

Mail completed form to:

PUBLIC UTILITIES COMMISSION
500 EAST CAPITOL AVENUE
PIERRE, SD 57501
ATTN: SOUTH DAKOTA ONE CALL BOARD

RECEIVED
0605-005
JUL 01 2005

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

COMPLAINT

COMPLETE INFORMATION IS REQUIRED - ADDITIONAL PAGES MAY BE USED IF REQUIRED

ALLEGATION OF PROBABLE VIOLATION(S) OF SOUTH DAKOTA ONE CALL LAWS

I. ACTION REQUESTED BY:

COMPLAINT FILED BY INDIVIDUAL OR BUSINESS* PERSON FILING COMPLAINT: Jim Mann

COMPANY: Montana-Dakota Utilities Co. ADDRESS: PO Box 1060, Rapid City, SD 57709 PHONE NUMBER: 605-355-4021

SIGNATURE OF COMPLAINANT:  DATE: 6/30/05 EMAIL ADDRESS: jim.mann@mdu.com

*If the complaint is files on behalf of a Company, the person signing this form should have the proper authority to file the complaint.

II. ACTION REQUESTED AGAINST:

NAME OF EXCAVATOR/FACILITY OPERATOR: Vince Finkhouse (dba Eagle Excavating) PHONE NUMBER: 605-431-9805 (cell), 605-341-1505 (home)

ADDRESS: 4201 S Interstate 90, Rapid City, SD 57703

WAS A LOCATE REQUESTED FROM SD ONE CALL? YES NO LOCATE TICKET #: _____

START DATE ON TICKET: N/A

DID EXCAVATOR WAIT UNTIL THE START DATE/TIME ON THE TICKET BEFORE COMMENCING EXCAVATION? YES NO N/A

WERE BURIED FACILITIES EXPOSED BY HAND OR WITH NON-INVASIVE EQUIPMENT PRIOR TO EXCAVATION? YES NO N/A

III. FACILITY INVOLVED (IF ANY)

TYPE OF FACILITY INVOLVED: 2" polyethelyne natural gas main OPERATOR OF FACILITY (IF KNOWN): Montana-Dakota Utilities Co.

OPERATOR ADDRESS: PO Box 1060, Rapid City, SD 57709 PHONE NUMBER: 605-355-4021

DEPTH OF COVER: 42" PRESSURE: 40 psig VOLTAGE: _____ NUMBER OF CABLE PAIRS: _____

IV. MARKING

WERE FACILITIES MARKED? YES NO N/A

WAS THE MARKING COMPLETE PRIOR TO THE START TIME ON THE TICKET? YES NO N/A

DID EXCAVATOR PRE-MARK WITH WHITE PAINT? YES NO N/A

WAS THE FACILITY MARKED ACCURATELY (WITHIN 18 INCHES)? YES NO N/A

DID EXCAVATOR USE REASONABLE CARE TO MAINTAIN LOCATE MARKS FOR LIFE OF PROJECT?
YES NO

HAVE YOU DISCUSSED THE PREVIOUS STATEMENTS WITH THE OTHER PARTY? YES NO

IS THERE AGREEMENT? YES NO IF NO, PLEASE EXPLAIN: I asked Vince Finkhouse why he did not obtain locates prior to excavation. He replied that he didn't need locates because he was the contractor that originally installed the water service and he knew exactly where all of the utilities were.

V. DAMAGE (IF ANY)

FATALITIES: N/A INJURIES: N/A LENGTH OF HOSPITALIZATION: N/A

ESTIMATED PROPERTY DAMAGE (\$): \$2,335 NUMBER OF CUSTOMERS AFFECTED: None

DAMAGED IN: PUBLIC PRIVATE (RIGHT-OF-WAY)

PHOTOS OF THE DAMAGED FACILITY? YES NO

ADDITIONAL INFORMATION: This damaged line was discovered when the homeowner of 16630 Elk Horn Rd, Piedmont, SD called our office to report the smell of gas. A leak investigation revealed a leak where a section of concrete had been removed from the driveway at this address and evidence showed that recent excavation had taken place under the driveway. Our crews exposed the leaking line and found a section of 2" polyethylene gas main had been damaged with a backhoe. Upon damaging the line, the excavator attempted to repair it by placing a rubber sleeve over the damage and fastening it with hose clamps. The damaged section was then backfilled when the excavator finished his excavation. Our investigation revealed that Complete Homebuilders had hired Vince Finkhouse (dba Eagle Excavating) to repair a leaking water service at this address. The 2" main was damaged as he was excavating to expose the water service. No locates had been requested.

VI. PROBABLE VIOLATION

SPECIFIC STATUE(S) OR RULE(S) THAT WAS VIOLATED: 49-7A-5, 49-7A-8, 49-7A-12

ADDRESS/LOCATION OF PROBABLE VIOLATION: 16630 Elk Horn Rd, Piedmont, SD

DATE/TIME OF PROBABLE VIOLATION: 12/23/04

HAVE YOU DISCUSSED THIS PROBABLE VIOLATION WITH THE PARTY THE ACTION IS FILED AGAINST: YES NO

IF YES, NAME OF THE PARTY WITH WHOM YOU DISCUSSED THE PROBABLE VIOLATION: Vince Finkhouse

DESCRIPTION OF PROBABLE VIOLATION: A violation of 49-7A-5 occurred when Mr. Finkhouse INTENTIONALLY commenced excavating at the above referenced address without first notifying the South Dakota One Call Notification Center. A violation of 49-7A-8 occurred when Mr. Finkhouse failed to hand dig and expose utilities prior to excavating with a backhoe. Mr Finkhouse knew the utilities were there since he commented that he didn't call for locates because he knew exactly where all the utilities were since he had installed the water service only a few months prior to the repair. A violation of 49-7A-12 occurred when Mr. Finkhouse INTENTIONALLY failed to notify Montana Dakota Utilities of the damage and instead attempted to repair and conceal the damage.

This line was damaged on December 23, 2004. We did not find the leak until the customer called and reported a natural gas odor on February 18, 2005. The resulting repair and cost of the lost gas totaled \$2,334.48. Mr. Finkhouse has not paid the bill.

