

On Wednesday June 8th 2022, I received a call from Greg Buthe (Midco) informing me of a damaged sewer line at 6606 Peninsula Point, Wentworth SD. The property owner is Mike Swiden. I called Mr. Swiden and explained the situation (again) with Lake Madison Sanitary District. At this point in time, I still believed I had a viable agreement with Lake Madison's Lawyer. I instructed Mr. Swiden to send the bill to Lake Madison. As stated in the background letter, found out Lake Madison's lawyer had a different interpretation of the agreement I thought we had. We received several letters from lawyer Cody Miller (see attached).

In his letter dated August 10, 2022, attorney Miller states "Regarding additional claims for damages which have arisen in the last year and provided to the Board for review, it is my understanding that these situations are 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 investigated whether any other jobs had been done on this property either by us or any other Midco contractor and there were none. The only time we were there was during our June/July 2021 time frame. Mr. Swiden said he doesn't have Midco service and didn't recall any other digging in his yard. He showed me the exact spot that the line was hit under a decorative rock in his landscaping. We have included several photos taken of the property while we were working there in June, 2021, one of the west side clearly showing no green locate paint or flags and the other, a close up of the exact spot Mr. Swiden showed me where the sewer was hit, under a decorative rock between the landscaping and yard also with no sign of paint or flags. We have also included a photo taken by me this summer (2022) showing the damage spot and a pedestal we set 3 feet away in line with the route of our cable. It is obvious the damage was done by us during June of 2021, not at a "completely different time" as alleged by lawyer Miller. This area was later marked by Roto Rooter technician Chris Lawson (605-680-9851) with green paint when they scoped and located the line on June 7, 2022. He said he saw no other markings when he was there.

In Mr. Miller's letter dated September 27, 2021, 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 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 operator's responsibility to locate them to be a valid rule and precedent, requiring compliance.

Also in the 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 with locators and hiring more people to comply with the new rule had to cause consternation and discussion in the sewer operator community. Mr. Miller indicated the District

talked 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, NOT ONCE have we 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. Not once. Occasionally a guy will try to go off an old map or "witch" the sewer, but never actually locate. We only see that happen 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 they have no idea where the sewer really is. We then follow the rules and mud vac a slot two or three feet either side of their mark and a foot below our bore head and pass through. These 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. It would cost money. They are gambling the sewer won't get hit and the cost of fixing a few is less than the actual cost of compliance with the rule. We believe Lake Madison Sanitary District is just another one of those operators. Mr. Miller basically says that in his letter of September 27, 2021. ECI feels the District should be aware of all rules and regulations set forth by the various local, State and Federal agencies that govern operators of 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 exact damage spot clearly showing no evidence of green sewer paint or flags the day before we bored through there.
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 that 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) suddenly claimed 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 company policy was to not mark services at that point in time and by their own admission, allegedly were not aware of the responsibility 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 in 2021 to be fraudulent.

Therefore,

1. We were made aware of this damage on June 8, 2022 by a call from Midco. We believe we are in the "90 day from date of discovery" period, but if not we ask the board to consider Lake Madison Sanitary 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