

STATE OF SOUTH DAKOTA
SOUTH DAKOTA ONE CALL NOTIFICATION BOARD
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

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IN THE MATTER OF THE COMPLAINT FILED
BY MONTANA-DAKOTA UTILITIES CO., RAPID
CITY, SOUTH DAKOTA, AGAINST VINCE
FINKHOUSE D/B/A EAGLE EXCAVATING,
RAPID CITY, SOUTH DAKOTA

OC05-005

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Transcript of Proceedings
November 8, 2005

ORIGINAL

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BEFORE THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD,
Sara Greff, Attorney
Kevin Kouba, Chairman
Steve Lehner, Member
Todd Chambers, Member
Gene Solseth, Member
Jerry Schroeder, Member
Ed Anderson, Member
Rod Cundy, Member

A P P E A R A N C E S

BRETT KOENECKE,
MAY, ADAM, GERDES & THOMPSON,
Attorneys at Law, 503 South Pierre Street,
Pierre, South Dakota 57501,
appearing on behalf Montana-Dakota Utilities.

ALSO PRESENT: BRITTANY NOVOTNY

Reported By Cheri McComsey Wittler, RPR, CRR

PRECISION REPORTING
L I M I T E D

1 STATE OF SOUTH DAKOTA

2 SOUTH DAKOTA ONE CALL NOTIFICATION BOARD

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3 (Exhibits A through M are marked for identification)

4 MR. KOUBA: I'll begin the hearing
 5 for Docket OC05-005, In the Matter of the Complaint
 6 Filed by Montana-Dakota Utilities Company,
 7 Rapid City, South Dakota Against Vince Finkhouse,
 8 d/b/a Eagle Excavating of Rapid City, South Dakota,
 9 regarding damaging a natural gas line owned by MDU
 10 while excavating.

11 The Complaint alleged that Finkhouse, number
 12 one, failed to notify the One Call Center before
 13 excavating, in violation of SDCL 49-7A-5, number
 14 two, failed to hand dig and expose a natural gas
 15 facility, in violation of SDCL 49-7A-8, and, number
 16 three, failed to notify MDU of the damage and
 17 instead attempted to repair and conceal the damage
 18 in violation of SDCL 49-7A-12.

19 The time is approximately 1:30 p.m. The date
 20 is November 8, 2005, and the location of the
 21 hearing is in Room 413, State Capitol,
 22 500 East Capitol, Pierre, South Dakota. I am
 23 Kevin Kouba, Chairman of the Board. Other Board
 24 members present are Jerry Schroeder, Rod Cundy,
 25 Todd Chambers, Ed Anderson, Steve Lehner, and
 Gene Solseth. I am presiding over this hearing.
 This hearing was noticed pursuant to the Board's

1 TRANSCRIPT OF PROCEEDINGS, held in the

2 above-entitled matter, at the State Capitol Building,
 3 500 East Capitol Avenue, Pierre, South Dakota, on the
 4 8th day of November 2005, commencing at 1:30 p.m.

5 =====

6 I N D E X

7	Witnesses	Dir	Cross	Redir	Recross
8	Ronald E. Blum	6	32	--	--
9	<u>Exhibit Nos.</u>		<u>M</u>	<u>O</u>	<u>R</u>
10	A - Pipe		3	13	13
11	B - Photographs		3	21	23
12	C - DVD		3	22	23
13	D - Damage Report		3	21	23
14	E - Report prepared by Jim Mann		3	21	23
15	F - Report prepared by Gary Higlin		3	21	23
16	G - Gas Leak and Repair Report		3	21	23
17	H - Report of Damage to Company-Owned Property		3	21	23
18	I - Invoice		3	21	23
19	J - Report prepared by Don Osborne		3	21	23
20	K - Report prepared by Henry McIntosh		3	21	23
21	L - Report prepared by John Miller		3	21	23
22	M - Letter attached to Enforcement Committee Action		3	21	23

4 Notice of Hearing issued October 14, 2005.

5 The issues at the hearing shall be, number
 6 one, whether Finkhouse violated SDCL 48-7A-5 (sic)
 7 by commencing excavation without providing advanced
 8 notification to the One Call Center, number two,
 9 whether Finkhouse violated SDCL 49-7A-8 by failing
 10 to properly expose a marked underground utility
 11 line, and, number three, whether Finkhouse failed
 12 to notify MDU of the damage and instead attempted
 13 to repair and conceal the damage in violation of
 14 SDCL 49-7A-12. Also at issue is whether penalties
 15 shall be imposed by the Board pursuant to
 16 SDCL 49-7A-18 and/or 49-7A-19, and, if so, what
 17 those penalties shall be.

18 All parties have the right to be present and
 19 to be represented by an attorney. All persons so
 20 testifying will be sworn in and subject to
 21 cross-examination by the parties. The Board's
 22 final decision may be appealed by the parties to
 23 the State Circuit Court and State Supreme Court.
 24 Sara Greff will act as the Board's counsel. She
 25 may provide recommended rulings on procedural and
 evidentiary matters. The Board may overrule its
 counsel's preliminary rulings throughout the
 hearing. If not overruled, the preliminary rulings

1 will become final rulings.
 2 I'll now turn the hearing over to Ms. Greff.
 3 MS. GREFF: Will the parties please
 4 make their appearances.
 5 MR. KOENECKE: Brett Koenecke of
 6 Pierre for Montana-Dakota Utilities.
 7 MS. GREFF: And seeing no one else,
 8 I guess at this time would you care to make any
 9 sort of opening statement before you begin?
 10 MR. KOENECKE: Just a very brief
 11 one. I'm glad to be here this afternoon. When I
 12 heard Mr. Kouba read the Notice of Hearing I
 13 noticed in the top line of the last paragraph it
 14 says 48-7A-5, and I think that should have been
 15 49-7A-5. I'll just sort of put that on the record.
 16 I have with me one witness from MDU, Ron Blum.
 17 He's an engineer. And Brittany Novotny, a new
 18 associate at our law office, is seated at the
 19 gallery and she likes to come watch people take
 20 testimony and do the hearings so she won't make the
 21 mistakes that I probably am about to later on.
 22 With that, we'll be as brief as possible given
 23 the circumstances and tell you what the situation
 24 is and get on our way.
 25 MS. GREFF: With that, I would let

