

On February 23, 2022 Midco received a call from Mike Reecy at 6582 Peninsula Point saying he was having problems with his sewer. Greg Buthe (Midco) emailed Scott Johnson (Lake Madison Sanitary District) and asked him to take care of this because he knew Lake Madison Sanitary had paid for the same type of damage at 6634 and 6640 Peninsula Point the previous year. Scott replied that this was not his problem and "We marked the line we showed you a picture and he hit it I will tell Mike the same thing I will tell Mike the same thing" (See attached email dated May 25). Note: Scott is apparently claiming he marked the sewer at 6582 Peninsula Point and we hit it during our construction project in June, 2021. We have provided photos of this driveway and yard during our construction that show the other utilities marked but no sewer marks. By his own admission, Scott refused to mark services in response to our locate request at this and every other address we worked at. Now he is claiming that he marked this line last summer ahead of us and has photos. He never has made them available to Midco or us.

I called Mike Reecy when I was notified about this and told him that LMSD had paid for the other damage claims in 2021 and I thought my deal with their lawyer was still valid. I told Mr. Reecy to contact them and send them the bill. He did and was ignored. We kept in touch and he kept telling me he was getting no response. I then sent a letter (see attached dated 6/7/22) to the District's Board attempting to get them to take care of this. As usual, no response. By this time, LMSD had stalled, ignored and prolonged this issue since February 23, 2022. I then had my attorney send a letter demanding action "or else" and finally got a response from LMSD. (see attached letters dated September 27, 2021 and August 10, 2022). In the last paragraph of the 2022 letter "regarding additional claims..." Mr. Miller claims the 2 damages we are filing complaints on were "completely different than the situations previously addressed as these were done at completely different times as well as the fact that these were clearly marked. In fact Scott Johnson has pictures showing that the proper markings were done prior to excavation by your client." We contacted Midco to see if any other contractors had done any mainline work after we were there. There were none. I asked Mr. Reecy if any other digging had been done on his property and he said a drop wire was buried from a pedestal northwest of his house to the same side and did not go under the driveway. Mr. Reecy gave me a collection of photos taken by the Roto Rooter tech that clearly shows an orange pipe going through the sewer line. This is the product we buried in June 2021. This is the same project Scott Johnson refused to mark services on and the same property and driveway we provided photos of showing no sewer marks taken the day we were digging there in 2021. Mr. Miller also claims it was marked prior to our excavation and they have photos to prove it.

In Mr. Miller's letter from September 27, 2021 to us, please notice the second to last paragraph. In part it says "The District has talked with the City of Madison, Big Sioux out of Sioux Falls, and other operators who have indicated that they conduct their markings the same as the District does. (i.e. not marking services) Additionally, the District has been conducting their marking procedures in the same manner for

a number of years consistent with multiple other operators' methods." What this statement says to me is "we don't mark our services because we never have and nobody else does, so that makes it okay." Attorney Miller goes on to say that the AG's opinion is not law but rather persuasive..." ECI believes this AG's ruling, opinion, whatever it is regarding sewer services and the operators' responsibility to locate them to be a valid rule and precedent, requiring compliance.

Also in that paragraph, Mr. Miller states "The District was only advised of the Attorney General's opinion regarding operator responsibility to mark private lines during communications with you and was certainly not operating in the face of such opinion." This statement is unbelievable. When the AG's decision came out in 2008, every ditch digger I've ever spoken with knew about it. The substantial cost of buying trucks, cameras and hiring more people to comply with the rule had to cause consternation and discussion in the sewer operator community. Mr. Miller indicated the District talks with their peers about this issue but apparently only once in the last 13 years and only because of us. In the thousands of projects we have done in the last 13 years, we have NEVER seen two guys get out of a truck with a camera/locator, go down a basement, open a clean out or remove a toilet and properly locate a service. Occasionally a guy will try to go off an old map or "witch" the sewer but never actually locate it. We only see that when the Roto Rooter man shows up after the damage has occurred. If a locator shows up at all, the guys from the more clever operators stick a flag in the yard knowing full well it is a guess at best. They usually have no idea where the sewer really is. We then follow the rules and mud vac a slot two to three feet either side of their mark and a foot below our bore head and pass through. The operators know that if a hit occurs, simply by showing up and putting down a mark, they can avoid having the word "intentional" on a complaint filed by the excavator. There is no doubt in my mind that the vast majority of sewer operators in South Dakota have made a deliberate, conscious and economically driven decision to not go through the process of having men actually physically locate lines as required by statute. They are gambling the sewer won't get hit and the cost of fixing a few is less than the cost of actual compliance with the rule. We believe Lake Madison Sanitary District is just another one of those operators. ECI feels the District should be aware of all rules and regulations set forth by the various local, State and Federal agencies that govern septic systems and not depend on us "negligent ditch diggers" to inform them of a thirteen year old rule.

Summary

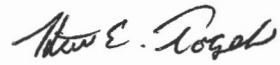
1. ECI had a valid ticket # 2115318658 for the address named in the complaint.
2. Scott Johnson (Lake Madison Sanitary District) repeatedly claimed he did not locate services and it wasn't his responsibility to do so.
3. We provided photos of the property and damage spot during construction showing no sign of green sewer paint or flags.
4. We have photos of the entire project and there are no sewer markings in any yard.
5. Attorney Miller stated that Lake Madison Sanitary District has a long standing marking procedure (apparently of not locating services) at the time of this project and they were not aware of the AG's ruling/opinion until we told them about it.

6. We believe the District was fully aware of the AG's decision and intentionally chose, as an economic decision to not mark services as required by this rule, making their repeated violations intentional.
7. Lake Madison has stalled, ignored requests from both ECI and affected homeowners and dragged this out making it impossible to get this situation handled and the homeowners properly reimbursed in a timely manner.
8. When damages recently surfaced, Scott (Lake Madison District) suddenly claims they had photographic proof that he "clearly marked" this and another property with a damaged sewer ahead of our construction last year, even though he said he doesn't mark services and the apparent company policy is to not mark services at that point in time and by their own admission, allegedly were not aware of the requirement to mark services until I told them about it after the job was done. We believe any photos of sewer service marks allegedly done prior to our construction on this job to be fraudulent.

Therefore,

1. ECI requests the Board consider Lake Madison Sanitary Sewer District's prolonged stalling and lack of response to our efforts and consider waiving any "90 day or 1 year" limitation on our filing.
2. ECI requests the Board consider the fact that sewer damages can remain undetected for many years, thereby making resolution through the complaint process impossible no matter how well documented.
3. ECI requests the Board rule in favor of our assertion that Lake Madison Sanitary District intentionally violated SDCL 49-7A-8.

Respectfully,



Keith E. Toczek