



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



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**TO:            HANDER PLUMBING AND HEATING**

**FROM:        SOUTH DAKOTA ONE CALL NOTIFICATION BOARD**

**DATE:        AUGUST 8, 2008**

**RE:            NOTICE OF COMPLAINT; DEADLINE FOR ANSWER;**

**In the Matter of the Complaint OC08-003 filed by City of Sioux Falls against Hander Plumbing and Heating, regarding a failure to provide notification of proposed excavation as required by SDCL 49-7A-8 and failure to report damage to an underground facility as required by SDCL 49-7A-12.**

You are hereby notified that the enclosed complaint as referenced above has been filed with the South Dakota One Call Notification Board against the Hander Plumbing and Heating. 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 August 29, 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-8 and SDCL 49-7A-12 referenced in the complaint:

The failure to maintain a minimum horizontal clearance of eighteen inches between a marked underground facility and the cutting edge of mechanical equipment and the failure to report damage of an underground facility at the intersection of 23<sup>rd</sup> street and Cliff Avenue in Sioux Falls to the City of Sioux Falls or the South Dakota One Call Center.

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 49-19. If any financial penalties are assessed in response to Complaint OC08-003 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](http://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](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 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; Operations Manual for Excavators and Operators

cc: City of Sioux Falls (via email)



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 The Traffic Shop dealt with Sioux Falls Construction as they contacted the City about the needed repairs. Hander was not contacted directly as they were a subcontractor of Sioux Falls Construction.

5. DAMAGE (if any)

Fatalities \_\_\_\_\_ Injuries \_\_\_\_\_ Length of hospitalization \_\_\_\_\_

Estimated property damage(s) \_\_\_\_\_

Number of customers affected \_\_\_\_\_

Damaged in:  Public  Private

Photos of damaged facility

Additional information General Contractor (Sioux Falls Construction) was advised that an electrical contractor was needed to by them or the subcontractor (Hander) to make the repairs. The cost for this repair was the responsibility of either the general or the subcontractor and all work must be completed to city standards.

6. PROBABLE VIOLATION

Specific statute(s) or rule(s) that was violated: SDCL 49-7A- 8 by using mechanical equipment within the 18" corridor of the marked facility and SDCL 49-7A-12 for failing to report the damage to either the one call center or the city of Sioux Falls

Address/location of probable violation: Intersection of 23<sup>rd</sup> St. and Cliff Ave.

Date of probable violation: Between time facility was marked and time that city was notified

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: On July 25<sup>th</sup> the City of Sioux Falls was notified by Sioux Falls Construction that a fiber conduit and possibly a fiber cable had been damaged and they should come to the site and repair prior to the contractor pouring the concrete. A locator was dispatched to the site and found the damaged facility. It was obvious to the locator that the damage had been caused by mechanical equipment and not hand digging. Sioux Falls Construction advised the locator that the damage had been done by Hander employees. The general contractor was advised that it was their responsibility to have the underground facility repaired to city standards and the cost was the responsibility of the general or their subcontractor.

Include other documents or photos with this complaint:  Yes  No

Signature of Complainant: /s/ Gary Styke