



## South Dakota One Call Notification Board

Larry Englerth  
Executive Director

1012 North Sycamore Ave.  
Sioux Falls, SD 57110

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May 31, 2005

Joe Vandersnick  
Vandersnick Excavating  
48587 254<sup>th</sup> Street  
Garretson, SD 57030

Ginny Beck  
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 May 31, 2005, to determine whether there is probable cause to believe that a violation has occurred relative to Complaint OC05-003 filed by Crooks Municipal Utilities against Vandersnick Excavating.

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

### **Complaint OC05-003**

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

The Committee found there was probably cause that Vandersnick Excavating had violated SDCL 49-7A-5 by commencing excavation at 47291 Dusenbergl Place, Renner, SD, without providing advance notification to the South Dakota One Call System as required by statute.

The committee recommends a penalty of five hundred dollars (\$500.00) with three hundred dollars (\$300.00) suspended on the following conditions:

1. Vandersnick Excavating fully complies with SDCL 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC05-003 by both parties.
2. Vandersnick Excavating fully complies with the resolution of Complaint OC05-003 by making payment of the two hundred dollars (\$200) within thirty (30) days of the issuance of the Order to close Complaint OC05-003.

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. 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 June 20, 2005 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 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 605-339-0529 or by email at [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 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. Englerth  
Executive Director

# **ENFORCEMENT COMMITTEE ACTION OC05-003**

## **Crooks Municipal Utilities vs. Vandersnick Excavating**

### **FINDINGS:**

#### **OC05-003**

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

Allegation is made by Crooks Municipal Utilities that Vandersnick Excavating commenced excavation at 47291 Dusenbergl Place, Renner, SD, without providing prior notification to the South Dakota One Call System as required by SDCL 49-7A-5.

The response received from Vandersnick Excavating did not dispute the allegation that excavation activity had commenced without providing advance notification to the South Dakota One Call System. The response did provide the reasoning for the failure to provide advance notification but the conditions cited are not excluded by SDCL 49-7A.

In reviewing the complaint filed by Crooks Municipal Utilities and the response from Vandersnick Excavating, the committee determined the following:

Vandersnick Excavating 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 Vandersnick Excavating had violated SDCL 49-7A-5 without providing advance notice to the South Dakota One Call System.

### **RECOMMENDATION**

#### **OC05-003**

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

The Committee found there was probably cause that Vandersnick Excavating had violated SDCL 49-7A-5 by commencing excavation at 47291 Dusenbergl Place, Renner, 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 three hundred dollars (\$300.00) suspended on the following conditions:

1. Vandersnick Excavating fully complies with SDCL 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC05-003 by both parties.
2. Vandersnick Excavating fully complies with the resolution of Complaint OC05-003 by making payment of the two hundred dollars (\$200) within thirty (30) days of the issuance of the Order to close Complaint OC05-003.

### **COMMENTS:**

**ACCEPTANCE OR REJECTION BY PARTIES  
COMPLAINT OC05-003**

**THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC05-003.**

**IF BOTH PARTIES INVOLVED IN THIS COMPLAINT ACCEPT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC05-003, THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY SDCL 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT OC05-003.**

**IF EITHER PARTY INVOLVED IN THIS COMPLAINT REJECT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC05-003. THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD WILL SET UP A HEARING TO RESOLVE THE REJECTED RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC05-003. 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.**

**OC05-003**

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

**I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC05-003 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION.**

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Signature

**I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC05-003 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC05-003.**

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Signature

**ACCEPTANCE OR REJECTION BY PARTIES  
COMPLAINT OC05-003**

**THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC05-003.**

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**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  
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**OC05-003**

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

**I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC05-003 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION.**

  
\_\_\_\_\_  
Signature  
Crooks Municipal Utilities

**I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC05-003 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC05-003.**

\_\_\_\_\_  
Signature  
Crooks Municipal Utilities

**ACCEPTANCE OR REJECTION BY PARTIES  
COMPLAINT OC05-003**

THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC05-003.

IF BOTH PARTIES INVOLVED IN THIS COMPLAINT ACCEPT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC05-003, THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY SDCL 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT OC05-003.

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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.

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**OC05-003**

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

**I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC05-003 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION.**

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Signature  
Vandersnick Excavating

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Signature  
Vandersnick Excavating