

Background Information

This complaint is the result of a situation started last year during a project we did for Midco on Peninsula Point, Lake Madison, South Dakota. It was caused by Lake Madison Sanitary District not marking sewer services in response to our locate request #2115318658. There have been several more damaged sewers showing up in recent months and we expect more over the next years. We had two last year and "threatened" Lake Madison Sanitary District that either they take responsibility or we would file a complaint for each house we passed that they failed to mark the service, effectively all of them on Peninsula Point. In retrospect, we should have filed all 38 complaints, but after Lake Madison agreed to pay those claims and trying to do our best to not burden the One Call System with such a large filing, we felt Lake Madison Sanitary had learned the lesson about marking services and would take care of future issues. They have not. The timing of these complaints is due to sewer damages showing up almost a year later and Lake Madison doing everything they can to stall, deflect blame and ignore their customers and us to "run the clock out" regarding filing deadlines on complaints. When a sewer damage shows up 5 years from now, what will be the excavators' recourse if the "no more than 1 year" time limit to file complaints is strictly enforced? Also, Midco has not notified us promptly on several occasions, pushing our timeline to file back. On 6/23, 2021 we called in ticket numbers 2115318658, 2115318653, 2115318652 and the affected utilities marked their lines. Lake Madison Sanitary also showed up and marked a sewer main under a street indicating they had responded. On July 6, 2021 Jeff Jones, co-owner and manager of ECI got a call from Midco indicating there had been several sewer services damaged. Jeff spoke to the foreman on the job and he said he did not see any services marked, just the mains. He had taken photos of all the lots he went through and the various locate marks present and not a single sewer mark was shown in any yard or driveway. On July 6 Jeff called the Madison Sanitary District office and asked why the services were not marked. (see Jeff Jones' attached statement) He was told they would have Scott Johnson, their field person call back. He did not. Jeff called again on 7/7 and got Scott's number and called him asking why the service had not been marked. Scott Johnson told Jeff that "he didn't mark services, they weren't his responsibility." Jeff tried to explain the South Dakota Attorney General's 2008 opinion relating to sewer services being the responsibility of the sewer operator but Scott maintained services were not his responsibility. Over the course of two months, Jeff made 11 phone calls to Madison Sanitary District and Scott attempting to explain and educate them on their responsibilities. All attempts were futile as Scott insisted he did not have to mark services. Jeff called Larry Jaynes, Executive Director of the South Dakota One Call and explained the situation and asked for help. Mr. Jaynes apparently called Madison Sanitary District and attempted to educate them on the AG's decision but apparently had no success. Mr. Jaynes called Jeff back and informed him of the call. The homeowners had suffered greatly as a result of sewage backing into their homes during the 4th of July and wanted reimbursement. When they contacted Lake Madison Sanitary District, they were informed to send their bills to Midco, therefore us. I became involved at this point and started calling

the District office requesting a manager or supervisor call me back to discuss this. After repeated calls, no one from the District would call me back. Several months later and after threatening action, I got a call from their lawyer Cody Miller. I explained the situation and informed him that because of the District's behavior (not marking, stalling, ignoring requests to discuss this, denying responsibility etc.) I was going to file approximately 38 complaints, one for each lot passed with no marks. I also "demanded" they give the homeowners a stipend for loss of use of their homes, aggravation, pain etc. I gave them a deadline to pay by and if they accepted responsibility and paid these claims, I would not proceed with complaints. After this conversation, I felt I had a "gentleman's agreement" that he understood their error and we would be left out of any future damages caused by this particular project. I was wrong on all points. I received a letter from Mr. Miller (see attached) stating all kinds of legal positions and double talk, total denials of responsibility and many accusations of ECI being negligent etc . The last paragraph stated they would be paying the repair bills which I took as acknowledgment of the basic agreement and the setting of precedent. I felt the situation was resolved. I was wrong.