

## 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)

August 9, 2004

Bert Magstadt  
Watertown Municipal Utilities  
901 4<sup>th</sup> Avenue SW  
Watertown, SD 57201

Tom LaFramboise  
LaFramboise Construction  
204 16<sup>th</sup> Street NW  
Watertown, SD 57201

Under the authority granted by SDCL 49-7A-22, the Enforcement Committee of the South Dakota One Call Notification Board met on August 4, 2004, to determine whether there is probable cause to believe that a violation has occurred relative to Complaint OC04-006 filed by Watertown Municipal Utilities against LaFramboise Construction.

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:

### **Complaint OC04-006**

Alleged Violation of SDCL 49-7A-12 Notification of damage to underground facility

The Committee found insufficient evidence to determine the actual time of the damage and therefore dismissed Complaint OC04-006 alleging that LaFramboise Construction had violated SDCL 49-7A-12 by their failure to report damage of an underground facility at 324 S. Broadway in Watertown on May 26, 2004.

The findings and recommendation of the Enforcement Committee are summarized on the attached form.

Under SDCL 49-7A-27 either party may accept the recommendation of the Enforcement Committee or 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 on the third page of the attachment. **Please return the signed form prior to the close of business on September 3, 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 the rejected complaint(s). 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.

Sincerely,

Larry L. Englerth  
Executive Director

## **RECOMMENDATION**

**OC04-006**

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

The Committee found insufficient evidence to determine the actual time of the damage and therefore dismissed Complaint OC04-006 alleging that LaFramboise Construction had violated SDCL 49-7A-12 by their failure to report damage of an underground facility at 324 S. Broadway in Watertown on May 26, 2004.

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

None

### **COMMENTS:**

While the committee could not find sufficient evidence to support the claim associated with this damage, the Committee had several concerns that should be noted by the parties involved.

1. While the committee could not establish the exact time of the damage, the findings of this complaint does not reflect the concern that if the allegation was true, the safety of the general public was severely jeopardized by LaFramboise Construction.
2. The need to insure that all facilities are marked or remarked on a project of this nature take the coordination of all parties but the ultimate responsibility to insure that marks are not removed and are present at the time of excavation is that of the excavator.

# **ENFORCEMENT COMMITTEE ACTION**

## **OC04-006**

### **Watertown Municipal Utilities vs. LaFramboise Construction**

#### **FINDINGS:**

#### **OC04-006**

##### **Alleged Violation of SDCL 49-7A-12 Notification of damage to underground facility**

Allegation is made by Watertown Municipal Utilities that LaFramboise Construction damaged an underground gas line while excavating at 324 S. Broadway in Watertown on May 26, 2004, and failed to properly notify Watertown Municipal Utilities or the South Dakota One Call Center as required by statute.

The response received from LaFramboise Construction did not dispute the allegation that damage occurred at 324 S. Broadway in Watertown but the response claimed that LaFramboise Construction had damaged the underground facility on the morning of May 27, 2004 and reported it to a locator at the site.

In reviewing the complaint filed by Watertown Municipal Utilities and the response from LaFramboise Construction, the committee determined the following:

1. LaFramboise Construction did damage an underground facility while excavating at 324 S. Broadway in Watertown.
2. The damage was reported to a technician for Watertown Municipal Utilities on May 27, 2004.
3. The actual date and the time of the damage cannot be established by documentation provided by either of the parties.

Based on the information noted above, the Committee found that there was insufficient documented evidence to determine the actual time of the damage and therefore found LaFramboise Construction had not violated SDCL 49-7A-12 by failing to report the damage to the underground facility as required by statute.

**ACCEPTANCE OR REJECTION BY PARTIES  
COMPLAINT OC04-006**

THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-006.

IF BOTH PARTIES INVOLVED IN THIS COMPLAINT ACCEPT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-006, THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY SDCL 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT OC04-006.

IF EITHER PARTY INVOLVED IN THIS COMPLAINT REJECT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-006. THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD WILL SET UP A HEARING TO RESOLVE THE REJECTED RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-006. 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.

TO ACCEPT OR 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 SEPTEMBER 3, 2004.

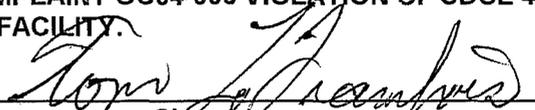
SOUTH DAKOTA ONE CALL NOTIFICATION BOARD  
1012 N. SYCAMORE AVENUE  
SIOUX FALLS, SD 57110-5747

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.

**OC04-006**

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

I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC04-006 VIOLATION OF SDCL 49-7A-12 NOTIFICATION OF DAMAGE TO UNDERGROUND FACILITY.

  
\_\_\_\_\_  
Signature

LaFramboise Construction

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC04-006 VIOLATION OF SDCL 49-7A-12 NOTIFICATION OF DAMAGE TO UNDERGROUND FACILITY AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC04-006.

  
\_\_\_\_\_  
Signature

LaFramboise Construction

**ACCEPTANCE OR REJECTION BY PARTIES**  
**COMPLAINT OC04-006**

THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-006.

IF BOTH PARTIES INVOLVED IN THIS COMPLAINT ACCEPT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-006, THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY SDCL 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT OC04-006.

IF EITHER PARTY INVOLVED IN THIS COMPLAINT REJECT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-006. THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD WILL SET UP A HEARING TO RESOLVE THE REJECTED RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-006. 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.

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

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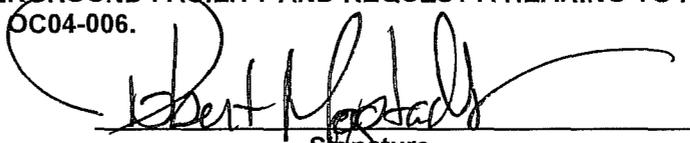
**OC04-006**

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

I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC04-006 VIOLATION OF SDCL 49-7A-12 NOTIFICATION OF DAMAGE TO UNDERGROUND FACILITY.

\_\_\_\_\_  
Signature  
Watertown Municipal Utilities

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC04-006 VIOLATION OF SDCL 49-7A-12 NOTIFICATION OF DAMAGE TO UNDERGROUND FACILITY AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC04-006.

  
\_\_\_\_\_  
Signature  
Watertown Municipal Utilities

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <li>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>■ Print your name and address on the reverse so that we can return the card to you.</li> <li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	<p>A. Signature  <input checked="" type="checkbox"/> <i>Roberta LaFramboise</i> <input checked="" type="checkbox"/> Agent  <input type="checkbox"/> Addressee</p>	
1. Article Addressed to:	B. Received by (Printed Name) <i>Roberta LaFramboise</i>	C. Date of Delivery <i>8/10/04</i>
<p>Tom LaFramboise          LaFramboise Construction          204 16<sup>th</sup> Street NW          Watertown, SD 57201</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes          If YES, enter delivery address below: <input type="checkbox"/> No</p>	
2. Article Number (Transfer from service label)	7003 1010 0000 7864 7930	
PS Form 3811, August 2001	Domestic Return Receipt	102595-02-M-1540

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <li>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>■ Print your name and address on the reverse so that we can return the card to you.</li> <li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	<p>A. Signature <span style="float: right;"><input type="checkbox"/> Agent <input type="checkbox"/> Addressee</span></p> <p><i>x B Noel</i></p>	
<p>1. Article Addressed to:</p> <div style="border: 1px solid black; padding: 5px; margin: 10px 0;"> <p>Bert Magstadt Watertown Municipal Utilities 901 4<sup>th</sup> Avenue SW Watertown, SD 57201</p> </div>	<p>B. Received by (<i>Printed Name</i>)</p> <p><i>Becky Noel</i></p>	<p>C. Date of Delivery</p> <p><i>8-10-9</i></p>
<p>2. Article Number <i>(Transfer from service label)</i></p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</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>4. Restricted Delivery? (<i>Extra Fee</i>) <input type="checkbox"/> Yes</p>	
<p>PS Form 3811, August 2001 Domestic Return Receipt 702595-02-M-1540</p>		

7003 1010 0000 7864 9231

RETURN