



Larry Englerth
Executive Director

1012 North Sycamore Ave.
Sioux Falls, SD 57110

Tel/Fax (605) 339-0529
Email: exedir@sdonecall.com

June 15, 2006

Mark Stromseth
Eagle Excavating
16736 451st Ave
Watertown, SD 57201

Steve Lehner, Asst General Manager
Watertown Municipal Utilities
901 4th Avenue Southwest
Watertown, SD 57201-4107

Under the authority granted by SDCL 49-7A-22, the Enforcement Committee of the South Dakota One Call Notification Board met on June 15, 2006, to determine whether there is probable cause to believe that a violation has occurred relative to Complaint OC06-002 filed by Watertown Municipal Utilities against Eagle Excavating, Inc.

By a unanimous vote of the Enforcement Committee, the recommended resolution to the alleged violation included in this complaint was determined to be as follows:

Complaint OC06-002

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

The Committee found there was probable cause that Eagle Excavating, Inc. had violated SDCL 49-7A-5 by commencing excavation at 3013 N. Serenity Drive in Watertown, 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) with three hundred dollars (\$300.00) suspended on the following conditions:

1. Eagle Excavating, Inc. fully complies with SDCL 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC06-002 by both parties.
2. Eagle Excavating, Inc. fully complies with the resolution of Complaint OC06-002 by making payment of the two hundred dollars (\$200) within thirty (30) days of the issuance of the Order to close Complaint OC06-002.

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 with the header "Acceptance or Rejection by Parties. **Please return the signed and dated form prior to the close of business on July 7, 2006 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 violation, 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.**

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 OC06-002

Watertown Municipal Utilities vs. Eagle Excavating, Inc.

FINDINGS:

OC06-002

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

Allegation is made by Watertown Municipal Utilities that Eagle Excavating, Inc. commenced excavation at 3013 N. Serenity Drive in Watertown, SD, without providing prior notification to the South Dakota One Call System as required by SDCL 49-7A-5.

Eagle Excavating, Inc. did not dispute the allegation that excavation activity had commenced without providing advance notification to the South Dakota One Call System.

In reviewing the complaint filed by Watertown Municipal Utilities and the response from Eagle Excavating, Inc., the committee determined the following:

Eagle Excavating, Inc. had commenced excavation without providing advanced notification to the South Dakota One Call System.

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

RECOMMENDATION

OC06-002

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

The Committee found there was probable cause that Eagle Excavating, Inc. had violated SDCL 49-7A-5 by commencing excavation at 3013 N. Serenity Drive in Watertown, 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) with three hundred dollars (\$300) suspended on the following conditions:

1. Eagle Excavating, Inc. fully complies with SDCL 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC06-002 by both parties.
2. Eagle Excavating, Inc. fully complies with the resolution of Complaint OC06-002 by making payment of the two hundred dollars (\$200) within thirty (30) days of the issuance of the Order to close Complaint OC06-002.

COMMENTS:

**ACCEPTANCE OR REJECTION BY PARTIES
COMPLAINT OC06-002**

THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC06-002.

IF BOTH PARTIES INVOLVED IN THIS COMPLAINT ACCEPT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC06-002, THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY SDCL 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT OC06-002.

IF EITHER PARTY INVOLVED IN THIS COMPLAINT REJECT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC06-002. THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD WILL SET UP A HEARING TO RESOLVE THE REJECTED RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC06-002. 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 JULY 7, 2006.

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.

OC06-002

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

I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC06-002 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION.

Signature

Date

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC06-002 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC06-002.

Signature

Date