

Safe digging is no accident. Always call 811 before digging.



# Know what's below. Call before you dig.



Larry Englerth  
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June 10, 2008

Jeff Thompson  
707 Prairie Blvd  
Dakota Dunes, SD 57049

Larry Albenesius  
Albenesius Contracting  
1050 Joseph Way  
Jackson, NE 68743

Under the authority granted by SDCL 49-7A-22, the Enforcement Committee of the South Dakota One Call Notification Board met on June 10, 2008, to determine whether there is probable cause to believe that a violation has occurred relative to Complaint OC08-001 filed by Jeff Thompson against Albenesius Contracting.

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 OC08-001**

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

The Committee found there is probable cause to find the Albenesius Contracting violated SDCL 49-7A-5 by commencing excavation at 707 Prairie Blvd, Dakota Dunes, South Dakota, 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 four hundred dollars (\$400.00) suspended on the following conditions:

1. Albenesius Contracting fully complies with SDCL 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC08-001 by both parties.
2. Albenesius Contracting fully complies with the resolution of Complaint OC08-001 by making payment of the one hundred dollars (\$100) within thirty (30) days of the issuance of the Order to close Complaint OC08-001.
3. Albenesius Contracting 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.

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. **Under the same statute, failure to respond to this notice is considered acceptance of the Enforcement Committee recommendation and your right to a hearing is waived.** 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 2, 2008, to:**

South Dakota One Call Notification Board  
c/o Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501

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](mailto: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 OC08-001**

## **Jeff Thompson vs. Albenesius Contracting**

### **FINDINGS: OC08-001**

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

Allegation is made by Jeff Thompson that Albenesius Contracting commenced excavation at 707 Prairie Blvd, Dakota Dunes, South Dakota, without providing advance notification to the South Dakota One Call System as required by SDCL 49-7A-5.

Albenesius Contracting did not dispute the allegation that excavation activity had commenced without providing advance notification to the South Dakota One Call System. Albenesius Contracting did indicate that they have a regular process for calling the South Dakota One Call System when excavating.

In reviewing the complaint filed by Jeff Thompson and the response from Albenesius Contracting, the committee determined the following:

Albenesius Contracting had commenced excavation without providing advanced notification to the South Dakota One Call System.

Based on the information noted above, the Committee found there is probable cause to find the Albenesius Contracting violated SDCL 49-7A-5 by commencing excavation at 707 Prairie Blvd, Dakota Dunes, South Dakota, without providing advance notification to the South Dakota One Call System as required by SDCL 49-7A-5.

### **RECOMMENDATION OC08-001**

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

The Committee found there was probable cause that Albenesius Contracting had violated SDCL 49-7A-5 by commencing excavation at 707 Prairie Blvd, Dakota Dunes, South Dakota, without providing advance notification to the South Dakota One Call System as required by SDCL 49-7A-5.

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

The committee recommends a penalty of five hundred dollars (\$500.00) with four hundred dollars (\$400.00) suspended on the following conditions:

- Albenesius Contracting fully complies with SDCL 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC08-001 by both parties.
- Albenesius Contracting fully complies with the resolution of Complaint OC08-001 by making payment of the one hundred dollars (\$100) within thirty (30) days of the issuance of the Order to close Complaint OC08-001.
- Albenesius Contracting 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.