We feel the seriousness of this incident can not be overlooked. Fortunately, the concrete over the leak had not been replaced before the leak was found and the gas was able to migrate to the surface. If the hard surface had been replaced before the leak was repaired, the gas would not be able to vent to atmosphere and could very easily migrated along the water service line (running under the driveway) to the inside of the structure. This could have caused catastrophic property damage along with serious injury or loss of life.

We are asking the Board to consider the seriousness of this incident and asses the maximum penalties allowed by law against Mr. Finkhouse.

Enclosures:

Written statements from Henry McIntosh, Don Osborne, John Miller, Gary Higlin and Jim Mann

ELM Locating & Utility Services Damage Report

MDU Damage and Leak Report

MDU Damage Invoice

Eight sheets containing photographs

A CD with a narrative video describing the scene after repairs were complete

One Call Locators, Ltd.

dba **ELM** Locating & Utility Services™

Damage Report

Check box if photos were taken

FOR COMPLETE DIRECTIONS, SEE "DAMAGE REPORT DIRECTIONS" IN ALL ELM CARS.

ALL fields must be completed in order to provide Claims Dept. with adequate information.

1. Accident Report Completed by (ELM Employee) Connie Follensbee
2. Address of Accident 16630 Elk Horn Court City & State Piedmont, SD
3. Today's Date 2-21-05 Date of Damage 2-18-05
4. Time Notified 11:00 Time of Arrival 11:30
5. If notified by any means other than ELM, how were you notified?
6. Was Utility Representative Present When You Arrived? Yes No
7. If Not, Time of Arrival _____
8. Name of Utility Representative Henry Tech # _____
9. Was Excavator Present When You Arrived? Yes No
10. Name of Excavator (Company) Not Known
11. Locate Request Number 0
12. ELM Verification Number (From Dispatch Office) _____
13. Address on Locate Request N/A
14. Date Located _____ Located By N/A
15. Utility Company Damaged MDU
16. Type & Size of Line Damaged 2" plastic
17. Was Damage Within The Described Dig Area? Yes No
18. Did the Damage Occur Within The Legal Time Limit Of The Request? Yes No
19. Description Of Locate Marks (check one or more if they apply)

- Marks Clearly Accurate Marks off by _____ feet/inches (circle one)
- Marks Destroyed By Construction Marks Destroyed By Weather

Explanation of Damage (Please be Specific – attach another page if necessary)

Damage occurred at an earlier time. The damager is unknown but attempted to repair the damaged gas line sometime ago and it had been leaking. We did a ticket search for that address and did not have a valid locate request.

20. Was any Asphalt or Concrete removed in order to repair the damage? Yes No
- 20-A. Damage took place in dirt or blacktop (Check one)
- 20-B. Distance from ped to ped _____ feet

*If for any reason photos were taken, please provide photos (labeled) to Missoula ASAP.
A sketch is required to complete this accident report. Please include Page 2.

21. Has The Utility Company Assigned Responsibility For the Damage? Yes No
- If Yes, State Responsible Party Unknown
22. Utility Representative Signature _____
23. A Sketch of this Damage Must Be Completed on Page 2 Now
24. Managers Name (Required) Connie Follensbee
25. Reviewed by Manager (date) _____

16630 Elk Horn Road Damage. Piedmont, SD

On February 18 2005, I was notified that a leaking gas line at 16630 Elk Horn Rd in Piedmont was leaking due to a repair made by an excavator when he damaged the line. I examined the section of line removed when Montana-Dakota Utilities Co. (MDU) made a permanent repair. You could see obvious damage from backhoe teeth looking inside the pipe. On the outside of the pipe, a rubber sleeve had been installed and held in place with hose clamps.

Gary Higlin, our Construction Supervisor, had investigated and determined that the line was hit by Vince Finkhouse (dba Eagle Excavating). Mr. Finkhouse had been hired by Complete Homebuilders to repair a leaking water service line at this address.

Gary tried calling Vince Finkhouse and left several voice mails. Mr. Finkhouse would not return the calls. After no response from numerous voice mails, I called Complete Homebuilders and informed them of the situation. The person I talked to at Complete Homebuilders was Cheryl. I informed her of the damage and the attempted repair and told her we had been trying to contact Vince Finkhouse but he ignored our calls. I told her there would be a bill for this damage and possible pending legal action and if we could not Talk to Vince Finkhouse, we would take action against Complete Homebuilders.

Within 15 minutes of my conversation with Cheryl, Vince Finkhouse called me. I questioned Mr. Finkhouse about the damage and he informed me that he had been the excavator that cut the driveway and excavated the water service at the above referenced address. He informed me that he was the contractor that installed the water service to the house when the house was built in July or August of 2004. He said the gas line and other utilities were there when he installed the water service and he knew where everything was so he didn't need locates. He also said he did not hit the gas line. I told him that our investigation pointed to him and that we would be sending him a bill for the repair. He said "OK". I also asked him for his address and home telephone number since we had no information other than his cell phone number. He gave me the information requested.

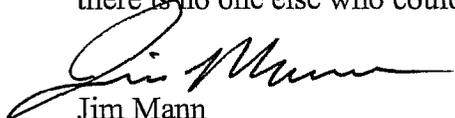
I had asked Cheryl of Complete Homebuilders to check her records on the date of the water service repair so we could calculate gas loss for the damage bill. She called me on 3/1/05 and informed me the repair had been made on December 23, 2004.

Vince Finkhouse had informed me that he did not call for locates prior to excavation. I asked SD One Call to search their database for any tickets that could match this area for the month of December. The only tickets that were close were tickets number 043330011 and 04333012 (the copies I have are hard to read but I believe those are the numbers). These tickets were both called in on 11/28/04. They were called in by Valley Heights Estates for emergency waterline repair and neither of these tickets described the property where our main was hit.

Mr. Finkhouse denied hitting our gas line but our investigation leads us to believe he is the only one that could have damaged it. The gas line was damaged in a fresh excavation under the driveway of a house that was only a few months old. The concrete had been

16630 Elk Horn Road Damage. Piedmont, SD

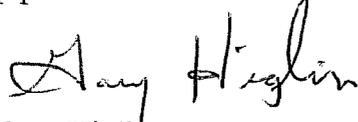
cut to make the excavation. The gas line was damaged directly over the water service line Vince Finkhouse was repairing. There are no other branch connections running off this parallel line of joint utilities. There are no splices or any other reason for another excavator to be digging at this site. The house was only a few months old when this excavation was made. Vince Finkhouse admits making this excavation. In my mind, there is no one else who could have done this damage.



