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May 18, 2010

South Dakota One Call Board  
Public Utilities Commission  
500 E. Capitol Avenue  
Pierre, SD 57501

**RECEIVED**  
**MAY 19 2010**  
**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

Re: Petition for Declaratory Ruling

Gentlemen:

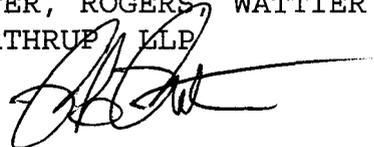
Enclosed herewith please find original Petition for Declaratory Ruling as executed by Dennis Davis, Executive Director of the South Dakota Association of Rural Water Systems.

I would appreciate it if you would keep the undersigned apprised on this matter, as well as South Dakota Rural Water Systems.

Thank you.

Very truly yours,

RITER, ROGERS, WATTIER &  
NORTHROP, LLP

By: 

Robert C. Riter, Jr.

RCR Jr-wb

Enclosure

cc: Dennis Davis

Robert C. Riter, Jr.  
Margo D. Northrup

Jerry L. Wattier  
Lindsey Riter-Rapp

Darla Pollman Rogers  
Robert D. Hofer, Of Counsel

**BEFORE THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD**

IN THE MATTER OF THE PETITION OF )  
SOUTH DAKOTA ASSOCIATION OF ) Petition  
RURAL WATER SYSTEMS FOR A )  
DECLARATORY RULING )

Petition for Declaratory Ruling

Pursuant to the provisions of SDCL 1-26-15, I, Dennis Davis, of 203 Center Street W., Madison, South Dakota, state that I am the Executive Director of South Dakota Association of Rural Water Systems (SDARWS), and hereby petition the South Dakota One-Call Notification Board for its declaratory ruling in regard to the following issues:

I. Issue 1 – Clarification of minimum horizontal clearance of eighteen inches

(1) The state statute or board rule or order in question is SDCL 49-7A-8 which states as follows:

An operator shall, upon receipt of the notice, advise the excavator of the location of underground facilities in the proposed excavation area by marking the location of the facilities with stakes, flags, paint, or other clearly identifiable marking within eighteen inches horizontally from the exterior sides of the underground facilities. The board shall promulgate rules, pursuant to chapter 1-26, to establish the response time for operators to mark the underground facilities. The response time shall be no later than forty-eight hours after the receipt of the notice, excluding Saturdays, Sundays, and legal holidays of the state or the excavation start time provided by the excavator, whichever is later. The response time may be less than forty-eight hours for emergency or subsequent inquiries to the original locate request and may be longer than forty-eight hours for nonexcavation requests. **Excavators shall maintain a minimum horizontal clearance of eighteen inches between a marked underground facility and the cutting edge of any mechanical equipment. If excavation is required within eighteen inches, horizontally, the excavator shall expose the facility with hand tools or noninvasive methods approved pursuant to rule and shall protect and support the facility prior to further excavation with mechanical equipment (emphasis added).**

(2) The facts and circumstances which give rise to the issue to be answered by the board are as follows:

Rural water systems in South Dakota are marking their underground facilities as required pursuant to South Dakota statutes. Rural water underground facilities are typically at a depth of five and one-half (5 ½) to six (6) feet. In certain instances, after the markings are complete, excavators are burying other underground facilities within eighteen inches horizontally (i.e. parallel to level ground) from the flags provided by the

rural water system and even in some instances directly above the flags. (See Attachment A, Photo) Various rural water systems have evidence that the underground facilities have not been placed with “hand tools or noninvasive methods” as required by statute.

(3) The precise issue to be answered by the board's declaratory ruling is as follows:

Regardless of depth of an underground facility, is it a violation of SDCL 49-7A-8 to bury an underground facility within eighteen inches horizontally on either side from the markings of another underground facility if hand tools or other noninvasive tools are not used?

II. Issue 2 – Marking outside, edge of pipe

(1) The state statute or board rule or order in question is SDCL 49-7A-8 which states as follows:

**An operator shall, upon receipt of the notice, advise the excavator of the location of underground facilities in the proposed excavation area by marking the location of the facilities with stakes, flags, paint, or other clearly identifiable marking within eighteen inches horizontally from the exterior sides of the underground facilities.** The board shall promulgate rules, pursuant to chapter 1-26, to establish the response time for operators to mark the underground facilities. The response time shall be no later than forty-eight hours after the receipt of the notice, excluding Saturdays, Sundays, and legal holidays of the state or the excavation start time provided by the excavator, whichever is later. The response time may be less than forty-eight hours for emergency or subsequent inquiries to the original locate request and may be longer than forty-eight hours for nonexcavation requests. Excavators shall maintain a minimum horizontal clearance of eighteen inches between a marked underground facility and the cutting edge of any mechanical equipment. If excavation is required within eighteen inches, horizontally, the excavator shall expose the facility with hand tools or noninvasive methods approved pursuant to rule and shall protect and support the facility prior to further excavation with mechanical equipment (emphasis added).

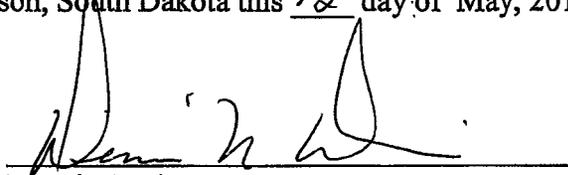
(2) The facts and circumstances which give rise to the issue to be answered by the board are as follows:

The pipes used by rural water systems can be up to 56 inches in diameter. If the rural water system places a flag (or other appropriate marking) directly above the center of the pipe, the horizontal clearance of eighteen inches does not adequately provide clearance of the outside edges of the pipe nor provide adequate space to ensure hand digging is safe. Rural water systems believe it appropriate to mark each edge of the pipe and mark with spray paint the center of the pipe which would require the excavator to maintain a minimum horizontal clearance of eighteen inches from both markings. (See Attachment B, Diagram).

(3) The precise issue to be answered by the board's declaratory ruling is as follows:

Do South Dakota statutes and administrative rules allow rural water systems to mark the outside edge of the pipe in two places and mark with spray paint or flags the center of the pipe in order to ensure an excavator maintains a minimum horizontal clearance of eighteen inches from the markings on both sides of the outside edge?

Dated at Madison, South Dakota this 12<sup>th</sup> day of May, 2010.

A handwritten signature in black ink, appearing to read "Dennis Davis", written over a horizontal line.

Dennis Davis  
Executive Director  
South Dakota Association of Rural Water Systems