



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



**TO: LOEWENBERG TECHNOLOGIES, INC.**

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

**DATE: JUNE 8, 2009**

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

**In the Matter of the Complaint OC09-003 filed by Southeastern Electric Cooperative, Inc. against Loewenberg Technologies, Inc., regarding a failure to maintain a minimum horizontal clearance of 18 inches between a marked underground facility and the cutting edge of any mechanical equipment as required by SDCL 49-7A-8.**

You are hereby notified that the enclosed complaint as referenced above has been filed with the South Dakota One Call Notification Board against the Loewenberg Technologies, Inc.. 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 June 30, 2009, 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 referenced in the complaint:

Failure to maintain a minimum horizontal clearance of 18 inches between a marked underground facility and the cutting edge of any mechanical equipment when excavating at 5105 Oakland Avenue in Sioux Falls, SD. When excavation was required within 18 inches horizontally, the excavator shall expose the facility with hand tools or noninvasive methods...

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 OC09-003 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

cc: Southeastern Electric Cooperative, Inc. (via email)

**RECEIVED**

JUN 05 2009

Mail completed form to:

**PUBLIC UTILITIES COMMISSION  
500 EAST CAPITOL AVENUE  
PIERRE, SD 57501  
ATTN: SOUTH DAKOTA ONE CALL BOARD**

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

**COMPLAINT**

COMPLETE INFORMATION IS REQUIRED - ADDITIONAL PAGES MAY BE USED IF REQUIRED

**ALLEGATION OF PROBABLE VIOLATION(S) OF SOUTH DAKOTA ONE CALL LAWS**

**I. ACTION REQUESTED BY:**

COMPLAINT FILED BY INDIVIDUAL  OR BUSINESS\*  PERSON FILING COMPLAINT: **Tim Chance**  
COMPANY: **Southeastern Electric Cooperative, Inc.** ADDRESS: **501 S. Broadway Ave. Marion, SD 57043 -0388**  
PHONE NUMBER: **1-800-333-2859 or (605) 934-1961**  
SIGNATURE: *Tim Chance* DATE: *6-4-2009* EMAIL ADDRESS: **tchance@southeasternelectric.com**  
\*If the complaint is filed on behalf of a Company, the person signing this form should have the proper authority to file the complaint.

**II. ACTION REQUESTED AGAINST:**

NAME OF EXCAVATOR/FACILITY OPERATOR: **Loewenburg Technologies, Inc.**  
PHONE NUMBER: **605-335-8175 Cell: 605-261-9912**  
ADDRESS: **1000 East Benson Rd. Sioux Falls, SD 57104**  
WAS A LOCATE REQUESTED FROM SD ONE CALL? YES  NO  LOCATE TICKET #: **083220025**  
START DATE ON TICKET: **11-19-08**  
DID EXCAVATOR WAIT UNTIL THE START DATE/TIME ON THE TICKET BEFORE STARTING EXCAVATION?  
YES  NO  NA   
WERE BURIED FACILITIES EXPOSED BY HAND OR WITH NON-INVASIVE EQUIPMENT PRIOR TO EXCAVATION? YES  NO  NA

**III. FACILITY INVOLVED (IF ANY)**

TYPE OF FACILITY INVOLVED: **Electric Distribution**  
OPERATOR OF FACILITY: **Southeastern Electric Cooperative, Inc**  
OPERATOR ADDRESS: **501 S Broadway Marion, SD 57043-0388** PHONE NUMBER: **605-934-1961**  
DEPTH OF COVER: **42 INCHES** PRESSURE: **VOLTAGE: 12,470/7200** NUMBER OF CABLE PAIRS: **2**

**IV. MARKING**

WERE FACILITIES MARKED? YES  NO  NA   
WAS THE MARKING COMPLETE PRIOR TO THE START TIME ON THE TICKET? YES  NO  NA   
DID EXCAVATOR PRE-MARK WITH WHITE PAINT? YES  NO  NA  WAS THE FACILITY MARKED ACCURATELY (WITHIN 18 INCHES)? YES  NO  NA  DID EXCAVATOR USE REASONABLE CARE TO MAINTAIN LOCATE MARKS FOR LIFE OF PROJECT? YES  NO  NA  HAVE YOU DISCUSSED THE PREVIOUS STATEMENTS WITH THE OTHER PARTY? YES  NO  IS THERE AGREEMENT? YES  NO   
IF NO, PLEASE EXPLAIN: Do not answer or calls, invoices or Letter

**V. DAMAGE (IF ANY)**

FATALITIES:                      INJURIES:                      LENGTH OF HOSPITALIZATION:  
ESTIMATED PROPERTY DAMAGE (\$): \$2,081.04      NUMBER OF CUSTOMERS AFFECTED: 12  
DAMAGED IN: PUBLIC       PRIVATE  (RIGHT-OF-WAY)  
PHOTOS OF THE DAMAGED FACILITY? YES  NO  (Can email or send them to you)  
ADDITIONAL INFORMATION: Admitted to the linemen they were at fault and were directional boring with out locating the cable depth and bored through the cable, also will not pay for the damages cause by this action

**VI. PROBABLE VIOLATION**

SPECIFIC STATUE(S) OR RULE(S) THAT WHERE VIOLATED:  
20:25:03:05:03 Excavator responsibilities when excavating near markings  
49-7A-10 Liability for damages to underground facility  
ADDRESS/LOCATION OF PROBABLE VIOLATION:  
5105 Oakland Ave. Sioux Falls, SD  
DATE/TIME OF PROBABLE VIOLATION:  
12/02/09  
HAVE YOU DISCUSSED THIS PROBABLE VIOLATION WITH THE PARTY THE ACTION IS FILED AGAINST:  
YES  NO  (We have tried to contact them with no response)  
IF YES, NAME OF THE PARTY WITH WHOM YOU DISCUSSED THE PROBABLE VIOLATION:  
Invoices sent 12-17-08, 2-26-09, and 4-21-09 Also Letter was sent to them on May 6<sup>th</sup> 2009, and also left messages on their cell phone. There has been no response to anything sent to them or message left.  
DESCRIPTION OF PROBABLE VIOLATION:  
Did not expose the cable for depth and directionaled bored through the cables and damaged primary cable and secondary cables.