Jim Mann
Region Gas Superintendent
Montana-Dakota Utilities Co.

16630 Elk Horn Road, Piedmont, SD

February 18, 2005, I was notified of a class I leak by our serviceman John Miller at 16630 Elk Horn Rd., it was around 9:00 a.m... I immediately called Henry McIntosh (Rapid City foreman) who was working in the area. After Henry arrived at the above address, he surveyed the situation and called me back to say he needed emergency locates. After he got the leak dug up an exposed Henry called me again with what he had found. He asked me if I could come out to 16630 Elk Horn Rd. & explained what he had found over the phone. I asked Henry to take pictures of what he had discovered that caused the leak. I arrived at 16630 Elk Horn Rd. about ½ hr. later. Henry showed me what he had found. He told me that a section of the driveway had already been removed from whoever was there to repair the water line and had not been replaced yet. Henry showed me the damaged gas line and how they tried to repair it to stop the leak. My observation was the person had hooked our gas line with the backhoe while digging up to repair the water line. Our gas line was approx. 36" in depth. Henry said there were no locate marks when he got there. The line had been repaired by using a fern-co for water pipe & some black electrical tape. This was held on the pipe by some hose clamps.



Gary Higlin
Construction Supervisor
Montana, Dakota Utilities Co.
Rapid City, SD.

June 29, 2005

On February 18th 2005, I (John Miller) was called to a gas odor at 16630 Elk Horn Rd in Piedmont. Upon arrival, I could smell natural gas by the customer's mail box. I proceeded to bar test the area close to the mail box and surrounding area. I located a water curb box and found about 50% gas in the ground. Upon further bar testing I narrowed the leak down to an area about 3 ft from the curb box, where I was getting 90% gas. At this time, I stopped bar testing, called Rapid City office to send construction crew.

Then I proceeded to go into the home to check for gas in the basement, no gas was present. At that time I informed the customer what I had found and that we had a crew on the way to dig up the area where gas leak was located. She informed me that they had a water leak there previously and that someone had been there to repair it. They used a backhoe to dig water leak. I suspected that possibly that was the cause of our gas leak.

The crew (Henry McIntosh and Don Osborn) arrived. I showed them where I detected 90% gas and they began hand digging in that area. Henry called in for emergency locates. At that time I turned over situation to Henry and Don to return later to turn gas on and relight customer after repairs. Upon returning they had dug down and located two inch main and there was a rubber no hub coupling wrapped around our two inch main. This is where the gas was leaking from. Henry and Don squeezed off the gas supply and cut out section of pipe with coupling on it. They proceeded to fuse new section of pipe in and completed the repair. Soap tested for leaks, none found. I then purged service line and restored service to customer.



John Miller

Gas Servicemen

Montana-Dakota Utilities Company

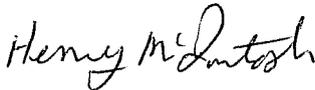
6/14/05

On February 18th 2005 we (Don Osborn and I, Henry McIntosh) were sent to a gas leak located at 16630 Elk Horn Road in Piedmont.

John Miller the Service person was already there when he called me (Henry McIntosh) to check out the leak. When we arrived at 9:30 am I asked John what he had found. He had 90% gas right over our 2 inch gas main. I (Henry McIntosh) noticed a section of the concrete driveway was cut out due to a water line leak.

I (Henry McIntosh) called my Supervisor Gary Higlin and told him what I saw. Gary called emergency locates the locaters showed up about one hour later. We as Don and Henry started hand digging because I know where the other utilities were also in the same ditch because I installed the 2" gas main in the ditch. After the located showed up and located the other utilities we started to dig with the backhoe. When we got closer to the gas main we could smell and hear the gas. After we found the gas line we exposed a furnco around our gas line. The more we exposed the gas line we could tell the gas line we could see that the gas line was pulled up about 6 to 8" above the rest of the gas main. And where we found the leak was right where they fixed a water leak the ground was wet around our gas line and the other utilities.

I (Henry McIntosh) took some pictures of what I saw from the water box and the furnco on the 2" gas main. After we fixed the damaged pipe we noticed that the gas line was scraped too more times besides the hole that was in the gas line.