1 you call your first witness.
 2 MR. KOENECKE: I'll call Ron Blum.
 3 RONALD E. BLUM,
 4 called as a witness, being first duly sworn in the
 5 above cause, testified under oath as follows:
 6 DIRECT EXAMINATION
 7 BY MR. KOENECKE:
 8 Q Ron, would you state your name and business address,
 9 please.
 10 A Ronald E. Blum, Montana-Dakota Utilities, 718 Steel
 11 Avenue, Rapid City, South Dakota.
 12 Q Ron, what's your position at Montana-Dakota Utilities?
 13 A I'm the senior region engineer for the Black Hills
 14 Region.
 15 Q How long have you been so employed?
 16 A I've been employed as the senior engineer in Rapid City
 17 for the last two years. I've been employed by
 18 Montana-Dakota Utilities as an engineer since May of
 19 1980.
 20 Q And what's your education, Ron?
 21 A I have a Bachelor of Science in civil engineering from
 22 South Dakota School of Mines and Technology. I
 23 graduated in 1980. I am also a registered professional
 24 engineer in the State of North Dakota.
 25 Q Ron, I notice when I look at the documents that they've

1 been signed by Jim Mann. Is that your understanding?
 2 A That's correct.
 3 Q Who is Jim Mann?
 4 A Jim Mann is my immediate supervisor. He's the gas --
 5 region gas superintendent for the Black Hills Region.
 6 Q And tell the Board why he isn't here this afternoon.
 7 A He's unable to be here because of medical reasons.
 8 He's in the hospital.
 9 Q And you drew the short straw?
 10 A Yeah. In a manner of speaking.
 11 Q I'll call your attention to I think first a document
 12 that we've marked as Exhibit M. Are you familiar --
 13 I'll give you a minute to take a look at it, and I'll
 14 ask if you're familiar with it?
 15 A Yes.
 16 Q You've seen it before?
 17 A Yes.
 18 Q Can you tell us what it is?
 19 A It's a letter accompanying Enforcement Committee Action
 20 from the South Dakota One Call Board. It also has
 21 documents on the back of it for acceptance or rejection
 22 of the Complaint rulings.
 23 Q And isn't it true that Jim Mann on behalf of MDU
 24 accepted all three of the suggestions of the committee?
 25 A Yes. Jim Mann signed the authorization of all three

1 rulings on this document.
 2 Q Okay. I'm going to call your attention to B. It's
 3 your understanding that the Enforcement Committee
 4 declined to pursue the question whether Finkhouse
 5 violated 49-7A-8 by failing to properly expose a marked
 6 underground utility line.
 7 A Yes.
 8 Q And that's acceptable to MDU?
 9 A Yes.
 10 Q So we won't be pursuing that here this afternoon. All
 11 right.
 12 Are you familiar with the business records
 13 located in the office in Rapid City?
 14 A Yes.
 15 Q Is this a record that you keep in the ordinary course
 16 of business?
 17 A Yes.
 18 MR. KOENECKE: We would move the --
 19 do you want me to just move all of these at once
 20 when we're done?
 21 MS. GREFF: Yeah. That's fine.
 22 MR. KOENECKE: I'll lay the
 23 foundation for each one as we go.
 24 Q I'll direct your attention to a point in time in
 25 February of 2005. Did there come a time in February

1 that your office in Rapid City was notified of an
 2 underground gas leak in the Piedmont area?
 3 **A** Yes. The property owner at 16630 Elk Horn Road phoned
 4 our Call Center with a report of a gas odor.
 5 **Q** Do you know what action was taken by MDU
 6 representatives?
 7 **A** A serviceman was immediately dispatched to investigate.
 8 Upon arrival at the site he found a disturbed
 9 excavation area around a water valve that crossed our
 10 gas line. He used his combustible gas indicator to
 11 test the soil for the presence of gas. He determined
 12 that it did not migrate away from that location but
 13 that there was significant readings of gas in the soil
 14 in that immediate area.
 15 **Q** Do you know who that was?
 16 **A** That was John Miller.
 17 **Q** Showing you what we've marked as Exhibit L, have you
 18 seen that before?
 19 **A** Yes.
 20 **Q** Can you tell the Board what that is?
 21 **A** This is John's account of his investigation of the gas
 22 leak that he conducted on February 18, 2005. He dated
 23 his report June 29, 2005 and signed it on the bottom.
 24 **Q** Is that a record that you keep in the office in
 25 Rapid City as a matter of ordinary course of business?

1 **A** Yes.
 2 **Q** Okay.
 3 MR. KOENECKE: Does the Board have
 4 that?
 5 MR. KOUBA: Was that John Miller?
 6 MR. KOENECKE: John Miller.
 7 MR. KOUBA: Yes. We have that.
 8 **Q** Did John then call for assistance, or what otherwise
 9 might he have done?
 10 **A** John notified the construction superintendent that he
 11 would require the assistance of a construction crew at
 12 that site to excavate and repair the leak. And that
 13 call was taken by Gary Higlin. He dispatched the
 14 construction crew with the foreman being
 15 Henry McIntosh.
 16 **Q** I'm going to show you what we've marked as F, K, and J.
 17 I'll give you a minute to look at those.
 18 Would you tell the Board what F, K, and J
 19 are.
 20 **A** F, K, and J are the personal accounts relating to the
 21 investigation, excavation, and repair of a gas leak at
 22 16630 Elk Horn Road. F is a letter, a note, that was
 23 produced by Gary Higlin, the construction supervisor.
 24 K is a note that was produced by the construction
 25 foreman, Henry McIntosh, and J is an account -- a note

