



Larry Englerth
Executive Director
exedir@sdonecall.com

1012 North Sycamore Ave.
Sioux Falls, SD 57110

Tel/Fax (605) 339-0529
Email:

June 12, 2007

Dion Pease
Pease Construction
5701 S Deer Park Dr
Sioux Falls, SD 57108

Arnie Wenbourne
A T & T
3000 W. 10th Street
Sioux Falls, SD 57104

The Enforcement Committee recommendation to resolve Complaint OC07-004 has been accepted by both parties involved in the complaint. The order closing this Complaint is attached.

Sincerely,

s/s Larry Englerth

Larry L. Englerth
Executive Director

BEFORE THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD

IN THE MATTER OF THE) ORDER
COMPLAINT AGAINST PEASE) OC07-004
CONSTRUCTION)

On May 3, 2007, the South Dakota Public Utilities Commission received a complaint from A T & T against Pease Construction. Pease Construction stated that they had not been the party that did the excavation and provided a statement from the responsible party.

On June 1, 2007, the Enforcement Committee of the South Dakota One Call Notification Board met and determined that probable cause does not exist in Docket OC07-004 in regards to the allegation that Pease Construction has violated SDCL 49-7A-5.

All interested parties agreed with the recommendations of the Enforcement Committee. By June 11, 2007, all interested parties had signed the Enforcement Committee Action Agreement.

ORDERED, that the terms and conditions of the Enforcement Committee Action Agreement and the signed Acceptance of the recommended resolution by both parties 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 12th day of June, 2007.

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: s/s Larry Englerth

Larry Englerth, Executive Director

Date: June 12, 2007

BY ORDER OF THE SD ONE-CALL BOARD:

s/s Jerry Schroeder

JERRY SCHROEDER, Chairman

s/s Larry Englerth

Under the Authority and on Behalf of the
Chairman

LARRY ENGLERTH, Executive Director

ENFORCEMENT COMMITTEE ACTION

OC07-004

A T & T Corporation vs. Pease Construction, LLC

FINDINGS:

OC07-004

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

Allegation is made by A T & T Corporation that Pease Construction, LLC commenced excavation at 3327, 3329, 3331, & 3333 West Bitterroot Street in Sioux Falls, SD, without providing prior notification to the South Dakota One Call System as required by SDCL 49-7A-5.

Pease Construction, LLC did not dispute the allegation that excavation activity had commenced without providing advance notification to the South Dakota One Call System but did state that the excavation was completed by the property owner Cornerstone Properties, LLC. A letter accepting responsibility for the excavation at these addresses was submitted by Cornerstone Properties, LLC.

In reviewing the complaint filed by A T & T Corporation and the response from Pease Construction, LLC, the committee determined the following:

Cornerstone Properties, LLC had commenced excavation without providing advanced notification to the South Dakota One Call System.

The Complaint has been filed against Pease Construction, LLC and there was no documentation to dispute the claim that Pease Construction was not the excavator at the identified addresses.

Based on the information noted above, the Committee found that there was not probable cause that Pease Construction, LLC had violated SDCL 49-7A-5 without providing advance notice to the South Dakota One Call System.

RECOMMENDATION

OC07-004

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

The Committee found there was not probable cause that Pease Construction, LLC had violated SDCL 49-7A-5 by commencing excavation at 3327, 3329, 3331, & 3333 West Bitterroot Street in Sioux Falls, SD, without providing prior notification to the South Dakota One Call System as required by SDCL 49-7A-5.

COMMENTS:

The response from Pease Construction, LLC included a statement "Furthermore, the property owner confirms that the landscaping and privacy panels were under 12" in depth (thus exempt from South Dakota One Call notification)". The statute exemption specifically states that the exemption is restricted to "tilling of soil and gardening to a depth of twelve inches. This exemption would not apply to the installation of a privacy fence or general landscaping

The response from Cornerstone Properties, LLC included a statement that implied a contact with A T & T would make it permissible to excavate at this property without providing notification to the South Dakota One Call System. No company would have the authority to grant such an exemption. The company doing the sprinkler work would be required to provide notification to the South Dakota One Call System prior to installing the irrigation system.

The recommended dismissal of this complaint does not preclude the filing of another complaint relative to the installation of privacy fence.