

October 25, 2004

Gleason Instant Tree Company
27226 471st Avenue
Harrisburg, SD 57032

B & R Tree Moving
2115 28th Ave. West
Brookings, SD 57006

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 OC04-009 & OC04-010 filed by B & R Tree Moving against Gleason Instant Tree Company.

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 OC04-009

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

The Enforcement Committee found that there was probable cause that Gleason Instant Tree Company had violated SDCL 49-7A-5 by commencing excavation without providing advance notification as required by the statute.

Under SDCL 49-7A-19

The committee recommends a penalty of two-thousand five-hundred dollars (\$2500.00) with one thousand dollars (\$1000.00) suspended on the basis that Gleason Instant Tree Company fully comply with SDCL 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC04-009 and the payment of the associated penalty and suspended penalties associated with the previous resolution of Dockets OC03-004 (\$350), OC03-007 (\$300), and OC03-008 (\$250).

Complaint OC04-010

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

The Enforcement Committee found that there was probable cause that Gleason Instant Tree Company had violated SDCL 49-7A-5 by commencing excavation without providing advance notification as required by the statute.

Under SDCL 49-7A-19

The committee recommends a penalty of two-thousand five-hundred dollars (\$2500.00) with two-thousand dollars five-hundred (\$2500.00) suspended on the basis that Gleason Instant Tree Company fully comply with SDCL 49-7A and

ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC04-010 and the payment of the associated penalty assessed in OC04-009 and suspended penalties associated with the previous resolution of Dockets OC03-004 (\$350), OC03-007 (\$300), and OC03-008 (\$250).

In summary, the resolution of these complaints would involve a payment of two-thousand four-hundred dollars (\$2400) with two-thousand five-hundred dollars (\$2500) suspended on the conditions that Gleason Instant Tree Company fully complies with SDCL 49-7A and ARSD Article 20:25 for twelve months following acceptance of the resolution and payment of all penalties.

The specific 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 violations 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 19, 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

OC04-009 & OC04-010

B & R Tree Moving vs. Gleason Instant Tree Company

FINDINGS:

OC04-009

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

Allegation is made by B & R Tree Moving that Gleason Instant Tree Company commenced excavation at 7000 W. 41st Street in Sioux Falls without providing advance notification to the South Dakota One Call System as required by statute.

The response received from Gleason Instant Tree Company did not dispute the allegation that excavation activity had commenced without providing the required notification to the South Dakota One Call System.

In reviewing the complaint filed by B & R Tree Moving and the response from Gleason Instant Tree Company, the committee determined the following:

1. Gleason Instant Tree Company had commenced excavation activity without providing notification to the South Dakota One Call System.
2. Statements by the property owner, included in Gleason Instant Tree Company response, indicate the excavator and the business were aware that notification to the South Dakota One Call System was a requirement but a determination was made, from their knowledge of underground facility locations, that notification would not be made.
3. Urgency of work requirements and improper work scheduling does not justify creating a safety hazard for employees and the public
4. SDCL 49-7A-17 allows any party to file a complaint against another party whom they believe to be violating of SDCL 49-7A-2, SDCL 49-7A-5, SDCL 49-7A-8 or SDCL 49-7A-12.
5. Gleason Instant Tree Company had previous complaints of a similar nature during 2003.
 - a. OC03-004 – seven instances where Gleason Instant Tree Company had commenced excavation in violation of SDCL 49-7A-5
 - b. OC03-007 - one instance where Gleason Instant Tree Company had commenced excavation in violation of SDCL 49-7A-5
 - c. OC03-008 – five instances where Gleason Instant Tree Company had commenced excavation in violation of SDCL 49-7A-5

Based on the information noted above, the Committee found that there was probable cause that Gleason Instant Tree Company had violated SDCL 49-7A-5 by commencing excavation at 7000 W 41st Street without providing advance notification to the South Dakota One Call System.

RECOMMENDATION

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

The Committee found that Gleason Instant Tree Company had violated SDCL 49-7A-5 by commencing excavation at 7000 W 41st Street without providing advance notification to the South Dakota One Call System.

PROPOSED PENALTY FOR THIS VIOLATION AUTHORIZED UNDER SDCL 49-7A-19:

The committee recommends a penalty of two-thousand five-hundred dollars (\$2500.00) with one-thousand dollars (\$1000.00) suspended on the basis that Gleason Instant Tree Company fully comply with SDCL 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC04-009 and the payment of the associated penalty.

