

**BEFORE THE ONE CALL BOARD OF THE STATE OF SOUTH DAKOTA**

**IN THE MATTER OF THE PETITION )  
OF SOUTH DAKOTA ASSOCIATION )     DECLARATORY RULING  
OF RUAL WATER SYSTEMS FOR A )  
DECLARATORY RULING             )**

On May 19, 2010, the South Dakota Association of Rural Water Systems (the "Association") filed a Petition for a Declaratory Ruling pursuant to SDCL 1-26-15 and ARSD 20:25:03:11. The Association presented two clarification questions relative to SDCL 49-7A-8.

*49-7A-8. Location of underground facilities--Marking. 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.*

The first question was, "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?" The second issue was whether, "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?"

The Association agreed to waive ARSD 20:25:01:12 which requires the Board to issue its ruling within 120 days. The Board has jurisdiction over this matter pursuant to SDCL Chapter 49-7A. At its September 29, 2010 meeting, the South Dakota One Call Board

(the "Board") considered both questions. The Association presented testimony and exhibits relative to its Petition.

- I. 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?

The questionable statute does not specifically address where an underground facility can be buried and the Board does not desire to rule regarding the burial of facilities. With that said, the Board agrees the statute specifically addresses excavation procedures and such procedures are not dependent on facility depth. The Board further agrees excavation is necessary when burying an underground facility and if other facilities are present and marked, hand tools or other noninvasive tools must be used, within eighteen inches horizontally on either side from the markings, prior to exposure of the existing facility.

The Board, therefore, answered this question in the affirmative. Regardless of depth, it is a violation of SDCL 49-7A-8 to bury an underground facility within eighteen inches horizontally on either side from the markings of an existing underground facility if the existing facility is not first exposed with hand tools or other board approved noninvasive method.

- II. Do South Dakota statutes and administrative rules allow rural water systems to mark the outside edge of the pipe 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?

The second question goes to proper facility marking. The only statutory requirement is that facilities be marked, "with stakes, flags, paint, or other clearly identifiable marking within eighteen inches horizontally from the exterior sides of the underground facilities." Neither the statute nor rule requires the area between the exterior sides of an underground facility be marked. The Board agrees, however, it is prudent to do so and certainly an operator may make any such a mark to most clearly communicate the location of its underground facilities. Again, the Board answers this question in the affirmative. It is therefore

**ORDERED**, regardless of depth, it is a violation of SDCL 49-7A-8 to bury an underground facility within eighteen inches horizontally on either side from the markings of an existing underground facility if the existing facility is not first exposed with hand tools or other board approved noninvasive method. It is

**FURTHER ORDERED**, although it is not required, South Dakota statutes and administrative rules allow a facility operator to mark the outside edge of its facility and further 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

<p style="text-align: center;"><b>CERTIFICATE OF SERVICE</b></p> <p>The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically.</p> <p>By: <u></u></p> <p>Date: <u>10/7/2010</u></p>
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BY ORDER OF THE ONE CALL BOARD:

 10/7/2010  
Bleau LaFave, Chairman (Date)

 10/7/2010  
Larry Janes, Executive Director (Date)

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the Declaratory Ruling were electronically served on the following on the 19<sup>th</sup> day of October, 2010.

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