

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

| | | |
|-------------------------------|---|----------|
| IN THE MATTER OF THE |) | ORDER |
| COMPLAINT AGAINST VANDERSNICK |) | OC05-003 |
| EXCAVATING |) | |

On March 4, 2005, the South Dakota Public Utilities Commission received a complaint from Crooks Municipal Utilities against Vandernick Excavating. Vandernick Excavating did not dispute the allegation in the complaint that they had excavated without providing advance notice to the South Dakota One Call System but did provide alternative scenario for the allegation.

On May 31, 2005 the Enforcement Committee of the South Dakota One Call Notification Board met and determined that probable cause exists in Docket OC05-003 in regards to the allegation that Vandernick Excavating has violated SDCL 49-7A-5. The Enforcement Committee recommended a \$500.00 penalty with \$300.00 suspended on the grounds that Vandernick Excavating fully comply with SDCL 49-7A and ARSD Article 20:25 for twelve months following the date of Vandernick Excavating signing the Enforcement Committee Action Agreement and that Vandernick Excavating fully comply with the resolution of this complaint by making payment of two hundred dollars within thirty days of the issuance of this order.

All interested parties agreed with the recommendations of the Enforcement Committee. By June 1, 2005, all interested parties had signed the Enforcement Committee Action Agreement and on June 4, 2005 payment was received from Vandernick Excavating relative to this complaint. It is therefore,

ORDERED, that the terms and conditions of the Enforcement Committee Action Agreement shall be incorporated into this Order by reference and attached hereto, the same as if it was fully recited herein and shall as such be fully binding upon the parties to it; and it is

FURTHER ORDERED that the docket in this matter shall be closed.

The South Dakota One-Call Notification Board has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-7A, specifically 49-7A-5, 49-7A-18, 49-7A-20, 49-7A-22, 49-7A-26.

Dated at Sioux Falls, South Dakota, this 4th day of June, 2005.

CERTIFICATE OF SERVICE

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, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By: _____
Larry Englerth, Executive Director

Date: June 4, 2005

BY ORDER OF THE SD ONE-CALL BOARD:

KEVIN KOUBA, Chairman

Under the Authority and on Behalf of the
Chairman

LARRY 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 Dusenberg 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 Dusenberg 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: