

**BEFORE THE SOUTH DAKOTA
ONE CALL NOTIFICATION BOARD**

IN THE MATTER OF THE COMPLAINT FILED)	FINDINGS OF FACT AND
BY MONTANA-DAKOTA UTILITIES CO., RAPID)	CONCLUSIONS OF LAW;
CITY, SOUTH DAKOTA, AGAINST VINCE)	NOTICE OF ENTRY OF
FINKHOUSE D/B/A EAGLE EXCAVATING,)	ORDER
RAPID CITY, SOUTH DAKOTA REGARDING)	
FAILURE TO PROVIDE PROPER)	OC05-005
NOTIFICATION AS REQUIRED BY SDCL 49-)	
7A-5 AND FAILURE TO NOTIFY DAMAGE TO)	
UNDERGROUND FACILITY AS REQUIRED BY)	
SDCL 49-7A-12)	

DECISION

On July 1, 2005, pursuant to SDCL 49-7A-17, the South Dakota One-Call Board (Board) received a complaint filed by Montana-Dakota Utilities Co. of Rapid City, South Dakota (MDU) against Vince Finkhouse d/b/a Eagle Excavating of Rapid City, South Dakota (Finkhouse). According to the complaint, Finkhouse hit a natural gas service line owned by MDU while excavating. The complaint alleged that Finkhouse: 1) failed to notify the One-Call System prior to commencing excavation; 2) failed to maintain a minimum clearance of eighteen inches between a marked underground facility and the cutting edge of mechanical equipment; and, 3) failed to provide notification to the utility of damage to an underground facility.

Pursuant to SDCL 49-7A-23 and 49-7A-24, a copy of the complaint was forwarded to Finkhouse via certified mail sent on July 1, 2005, advising him that that he must file an answer in writing by July 29, 2005. Return receipt indicated that Finkhouse signed for the notice on July 14, 2005. No answer was filed by Finkhouse. Pursuant to SDCL 49-7A-22, a five member panel (Panel) was appointed by Kevin Kouba, Chairman of the Board, for the purpose of determining whether there was probable cause to believe there had been a violation of any statute or rule of the Board. The Panel met on August 19, 2005. Pursuant to SDCL 49-7A-25, the Panel determined by a unanimous vote that there was probable cause to believe a violation of SDCL 49-7A-5 and SDCL 49-7A-12 occurred. The Panel also determined by a unanimous vote that there was no probable cause to believe a violation of SDCL 49-7A-8 occurred.

With regard to the alleged violation of SDCL 49-7A-5, the Panel found there was probable cause to conclude that Finkhouse had violated SDCL 49-7A-5 by failing to provide advance notification prior to excavation to the South Dakota One Call System as required by statute. Pursuant to SDCL 49-7A-18 and SDCL 49-7A-22, the Panel recommended a penalty of five hundred dollars (\$500) for the alleged violation of SDCL 49-7A-5.

With regard to the alleged violation of SDCL 49-7A-8, the Panel found there was no probable cause to conclude that Finkhouse had violated SDCL 49-7A-8 by failing to maintain a minimum horizontal clearance of eighteen inches between the marked underground facility and the cutting edge of the mechanical equipment. Pursuant to SDCL 49-7A-22, the Panel recommended dismissal of this allegation.

With regard to the alleged violation of SDCL 49-7A-12, the Panel found there was probable cause to conclude Finkhouse had intentionally violated SDCL 49-7A-12 by failing to provide notification to the operator of the facility or the One-Call Notification Center of damage to an underground gas line. Pursuant to SDCL 49-7A-18, 49-7A-19 and 49-7A-22, the Panel recommended a penalty of six thousand dollars (\$6000) for the alleged violation of SDCL 49-7A-12.

Pursuant to SDCL 49-7A-27, a copy of the Panel's recommendations was sent to the parties on August 22, 2005. On or about September 7, 2005, the Board received acceptance of the Panel's recommendations from MDU. The Board never received a response from Finkhouse in regards to the Panel's recommendations.

