

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

TO: VINCE FINKHOUSE dba EAGLE EXCAVATING

FROM: SOUTH DAKOTA ONE CALL NOTIFICATION BOARD

RE: NOTICE OF COMPLAINT; DEADLINE FOR ANSWER;

In the Matter of the Complaint OC05-005 filed by Montana-Dakota Utilities Co. against Vince Finkhouse, dba Eagle Excavating, regarding a failure to provide notification of proposed excavation as required by SDCL 49-7A-5; failure to hand dig and expose underground utilities as required by SDCL 49-7A-8; and failure to provide notification of damage to an underground facility as required by SDCL 49-7A-12.

You are hereby notified that the enclosed complaint as referenced above has been filed with the South Dakota One Call Notification Board against Vince Finkhouse, dba Eagle Excavating. Pursuant to SDCL 49-7A-23 & SDCL 49-7A-24 you are required to answer this complaint, in writing, no later than the close of business on July 29, 2005, by filing the original and two copies of the answer at the address listed below and by serving a copy on the complainant.

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

Your answer should be as thorough and detailed as possible and should include any documentation that supports your position e.g. witness statements, pictures, etc. We would encourage you to specifically address the alleged violations of SDCL 49-7A-5, SDCL 49-7A-8 and SDCL 49-7A-12 referenced in the complaint:

- Allegation that you failed to provide advance notification prior to excavation for the purpose a water line repair at 16630 Elk Horn Road in Piedmont, SD.
- Allegation that you stated you were aware a gas line was in the area of the excavation and you failed to hand dig and expose the gas line prior to excavation at 16630 Elk Horn Road in Piedmont, SD.
- Allegation that you damaged the gas line at 16630 Elk Horn Road in Piedmont, SD and failed to provide notification to the South Dakota One Call Notification Center or Montana-Dakota Utilities.

Pursuant to SDCL 49-7A-22 a panel of Board members will make a determination of probable cause based on the complaint and your response. If probable cause is determined, the panel may recommend penalties under SDCL 49-7A-18 or SDCL 49-7A-19.

If financial penalties are assessed in response to Complaint OC05-005; the amount will be based on the factors noted in SDCL 49-7A-26 which are as follows:

1. The amount of damage
2. The degree of threat to the public safety, and
3. The public inconvenience caused;
4. The respondent's plans and procedures to insure future compliance with statute and rules;
5. Any history of previous violations;
6. Other matters as justice requires.

You may address any of these items in your response if you believe it would be of value to the Enforcement Panel when they consider this complaint.

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.

A copy of the Operations Manual for Facility Operators and Excavators is enclosed. The South Dakota One Call Statute is reprinted in this manual starting on page 25 with the penalty section starting at the bottom of page 29. We would encourage you to review this material prior to completing your response.

Procedural questions may be directed to Larry Englerth, Executive Director to the South Dakota One Call Notification Board, at 605-339-0529 or by email to 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 Enforcement Panel review and/or a 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.

Enclosure: Operations Manual & copy of complaint

cc: Jim Mann, Montana-Dakota Utilities Co., Complainant (cover letter only via email)

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:

Vince Finkhouse
dba Eagle Excavating
4201 S. Interstate 90
Rapid City, SD 57703

2. Article Number

(Transfer from service label)

PS Form 3811, February 2004

COMPLETE THIS SECTION ON DELIVERY

A. Signature

Carolyn Bunnell Agent Addressee

B. Received By (Printed Name)

CAROLYN BUNNELL

C. Date of Delivery

14 JUL 2005

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

7003 1010 0000 7865 0206

Domestic Return Receipt

102595-02-M-1540