



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

October 21, 2004

238-5378
Marshall Johnson
Johnson Digging, Inc.
P. O. Box 64
Hurley, SD 57036

11/19 TW son, referred to 238-5378
11/20 TW with w/ mail immediate
w/ accept resolution
JSE

Tim Chance
Southeastern Electric Cooperative, Inc.
P.O. Box 105
Alcester, SD 57001-0105

Under the authority granted by SDCL 49-7A-22, the Enforcement Committee of the South Dakota One Call Notification Board met on October 20, 2004, to determine whether there is probable cause to believe that a violation has occurred relative to Complaint OC04-007 filed by Southeastern Electric Cooperative, Inc. against Johnson Digging.

By a unanimous vote of the Enforcement Committee, the recommended resolutions to the alleged violations included in this complaint were determined to be as follows:

Complaint OC04-007

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

The Enforcement Committee found that there was probable cause that Johnson Digging had violated SDCL 49-7A-5 by commencing excavation prior to the forty-eight hour advance notification required by the statute.

The committee recommends a penalty of five-hundred dollars (\$500.00) with three-hundred fifty dollars (\$300.00) suspended on the basis that Johnson Digging fully comply with SDCL 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC04-007 and the payment of the associated penalty.

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 the violation alleged in this complaint. Your decision should be reflected on the second page of the attachment. **Please return the signed form prior to the close of business on November 12, 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 alleged in the rejected complaint. 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..

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 advice of counsel should you have any legal questions.**

Sincerely,

Larry L. Englerth
Executive Director

ENFORCEMENT COMMITTEE ACTION

OC04-007

Southeastern Electric Cooperative, Inc. vs. Johnson Digging

FINDINGS:

OC04-007

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

Allegation is made by Southeastern Electric Cooperative, Inc. that Johnson Digging commenced excavation on Ticket Number 042080339 on July 27, 2004, prior to the start date on the locate request of July 28, 2004.

The response received from Johnson Digging did not dispute the allegation that excavation activity had commenced prior to the start date on the ticket.

In reviewing the complaint filed by Southeastern Electric Cooperative, Inc. and the response from Johnson Digging, the committee determined the following:

1. Johnson Digging had commenced excavation activity prior to the start date on the locate request..
2. Ticket Number 042080339 listed twelve facility operators to be notified of which one was Southeastern Electric Cooperative
3. Southeastern Electric Cooperative, Inc. had not located or cleared the locate request prior to the start of excavation by Johnson Digging.

Based on the information noted above, the Committee found that there was probable cause that Johnson Digging had violated SDCL 49-7A-5 by commencing excavation prior to the start date on ticket number 042080339.

RECOMMENDATION

OC04-007

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

The Committee found that Johnson Digging had violated SDCL 49-7A-5 by commencing excavation on July 27, 2004 which was prior to the start date of July 28, 2004 on the locate request for the excavation site.

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 Johnson Digging fully comply with SDCL 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC04-007 and the payment of the associated penalty.

COMMENTS:

ACCEPTANCE OR REJECTION BY PARTIES
COMPLAINT OC04-007

THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-007.

IF BOTH PARTIES INVOLVED IN THIS COMPLAINT ACCEPT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-007, THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY SDCL 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT OC04-007.

IF EITHER PARTY INVOLVED IN THIS COMPLAINT REJECT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-007. THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD WILL SET UP A HEARING TO RESOLVE THE REJECTED RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-007. 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 NOVEMBER 12, 2004.

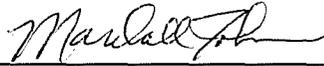
SOUTH DAKOTA ONE CALL NOTIFICATION BOARD
1012 N. SYCAMORE AVENUE
SIOUX FALLS, SD 57110-5747

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.

OC04-007

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

I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC04-007 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION.



Signature
Johnson Digging

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC04-007 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC04-007.

Signature
Johnson Digging

ENFORCEMENT COMMITTEE ACTION

OC04-007

Southeastern Electric Cooperative, Inc. vs. Johnson Digging

FINDINGS:

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

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COMPLAINT OC04-007

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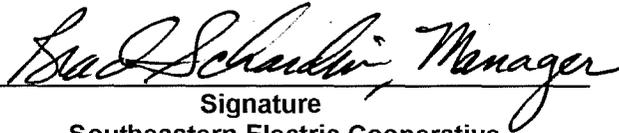
SOUTH DAKOTA ONE CALL NOTIFICATION BOARD
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OC04-007

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I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC04-007 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION.


Signature
Southeastern Electric Cooperative

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC04-007 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC04-007.

Signature
Southeastern Electric Cooperative

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. 		A. Signature <input checked="" type="checkbox"/> <i>T. Chance</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
1. Article Addressed to:		B. Received by (Printed Name) <i>T. Chance</i>	C. Date of Delivery <i>11-1-04</i>
2. Article Number <i>(Transfer from service)</i>		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
Tim Chance Southeastern Electric Cooperative P.O. Box 105 Alcester, SD 57001-0105		3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
2. Article Number <i>(Transfer from service)</i>		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
PS Form 3811, August 2001		Domestic Return Receipt	
		7003 1010 0000 7864 9293	
		102595-02-M-1540	

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. 		A. Signature <input checked="" type="checkbox"/> <i>Ruth Johnson</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
1. Article Addressed to:		B. Received by (Printed Name) <i>Ruth Johnson</i>	C. Date of Delivery
2. Article Number <i>(Transfer from serv)</i>		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
Marshall Johnson Johnson Digging, Inc. P. O. Box 64 Hurley, SD 57036		3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
2. Article Number <i>(Transfer from serv)</i>		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
PS Form 3811, August 2001		Domestic Return Receipt	
		7003 1010 0000 7864 9286	
		102595-02-M-1540	