A hearing was held as scheduled on November 8, 2005, at 1:30 p.m. (CST) in Room 413 of the State Capitol Building located at 500 East Capitol Avenue in Pierre, South Dakota. MDU was present and represented by counsel. Mr. Finkhouse was not present at the hearing. He failed to show up at the appointed time and place. MDU presented its evidence through the testimony of Ronald E. Blum (Blum), a senior region engineer for the Black Hills region of MDU. The issue at the hearing was: 1) whether Finkhouse failed to notify One Call Systems prior to excavation in accordance with SDCL 49-7A-5; 2) whether Finkhouse failed to maintain a clearance of eighteen inches between a marked underground facility and the cutting edge of mechanical equipment in accordance with SDCL 49-7A-8; and, 3) whether Finkhouse intentionally damaged a gas line and failed to notify the operator or the One-Call Notification Center in accordance with SDCL 49-7A-12 by its failure to report damage of an underground facility at 16630 Elk Horn Road in Piedmont, South Dakota.

At the conclusion of the hearing, a motion was made by Mr. Ed Anderson, a Board member present at the hearing. Mr. Anderson moved that based on the testimony and the evidence submitted today the Board should adopt the recommendations in full of the Enforcement Committee as they were issued on August 15, 2005. (See attached Exhibit M). Mr. Steve Lehner, Board member, provided a second to the motion. Chairman Kevin Kouba called for discussion on the motion. There was no discussion and a vote was taken of all the members present. There was a unanimous vote by all the members of the Board present at the hearing in support of the motion. Those members present at the hearing for the vote included: Mr. Kevin Kouba, Mr. Steve Lehner, Mr. Todd Chambers, Mr. Gene Solseth, Mr. Jerry Schroeder, Mr. Rod Cundy and Mr. Ed Anderson. Chairman Kouba adjourned the hearing.

Having considered the evidence of record and applicable law, the Board makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Montana-Dakota Utilities Co. (MDU) of Rapid City, South Dakota, filed a complaint with the South Dakota One-Call Board (Board) against Vince Finkhouse d/b/a Eagle Excavating of Rapid City, South Dakota (Finkhouse). According to the complaint, Finkhouse damaged a natural gas service line owned by MDU while excavating. The complaint alleged that Finkhouse: 1) failed to notify the One-Call System prior to commencing excavation in violation of SDCL 49-7A-5; 2) failed to maintain a minimum clearance of eighteen inches between a marked underground facility and the cutting edge of mechanical equipment in violation of SDCL 49-7A-8 and; 3) failed to provide notification to the utility of damage to an underground facility in violation of SDCL 49-7A-12.

2. MDU presented evidence and exhibits to the Board through the testimony of Ronald E. Blum (Blum), a senior region engineer in the Black Hills region for MDU.
3. Blum testified that MDU agreed not to pursue the issue of the violation of SDCL 49-7A-8. TR at 7-8.
4. In February of 2005, MDU was notified of a gas leak by the property owner at 16630 Elk Horn Road in Piedmont, South Dakota. TR at 9. A serviceman was immediately dispatched to the location and determined that there was a significant amount of gas in the soil in the area. *Id.*
5. A construction crew was then called to the site to excavate and repair the leak. TR at 10. Upon commencing excavation of the leak, the construction crew could hear gas escaping from the pipe. TR at 12.
6. The crew found that, "Upon inspection looking inside the pipe you can see where the pipe was penetrated. It was then repaired by somebody with electrical tape and then a rubber boot and three hose clamps." TR at 12; see also Exhibit A.
7. Blum testified that a piece of excavating equipment damaged the pipe, possibly a backhoe based on the distance between the damaged areas. *Id.*
8. Through an investigation, MDU learned that Finkhouse was responsible for the damage to the pipe. TR at 17. MDU found that Finkhouse had installed the original water and water service lines to the neighborhood in and around 16630 Elk Horn Road in Piedmont, South Dakota. *Id.* MDU also found that Finkhouse made a repair to a water leak at 16630 Elk Horn Road in Piedmont, South Dakota on December 23, 2004. *Id.*
9. According to Blum, "the waterline crossed directly underneath the damaged area of the gas line." *Id.*
10. In the course of MDU's investigation, MDU found no valid locate tickets for 16630 Elk Horn Road in Piedmont, South Dakota. TR 18; see also Exhibit D. MDU hired One Call Locators Limited who does business as ELM Locating to do a ticket search. TR 19.
11. ELM Locating found that, "Damage occurred at an earlier time. The damager is unknown but attempted to repair the damaged gas line some time ago and it had been leaking. We did a ticket search for that address and did not have a valid locate request." *Id.*; see also Exhibit D.
12. In the course of MDU's investigation, MDU also called Finkhouse. TR 20. In a conversation with Finkhouse, he admitted to digging at the location of 16630 Elk Horn Road in Piedmont, South Dakota, and he also admitted to digging without calling locates because he knew where the utilities were in that area. *Id.*
13. Blum testified that MDU also called South Dakota One Call to see if any tickets had been issued to anyone at 16630 Elk Horn Road in Piedmont, South Dakota. TR 21. South