Henry McIntosh
Working Foreman
Montana Dakota Utilities

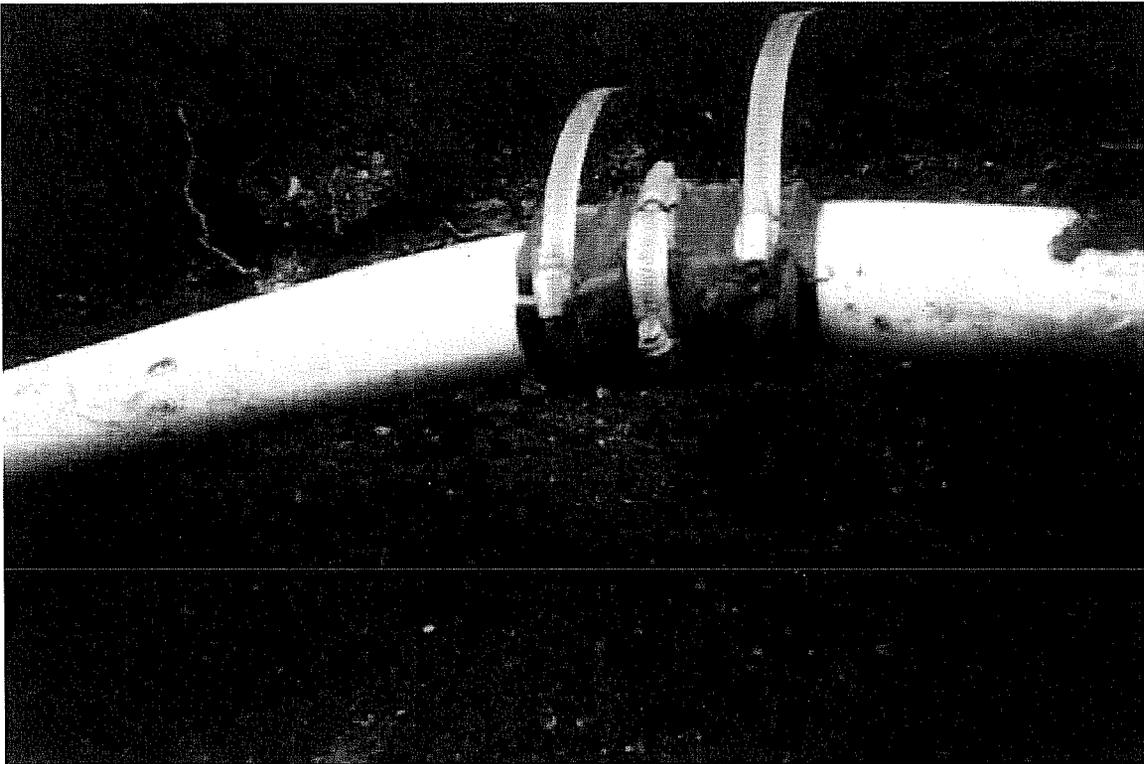
June 23, 2005

On February 18, 2005, Henry McIntosh and I (Don Osborne) were sent to 16630 Elk Horn Road in Piedmont, South Dakota for a gas leak.

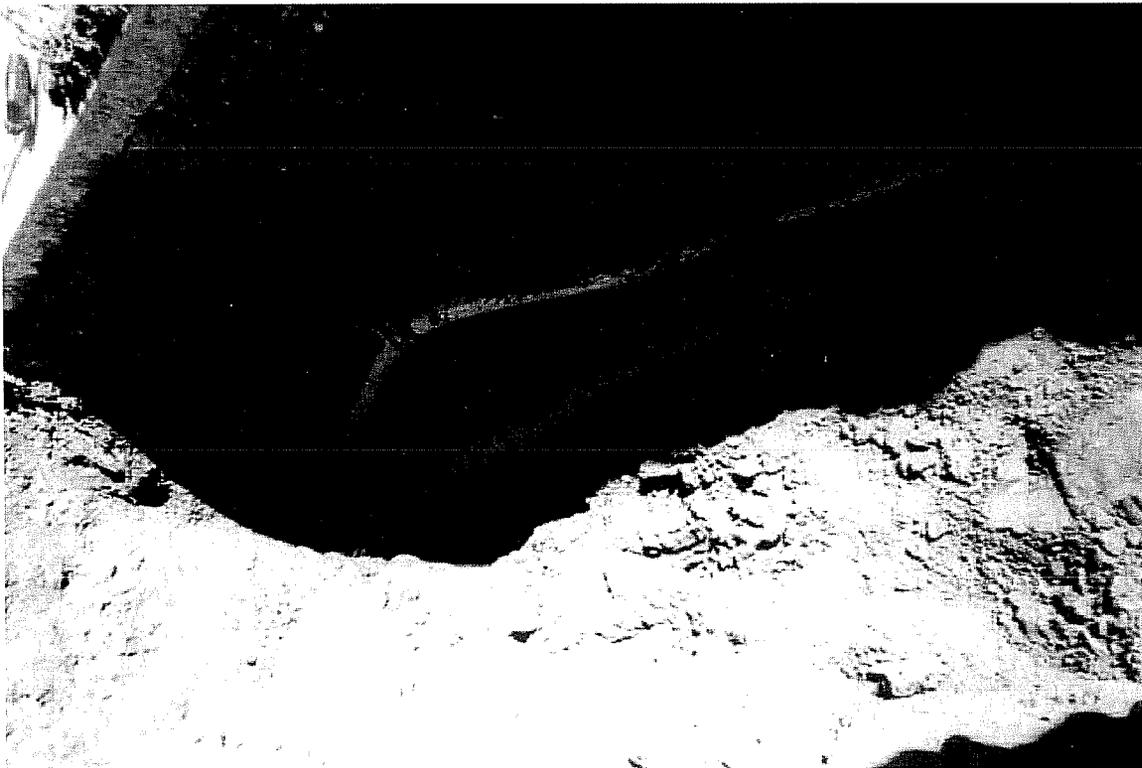
Upon arrival at the gas leak, John Miller (serviceman) told Henry McIntosh that there was ninety percent gas over a two-inch gas main. There was also a section of concrete that was torn up due to a water line leak. Henry McIntosh contacted supervisor Gary Higlin. Emergency locators were contacted. While Henry and I were waiting for the locators to arrive, we started hand-digging to find the gas line. The locators arrived approximately an hour later. After the utility lines were located, the backhoe was used for digging. After digging, we could smell and hear the gas leak. A furnco was exposed around the gas line. The gas line was six to eight inches above the rest of the gas main. The gas leak was in the same area where the water line leak occurred. The ground was also wet around the gas line and other utilities.

Henry McIntosh took photographs of water line area and the furnco on the two-inch gas main. After the gas line was fixed, further inspection revealed two more scrapes in the gas line.

