

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



Know what's below. Call before you dig.



Larry Englerth
Executive Director

1012 North Sycamore Ave.
Sioux Falls, SD 57110

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

TO: ALBENESIUS CONTRACTING

FROM: SOUTH DAKOTA ONE CALL NOTIFICATION BOARD

DATE: April 25, 2008

RE: NOTICE OF COMPLAINT; DEADLINE FOR ANSWER;

In the Matter of the Complaint OC08-001 filed by Jeff Thompson against the Albenesius Contracting, regarding a failure to provide notification of proposed excavation as required by SDCL 49-7A-5.

You are hereby notified that the enclosed complaint as referenced above has been filed with the South Dakota One Call Notification Board against the Albenesius Contracting. Pursuant to SDCL 49-7A-23 & SDCL 49-7A-24, you are required to answer this complaint in writing, no later than the close of business on May 16, 2008, by filing the original and two copies of the answer at the address listed below and by serving a copy on the complainant or you may file your response electronically at <http://www.state.sd.us/puc/EFilingOptions.aspx>.

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

Your answer should be as thorough and detailed as possible and should include any documentation that supports your position e.g. witness statements, pictures, etc. We would encourage you to specifically address the alleged violation of SDCL 49-7A-5 referenced in the complaint:

Failure to provide advance notification to the South Dakota One Call Notification Center prior to commencing excavation at 707 Prairie Blvd, in Dakota Dunes, SD.

Pursuant to SDCL 49-7A-22 a panel of Board members will make a determination of probable cause based on the complaint and associated response. If probable cause is determined, the panel may recommend penalties under SDCL 49-7A-18 or SDCL 49-7A-19. If any financial penalties are assessed in response to Complaint OC08-001, the amount will be based on the factors noted in SDCL 49-7A-26 which are as follows:

1. The amount of damage
2. The degree of threat to the public safety, and
3. The public inconvenience caused;
4. The respondent's plans and procedures to insure future compliance with statute and rules;
5. Any history of previous violations;
6. Other matters as justice requires.

You may address any of these items in your response if you believe it would be of value to the Enforcement Panel when they consider this complaint.

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.

A copy of the Operations Manual for Facility Operators and Excavators, the South Dakota One Call Statute and associated Administrative Rules are available on our web site www.sdonecall.com.

Procedural questions may be directed to Larry Englerth, Executive Director to the South Dakota One Call Notification Board, at 605-339-0529 or by email to 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 Enforcement Panel review and/or a 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.

Enclosure: Copy of complaint

cc: Jeff Thompson (via email)

ONE CALL COMPLAINT FORM
South Dakota One Call Notification Board
c/o South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501-5070
Telephone (605) 339-0529
www.sdonecall.com

1. ACTION REQUESTED BY

Complaint filed by: Individual Company

Person filing complaint: Jeff Thompson

Company:

Address: 707 Prairie Blvd, Dakota Dunes, SD

Phone NumberⓂ605) 232-1528 Ext:

Email Address: jeffrey.thompson@gateway.com

Date: April 21, 2008

2. ACTION REQUESTED AGAINST

Name of excavator/facility operator: Albenesius Contracting (Larry Albenesius)

Phone Number: 402-632-4318 (C) (712) 259-1191 Ext:

Address: 1050 Joseph Way, Jackson, NE 68743

Was a locate requested from SD One Call? Yes No

Locate ticket #: Start date on ticket:

Did excavator wait until the start date/time on the ticket before commencing excavation? Yes No N/A

Buried facilities exposed by hand or non-invasive equipment prior to excavation? Yes No N/A

3. FACILITY INVOLVED (if any) No Facilities Involved

Type of facility involved:

Operator of facility (if known):

Operator address:

Phone Number:

Depth of cover: Pressure

Voltage: # of cable repairs:

4. MARKING

Were facilities marked? Yes No N/A

Was the marking complete prior to the start time on the ticket? Yes No N/A

Did the excavator pre-mark with white paint? Yes No N/A

Was the facility marked accurately (within 18 inches)? Yes No N/A

Have you discussed the previous statements with the other party? Yes No

Did the excavator use reasonable care to maintain locate marks for the life of project?

Yes No N/A

Have you discussed the previous statements with other party? Yes No N/A

Is there agreement? Yes No

If no please explain

5. DAMAGE (if any)

Fatalities _____ Injuries _____ Length of hospitalization _____

Estimated property damage(s): Private Property was damaged by the removal of soil...amount of damage undetermined

Number of customers affected

Damaged in: Public Private

Photos of damaged facility

Additional information

6. PROBABLE VIOLATION

Specific statute(s) or rule(s) that was violated:

SDCL 49-7A-5 Notification of proposed excavation

Address/location of probable violation: 707 Prairie Blvd, Dakota Dunes, SD

Date of probable violation: April 16, 2008 Time of probable violation: 1:00 PM

Have you discussed this probable violation with the party this action is filed against?

Yes No

Name of party with whom you discussed the probable violation:

Description of probable violation:

A contractor Albenesius Contracting (Larry Albenesius) of Jackson, NE (Cell phone 712-259-1191) dug a 17 inch deep ditch over your markings on my property without my permission or knowledge. He is not a contractor working for me. I believe he is working for Mitch Herrity of Dunham Homes, Sioux Falls, SD. Bonnie Peterson-Mogen President of Dunham Homes certified on January 8, 2008 that final grading was complete. My dig ticket was not valid until April 24, 2008. Ticket SDJTHOMPSON8101154728 will have to be re-located.

Include other documents or photos with this complaint: Yes No

Photo's available upon request

Signature of Complainant: /s/ Jeffery Thompson filed electronically