

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

IN THE MATTER OF THE)	ORDER
COMPLAINT AGAINST MEBIUS)	
NURSERY)	OC05-004

On May 20, 2005, the South Dakota Public Utilities Commission received a complaint from Kaneb Pipe Line against Mebius Nursery. Mebius Nursery did not dispute the allegations in the complaint.

On July 6, 2005 the Enforcement Committee of the South Dakota One-Call Notification Board met and determined that probable cause exists in Docket OC05-004 in regards to the allegation that Mebius Nursery has violated SDCL 49-7A-5. The Enforcement Committee recommended a \$500.00 penalty with \$300.00 suspended on the grounds that Mebius Nursery fully comply with SDCL 49-7A and ARSD Article 20:25 for twelve months following the date of Mebius Nursery signing the Enforcement Committee Action Agreement.

All interested parties agreed with the recommendations of the Enforcement Committee. By August 4, 2005, all interested parties had signed the Enforcement Committee Action Agreement. 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 upon compliance with the provisions of the Enforcement Committee Action Agreement 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 5th day of August, 2005.

CERTIFICATE OF SERVICE

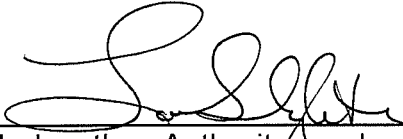
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By: 
Larry Englerth, Executive Director

Date: August 5, 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 OC05-004

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: