site at that time. TR at 35 & 36.
4. LaFramboise first encountered problems with the gas line on the morning of May 27, 2004. TR at 34-36. LaFramboise notified the locator of the problem with the gas line when the locator arrived at the site. TR at 36. The locator then promptly called the correct people from Watertown Municipal Utilities to notify them of the problem. *Id.*
5. Bert Magstadt, assistant general manager for Watertown Municipal Utilities, stated that Watertown received a call on May 27, 2004 at 11:30 a.m. (CDT) that a gas line near the residence of 324 South Broadway Street in Watertown, South Dakota was injured. TR at 13-14, 19.
6. Mr. Magstadt disputes LaFramboise's testimony that the problem with the gas line was first noticed on the morning of May 27, 2004. TR at 15. Mr. Madstadt testified that LaFramboise told him the damage occurred the night before. *Id.*
7. The Board finds LaFraomboise's testimony credible and finds that insufficient evidence exists to indicate that LaFramboise didn't properly notify the operator of the facility of the damage to the gas line in violation of SDCL 49-7A-12.

CONCLUSIONS OF LAW

- 1. The Board has jurisdiction over this matter pursuant to SDCL Chapter 49-7A, including 49-7A-2, 49-7A-4, 49-7A-12, 49-7A-17 through 49-7A-27, inclusive and SDCL Chapter 1-26.
- 2. SDCL 49-7A-12 provides in part, that "the excavator shall immediately notify the operator of the facility, or, if unknown, the one-call notification center of such damage, dislocation, or disturbance."
- 3. The Board finds that there is insufficient evidence to find that LaFramboise violated SDCL 49-7A-12 by not notifying the operator of the facility or the one-call notification center of damage to the natural gas service line.

It is therefore

ORDERED, that the Board finds that LaFramboise did not violate SDCL 49-7A-12; and it is FURTHER ORDERED, that the Complaint is dismissed.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that this Order was duly entered on the 19th day of January, 2005. Pursuant to SDCL 1-26-32, this Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties.

Dated at Sioux Falls, South Dakota, this 19th day of January, 2005.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By: Debra Kalko

Date: 1/19/05

(OFFICIAL SEAL)

BY ORDER OF THE SD ONE-CALL BOARD:

Kevin Kouba
 KEVIN KOUBA, Chairman

Larry Englert
 Under the Authority and on Behalf of the Chairman

LARRY ENGLERTH, Executive Director