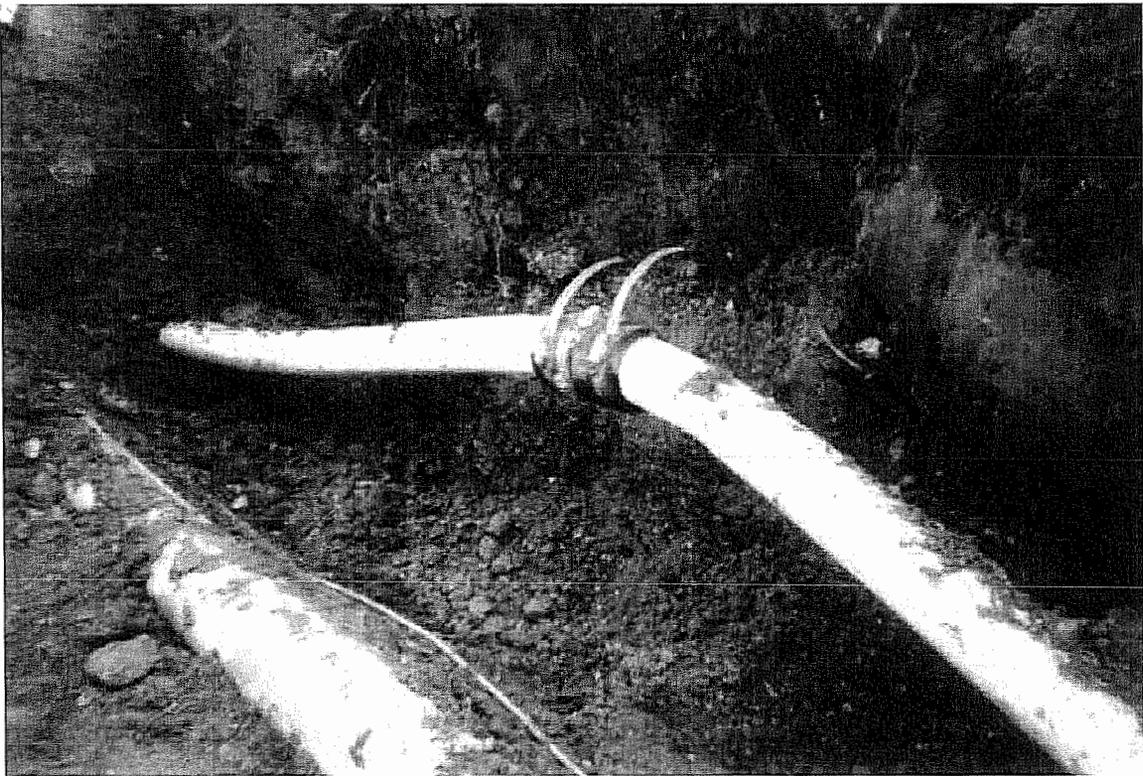

Don Osborne
Fitter Operator
Montana Dakota Utilities

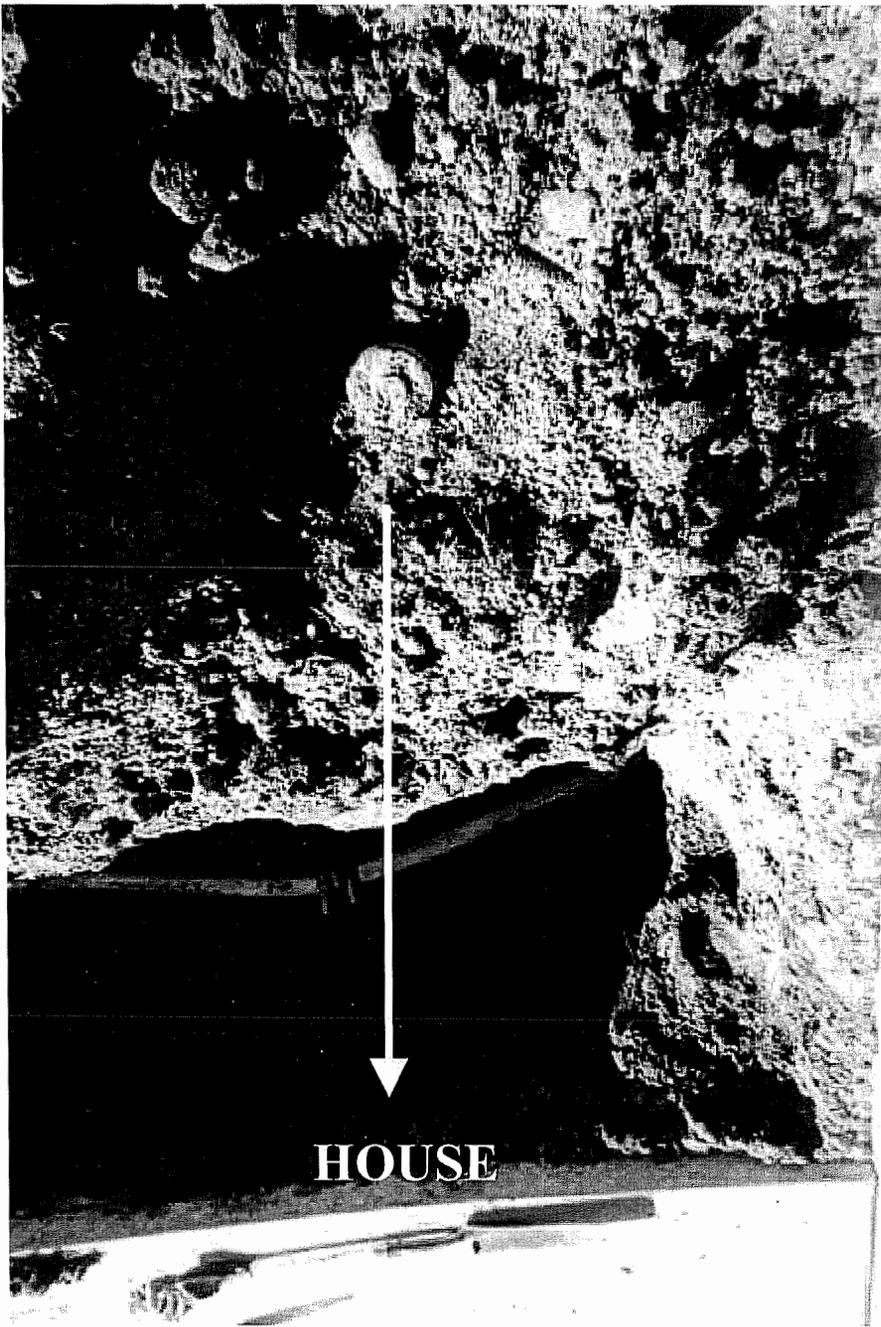


Close-up of damage and repair,

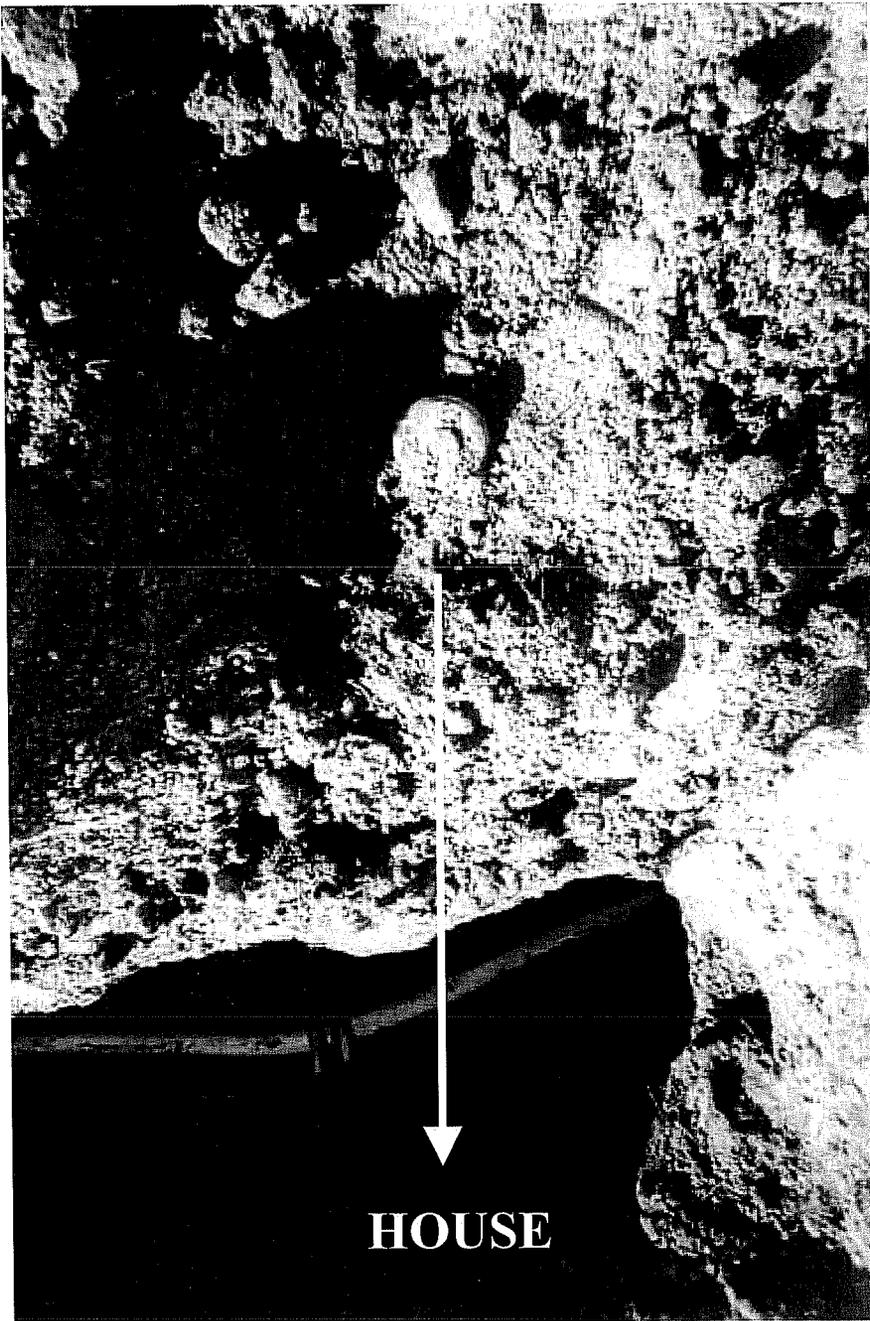


