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June 1, 2007

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

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

Under the authority granted by SDCL 49-7A-22, the Enforcement Committee of the South Dakota One Call Notification Board met on June 1, 2007, to determine whether there is probable cause to believe that a violation has occurred relative to Complaint OC07-004 filed by A T & T Corporation against Pease Construction.

By a unanimous vote of the Enforcement Committee, the recommended resolution to the alleged violation included in this complaint was determined to be as follows:

**Complaint OC07-004**

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

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.

The committee recommends that Complaint OC07-004 be dismissed.

The committee recommends that Pease Construction review the comments included on the attached form to insure that there is a complete understanding of the requirements under SDCL 49-7A and the Administrative Rules.

The findings and recommendation of the Enforcement Committee are summarized on the attached form.

Under SDCL 49-7A-27 either party may accept the recommendation of the Enforcement Committee or reject the recommendation of the Enforcement Committee by requesting a formal hearing on the violation alleged in this complaint. Your decision should be reflected on the second page of the attachment with the header "Acceptance or Rejection by Parties. **Please return the signed and dated form prior to the close of business on June 25, 2007, to:**

South Dakota One Call Notification Board  
c/o Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501

If both parties accept this resolution, the South Dakota One Call Notification Board is required to accept the resolution and close this complaint. If either party rejects the Enforcement Committee resolution of the alleged violation, the South Dakota One Call Notification Board will conduct a hearing as a contested case under Chapter 1-26 to resolve the allegation alleged in the rejected complaint. Following this hearing, the Board shall either render a decision dismissing the complaint for insufficient evidence or shall impose a penalty pursuant to SDCL 49-7A-18 or SDCL 49-7A-19.

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.**

If you have any procedural questions relative to this complaint, please contact me at 605-339-0529 or by email at [exedir@sdonecall.com](mailto: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 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.

Sincerely,

Larry L. 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.



**ACCEPTANCE OR REJECTION BY PARTIES  
COMPLAINT OC07-004**

THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC07-004.

IF BOTH PARTIES INVOLVED IN THIS COMPLAINT ACCEPT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC07-004, THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY SDCL 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT OC07-004.

IF EITHER PARTY INVOLVED IN THIS COMPLAINT REJECT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC07-004. THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD WILL SET UP A HEARING TO RESOLVE THE REJECTED RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC07-004. THIS HEARING SHALL BE CONDUCTED AS A CONTESTED CASE UNDER CHAPTER 1-26. FOLLOWING THE HEARING, THE BOARD SHALL EITHER RENDER A DECISION DISMISSING THE COMPLAINT FOR INSUFFICIENT EVIDENCE OR SHALL IMPOSE A PENALTY PURSUANT TO THE PROVISIONS OF SDCL 49-7A-18 OR SDCL 49-7A-19.

TO ACCEPT OR REJECT THE RESOLUTION OF THE ALLEGED VIOLATION, YOU SHOULD COMPLETE THE FOLLOWING AND RETURN TO THE ADDRESS BELOW PRIOR TO THE CLOSE OF BUSINESS ON JUNE 25, 2007.

SOUTH DAKOTA ONE CALL NOTIFICATION BOARD  
c/ o PUBLIC UTILITIES COMMISSION  
500 EAST CAPITOL AVENUE  
PIERRE, SD 57501

PURSUANT TO SDCL 15-6-55, FAILURE TO ANSWER THIS COMPLAINT RESOLUTION COULD RESULT IN A DEFAULT JUDGMENT BEING ISSUED AGAINST YOU. APPROPRIATE LIENS AND OTHER LEGAL COLLECTION ACTIONS COULD RESULT.

**OC07-004**

VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION

I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC07-004 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION.

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Signature

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Date

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC07-004 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC07-004.

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Signature

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Date