1 that was produced by Don Osborne, a fitter operator
 2 that assisted Henry McIntosh in the repairs.
 3 **Q** Are those all documents you keep in the ordinary course
 4 of business?
 5 **A** Yes.
 6 **Q** What, if you know, happened after Henry was dispatched
 7 to the location?
 8 **A** When Henry arrived at the location he had emergency
 9 locates called in to South Dakota One Call and the
 10 contract locators in Rapid City. They responded within
 11 about an hour. Before the locator arrived they
 12 proceeded to start hand digging in that location to
 13 expose the leak. They had not exposed the pipe before
 14 the locates were made. After the locates were made
 15 they completed their excavation and found the
 16 fabricated repair and the leak that was at that
 17 location.
 18 **Q** I'm showing you what we've marked as Exhibit A. That's
 19 been in your custody for some time; correct?
 20 **A** Yes. It was in direct custody of the engineering
 21 department in Rapid City, South Dakota continuously
 22 until now.
 23 **Q** And can you tell the Board what Exhibit A is?
 24 **A** Exhibit A is a piece of damaged 2-inch polyethylene gas
 25 pipe that was removed from the area that they found the

1 leak. When they dug up the pipe they could audibly
 2 hear the gas escaping from this area. Upon inspection
 3 looking inside the pipe you can see where the pipe was
 4 penetrated. It was then repaired by somebody with
 5 electrical tape and then a rubber boot and three hose
 6 clamps.
 7 **Q** Is the pipe straight as it came from the factory?
 8 **A** No. And it wasn't in alignment with the adjacent pipe.
 9 It had been hooked by excavation equipment and
 10 displaced in the trench about 6 inches higher than the
 11 adjacent pipe.
 12 **Q** Could it or would it have been bent during the
 13 installation process initially?
 14 **A** No.
 15 **Q** Could I or somebody who's much stronger than I have
 16 bent that pipe with a shovel or some other hand
 17 implement?
 18 **A** No.
 19 **Q** Is it your opinion as an engineer that it was a piece
 20 of -- a power tool of some kind?
 21 **A** Yes. Some form of excavating equipment. The markings
 22 on it indicate probably a backhoe because of the
 23 distance between the damaged areas it looks like
 24 backhoe teeth.
 25 **Q** Thanks.

1 MR. KOENECKE: We'll move Exhibit A
 2 so we can pass it around then.
 3 MS. GREFF: Since there's no one
 4 here to object, Exhibit A is received.
 5 MR. KOENECKE: Okay. Thank you.
 6 Q I'll show you what we've marked as Exhibit B and let
 7 you take a look at that.
 8 (Witness examines document)
 9 Q Can you tell us what those are?
 10 A Exhibit B are black-and-white copies of color prints
 11 made from photographs on the day that the damage was
 12 discovered. It includes views of the damaged and
 13 fabricated repair in the ditch and the adjacent water
 14 valve, as well as the driveway pavement with a distance
 15 down to the pipe and a couple other photographs.
 16 Q Do you know who took the photographs?
 17 A I believe since Henry McIntosh shows up in a couple of
 18 them, he took some of the photographs, and Don Osborne
 19 took the other ones. The construction crews are
 20 equipped with cameras, disposable cameras, that they
 21 use to do immediate investigation of this type of
 22 damage.
 23 Q Is it company policy to use those cameras and take
 24 pictures like that?
 25 A Yes.

1 Q And to keep the pictures as records as part of your
 2 business?
 3 A Yes.
 4 MR. KOENECKE: If I might, does the
 5 Board all have --
 6 MS. GREFF: Colored copies even.
 7 MR. KOENECKE: Excellent. Thank
 8 you.
 9 Q I'm quickly going to show you what we've marked as G,
 10 H, and I, and we'll get those out of the way as well.
 11 Let's talk about G first. Can you tell me
 12 what G is?
 13 A G is a standard Gas Leak and Repair Report. Our
 14 construction crews are obligated to produce these
 15 reports every time they repair a jurisdictional gas
 16 leak.
 17 Q I notice on that report that it shows an original
 18 installation date of the pipe. Is that correct?
 19 A Yes.
 20 Q What was the original installation time or date of the
 21 pipe?
 22 A 2004.
 23 Q If I understand correctly, it was almost brand new at
 24 the time of the incident.
 25 A Yes. This was a new development in a new area, and the

1 installation was new.
 2 Q Do you know approximately how much time there was
 3 between discovery and installation?
 4 A I don't know that. I would assume that it was
 5 installed late in 2004.
 6 Q When we say new it was to a new home in the Piedmont
 7 area?
 8 A Yes.
 9 Q Okay. Is that a business record you keep in your
 10 ordinary course of business at your office?
 11 A Yes.
 12 Q Okay. Thank you. Can you tell us what H is?
 13 A H is our standard company form for Report of Damage to
 14 Company-Owned Property. It's also produced by the
 15 construction crew after they effect a gas leak repair
 16 on jurisdictional piping.
 17 Q Is that a business record that you keep in the ordinary
 18 course of business?
 19 A Yes.
 20 Q And I, could you tell us what I is?
 21 A I is an invoice that was sent to Vince Finkhouse from
 22 Eagle Excavating in March, March 8 of 2005, to recover
 23 the cost of repairing the gas leak that was found at
 24 this location.
 25 Q Do you know, does that include the time and materials

1 MDU expended in fixing the break?
 2 A Yes. Yes. This bill was prepared according to the
 3 approved rates for recovering costs to repair gas leaks
 4 caused by excavators approved by the PUC.
 5 Q Does it also include an estimate of the gas that
 6 escaped during the time it was ruptured?
 7 A Yes.
 8 Q How did you prepare that, if you know?
 9 A The estimate is prepared with gas loss software that's
 10 available on the market for the gas industry
 11 from Gas Works is the name of the software. It's
 12 produced by a company called Bradley B. Bean in
 13 Colorado Springs, Colorado.
 14 Q And so would MDU have any further costs at all past the
 15 invoice that's on I?
 16 A Not directly related to the repair.
 17 Q Certainly they've had costs in different places?
 18 A There's been additional costs associated in this in
 19 trying to recover this amount as well as pursuing the
 20 One Call Complaint.
 21 Q Did Finkhouse or Eagle Excavating or anyone else pay
 22 the bill that is Exhibit I?
 23 A Not to my knowledge.
 24 Q Are these all, G, H, and I, records you keep in the
 25 ordinary course of business?

1 A Yes.

2 Q We've talked about a Mr. Finkhouse several times here.

3 How did you come to learn that Mr. Finkhouse was

4 probably and almost certainly responsible for the

5 damage?