COMMENTS:

The committee recommends that Gleason Instant Tree Company take actions to insure that their business becomes fully compliant with South Dakota statutes and administrative rules relative to excavation activity in the state. This should include proper work scheduling to insure that adequate time is allowed for notification of the South Dakota One Call System prior to commencing any excavation activity and should also include advising property owners and related businesses that work requirements for the relocation of trees is subject to South Dakota law and they are subject to penalties for aiding and abetting the violation of these statutes.

FINDINGS:

OC04-0010

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

Allegation is made by B & R Tree Moving that Gleason Instant Tree Company commenced excavation at 26611 467 Avenue without providing advance notification to the South Dakota One Call System as required by statute.

The response received from Gleason Instant Tree Company did not dispute the allegation that excavation activity had commenced without providing the required notification to the South Dakota One Call System.

In reviewing the complaint filed by B & R Tree Moving and the response from Gleason Instant Tree Company, the committee determined the following:

1. Gleason Instant Tree Company had commenced excavation activity without providing notification to the South Dakota One Call System.
2. Statements by the property owner, included in Gleason Instant Tree Company response, indicate the excavator and the property owner were aware that notification to the South Dakota One Call System was a requirement but a determination was made, from their knowledge of underground facility locations, that notification would not be made.
3. Urgency of work requirements and improper work scheduling does not justify creating a safety hazard for employees and the public
4. SDCL 49-7A-17 allows any party to file a complaint against another party whom they believe to be violating of SDCL 49-7A-2, SDCL 49-7A-5. SDCL 49-7A-8 or SDCL 49-7A-12
5. Gleason Instant Tree Company had previous complaints of a similar nature during 2003.
 - a. OC03-004 – seven instances where Gleason Instant Tree Company had commenced excavation in violation of SDCL 49-7A-5
 - b. OC03-007 - one instance where Gleason Instant Tree Company had commenced excavation in violation of SDCL 49-7A-5
 - c. OC03-008 – five instances where Gleason Instant Tree Company had commenced excavation in violation of SDCL 49-7A-5

Based on the information noted above, the Committee found that there was probable cause that Gleason Instant Tree Company had violated SDCL 49-7A-5 by commencing excavation at 7000 W 41st Street without providing advance notification to the South Dakota One Call System.

RECOMMENDATION

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

The Committee found that Gleason Instant Tree Company had violated SDCL 49-7A-5 by commencing excavation at 26611 467th Avenue without providing advance notification to the South Dakota One Call System.

PROPOSED PENALTY FOR THIS VIOLATION AUTHORIZED UNDER SDCL 49-7A-19:

The committee recommends a penalty of two-thousand five-hundred dollars (\$2500.00) with two-thousand five-hundred dollars (\$2500.00) suspended on the basis that Gleason Instant Tree Company fully comply with SDCL 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC04-010.

COMMENTS:

The committee recommends that Gleason Instant Tree Company take actions to insure that their business becomes fully complaint with South Dakota statutes and administrative rules relative to excavation activity in the state. This should include proper work scheduling to insure that adequate time is allowed for notification of the South Dakota One Call System prior to commencing any excavation activity and should also include advising property owners and related businesses that work requirements for the relocation of trees is subject to South Dakota law and they are subject to penalties for aiding and abetting the violation of these statutes.

ACTION ON PREVIOUSLY SUSPENDED PENALTIES:

OC03-004, OC03-007 and OC03-008

The penalties suspended on the condition that Gleason Instant Tree Company comply with SDCL 49-7A and ARSD 20:25 for a twelve month period commencing on September 6, 2003 become due as a result of violations OC04-009 and OC04-010 in the amount of three hundred fifty dollars (\$350) on Complaint OC03-004, three hundred dollars (\$300) on Complaint OC03-007 and two hundred fifty (\$250) on Complaint OC03-008.

ACCEPTANCE OR REJECTION BY PARTIES
COMPLAINT OC04-009 & OC04-010

THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-009 & OC04-010.

IF BOTH PARTIES INVOLVED IN THIS COMPLAINT ACCEPT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-009 & OC04-010, THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY SDCL 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT OC04-009 & OC04-010.

IF EITHER PARTY INVOLVED IN THIS COMPLAINT REJECT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-009 & OC04-010. THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD WILL SET UP A HEARING TO RESOLVE THE REJECTED RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-009 & OC04-010. 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 ALLEGED VIOLATION, YOU SHOULD COMPLETE THE FOLLOWING AND RETURN TO THE ADDRESS BELOW PRIOR TO THE CLOSE OF BUSINESS ON NOVEMBER 19, 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.

OC04-009 & OC04-010

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

I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC04-009 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION.

Signature

I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC04-010 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION.

Signature

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC04-009 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC04-009.

Signature

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC04-010 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC04-010.

Signature