



South Dakota One Call Notification Board

Larry Englerth
Executive Director

1012 North Sycamore Ave.
Sioux Falls, SD 57110

Tel/Fax (605) 339-0529
Email: exedir@sdonecall.com

July 14, 2004

First Dakota Horticulture, Inc.
46551 264th Street
Sioux Falls, SD 57107

Crooks Municipal Utilities
108 East Main Street
Crooks, SD 57020

Under the authority granted by SDCL 49-7A-22, the Enforcement Committee of the South Dakota One Call Notification Board met on July 14, 2004, to determine whether there is probable cause to believe that a violation has occurred relative to Complaint OC04-005 filed by Crooks Municipal Utilities against First Dakota Horticulture.

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

Complaint OC04-005

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

The Enforcement Committee found that there was probable cause that First Dakota Horticulture had violated SDCL 49-7A-5 by commencing without providing advance notification to the South Dakota One Call System.

The committee recommends a penalty of five-hundred dollars (\$500.00) with four-hundred fifty dollars (\$450.00) suspended on the basis that First Dakota Horticulture fully comply with SDCL 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC04-005.

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 either or both of the violations alleged in this complaint. Your decision should be reflected on the second page of the attachment. **Please return the signed form prior to the close of business on July 30, 2004 to:**

South Dakota One Call Notification Board
1012 N. Sycamore Avenue
Sioux Falls, SD 57110-5747

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 either or both of the alleged violations, the South Dakota One Call Notification Board will conduct a hearing as a contested case under Chapter 1-26 to resolve the allegation (s) alleged in the rejected complaint(s). 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.**

Sincerely,

Larry L. Englerth
Executive Director

ENFORCEMENT COMMITTEE ACTION

OC04-005

Crooks Municipal Utilities vs. First Dakota Horticulture

FINDINGS:

OC04-005

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

Allegation is made by Crooks Municipal Utilities that First Dakota Horticulture commenced excavation at 209 W. 9th Street, Crooks SD, without providing prior notification to the South Dakota One Call System as required by SDCL 49-7A-5.

The response received from First Dakota Horticulture did not dispute the allegation that excavation activity had commenced without providing advance notification to the South Dakota One Call System.

In reviewing the complaint filed by Crooks Municipal Utilities and the response from First Dakota Horticulture, the committee determined the following:

First Dakota Horticulture had commenced excavation without providing advanced notification to the South Dakota One Call System.

Based on the information noted above, the Committee found that there was probable cause that First Dakota Horticulture had violated SDCL 49-7A-5 without providing advance notice to the South Dakota One Call System.

RECOMMENDATION

OC04-005

VIOLATION OF SOUTH DAKOTA SDCL 49-7A-5:

The Committee found that First Dakota Horticulture had violated SDCL 49-7A-5 by commencing excavation at 209 W. 9th Street, Crooks SD, without providing advance notification to the South Dakota One Call System as required by statute.

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

The committee recommends a penalty of five hundred dollars (\$500.00) with four-hundred fifty dollars (\$450.00) suspended on the basis that First Dakota Horticulture fully comply with SDCL 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC04-005.

COMMENTS:

The Committee acknowledges that the excavation activity was restricted to 'hand digging' activities and that First Dakota Horticulture provided a plan to insure that they would comply with South Dakota statutes and rules in the future. With consideration given to these factors, the Committee also determined that First Dakota Horticulture was excavating under third party tickets and therefore, would be required to change their existing practices to insure they were in compliance with statutes. Any failure to comply with the law in the future would make First Dakota Horticulture liable for the suspended portion of the penalty plus any future penalties assessed under SDCL 49-7A-19.

ACCEPTANCE OR REJECTION BY PARTIES
COMPLAINT OC04-005

THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-005.

IF BOTH PARTIES INVOLVED IN THIS COMPLAINT ACCEPT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-005, THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY SDCL 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT OC04-005.

IF EITHER PARTY INVOLVED IN THIS COMPLAINT REJECT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-005. THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD WILL SET UP A HEARING TO RESOLVE THE REJECTED RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-005. 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 July 30, 2004.

SOUTH DAKOTA ONE CALL NOTIFICATION BOARD
1012 N. SYCAMORE AVENUE
SIOUX FALLS, SD 57110-5747

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

OC04-005

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

I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC04-005 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION.

 7-19-04

Signature
Crooks Municipal Utilities

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC04-005 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC04-005.

Signature
Crooks Municipal Utilities

ACCEPTANCE OR REJECTION BY PARTIES
COMPLAINT OC04-005

THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-005.

IF BOTH PARTIES INVOLVED IN THIS COMPLAINT ACCEPT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-005, THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY SDCL 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT OC04-005.

IF EITHER PARTY INVOLVED IN THIS COMPLAINT REJECT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-005. THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD WILL SET UP A HEARING TO RESOLVE THE REJECTED RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC04-005. 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 July 30, 2004.

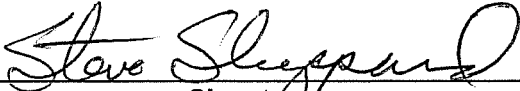
SOUTH DAKOTA ONE CALL NOTIFICATION BOARD
1012 N. SYCAMORE AVENUE
SIOUX FALLS, SD 57110-5747

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

OC04-005

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

I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC04-005 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION.



Signature
First Dakota Horticulture

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC04-005 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC04-005.

Signature
First Dakota Horticulture

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

First Dakota Horticulture, Inc.
46551 264th Street
Sioux Falls, SD 57107

2. Article Number
(Transfer from service label)

COMPLETE THIS SECTION ON DELIVERY

A. Signature
x Matthew Schumacher Agent
 Addressee

B. Received by (Printed Name) C. Date of Delivery
Matthew Schumacher *7-19-04*

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

FIRST DAKOTA HORTICULTURE, INC.

46551 264TH STREET
SIOUX FALLS, SD 57107-6903
(605) 526-4428

FIRST NATIONAL BANK
100 S. PHILLIPS AVE.
P.O. BOX 5186
SIOUX FALLS, SD 57117-5186

4921

78-2/914

7/20/2004

PAY TO THE ORDER OF SOUTH DAKOTA ONE CALL SYSTEM

\$ **50.00

Fifty and 00/100***** DOLLARS

SOUTH DAKOTA ONE CALL SYSTEM
1012 N SYCAMORE AVENUE
SIOUX FALLS, SD 57110-5747


AUTHORIZED SIGNATURE

MEMO

⑈004921⑈ ⑆091400020⑆ 139⑈704⑈6⑈

FIRST DAKOTA HORTICULTURE, INC.

4921

SOUTH DAKOTA ONE CALL SYSTEM

7/20/2004

Date	Type	Reference	Original Amt.	Balance Due	Discount	Payment
07/20/2004	Bill		50.00	50.00		50.00
				Check Amount		50.00

1ST NATIONAL BANK

50.00