Dakota One Call reported that there were no valid tickets issued to any excavator in that area. *Id.*

14. MDU was never notified of the damage to the gas line until the leak was discovered by the property owner. TR 23.
15. The Board finds Blum's testimony credible and finds that sufficient evidence exists to indicate that Finkhouse did not properly provide prior notification to the One Call System prior to excavation in violation of SDCL 49-7A-5 and that Finkhouse did not properly notify the operator of the facility of the damage to the gas line in violation of SDCL 49-7A-12.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter pursuant to SDCL Chapter 49-7A, including 49-7A-2, 49-7A-4, 49-7A-12, 49-7A-17 through 49-7A-27, inclusive and SDCL Chapter 1-26.
2. SDCL 49-7A-5 provides in part, that "No excavator may begin any excavation without first notifying the one-call notification center of the proposed excavation. . . ."
3. The Board finds that there is sufficient evidence to find that Vince Finkhouse violated SDCL 49-7A-5 by failing to provide advance notice to the one-call notification center prior to excavating at 16630 Elk Horn Road in Piedmont, South Dakota.
4. SDCL 49-7A-8 provides in part, that "Excavators shall maintain a minimum horizontal clearance of eighteen inches between a marked underground facility and the cutting edge of any mechanical equipment. . . ."
5. The Board finds that there is insufficient evidence to find that Vince Finkhouse violated SDCL 49-7A-8.
6. SDCL 49-7A-12 provides in part, that "the excavator shall immediately notify the operator of the facility, or, if unknown, the one-call notification center of such damage, dislocation, or disturbance."
7. The Board finds that there is sufficient evidence to find that Vince Finkhouse violated SDCL 49-7A-12 by not notifying the operator of the facility or the one-call notification center of damage to the natural gas service line at 16630 Elk Horn Road in Piedmont, South Dakota.
8. The Enforcement Committee's findings of fact and conclusions of law along with penalty recommendations are fully adopted and incorporated herein by reference. (See Attached Exhibit M).

It is therefore

ORDERED, that the Board finds that Vince Finkhouse d/b/a Eagle Excavating did violate SDCL 49-7A-5; and it is

FURTHER ORDERED, that the Board finds that Vince Finkhouse d/b/a Eagle Excavating did violate SDCL 49-7A-12; and it is

FURTHER ORDERED, that Vince Finkhouse fully comply with the Enforcement Committee's Findings of Fact and Conclusions of Law and penalty recommendations.

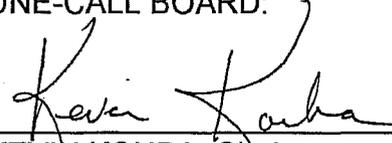
NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that this Order was duly entered on the 2nd day of December, 2005. Pursuant to SDCL 1-26-32, this Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties.

