

**TO: GLEASON INSTANT TREE COMPANY**

**FROM: SOUTH DAKOTA ONE CALL NOTIFICATION BOARD**

**DATE: SEPTEMBER 13, 2004**

**RE: NOTICE OF COMPLAINT; DEADLINE FOR ANSWER;**

**In the Matter of the Complaint OC04-009 & OC04-0010 filed by B & R Tree Moving against Gleason Instant Tree Company, regarding a failure to provide notification of proposed excavation as required by SDCL 49-7A-5.**

You are hereby notified that the enclosed complaint as referenced above has been filed with the South Dakota One Call Notification Board against Gleason Instant Tree Company. 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 October 8, 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 alleged violation of SDCL 49-7A-5 referenced in the complaint:

- (OC04-009) Failure to provide advance notification to the South Dakota One Call Notification Center prior to commencing excavation at 7000 W. 41<sup>st</sup> Street, Sioux Falls, SD.
- (OC04-0010) Failure to provide advance notification to the South Dakota One Call Notification Center prior to commencing excavation at 26611 467<sup>th</sup> Avenue, Sioux Falls, SD.

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, this would be a second violation within twelve months of closure of the OC03-004, OC03-007 & OC03-08 and the panel may recommend penalties under SDCL 49-7A-19. If any financial penalties are assessed in response to Complaint OC04-009 & OC04-010, 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 Enforcement Panel 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 advice 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](mailto:exedir@sdonecall.com).

Enclosure: Operations Manual, copy of complaint, copy of letter, copy of ticket

cc: Brian Ramlo, B & R Tree Moving, Complainant (cover letter only via email)