6 A In the course of investigating how the damage occurred

7 the developer of this new subdivision was contacted,

8 and they informed MDU that Vince Finkhouse doing

9 business as Eagle Excavating had conducted the original

10 installation of the water and water service lines in

11 this neighborhood and that he had been called back to

12 this location to repair a water leak in February of

13 2000 -- excuse me. In December 23 of 2004 he made a

14 repair at this leak location.

15 Q At this leak location, meaning the subdivision or

16 where?

17 A Meaning directly in front of 16630 Elk Horn Road in

18 Piedmont right at the water valve, curb valve.

19 Q And where was the curb stop or water valve in

20 relationship to the damaged pipe that is Exhibit A?

21 A The water line crossed directly underneath the damaged

22 area of the gas line. The water curb stop was just a

23 couple of feet towards the curb away from the gas line.

24 Q And this, as I understand, was underneath a driveway.

25 Am I correct?

1 A Yes.

2 Q Was the driveway exposed -- or I should say underneath

3 the driveway, was the concrete broken and excavated

4 when MDU got there?

5 A Yes. When we arrived the driveway was intact except

6 for one panel that had been broken out around the water

7 curb stop, and our crews discovered that the soil was

8 put back in and still remained quite moist, evidently

9 from the walk leak in the area that had been repaired.

10 Q Did you or anybody on behalf of the company check to

11 see whether a One Call location request had been put in

12 for this area?

13 A Yes. In the course of the investigation we checked

14 with Dakota One Call and with ELM Locators to see if

15 any locate tickets had been produced for this address

16 or in the -- anywhere in the area.

17 Q And what did you find out?

18 A We found out that there were a couple of tickets, they

19 weren't directly related to this location, and that

20 they had been done at least a month before the water

21 leak repair. So they weren't valid locates for this

22 location.

23 Q I'm showing you what we've marked as Exhibit D. Are

24 you familiar with that document?

25 A Yes.

1 Q Can you tell me what it is?

2 A It's a Locating and Utility Services Damage Report from

3 One Call Locators Limited who are doing business as

4 ELM Locating. It outlines their efforts to find a

5 locating ticket for this area.

6 Q Do you see in the middle where it says explanation of

7 damage, and it has some text and typewriting?

8 A Yes.

9 Q Can you read that out loud into the record, please.

10 A The explanation of damage that they reported is,

11 "Damage occurred at an earlier time. The damager is

12 unknown but attempted to repair the damaged gas line

13 some time ago and it had been leaking. We did a ticket

14 search for that address and did not have a valid locate

15 request."

16 Q MDU did not do or none of its employees did a locate

17 request or check to see if there had been one; correct?

18 Nobody at MDU did the search on Exhibit D.

19 A No. This was conducted by the manager -- the

20 area manager in Rapid City for ELM Locating,

21 Connie Follensbee.

22 Q That was obtained as part of MDU's investigation into

23 the matter; correct?

24 A Yes.

25 Q And is that a business record then, the report that you

1 got back then, kept in the ordinary course of business

2 at the office?

3 A Yes.

4 Q Thank you. Did anybody from MDU ever have contact with

5 Mr. Finkhouse, if you know?

6 A My understanding from Jim Mann's report is that he was

7 able to contact Vince Finkhouse sometime after we did

8 the repair and in the stages of the -- or in the course

9 of the investigation.

10 Q And do you know what, if anything, Mr. Finkhouse said

11 about the incident we're talking about here this

12 afternoon?

13 A Mr. Finkhouse acknowledged digging in that location

14 without locates and that he knew that there were

15 utilities in the area and he still didn't call for

16 locates. He did not acknowledge damaging the pipe, but

17 he did -- when Jim Mann confronted him and told him

18 that our investigation pointed to him and that we would

19 be sending him a bill for the repair he said, Okay.

20 Q Somebody at MDU then sent him a bill which was never

21 paid, if I understand correctly?

22 A Correct. That's the bill that was labeled as

23 Exhibit I.

24 Q Did Jim Mann prepare a report in this matter?

25 A Yes.

1 Q Is that what I've marked Exhibit E?
 2 A Yes.
 3 Q Is that a business record that's kept in the ordinary
 4 course of business?
 5 A Yes.
 6 MR. KOENECKE: At this time we
 7 would move A through -- we already moved A so we
 8 would move B through M.
 9 MS. GREFF: Did you do C?
 10 MR. KOENECKE: C was the tape. We
 11 have not done C yet.
 12 MS. GREFF: G? Okay.
 13 Q Did anybody from MDU check to see if it was possible
 14 that anybody else had done excavating in that area?
 15 A No. We had checked with the One Call to see who had
 16 dug in that area, and they informed us of these two
 17 tickets that were evidently issued to Eagle Excavating.
 18 They didn't lead us towards any other excavators that
 19 might have been digging there. The developer also
 20 didn't mention anybody else that might be digging
 21 there. And that was all the farther we took looking
 22 into somebody else doing it.
 23 Q The developer knew who had dug in that spot, didn't
 24 they?
 25 A Yes.

1 Q And they told you Finkhouse?
 2 A Yes.
 3 Q They didn't tell you anybody else?
 4 A Correct.
 5 Q Did anybody from the company prepare or take a
 6 videotape or a video recording of the place in
 7 question?
 8 A Yes.
 9 Q Have you got a copy of that with you?
 10 A Yes.
 11 Q Is that Exhibit C?
 12 A It's marked as Exhibit C. It was a video recording
 13 that Jim Mann took in April of 2004 after the gas leak
 14 had been repaired. The pavement had also been repaired
 15 at that time. But it shows the immediate proximity to
 16 16630 Elk Horn Road, including location marks that were
 17 still left there from when we did the repair.
 18 Q Is that a business record kept in the ordinary course
 19 of business?
 20 A Yes.
 21 MR. KOENECKE: We'll move C. You
 22 don't have to look at it unless somebody requests.
 23 But I think you've got a copy in your files
 24 already. And if you don't, you'll have this one.
 25 MS. GREFF: I was going to say, to