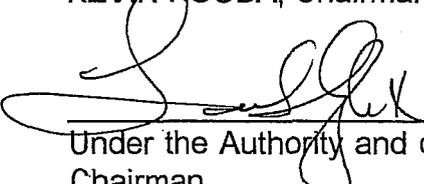
Dated at Sioux Falls, South Dakota, this 2nd day of December, 2005.

<p style="text-align: center;">CERTIFICATE OF SERVICE</p> <p>The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.</p> <p>By: </p> <p>Date: December 2, 2005</p> <p style="text-align: center;">(OFFICIAL SEAL)</p>

BY ORDER OF THE SOUTH DAKOTA
ONE-CALL BOARD:



KEVIN KOUBA, Chairman



Under the Authority and on behalf of the
Chairman

LARRY ENGLERTH, Executive Director



Notification Board

Phone: (605) 339-0529
Email: edir@sdonecall.com

August 22, 2005

Jim Mann
Montana-Dakota Utilities Co.
PO Box 1060
Rapid City, SD 57709

Vince Finkhouse
dba Eagle Excavating
4201 S. Interstate 90
Rapid City, SD 57703

Under the authority granted by SDCL 49-7A-22, the Enforcement Committee of the South Dakota One Call Notification Board met on August 19, 2005, to determine whether there is probable cause to believe that violations had occurred relative to Complaint OC05-005 filed Montana-Dakota Utilities Company against Vince Finkhouse, dba Eagle Excavating.

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 OC05-005(A)

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

The Committee found there was probable cause that Vince Finkhouse, dba Eagle Excavating, had violated SDCL 49-7A-5 by commencing excavation at 16630 Elk Horn Road in Piedmont, SD, without providing advance notification to the South Dakota One Call System as required by statute.

The committee recommends a penalty of five hundred dollars (\$500.00) be assessed against Vince Finkhouse, dba Eagle Excavating for this violation.

The committee also found that the conditions cited in the complaint did not meet the requirement to assess additional penalties under SDCL 49-7A-19.

Complaint OC05-005(B)

Alleged Violation of SDCL 49-7A-8 - Marking

A Violation of SDCL 49-7A-8 would require that an underground facility was marked prior to the excavation activity commencing for an excavator to be in violation of this statute. Therefore, the Committee found that probable cause could not be substantiated that Vince Finkhouse, dba Eagle Excavating, had violated SDCL 49-7A-8 by excavating at 16630 Elk Horn Road, Piedmont, SD, without maintaining a minimum horizontal clearance of eighteen inches between a marked underground facility and the cutting edge of any mechanical equipment as required by SDCL 49-7A-8.

Complaint OC05-005(C)

Alleged Violation of SDCL 49-7A-12 Failure to provide notification of damage to an underground facility

The Committee found there was probable cause that Vince Finkhouse, dba Eagle Excavating, had violated SDCL 49-7A-12 by damaging an underground facility at 16630 Elk Horn Road in Piedmont, SD, without providing notice of the damage to Montana-Dakota Utilities or the South Dakota One Call Center.

The committee recommends a penalty of one-thousand dollars (\$1000.00) be assessed against Vince Finkhouse, dba Eagle Excavating for this violation.

The committee also found that the conditions cited in the complaint met the requirement to assess additional penalties under SDCL 49-7A-19.

The committee recommends an additional penalty of five-thousand dollars (\$5000) for this violation.

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

Under SDCL 49-7A-27 either party may accept the recommendations of the Enforcement Committee or reject the recommendations of the Enforcement Committee by requesting a formal hearing on any of the violations alleged in this complaint. Your decision should be reflected on the third page of the attachments with the header "Acceptance or Rejection by Parties. **Please return the signed and dated form prior to the close of business on September 9, 2005 to:**

South Dakota One Call Notification Board
1012 N. Sycamore Avenue
Sioux Falls, SD 57110-5747

If both parties accept any of the resolutions, the South Dakota One Call Notification Board is required to accept the resolutions and close that violation in the complaint. If either party rejects the Enforcement Committee resolution of any 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 alleged violation in this complaint. Following this hearing, the Board shall either render a decision dismissing the violation in the complaint for insufficient evidence or shall impose a penalty pursuant to SDCL 49-7A-18 and/or SDCL 49-7A-19.