Notice the extreme upward bend in the pipe. This damage was obviously caused by a Backhoe or some other power equipment.

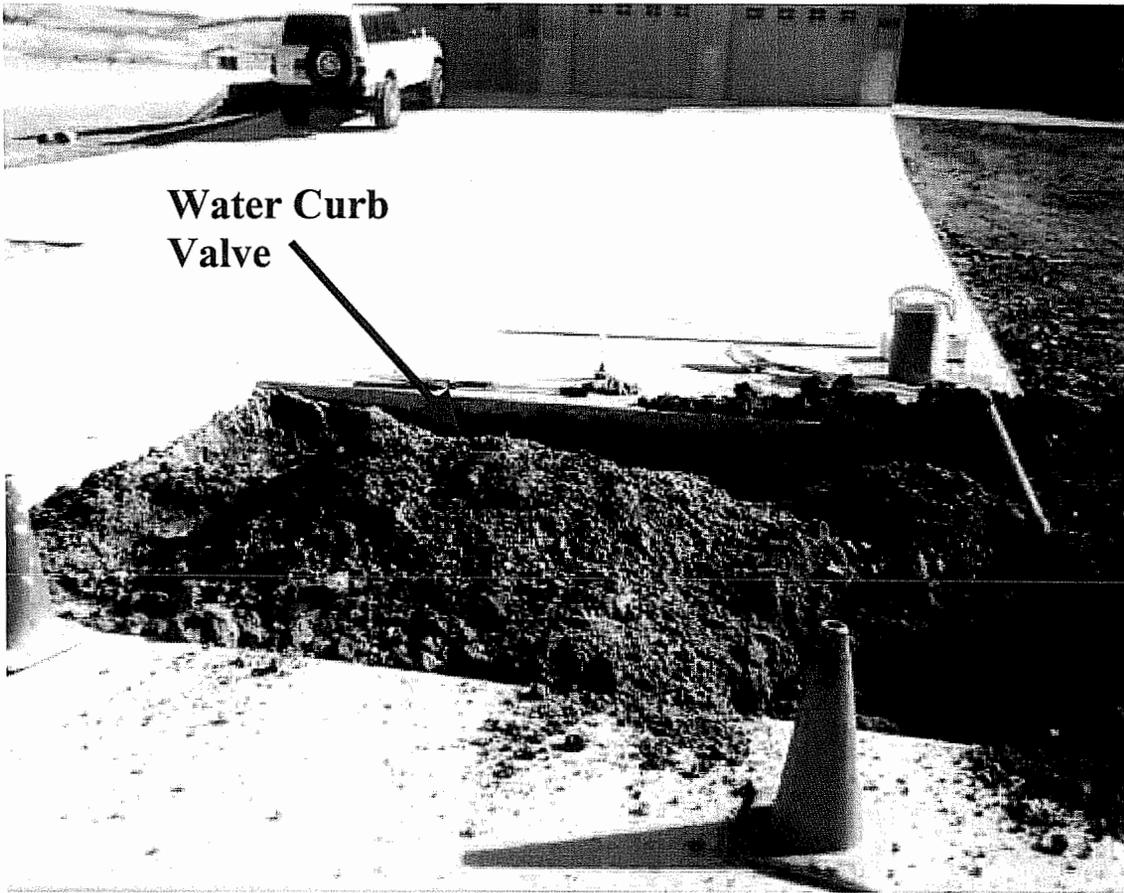




Water curb valve in relation to the damage line.