1 my knowledge we do not have a copy. Does anybody
 2 want to look at this now?
 3 Okay. Do you want to move them all now?
 4 MR. KOENECKE: Yep.
 5 MS. GREFF: Since there's nobody
 6 objecting, Exhibits A through M have been received.
 7 Q Do you know whether Finkhouse or anybody else notified
 8 MDU of the damage found at 16630 Elk Horn Road?
 9 A Nobody notified Montana-Dakota of any damage at that
 10 location until the leak was discovered.
 11 Q When Montana-Dakota representatives got there I just
 12 want to make sure the record's clear, had the -- the
 13 hole had been filled in with dirt?
 14 A Yes.
 15 Q But the concrete from the driveway had not been
 16 replaced?
 17 A Correct.
 18 Q So the pipe that's broken and in Exhibit A was buried?
 19 A Yes.
 20 MR. KOENECKE: I have nothing
 21 further.
 22 MS. GREFF: At this time I'll open
 23 it up for any questions by the Board of Mr. Blum.
 24 MR. KOUBA: I just have something
 25 I'm unclear. You stated that Mr. Finkhouse had

1 been called to the address in question and fixed a
 2 water leak in December of 2004; is that correct?
 3 THE WITNESS: Yes.
 4 MR. KOUBA: And when the gas leak
 5 was discovered and found, that was February 18 of
 6 2005; correct?
 7 THE WITNESS: Yes.
 8 MR. KOUBA: And you stated that
 9 there was no record of any other excavation done at
 10 that site during that time.
 11 THE WITNESS: We did not have any
 12 record in our possession or find any report of
 13 excavation at that location.
 14 MR. KOUBA: You mentioned that when
 15 your people got there the soil was still damp.
 16 This is going to be just a real -- a question that
 17 I'm just trying to clarify for myself. Is it -- in
 18 the normal course of business is it normal to have
 19 soil exposed for two months to still be moist from
 20 a water leak like that, in your opinion?
 21 THE WITNESS: From a water leak,
 22 yes.
 23 MR. KOUBA: Even though that soil --
 24 could that soil have been replacement soil from the
 25 original water leak? I guess what I'm getting at,

1 the question is, in your opinion -- I think you
2 clarified to me that there's evidence that showed
3 there was no other excavation in that area in that
4 two-month period.

5 THE WITNESS: Yes. The soil
6 appeared to be native soil that was taken out and
7 put back in that location.

8 MR. KOUBA: Okay. Thank you.

9 MR. ANDERSON: As a follow-up to
10 Kevin's, would it be -- in your opinion would it be
11 a fair statement that had there been any subsequent
12 excavation, any soil disturbance of any type, is it
13 likely that the gas leak would have been discovered
14 almost immediately or within a very short period of
15 time of any other soil disturbance?

16 THE WITNESS: If I understand what
17 you're asking, it appeared to us that there had
18 been no other excavation there and that the two
19 months between the time of the damage and the time
20 of the leak there was no excavation between --
21 during that time period.

22 MR. ANDERSON: Because -- and what
23 I'm wondering is because it's a low pressure line
24 and there was approximately -- looking at the
25 pictures it looked like at least 36 inches of fill,

1 probably more, that two-month time would be a
2 reasonable time for the odor to finally reach to
3 come up out of the soil and that's when it was --
4 that's when the homeowner discovered it.

5 Had there been subsequent disturbance to the
6 soil, somebody else had been in subsequent to the
7 repair or the damage, that it's quite -- I'm
8 wondering, wouldn't it be likely that it would have
9 been discovered at that time?

10 THE WITNESS: Yes. It would be
11 reasonable to assume that if anybody had dug in
12 that location or near that location during that
13 time, they would have discovered the gas leak
14 because of the way it was leaking when we did find
15 it.

16 They were fortunate that they didn't repair
17 the concrete over the top of it. That would have
18 held the the gas down in and caused it to migrate
19 out. That would have caused it to maybe be
20 discovered at another location like inside the
21 building. The way it was, it was discovered
22 immediately adjacent to the new excavation when the
23 new homeowner was going to his mailbox to get his
24 mail.

25 MR. SOLSETH: Do you know if the

1 house had been occupied the whole time?

2 THE WITNESS: No. I don't know
3 that. I just know that it was occupied at the
4 point that the leak was discovered.

5 MR. CHAMBERS: During your
6 investigation did you determine who put the water
7 line from the curb stop to the house?

8 THE WITNESS: I believe from what
9 the developer, Complete Home Builders, and
10 Vince Finkhouse have told us, that Mr. Finkhouse
11 was the person who originally installed the water
12 line, and that's why he was called back to fix the
13 leak. It was a defective installation or just
14 something that may have happened in the course of
15 business. But he was called back to repair the
16 line that he had originally installed.

17 MR. CHAMBERS: I guess I understood
18 from your testimony that the leak was probably at
19 the curb stop. And I guess I was asking from the
20 curb stop to the house, who actually installed
21 that?

22 THE WITNESS: I believe it was
23 Vince Finkhouse, Eagle Excavating.

24 MR. CHAMBERS: Okay. Who installed
25 the gas line main in front of the house that was

1 damaged?

2 THE WITNESS: That would have been
3 Montana-Dakota Utilities. We installed the gas
4 line.

5 MR. CHAMBERS: Is it possible that
6 the damage and repair occurred during the gas line
7 installation?

8 THE WITNESS: No.

9 MR. CHAMBERS: And why is that?

10 THE WITNESS: It's not a standard
11 repair method. As you see, we cut this section of
12 pipe out. We heat-fused in a new section of pipe
13 that was pretested at 100 pounds, and then we
14 subsequently tested the connections after that pipe
15 was installed. Something like this isn't allowed
16 to be left in the ground by an MDU construction
17 crew.

18 MR. CHAMBERS: Since it was your
19 crews you didn't really have an inspector on site
20 or anything like that, it was just the policy or
21 the procedure for the crews who were installing the
22 main not to do something like that?

23 THE WITNESS: Yes.

24 MR. CHAMBERS: Thank you.

25 MR. SOLSETH: Do you know when the

1 time frame for the -- it looks like it must be
 2 what, is that a telecommunications -- I can't think
 3 of what it's called. Conduit or whatever. Was
 4 that installed with you guys or after you guys or
 5 whatever? Do you know the time frame of when that
 6 conduit was put in?

