



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 7, 2005

Mebius Nursery & Garden Center
1700 N. Foster Street
Mitchell, SD 57301

Curt Grafing
Kaneb Pipe Line
3721 S. Grange Ave.
Sioux Falls, SD 57105

Under the authority granted by SDCL 49-7A-22, the Enforcement Committee of the South Dakota One Call Notification Board met on July 6, 2005, to determine whether there is probable cause to believe that a violation has occurred relative to Complaint OC05-004 filed by Kaneb Pipe Line against Mebius Nursery & Garden Center

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

Complaint OC05-003

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

The Committee found there was probable cause that Mebius Nursery & Garden Center had violated SDCL 49-7A-5 by commencing excavation at the new Scott Franz residence (T103N, R59W, Sec 8, SW & NW Quarter Sections), 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. Mebius Nursery & Garden Center fully complies with SDCL 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC05-004 by both parties.
2. Mebius Nursery & Garden Center fully complies with the resolution of Complaint OC05-004 by making payment of the two hundred dollars (\$200) within thirty (30) days of the issuance of the Order to close Complaint OC05-004.

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 July 29, 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. 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
OC05-004
Kaneb Pipe Line vs. Mebius Nursery & Garden Center

FINDINGS:

OC05-004

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

Allegation is made by Kaneb Pipe Line that Mebius Nursery & Garden Center commenced excavation at the new Scott Franz residence (T103N, R59W, Sec 8, SW & NW Quarter Sections), without providing prior notification to the South Dakota One Call System as required by SDCL 49-7A-5.

Mebius Nursery & Garden Center 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 Kaneb Pipe Line and the concurrence from Mebius Nursery & Garden Center, the committee determined the following:

Mebius Nursery & Garden Center 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 Mebius Nursery & Garden Center had violated SDCL 49-7A-5 without providing advance notice to the South Dakota One Call System.

RECOMMENDATION

OC05-004

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

The Committee found there was probable cause that Mebius Nursery & Garden Center had violated SDCL 49-7A-5 by commencing excavation at the new Scott Franz residence (T103N, R59W, Sec 8, SW & NW Quarter Sections) 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. Mebius Nursery & Garden Center fully complies with SDCL 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC05-004 by both parties.
2. Mebius Nursery & Garden Center fully complies with the resolution of Complaint OC05-004 by making payment of the two hundred dollars (\$200) within thirty (30) days of the issuance of the Order to close Complaint OC05-004.

COMMENTS:

**ACCEPTANCE OR REJECTION BY PARTIES
COMPLAINT OC05-004**

THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC05-004.

IF BOTH PARTIES INVOLVED IN THIS COMPLAINT ACCEPT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC05-004, THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY SDCL 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT OC05-004.

IF EITHER PARTY INVOLVED IN THIS COMPLAINT REJECT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC05-004. THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD WILL SET UP A HEARING TO RESOLVE THE REJECTED RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC05-004. 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 29, 2005.

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.

OC05-004

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

I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC05-004 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION.



Signature

Mebius Nursery and Garden Center

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC05-004 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC05-004.

Signature
Mebius Nursery and Garden Center

**ACCEPTANCE OR REJECTION BY PARTIES
COMPLAINT OC05-004**

THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC05-004.

IF BOTH PARTIES INVOLVED IN THIS COMPLAINT ACCEPT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC05-004, THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY SDCL 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT OC05-004.

IF EITHER PARTY INVOLVED IN THIS COMPLAINT REJECT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC05-004. THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD WILL SET UP A HEARING TO RESOLVE THE REJECTED RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC05-004. 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 29, 2005.

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.

OC05-004

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

I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC05-004 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION.

Curt Graefing 7-8-05
Signature

Kaneb Pipe Line

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC05-004 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC05-004.

Signature
Kaneb Pipe Line

U.S. Postal Service™ Delivery Confirmation™ Receipt

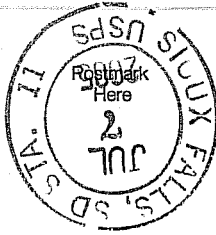
Postage and Delivery Confirmation fees must be paid before mailing.

Article Sent To: (to be completed by mailer)

(Please Print Clearly)

Curt Grafing
Kaneb Pipe Line
3721 S. Grange Ave.
Sioux Falls, SD 57105

DELIVERY CONFIRMATION NUMBER:
0302 2940 0001 2390 5358



POSTAL CUSTOMER:

Keep this receipt. For Inquiries:
Access internet web site at
www.usps.com®
or call 1-800-222-1811

CHECK ONE (POSTAL USE ONLY)

- Priority Mail™ Service
 First-Class Mail® parcel
 Package Services parcel

PS Form 152, May 2002

(See Reverse)

U.S. Postal Service™ Delivery Confirmation™ Receipt

Postage and Delivery Confirmation fees must be paid before mailing.

Article Sent To: (to be completed by mailer)

(Please Print Clearly)

Mebius Nursery
1700 N. Foster Street
Mitchell, SD 57301

DELIVERY CONFIRMATION NUMBER:
0302 2940 0001 2390 5358



POSTAL CUSTOMER:

Keep this receipt. For Inquiries:
Access internet web site at
www.usps.com®
or call 1-800-222-1811

CHECK ONE (POSTAL USE ONLY)

- Priority Mail™ Service
 First-Class Mail® parcel
 Package Services parcel

PS Form 152, May 2002

(See Reverse)