

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



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



November 13, 2009

Gerrick McComsey, President
Sharpe Enterprises, Inc.
1218 Sale Barn Road
Fort Pierre, SD 57532-0580

William Heaston, Attorney
South Dakota Network LLC
2900 W. 10th Street
Sioux Falls, SD 57104

Under the authority granted by SDCL 49-7A-22, the Enforcement Committee of the South Dakota One Call Notification Board met on November 12, 2009 to determine whether there is probable cause that a violation had occurred relative to Complaint OC09-008 filed by South Dakota Network, LLC against Sharpe Enterprises, Inc.

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 OC09-008

Alleged Violation of SDCL 49-7A-08 Failure to maintain a minimum horizontal clearance between a marked facility and the cutting edge of any mechanized equipment.

The Committee did not find probable cause that Sharpe Enterprises, Inc. violated SDCL 49-7A-08 by failing to maintain a minimum horizontal clearance between a marked facility and the cutting edge of any mechanized equipment as required by statute.

Therefore the committee recommends no penalty.

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 December 3, 2009, 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 605-348-4543 or by email at 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. Janes
Executive Director

ENFORCEMENT COMMITTEE ACTION OC09-008

South Dakota Network, LLC vs. Sharpe Enterprises, Inc.

FINDINGS: OC09-008

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

Allegation is made by South Dakota Network, LLC that Sharpe Enterprises, Inc. failed to maintain a minimum horizontal clearance of eighteen inches between a marked underground facility and the cutting edge of any mechanized equipment at a location in front of the State Library on August 26, 2009 as required by SDCL 49-7A-08.

Mr. McComsey, Sharpe Enterprises, Inc., stated that ELM Locate Service informed them there were no fiber optic lines in the project area. During a subsequent locate request, ELM Locate Service again informed Sharpe Enterprises, Inc. that there were no fiber optic lines in the area.

In reviewing the complaint filed by South Dakota Network, LLC and the response from Sharpe Enterprises, Inc., the committee did not find evidence to support probable cause that Sharpe Enterprises, Inc. violated SDCL 49-7A-08.

RECOMMENDATION OC09-008

VIOLATION OF SOUTH DAKOTA SDCL 49-7A-08:

The Committee did not find probable cause that Sharpe Enterprises, Inc. had violated SDCL 49-7A-08 by failing to maintain a minimum horizontal clearance of eighteen inches between a marked underground facility and the cutting edge of any mechanized equipment at a location in front of the State Library on August 26, 2009 as required by SDCL 49-7A-08.

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

The committee recommends no penalty due to lack of sufficient evidence to support probable cause.

ACCEPTANCE OR REJECTION BY PARTIES

COMPLAINT OC09-008

THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC09-008.

IF BOTH PARTIES INVOLVED IN THIS COMPLAINT ACCEPT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC09-008, THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY SDCL 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT OC09-008.

IF EITHER PARTY INVOLVED IN THIS COMPLAINT REJECT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC09-008, THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD WILL SET UP A HEARING TO RESOLVE THE REJECTED RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC09-008. 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 VIOLATION, YOU SHOULD COMPLETE THE FOLLOWING AND RETURN TO THE ADDRESS BELOW PRIOR TO THE CLOSE OF BUSINESS ON DECEMBER 3, 2009.

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.

OC09-008

VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION

I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC09-008 VIOLATION OF SDCL 49-7A-08 NOTIFICATION OF PROPOSED EXCAVATION.

Signature - Sharpe Enterprises, Inc

Date

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC09-008 VIOLATION OF SDCL 49-7A-08 NOTIFICATION OF PROPOSED EXCAVATION AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC09-008.

Signature - Sharpe Enterprises, Inc

Date

**ACCEPTANCE OR REJECTION BY PARTIES
COMPLAINT OC09-008**

THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC09-008.

IF BOTH PARTIES INVOLVED IN THIS COMPLAINT ACCEPT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC09-008, THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY SDCL 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT OC09-008.

IF EITHER PARTY INVOLVED IN THIS COMPLAINT REJECT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC09-008, THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD WILL SET UP A HEARING TO RESOLVE THE REJECTED RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC09-008. 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 VIOLATION, YOU SHOULD COMPLETE THE FOLLOWING AND RETURN TO THE ADDRESS BELOW PRIOR TO THE CLOSE OF BUSINESS ON DECEMBER 3, 2009.

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.

OC09-008

VIOLATION OF SDCL 49-7A-08 NOTIFICATION OF PROPOSED EXCAVATION

I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC09-008 VIOLATION OF SDCL 49-7A-08 NOTIFICATION OF PROPOSED EXCAVATION.

Signature - South Dakota Network, LLC

Date

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC08-008 VIOLATION OF SDCL 49-7A-08 NOTIFICATION OF PROPOSED EXCAVATION AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC09-008.

Signature - South Dakota Network, LLC

Date