Pursuant to SDCL 15-6-55, failure to answer any of the violations alleged in 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.**

If you have any procedural questions relative to this complaint, please contact me at 605-339-0529 or by email at exedir@sdonecall.com. I would request that you do not contact any members of the South Dakota One Call Notification Board to discuss this complaint. Since they may be involved in the Chapter 1-26 hearing to resolve of the complaint, they have been advised by legal counsel to not discuss any pending complaint before the Board.

Sincerely,

Larry L. Englerth
Executive Director

ENFORCEMENT COMMITTEE ACTION

OC05-005(A)

Montana-Dakota Utilities Co. vs. Vince Finkhouse, dba Eagle Excavating

FINDINGS:

OC05-005(A)

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

Allegation is made by Montana-Dakota Utilities Co. that Vince Finkhouse, dba Eagle Excavating, commenced excavation at 16630 Elk Horn Road, Piedmont, SD, without providing prior notification to the South Dakota One Call System as required by SDCL 49-7A-5.

No response was received from Vince Finkhouse, dba Eagle Excavating relative to the complaint filed.

Prior to reviewing the complaint, and in view of the fact that no response was received from Vince Finkhouse, dba Eagle Excavating, the committee reviewed the following process for notifying Vince Finkhouse, dba Eagle Excavating:

- Notification of the Complaint was mailed to Vince Finkhouse, dba Eagle Excavating, on July 7, 2005.
- Carolyn Bunnell signed for the delivery of the complaint on July 14, 2005.
- Vince Finkhouse, dba Eagle Excavating, failed to respond within the legal time frame (July 29, 2005)
- Larry Englerth, Executive Director to the South Dakota One Call Notification Board, left messages for Mr. Finkhouse on Friday July 29th and Saturday July 30th.
- Mr. Finkhouse contacted Larry Englerth, Executive Director to the South Dakota One Call Notification Board, on Monday August 1, 2005 and discussed the complaint process and agreed to file a response regarding this complaint with the South Dakota One Call Notification Board by Friday August 5, 2005.
- The South Dakota One Call Notification Board sent a letter on August 6th advising Vince Finkhouse, dba Eagle Excavating of their failure to receive a response to the complaint.
- Vince Finkhouse, dba Eagle Excavating, failed to meet the commitment to respond to the complaint and no response has been received at the time of the Enforcement Committee on August 19, 2005.

The Committee determined that all appropriate steps had been taken to insure that Vince Finkhouse, dba Eagle Excavating, had the opportunity and notification to respond to this complaint within the timelines established in SDCL 49-7A-23.

In reviewing the Complaint filed by Montana-Dakota Utilities Company, the following items were noted:

- Complete Homebuilders had provided information that they had hired Vince Finkhouse, dba Eagle Excavating, to repair a leaking water service at this address.
- Mr. Finkhouse had acknowledged to a representative of Montana-Dakota Utilities that he had done the excavation work at this address.

Based on the information noted above, the Committee found that there was probable cause that Vince Finkhouse, dba Eagle Excavating, had violated SDCL 49-7A-5 without providing advance notice to the South Dakota One Call System.

RECOMMENDATION

OC05-005(A)

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

The Committee found there was probable cause that Vince Finkhouse, dba Eagle Excavating, had violated SDCL 49-7A-5 by commencing excavation at 16630 Elk Horn Road, Piedmont, SD, without providing advance notification to the South Dakota One Call System as required by statute.

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

The committee recommends a penalty of five hundred dollars (\$500.00) against Vince Finkhouse, dba Eagle Excavating, for this violation.

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

The committee found there was insufficient information provided to establish that the excavation at this site was intentionally done without providing notice to the South Dakota One Call Center.