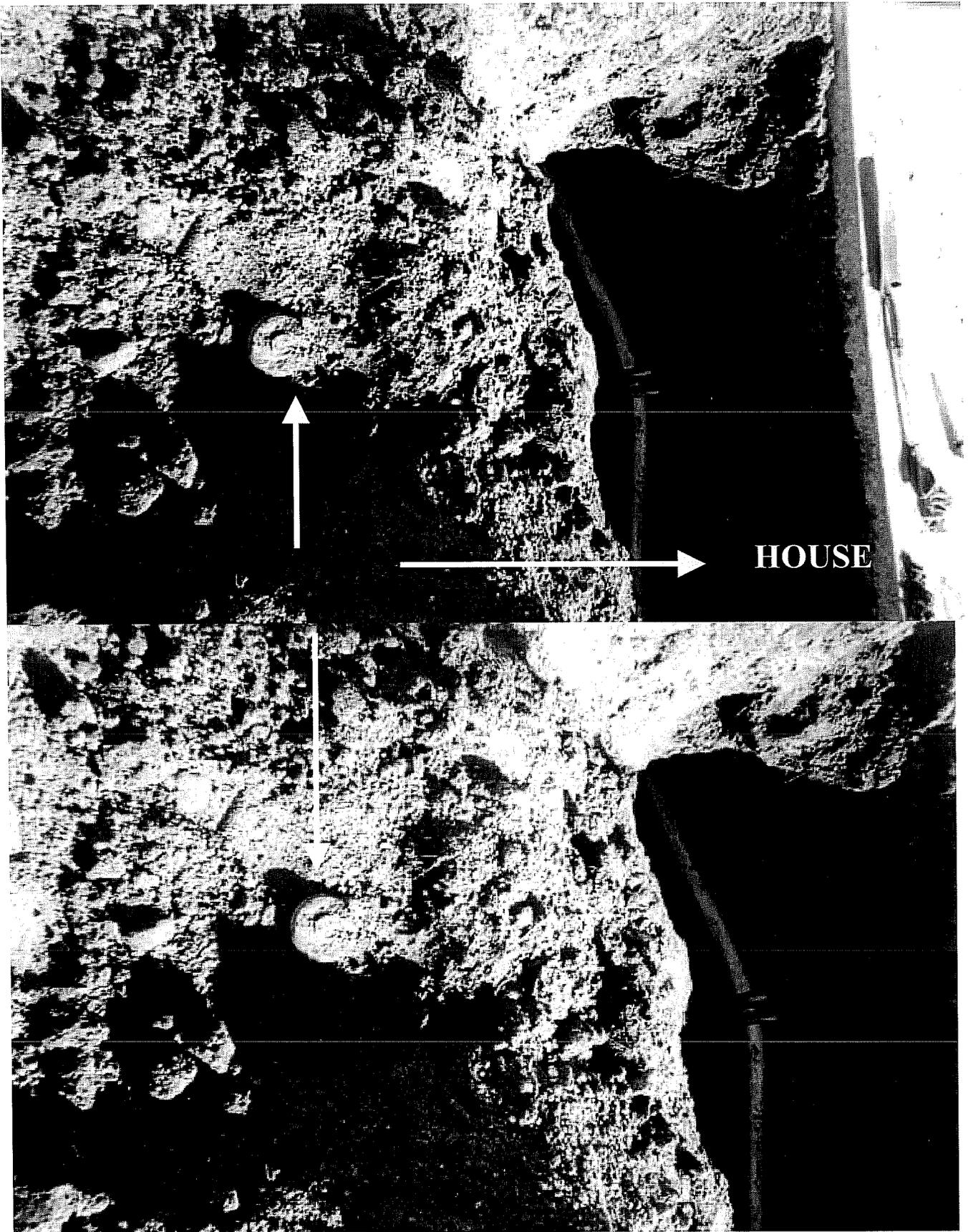
Another view of the water curb stop in relationship to the damage.



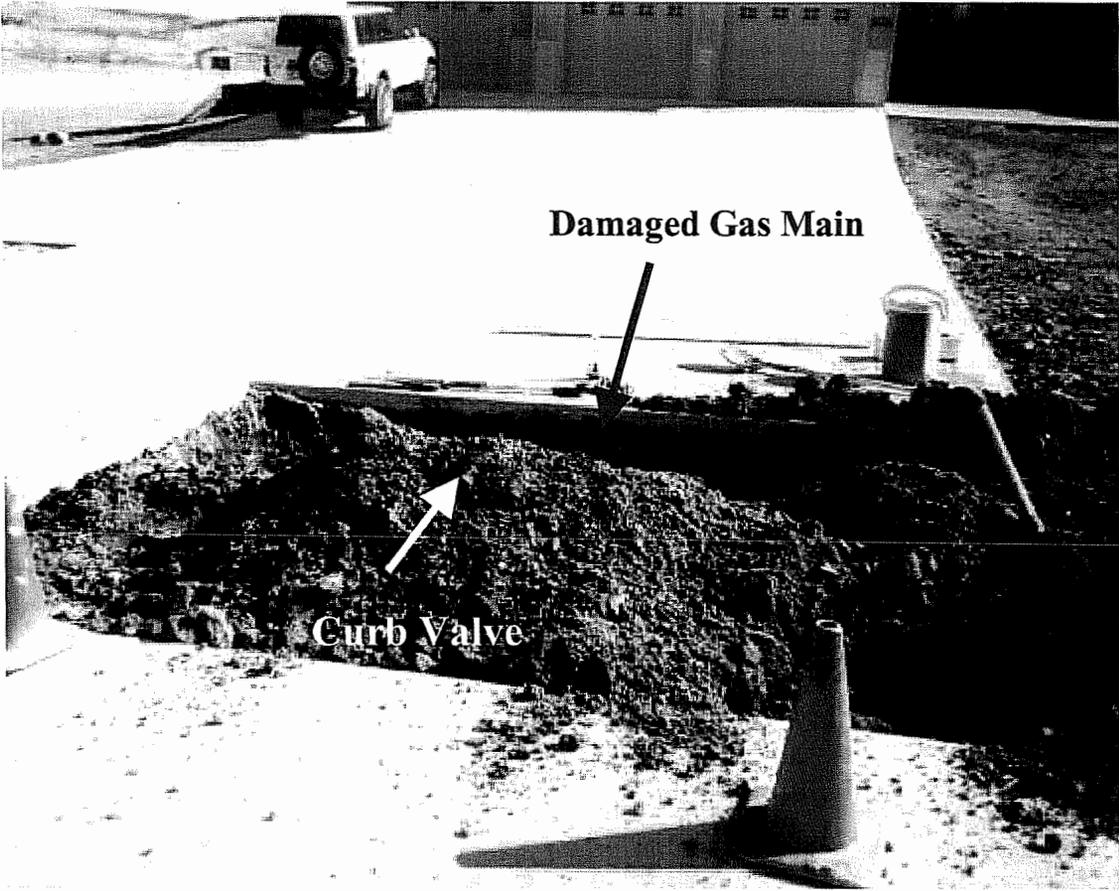
A view of the concrete removal and excavation in relation to the house.