7 THE WITNESS: Yes. The power
 8 communications conduits and the gas lines were all
 9 installed in a joint trench at the same time.
 10 Natural gas is installed above the other utilities.

11 MR. SOLSETH: Okay. So that was
 12 already backfilled by the time you came and put
 13 your gas in, the stuff below you?

14 THE WITNESS: Typically on a joint
 15 trench operation we ask for the other utilities to
 16 be padded, backfilled a little bit, before we get
 17 there to put ours in. If our crews get there and
 18 they aren't padded or backfilled, our crews will
 19 put in some select backfill to obtain the
 20 separation we need between the other utilities.

21 MR. SOLSETH: Do you know where the
 22 water line -- was that in prior to the other
 23 utilities going in? In other words, do you have
 24 any idea, I mean, is that well below these other
 25 utilities?

1 THE WITNESS: My understanding is
 2 that it is. It wasn't exposed during the course of
 3 our repair, which would indicate that it's below
 4 us.

5 MR. CONDY: I just want to clarify
 6 one thing. On the ticket search you mentioned that
 7 ELM, you guys contacted them, and they did the
 8 research to see if anybody else had called in any
 9 tickets at that particular location.

10 So you were going off of ELM's word?
 11 Montana-Dakota Utilities did not call in a ticket
 12 search themselves; is that correct?

13 THE WITNESS: Jim Mann states that
 14 he asked South Dakota One Call to search their
 15 database for any tickets that could match this area
 16 for the month of December. The only tickets that
 17 were close were tickets number 4330011 and 433012.
 18 These tickets were both called in in November
 19 of '04, November 28 of '04. They were called in by
 20 Valley Heights Estates for emergency water line
 21 repair. Neither of these tickets describe the
 22 property where our main was hit.

23 So that indicates that Jim Mann called in to
 24 South Dakota One Call and had them do a search, as
 25 well as we directly contacted the contract locator.

1 They're more familiar with where they've been
 2 locating and can sometimes come up with records
 3 that we don't get by calling One Call or at least
 4 they can confirm what we do get from One Call. So
 5 there were two calls made, one to South Dakota One
 6 Call, and one to ELM Locators.

7 MR. CONDY: There was just no
 8 documentation from South Dakota One Call except for
 9 just the word Jim had said there, as far as them
 10 two tickets? You never received anything from
 11 South Dakota One Call stating those were the only
 12 two tickets for that area?

13 THE WITNESS: I don't have a
 14 document saying those were the only two tickets,
 15 but he does say that he has the copies. They're
 16 hard to read, but he believes those are the two
 17 numbers that he could read on them. So
 18 South Dakota One Call did send him copies of those
 19 two tickets.

20 MR. CONDY: Okay. Thanks.
 21 MS. GREFF: Other questions from the
 22 Board?

23 Seeing none, Brett.
 24 MR. KOENECKE: I just want to follow
 25 up on something that Mr. Chambers asked.

REDIRECT EXAMINATION

BY MR. KOENECKE:

1
 2
 3 Q If I understand correctly and as a lawyer from Pierre I
 4 probably don't, we had a trench that had several
 5 utilities in it. At the point that the gas pipe was
 6 laid there would have been backfill over the others.
 7 MDU would have come along and laid the gas pipe.

8 My question is then how would MDU have
 9 backfilled over the top of that?

10 A The MDU gas crew, like I said before, they would have
 11 ensured there was separation from the other utilities.
 12 After placing our pipeline and locator wire in the
 13 trench, they would have completed filling the trench
 14 with the native soil, if it was suitable for backfill.

15 Q What would they have used to do that for a tool or an
 16 implement?

17 A Typically they'll use a shovel, a number two shovel, to
 18 pad our main, and then they will push in the remaining
 19 backfill with excavation equipment, either a backhoe
 20 bucket or a skid steer bucket and compact it as they
 21 go.

22 Q Would the ordinary way of backfilling with a backhoe
 23 bucket have caused the damage to Exhibit A that we see
 24 here?

25 A No.

1 Q Was there anybody above you in the trench?
 2 A No.
 3 MR. KOENECKE: Nothing further.
 4 Thank you.
 5 MS. GREFF: Was the MDU gas line
 6 laid -- was the MDU gas line in place -- when the
 7 two ticket searches that came up in 2004, was the
 8 MDU gas line already in place when those two ticket
 9 searches were done by Mr. Finkhouse?
 10 THE WITNESS: I don't know.
 11 MR. KOENECKE: Are you asking
 12 whether MDU was in place prior to November 28?
 13 MS. GREFF: Correct. Of '04.
 14 Meaning would Mr. Finkhouse have known that the MDU
 15 gas line was there when he called in those ticket
 16 searches in 2004 to do that water main work?
 17 THE WITNESS: I don't know.
 18 MR. KOENECKE: Finkhouse didn't call
 19 in the ticket searches, though.
 20 MS. GREFF: Weren't they issued to
 21 him?
 22 MR. KOUBA: The actual initial
 23 tickets 433011 and --
 24 MS. GREFF: Those were not his?
 25 MR. KOUBA: We don't know whose

1 those are.
 2 MS. GREFF: I'm sorry. That was my
 3 mistake.
 4 THE WITNESS: I just don't know.
 5 MR. KOENECKE: Can we go off the
 6 record a minute?
 7 (Discussion off the record)
 8 MS. GREFF: In MDU's Complaint there
 9 was a lot of mention of the word "intentional
 10 damage" to the said gas line. Is that stemming
 11 from Mr. Finkhouse's prior work on the water mains
 12 in and around the area?
 13 THE WITNESS: It stems directly from
 14 his statement that he knew that there were
 15 utilities there and he didn't take the legal
 16 required steps to protect the utilities.
 17 MS. GREFF: Okay. That's all I
 18 have.
 19 Other questions from the Board?
 20 MR. SOLSETH: I guess -- okay.
 21 MS. GREFF: Anything else?
 22 Mr. Koenecke, do you have anything else for this
 23 witness?
 24 MR. KOENECKE: Nothing. Thank you.
 25 MS. GREFF: Seeing there's no one

