

BEFORE THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD

IN THE MATTER OF THE) ORDER
COMPLAINT AGAINST SOLID) OC07-007
FENCE COMPANY)

On November 6, 2007, the South Dakota Public Utilities Commission received a complaint from the City of Crooks against Solid Fence Company. Solid Fence Company did not dispute the allegation in the complaint that they had excavated without providing advance notice to the South Dakota One Call System. Allegation is that excavation occurred prior to the start date and time on Locate Request 073090341.

On January 9, 2008, the Enforcement Committee of the South Dakota One Call Notification Board met and determined that probable cause exists in Docket OC07-007 in regards to the allegation that Solid Fence Company has violated SDCL 49-7A-5. The Enforcement Committee recommended a five-hundred dollars (\$500) penalty with three-hundred dollars (\$300.00) suspended on the grounds that Solid Fence Company fully comply with SDCL 49-7A and ARSD Article 20:25 for twelve months following the date of both parties accepting the Enforcement Committee Action Agreement and that Solid Fence Company fully comply with the resolution of this complaint by making payment of two-hundred dollars (\$200) within thirty days of the issuance of this order.

All interested parties agreed with the recommendations of the Enforcement Committee. By January 31, 2008, the City of Crooks had signed the Enforcement Committee Action Agreement and Solid Fence Company did not respond, which in accordance with SDCL 49-7A-27, reflects acceptance of the recommendation of the Enforcement Committee.

ORDERED, that the terms and conditions of the Enforcement Committee Action Agreement and the Acceptance of the recommended resolution by the City of Crooks shall be incorporated into this Order by reference and attached hereto, the same as if it was fully recited herein and shall as such be fully binding upon the parties to it; and it is

FURTHER ORDERED that the docket in this matter shall be closed.

The South Dakota One-Call Notification Board has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-7A, specifically 49-7A-5, 49-7A-18, 49-7A-20, 49-7A-22, 49-7A-26.

Dated at Sioux Falls, South Dakota, this 1st day of February 2008.

CERTIFICATE OF SERVICE

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.

By: s/s Larry Englerth

Larry Englerth, Executive Director

Date February 1, 2008

BY ORDER OF THE SD ONE-CALL BOARD:

s/s Jerry Schroeder

JERRY SCHROEDER, Chairman

s/s Larry Englerth

Under the Authority and on Behalf of the
Chairman

LARRY ENGLERTH, Executive Director

ENFORCEMENT COMMITTEE ACTION

OC07-007

City of Crooks vs. Solid Fence Company

FINDINGS: **OC07-007**

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

Allegation is made by City of Crooks that Solid Fence Company commenced excavation at 405 South Susan Avenue in Crooks, South Dakota, without providing prior notification to the South Dakota One Call System as required by SDCL 49-7A-5. Allegation is that excavation occurred prior to the start date and time on Locate Request 073090341.

Solid Fence Company did not dispute the allegation that excavation activity had commenced without providing advance notification to the South Dakota One Call System. The response did not indicate that Solid Fence Company understood the seriousness of the complaint and potential for damage to property and injury to employees or the general public.

In reviewing the complaint filed by City of Crooks and the response from Solid Fence Company, the committee determined the following:

Solid Fence Company had violated SDCL 49-7A-5 by commencing excavation at 405 South Susan Avenue in Crooks, South Dakota on locate number 073090341 prior to the start date of November 8, 2007.

Based on information provided, the Committee found there is probable cause to find Solid Fence Company violated SDCL 49-7A-5 by commencing excavation at 405 South Susan Avenue in Crooks, South Dakota on locate number 073090341 prior to the start date of November 7, 2007

RECOMMENDATION **OC07-007**

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

The Committee found there was probable cause that Solid Fence Company had violated SDCL 49-7A-5 by commencing excavation at 405 South Susan Avenue in Crooks, South Dakota on locate number 073090341 prior to the start date of November 7, 2007.

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

The committee recommends a penalty of five hundred dollars (\$500.00) with three hundred dollars (\$300.00) suspended on the following conditions:

- Solid Fence Company fully complies with SDCL 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC07-007 by both parties.
- Solid Fence Company fully complies with the resolution of Complaint OC07-007 by making payment of the two hundred dollars (\$200) within thirty (30) days of the issuance of the Order to close Complaint OC07-007.
- Solid Fence Company should be aware that any future violation of SDCL 49-7A or ARSD 20:25 within twelve months from the date of the final order are be subject to additional penalties up to a maximum of \$5000 under SDCL 49-7A-18.