Perspective of depth on the damaged line.



More views of the water curb valve in relation to the damage.



REPORT OF DAMAGE TO COMPANY-OWNED PROPERTY

(NOTE: Please refer to bottom of this form before proceeding with completion.)

Part A

Owner of Property: mdu Division/District: black hills
Date and Time of Loss: 9:30 AM 18 February 2005
Name of Location Where Damage Occurred: 16630 elk horn rd
Location of Damaged Property: elk horn rd (Street) piedmont (City) s,d (State)
Rural Location:
Estimated Amount of Loss: Our Service Order No. (if applicable):
Description and Cause of Loss or Damage: 2" main was damaged when contractor was repairing water main.

Part B

Did Loss or Damage Originate on our Premises? Yes No If No, Explain public property
If an Explosion, did a Fire Ensur? Yes No How was Fire Extinguished?
If Electrical Property is Involved, Fill in the Following Supplemental Data:
Type of Equipment Involved: backhole
Damage caused by Electrical Arcing, Short Circuit or Other Failure, Give Approximate Cause:
Did Fire Ensur? Yes No

Part C

If damage was caused by excavation, was location of our facilities requested prior to digging? Yes No
Location requested by: none Time: Date:
Company property located on: Private Property Public Property
Damage notification by: home owner Time: 9:00 AM Date: 2/18/2005
Was damager a subcontractor: Yes No If yes, for whom Complete Home Builders
Address: 734 Alta Vista Dr. Telephone #: 343-7922
Name of equipment operator: Vince Finkhouse Address: unknown at this time
Type of equipment: Backhoe Owner: Eagle Excavating
Others involved in property damage: Owner Address: unknown at this time
Name: Address:
Name: Address:
In case of line break, complete the following: Size of hole: 1/4" Time line blew: unknown-date repaired 2/18
Names of Witnesses: Address:
Name of Insurer: Address:

Part D

Names of Persons Injured: Address: Extent of Injury:

Signature: Henry McIntosh Signature: Gary Higlin
Date: 2/18/2005 Date: 2/22/2005

Send one copy to the Treasury Services Dept (GO) and one copy to Legal Dept (GO)

MONTANA-DAKOTA UTILITIES CO.
GAS LEAK AND REPAIR REPORT
(Or Pipeline Condition Report)

Reason For Report: Inspection Leak and Repair

Division: black hills Town: piedmont Date: 2/18/05

If Leak, Date Detected: 2/18/2005 By Whom: home owner

Leak Classification: Class I Class II Class III No Leak

Date Leak Repair Person was Dispatched: 2/18/2005 Time: 9:00 AM

Date Leak Repair Person Responded: 2/18/2005 Time: 9:15 AM

From What Location (Town) did Leak Respond Person Leave: blackhawk

Type of Line: Rural Service Line Distribution Main Service Line

Location: Map Number _____ Block Number: _____ Lot Number: _____

If Rural Service Line: Transmission Line Number: _____ Line Name: _____

Survey Location: Acct Number: 317931.01.8 On Federal Land: Yes No

Describe Specific Location: 16630 elk horn rd

Internal Pipe Condition:

Pipe Size: 2-in Depth: 42" Length Exposed: 10'

External Condition _____ Coating Type _____

Type of Pipe plastic If steel is it cathodiocally protected: Yes No Pipe/Wire to Soil _____

Soil Conditions: Gravel Sand Silt Clay _____ Other Moisture Dry Damp Wet

Original Installation Date: 2004 Operating Pressure: 42 psi

Kinds of Leak: Corrosion Natural Forces Excavation Material and Welds Equipment & Operations

Other Outside Force Damage Other

Description of Leak: Backhoe punched a 1/4" hole in 2" (p) main

Method of Repair: Replaced section of 2" pipe, butt fusion & electro-fusion coupling were used. Pres.tested 100 psi/soap

Date Repaired: 2/18/2005 S.O.: _____ Date of follow up (if required) none

If a DOT Reportable Leak: Date and Time of Telephone report: 2/18/2005 9:00

To whom was leak reported: John miller

Remarks:

Leak was reported by homeowner on 2/18, John Miller/serviceman responded. A construction crew was then dispatched to location. Leak was dug up, damage was found on the 2" main. Contractor tried to repair damage with electrical tape & a rubber with clamps. Contractor had covered up the repair and did not report it to MDU. The date of this incident is unknown-date repaired was 2/18 when it was discovered. LEAKING 57 DAYS, 229 MCF LOSS, JIM MANN

Signed: Henry McIntosh Signed: Gary Higlin 2/22/05



MONTANA-DAKOTA

UTILITIES CO.
A Division of MDU Resources Group, Inc.

Remit to: PO BOX 1060
Rapid City, SD 57709

718 Steele Ave.
P.O. Box 1060
Rapid City, SD 57709-1060

DATE: 3/8/05

ATTN: VINCE FINKHOUSE
EAGLE EXCAVATING
4201 S. INTERSTATE 90
RAPID CITY, SD 57703

INVOICE NUMBER
336026

INVOICE

ACCOUNT NUMBER
336026.01

TERMS: 30 Days Cash

DATE	FEET	DESCRIPTION	UNITS	AMOUNT
2/18/05		Repaired 2" main that was damaged and was leaking. 16630 Elk Horn Rd. Piedmont		\$2,334.48
			TOTAL DUE	\$2,334.48