COMMENTS:

**ACCEPTANCE OR REJECTION BY PARTIES
COMPLAINT OC05-005(A)**

THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC05-005(A).

IF BOTH PARTIES INVOLVED IN THIS COMPLAINT ACCEPT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC05-005(A) , THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY SDCL 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT OC05-005(A) .

IF EITHER PARTY INVOLVED IN THIS COMPLAINT REJECT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC05-005(A). THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD WILL SET UP A HEARING TO RESOLVE THE REJECTED RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC05-005(A). 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 9, 2005, 2005.

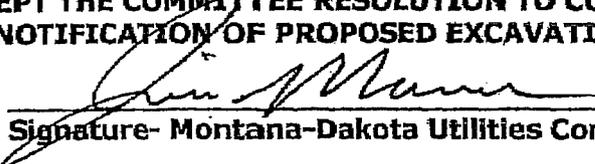
SOUTH DAKOTA ONE CALL NOTIFICATION BOARD
1012 N. SYCAMORE AVENUE
SIOUX FALLS, SD 57110-5747

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.

OC05-005(A)

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

I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC05-005(A) VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION.



Signature- Montana-Dakota Utilities Company

9/7/05
Date

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC05-005(A) VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC05-005(A).

Signature- Montana-Dakota Utilities Company

Date

ENFORCEMENT COMMITTEE ACTION

OC05-005(B)

Montana-Dakota Utilities Co. vs. Vince Finkhouse, dba Eagle Excavating

FINDINGS:

OC05-005(B)

Alleged Violation of SDCL 49-7A-8 Location of Underground Facilities - Marking

Allegation is made by Montana-Dakota Utilities Co. that Vince Finkhouse, dba Eagle Excavating, excavated at 16630 Elk Horn Road, Piedmont, SD, without maintaining a minimum horizontal clearance of eighteen inches between a marked underground facility and the cutting edge of any mechanical equipment as required by SDCL 49-7A-8.

No response was received from Vince Finkhouse, dba Eagle Excavating relative to the complaint filed.

Prior to reviewing the complaint, and in view of the fact that no response was received from Vince Finkhouse, dba Eagle Excavating, the committee reviewed the following process for notifying Vince Finkhouse, dba Eagle Excavating:

- Notification of the Complaint was mailed to Vince Finkhouse, dba Eagle Excavating, on July 7, 2005.
- Carolyn Bunnell signed for the delivery of the complaint on July 14, 2005.
- Vince Finkhouse, dba Eagle Excavating, failed to respond within the legal time frame (July 29, 2005)
- Larry Englerth, Executive Director to the South Dakota One Call Notification Board, left messages for Mr. Finkhouse on Friday July 29th and Saturday July 30th.
- Mr. Finkhouse contacted Larry Englerth, Executive Director to the South Dakota One Call Notification Board, on Monday August 1, 2005 and discussed the complaint process and agreed to file a response regarding this complaint with the South Dakota One Call Notification Board by Friday August 5, 2005.
- The South Dakota One Call Notification Board sent a letter on August 6th advising Vince Finkhouse, dba Eagle Excavating of their failure to receive a response to the complaint.
- Vince Finkhouse, dba Eagle Excavating, failed to meet the commitment to respond to the complaint and no response has been received at the time of the Enforcement Committee on August 19, 2005.

The Committee determined that all appropriate steps had been taken to insure that Vince Finkhouse, dba Eagle Excavating, had the opportunity and notification to respond to this complaint within the timelines established in SDCL 49-7A-23.

In reviewing the Complaint filed by Montana-Dakota Utilities Company, the following items were noted:

- Vince Finkhouse, dba Eagle Excavating, had not provided notification to the South Dakota One Call Center prior to the start of excavation at this address.
- No locate request had been sent to Montana-Dakota Utilities Company relative to this excavation activity.
- The buried gas line was not marked prior to the excavation activity.

