



South Dakota One Call Notification Board

Larry Englerth
Executive Director

1012 North Sycamore Ave.
Sioux Falls, SD 57110

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October 21, 2004

Rick Trupe Construction
206 E. Harry Street
Castlewood, SD 57223

Kingbrook Rural Water System, Inc.
P. O. Box 299
Arlington, SD 57212

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 OC04-008 filed by Kingbrook Rural Water System, Inc. against Rick Trupe Construction.

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 OC04-008

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

The Enforcement Committee found that there was not probable cause that Rick Trupe Construction had done any excavation in violation of SDCL 49-7A-5 at 134 N. Lake Drive, Lake Poinsett, SD.

The committee recommends this complaint against Rick Trupe Construction be dismissed.

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 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

OC04-008

Kingbrook Rural Water System, Inc. vs. Rick Trupe Construction

FINDINGS:

OC04-008

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

Allegation is made by Kingbrook Rural Water System, Inc. that Rick Trupe Construction commenced excavation at 134 N. Lake Drive, Lake Poinsett, SD without providing proper notification to the South Dakota One Call System.

The response received from Rick Trupe Construction did not dispute the fact that they were a general contractor in the construction of a garage at this address but noted that the placement of the concrete floor was completed by a subcontractor or a separate party under contract with the property owner

In reviewing the complaint filed by Kingbrook Rural Water System, Inc. and the response from Rick Trupe Construction, the committee determined the following:

1. Rick Trupe Construction was the general contractor at this site.
2. Actual excavation at this address was completed by either a subcontractor or a separate party under contract with the property owner
3. South Dakota Statute SDCL 49-7A-1. Definition of Terms (4) states that the excavator required to make the notification is the party that is doing the actual excavation

Based on the information noted above, the Committee found that there insufficient evidence that Rick Trupe Construction had violated SDCL 49-7A-5 by commencing excavation prior to the start date on ticket number without providing advance notification to the South Dakota One Call System.

RECOMMENDATION

OC04-008

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

The Committee found insufficient evidence to indicate that Rick Trupe Construction was involved in excavation activity at 134 N. Lake Drive, Lake Poinsett, SD.

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

The committee recommends the complaint be dismissed.

COMMENTS:

Based on the information provided, Kingbrook Rural Water System, Inc. has the option to file a complaint against the party that actually placed the concrete at his site.

Read w/you

**ACCEPTANCE OR REJECTION BY BOTH PARTIES
COMPLAINT OC04-008**

THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-008.

IF BOTH PARTIES INVOLVED IN THIS COMPLAINT ACCEPT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-008, THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY SDCL 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT OC04-008.

IF EITHER PARTY INVOLVED IN THIS COMPLAINT REJECT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-008. THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD WILL SET UP A HEARING TO RESOLVE THE REJECTED RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-008. 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.

OC04-008

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

I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC04-008 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION.



Signature
Rick Trupe Construction

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC04-008 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC04-008.

Signature
Rick Trupe Construction

**ACCEPTANCE OR REJECTION BY BOTH PARTIES
COMPLAINT OC04-008**

THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-008.

IF BOTH PARTIES INVOLVED IN THIS COMPLAINT ACCEPT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-008, THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY SDCL 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT OC04-008.

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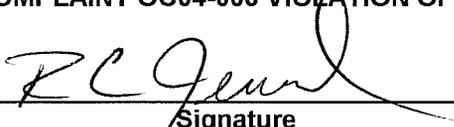
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1012 N. SYCAMORE AVENUE
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OC04-008

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

I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC04-008 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION.



Signature
Kingbrook Rural Water System, Inc.

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC04-008 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC04-008.

Signature
Kingbrook Rural Water System, Inc.