1 here to cross-examine you, we appreciate your time,
 2 Mr. Blum, and I guess you're excused from your
 3 testimony.
 4 Do you have any other witnesses to call at
 5 this time?
 6 MR. KOENECKE: I do not.
 7 MS. GREFF: And seeing as there is
 8 nobody else to offer anymore to the record, would
 9 you wish to close with any sort of closing
 10 statement?
 11 MR. KOENECKE: Just a brief one for
 12 the benefit of the Board. We've put a lot of
 13 people's reports and business -- and understandings
 14 of what happened that day, the witness's reports,
 15 in through Mr. Blum because it's not -- it doesn't
 16 make any economic sense for us to bring all of
 17 those people out here to tell you what they saw
 18 that day.
 19 I'd just ask you to read those reports and
 20 receive them as having come from that person. We
 21 couldn't bring those five or six people out here.
 22 One because he's in the hospital, and the other
 23 ones because that isn't going to make any sense at
 24 all. So we've used what I call the Business
 25 Records Exception to the Hearsay Rule, which is

1 more than you need to know. That's why I asked him
 2 that every time, because that's an evidentiary
 3 requirement.
 4 So I would just ask you to take a look at
 5 those and view them in that manner. That's why we
 6 didn't bring those people out here.
 7 We appreciate your time and your
 8 thoughtfulness on this matter and glad to have met
 9 those of you I haven't met before, and we'll leave
 10 you to your deliberations. Thank you.
 11 MS. GREFF: At this time I would --
 12 I'd look to the Board for either making a ruling
 13 from the bench or if you want to be in a brief
 14 recess or if you want to take this matter into
 15 consideration, I'd look for a motion from the
 16 Board.
 17 MR. ANDERSON: Just a procedural
 18 question. Would a motion to adopt the
 19 recommendation of the Enforcement Committee as it
 20 was issued on August 15, that would be an
 21 appropriate motion?
 22 MS. GREFF: That would be an
 23 appropriate motion.
 24 MR. ANDERSON: So moved.
 25 MR. KOUBA: A motion to adopt the

1 recommendations of the findings of the Enforcement
 2 Committee. Is there a second?
 3 MR. LEHNER: Second.
 4 MR. KOUBA: We have a second. Any
 5 further discussion? Any further discussion?
 6 Hearing none, all of those in favor of that
 7 motion, signify by saying aye.
 8 (All indicate aye)
 9 MR. KOUBA: Opposed, same sign.
 10 (No audible response)
 11 MR. KOUBA: Motion carried. I'd
 12 entertain a motion to adjourn.
 13 MR. ANDERSON: So moved.
 14 MR. KOUBA: So moved. Is there a
 15 second?
 16 MR. SOLSETH: Second.
 17 MR. KOUBA: All those in favor,
 18 signify by saying aye.
 19 (All indicate aye)
 20 MR. KOUBA: Opposed, same sign.
 21 (No audible reponse)
 22 MR. KOUBA: Thank you very much.
 23
 24
 25

1 STATE OF SOUTH DAKOTA)
 2 :SS CERTIFICATE
 3 COUNTY OF HUGHES)
 4
 5 I, CHERI MCCOMSEY WITTLER, a Registered
 6 Professional Reporter and Notary Public in and for the
 7 State of South Dakota:
 8 DO HEREBY CERTIFY that as the duly-appointed
 9 shorthand reporter, I took in shorthand the proceedings
 10 had in the above-entitled matter on the 8th day of
 11 November 2005, and that the attached is a true and
 12 correct transcription of the proceedings so taken.
 13 Dated at Pierre, South Dakota this 9th day
 14 of November 2005.
 15
 16
 17 
 18 Cheri McComsey Wittler,
 19 Notary Public and
 20 Registered Professional Reporter
 21
 22
 23
 24
 25