RECOMMENDATION

OC05-005(B)

VIOLATION OF SOUTH DAKOTA SDCL 49-7A-8:

Violation of SDCL 49-7A-8 would require that an underground facility was marked prior to the excavation activity commencing for an excavator to be in violation of this statute. Therefore, the Committee found that probable cause could not be substantiated that Vince Finkhouse, dba Eagle Excavating, had violated SDCL 49-7A-8 by excavating at 16630 Elk Horn Road, Piedmont, SD, without maintaining a minimum horizontal clearance of eighteen inches between a marked underground facility and the cutting edge of any mechanical equipment as required by SDCL 49-7A-8.

**ACCEPTANCE OR REJECTION BY PARTIES
COMPLAINT OC05-005(B)**

THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC05-005(B).

IF BOTH PARTIES INVOLVED IN THIS COMPLAINT ACCEPT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC05-005(B), THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY SDCL 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT OC05-005(B).

IF EITHER PARTY INVOLVED IN THIS COMPLAINT REJECT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC05-005(B), THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD WILL SET UP A HEARING TO RESOLVE THE REJECTED RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC05-005(B). 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 9, 2005, 2005.

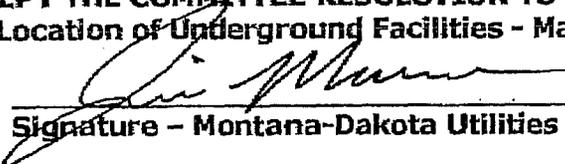
**SOUTH DAKOTA ONE CALL NOTIFICATION BOARD
1012 N. SYCAMORE AVENUE
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PURSUANT TO SDCL 15-6-55, FAILURE TO ANSWER THIS COMPLAINT RESOLUTION COULD RESULT IN A DEFAULT JUDGEMENT BEING ISSUED AGAINST YOU. APPROPRIATE LIENS AND OTHER LEGAL COLLECTION ACTIONS COULD RESULT.

OC05-005(B)

VIOLATION OF SDCL 49-7A-8 Location of Underground Facilities - Marking

I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC05-005(B) VIOLATION OF SDCL 49-7A-8 Location of Underground Facilities - Marking.



Signature - Montana-Dakota Utilities Company

9/7/05
Date

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC05-005(B) VIOLATION OF SDCL 49-7A-8 Location of Underground Facilities - Marking AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC05-005(B).

Signature - Montana-Dakota Utilities Company

Date

ENFORCEMENT COMMITTEE ACTION

OC05-005(C)

Montana-Dakota Utilities Co. vs. Vince Finkhouse, dba Eagle Excavating

FINDINGS:

OC05-005(C)

Alleged Violation of SDCL 49-7A-12 Notification of Damage to Underground Facility

Allegation is made by Montana-Dakota Utilities Co. that Vince Finkhouse, dba Eagle Excavating, while excavating at 16630 Elk Horn Road, Piedmont, SD, damaged an underground gas line and failed to notify Montana-Dakota Utilities or the South Dakota One Call Center as required by SDCL 49-7A-12.

No response was received from Vince Finkhouse, dba Eagle Excavating relative to the complaint filed.

Prior to reviewing the complaint, and in view of the fact that no response was received from Vince Finkhouse, dba Eagle Excavating, the committee reviewed the following process for notifying Vince Finkhouse, dba Eagle Excavating:

- Notification of the Complaint was mailed to Vince Finkhouse, dba Eagle Excavating, on July 7, 2005.
- Carolyn Bunnell signed for the delivery of the complaint on July 14, 2005.
- Vince Finkhouse, dba Eagle Excavating, failed to respond within the legal time frame (July 29, 2005)
- Larry Englerth, Executive Director to the South Dakota One Call Notification Board, left messages for Mr. Finkhouse on Friday July 29th and Saturday July 30th.
- Mr. Finkhouse contacted Larry Englerth, Executive Director to the South Dakota One Call Notification Board, on Monday August 1, 2005 and discussed the complaint process and agreed to file a response regarding this complaint with the South Dakota One Call Notification Board by Friday August 5, 2005.
- The South Dakota One Call Notification Board sent a letter on August 6th advising Vince Finkhouse, dba Eagle Excavating of their failure to receive a response to the complaint.
- Vince Finkhouse, dba Eagle Excavating, failed to meet the commitment to respond to the complaint and no response has been received at the time of the Enforcement Committee on August 19, 2005.

