



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



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September 12, 2008

Robert Quarve  
Hander Plumbing and Heating Inc.  
2407 W. 5<sup>th</sup> Street  
Sioux Falls, SD 57104

Gary Styke  
City of Sioux Falls  
224 W 9<sup>th</sup> Street  
Sioux Falls, SD

Under the authority granted by SDCL 49-7A-22, the Enforcement Committee of the South Dakota One Call Notification Board met on September 11, 2008, to determine whether there is probable cause to believe that a violation has occurred relative to Complaint OC08-003 filed by City of Sioux Falls against Hander Plumbing and Heating.

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

### **Complaint OC08-003**

Alleged Violation of SDCL 49-7A-8 Location of underground facilities - and SDCL 49-7A-12 Notification of damage to underground facility

The Committee found there was not probable cause that Hander Plumbing and Heating had violated SDCL 49-7A-8 by using mechanical equipment within eighteen inches horizontal from a marked facility and found there was not probable cause that Hander Plumbing and Heating had violated SDCL 49-7A-12 by failing to notify the City of Sioux Falls of a damage to their underground facilities.

The committee recommends that Complaint OC08-003 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. **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 October 6, 2008 to:**

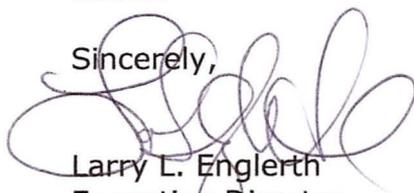
South Dakota One Call Notification Board  
c/o Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501

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 OC08-003**

**City of Sioux Falls vs. Hander Plumbing and Heating,**

## **FINDINGS:**

### **OC08-003**

#### **Alleged Violation of SDCL 49-7A-8 Location of underground facilities - marking**

Allegation is made by City of Sioux Falls that Hander Plumbing and Heating violated SDCL 49-7A-8 by using mechanical equipment within eighteen inches of a marked underground facility at the intersection of 23<sup>rd</sup> Street and Cliff Avenue in Sioux Falls, SD.

Hander Plumbing and Heating responded that the excavation activity was related to Ticket Number 081900357 which was for the purpose of installing water, sewer and storm sewer. Hander also stated that the excavation identified in this complaint was not related to the work activity identified on the ticket but rather while loading rock into a rock box the loader slid against the curb in the wet soil.

In reviewing the complaint filed by City of Sioux Falls and the response from Hander Plumbing and Heating the committee determined the following:

Actions by Hander Plumbing and Heating that resulted in the removal of dirt and subsequent damage to an underground conduit was deemed to be an accidental incident and did not indicate that Hander Plumbing and Heating intended to excavate at the point of damage. The complaint filed by the City of Sioux Falls did not provide any information that could be considered contrary to the response provided by Hander Plumbing and Heating.

Based on the information noted above, the Committee found that there was not probable cause that Hander Plumbing and Heating had violated SDCL 49-7A-8 Location of underground facilities - marking.

#### **Alleged Violation of SDCL 49-7A-12 Notification of damage to underground facility**

Allegation is made by City of Sioux Falls that Hander Plumbing and Heating violated SDCL 49-7A-12 by failing to report damage to an underground facility at the intersection of 23<sup>rd</sup> Street and Cliff Avenue in Sioux Falls, SD.

Hander Plumbing and Heating responded that the damage was identified by the General Contractor when the loader was being extricated from the muddy area and that the general contractor notified the city of the damage a short interval after it was identified. Hander also stated that they had worked with the General Contractor to have the damage repaired and had taken responsibility for the cost of repair.

In reviewing the complaint filed by City of Sioux Falls and the response from Hander Plumbing and Heating the committee determined the following:

In these circumstances, the actions by Hander Plumbing and Heating in having the General Contractor notify the city do not reflect any intent to not provide notice and appeared to be a reasonable action.

Based on the information noted above, the Committee found that there was not probable cause that Hander Plumbing and Heating had violated SDCL 49-7A-12 ... Notification of damage to underground facility.

## **RECOMMENDATION**

### **OC08-003**

#### **VIOLATION OF SOUTH DAKOTA SDCL 49-7A-8 and SDCL 49-7A-12:**

The Committee found there was not probable cause that Hander Plumbing and Heating had violated SDCL 49-7A-8 by using mechanical equipment within eighteen inches horizontal from a marked facility and found there was not probable cause that Hander Plumbing and Heating had violated SDCL 49-7A-12 by failing to notify the City of Sioux Falls of a damage to their underground facilities.

#### **COMMENTS:**

The Enforcement Committee noted that City of Sioux Falls had not contacted Hander Construction to discuss the issues in this complaint and that the complaint did not provide any evidence that the underground facility was marked.

**ACCEPTANCE OR REJECTION BY PARTIES  
COMPLAINT OC08-003**

**THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO THE VIOLATIONS ALLEGED IN COMPLAINT NUMBER OC08-003.**

**IF BOTH PARTIES INVOLVED IN THIS COMPLAINT ACCEPT THE COMMITTEE RESOLUTION TO THE VIOLATIONS ALLEGED IN COMPLAINT NUMBER OC08-003, THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY SDCL 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT OC08-003.**

**IF EITHER PARTY INVOLVED IN THIS COMPLAINT REJECT THE COMMITTEE RESOLUTION TO THE EITHER OF THE VIOLATIONS ALLEGED IN COMPLAINT NUMBER OC08-003. THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD WILL SET UP A HEARING TO RESOLVE THE REJECTED RESOLUTION TO THE EITHER VIOLATION ALLEGED IN COMPLAINT NUMBER OC08-003. 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 VIOLATIONS, YOU SHOULD COMPLETE THE FOLLOWING AND RETURN TO THE ADDRESS BELOW PRIOR TO THE CLOSE OF BUSINESS ON OCTOBER 6, 2008.**

**SOUTH DAKOTA ONE CALL NOTIFICATION BOARD  
c/o PUBLIC UTILITIES COMMISSION  
500 EAST CAPITOL AVENUE  
PIERRE, SD 57501**

**PURSUANT TO SDCL 15-6-55, FAILURE TO ANSWER THIS COMPLAINT RESOLUTION COULD RESULT IN A DEFAULT JUDGMENT BEING ISSUED AGAINST YOU. APPROPRIATE LIENS AND OTHER LEGAL COLLECTION ACTIONS COULD RESULT.**

**ACCEPTANCE OR REJECTION BY PARTIES  
COMPLAINT OC08-003**

**VIOLATION OF SOUTH DAKOTA SDCL 49-7A-8**

**I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC08-003  
VIOLATION OF SDCL 49-7A-8.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC08-003  
VIOLATION OF SDCL 49-7A-8 AND REQUEST A HEARING TO RESOLVE THE  
VIOLATION ALLEGED IN COMPLAINT OC08-003.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**VIOLATION OF SOUTH DAKOTA SDCL 49-7A-12**

**I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC08-003  
VIOLATION OF SDCL 49-7A-12.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC08-003  
VIOLATION OF SDCL 49-7A-12 AND REQUEST A HEARING TO RESOLVE THE  
VIOLATION ALLEGED IN COMPLAINT OC08-003.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date