



Larry Englerth
Executive Director

1012 North Sycamore Ave.
Sioux Falls, SD 57110

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

November 3, 2006

Jeremy Scadden Construction
120 Olson Street
Valley Springs, SD 57068

City of Brandon
Wayne Fletcher, Director of Public Works
P.O. Box 95
Brandon, SD 57005

Under the authority granted by SDCL 49-7A-22, the Enforcement Committee of the South Dakota One Call Notification Board met on November 3, 2006 to determine whether there is probable cause to believe that a violation has occurred relative to Complaint Docket OC06-008 filed by City of Brandon against Jeremy Scadden Construction

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

Complaint Docket OC06-008

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

The Committee found that there was insufficient evidence to determine that probable cause existed to show that Jeremy Scadden Construction had violated SDCL 49-7A-5 without providing advance notice to the South Dakota One Call System as required by statute.

The Committee therefore recommends that Complaint Docket OC06-008 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 Docket. 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 November 24, 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 Docket. 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 Docket. Following this hearing, the Board shall either render a decision dismissing the Complaint Docket 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 Docket 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 Docket, 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 Docket. Since they may be involved in the Chapter 1-26 hearing to resolve of the Complaint Docket, they have been advised by legal counsel to not discuss any pending Complaint Docket before the Board.

Sincerely,

Larry L. Englerth
Executive Director

ENFORCEMENT COMMITTEE ACTION

Docket OC06-008

City of Brandon vs. Jeremy Scadden Construction

FINDINGS:

Docket OC06-008

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

Allegation is made by City of Brandon that Jeremy Scadden Construction commenced excavation at 205 Fairway Avenue in Brandon, SD, without providing prior notification to the South Dakota One Call System as required by SDCL 49-7A-5.

Jeremy Scadden Construction submitted a response to Complaint Docket OC-06-008 identifying the following issues for consideration:

1. Acknowledge that he had performed work functions in the vicinity of 205 Fairway Avenue in Brandon, SD
2. Stated that the work functions involved the removal and piling of trees but the work functions did not meet the definition of excavation included in SDCL 49-7A-1.
3. Other factors that would not be relevant to determination of probable cause in this Complaint Docket

In reviewing the complaint filed by City of Brandon and the response from Jeremy Scadden Construction, the committee determined the following:

1. Pictures associated with the complaint did not clearly indicate that any excavation activity had occurred as defined in SDCL 49-7A-1

Based on the information noted above, The Committee found that there was insufficient evidence to determine that probable cause existed to show that Jeremy Scadden Construction had violated SDCL 49-7A-5 without providing advance notice to the South Dakota One Call System.

RECOMMENDATION

Docket OC06-008

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

The Committee found that there was insufficient evidence to determine that probable cause existed to show that Jeremy Scadden Construction had violated SDCL 49-7A-5 without providing advance notice to the South Dakota One Call System as required by statute.

The Committee therefore recommends that Complaint Docket OC06-008 be dismissed.

**ACCEPTANCE OR REJECTION BY PARTIES
COMPLAINT DOCKET OC06-008**

THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT DOCKET OC06-008.

IF BOTH PARTIES INVOLVED IN THIS COMPLAINT DOCKET ACCEPT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT DOCKET OC06-008, THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY SDCL 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT DOCKET OC06-008.

IF EITHER PARTY INVOLVED IN THIS COMPLAINT REJECT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT DOCKET OC06-008. THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD WILL SET UP A HEARING TO RESOLVE THE REJECTED RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT DOCKET OC06-008. 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 24, 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 DOCKET RESOLUTION COULD RESULT IN A DEFAULT JUDGMENT BEING ISSUED AGAINST YOU. APPROPRIATE LIENS AND OTHER LEGAL COLLECTION ACTIONS COULD RESULT.

OC06-008

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

I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT DOCKET OC06-008 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION.

Signature

Date

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT DOCKET OC06-008 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT DOCKET OC06-008.

Signature

Date