The Committee determined that all appropriate steps had been taken to insure that Vince Finkhouse, dba Eagle Excavating, had the opportunity and notification to respond to this complaint within the timelines established in SDCL 49-7A-23.

In reviewing the Complaint filed by Montana-Dakota Utilities Company, the following items were noted:

- Complete Homebuilders had provided information that they had hired Vince Finkhouse, dba Eagle Excavating, to repair a leaking water service at this address.
- Mr. Finkhouse had acknowledged to a representative of Montana-Dakota Utilities that he had done the excavation work at this address.
- During this excavation, damage had occurred to an underground gas line owned and operated by Montana-Dakota Utilities Company at 16630 Elk Horn Road, Piedmont, SD.
- Vince Finkhouse, dba Eagle Excavating, had failed to notify Montana-Dakota Utilities Company or the South Dakota One Call Center of this damage.
- Vince Finkhouse, dba Eagle Excavating had attempted to repair the damage to the underground gas line at 16630 Elk Horn Road, Piedmont, SD.

Based on the information noted above, the Committee found there was probable cause that Vince Finkhouse, dba Eagle Excavating, while excavating at 16630 Elk Horn Road, Piedmont, SD, had damaged

an underground gas line and failed to notify Montana-Dakota Utilities or the South Dakota One Call Center as required by SDCL 49-7A-12.

RECOMMENDATION

OC05-005(C)

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

The Committee found there was probable cause that Vince Finkhouse, dba Eagle Excavating, while excavating at 16630 Elk Horn Road, Piedmont, SD, had damaged an underground gas line and failed to notify Montana-Dakota Utilities or the South Dakota One Call Center as required by SDCL 49-7A-12.

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

The committee recommends a penalty of one-thousand dollars (\$1000) against Vince Finkhouse, dba Eagle Excavating, for this violation.

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

The committee determined that the conditions identified in this complaint clearly indicate that SDCL 49-7A-19 applies to this violation.

In addition to the previously identified penalty under SDCL 49-7A-18 the committee recommends an additional penalty of five-thousand dollars (\$5000) against Vince Finkhouse, dba Eagle Excavating for this violation.

**ACCEPTANCE OR REJECTION BY PARTIES
COMPLAINT OC05-005(C)**

THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC05-005(C).

IF BOTH PARTIES INVOLVED IN THIS COMPLAINT ACCEPT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC05-005(C) , THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY SDCL 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT OC05-005(C) .

IF EITHER PARTY INVOLVED IN THIS COMPLAINT REJECT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC05-005(C). THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD WILL SET UP A HEARING TO RESOLVE THE REJECTED RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC05-005(C). 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 9, 2005, 2005.

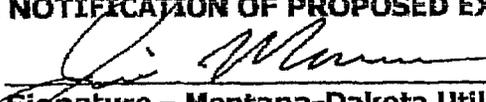
SOUTH DAKOTA ONE CALL NOTIFICATION BOARD
1012 N. SYCAMORE AVENUE
SIOUX FALLS, SD 57110-5747

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.

OC05-005(C)

VIOLATION OF SDCL 49-7A-12 NOTIFICATION OF PROPOSED EXCAVATION

I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC05-005(C) VIOLATION OF SDCL 49-7A-12 NOTIFICATION OF PROPOSED EXCAVATION.



Signature - Montana-Dakota Utilities Company

9/7/05
Date

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC05-005(C) VIOLATION OF SDCL 49-7A-12 NOTIFICATION OF PROPOSED EXCAVATION AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC05-005(C).

Signature - Montana-Dakota Utilities Company

Date