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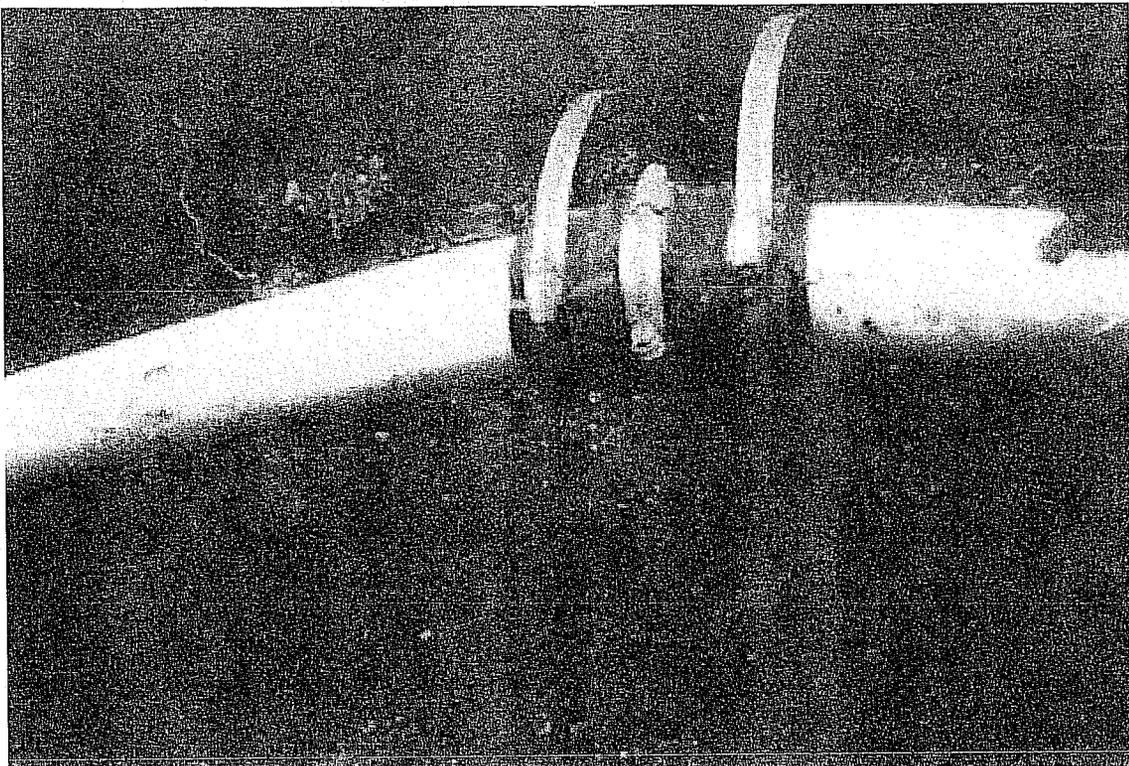
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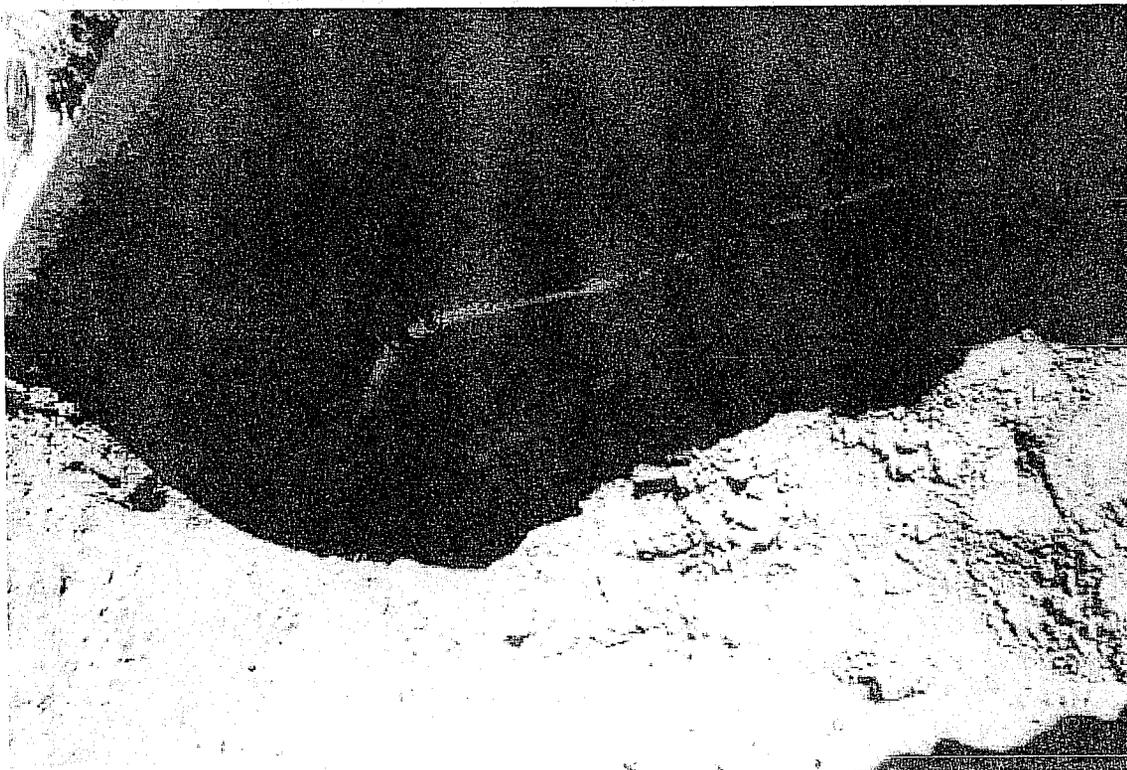
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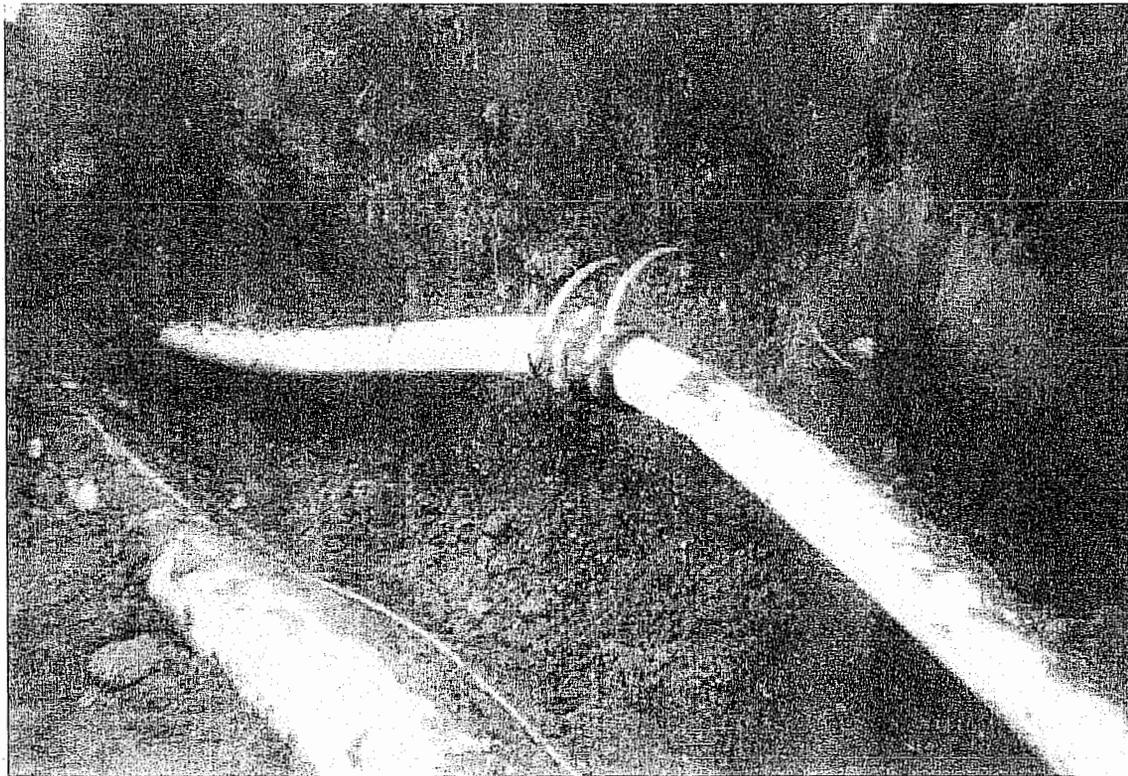
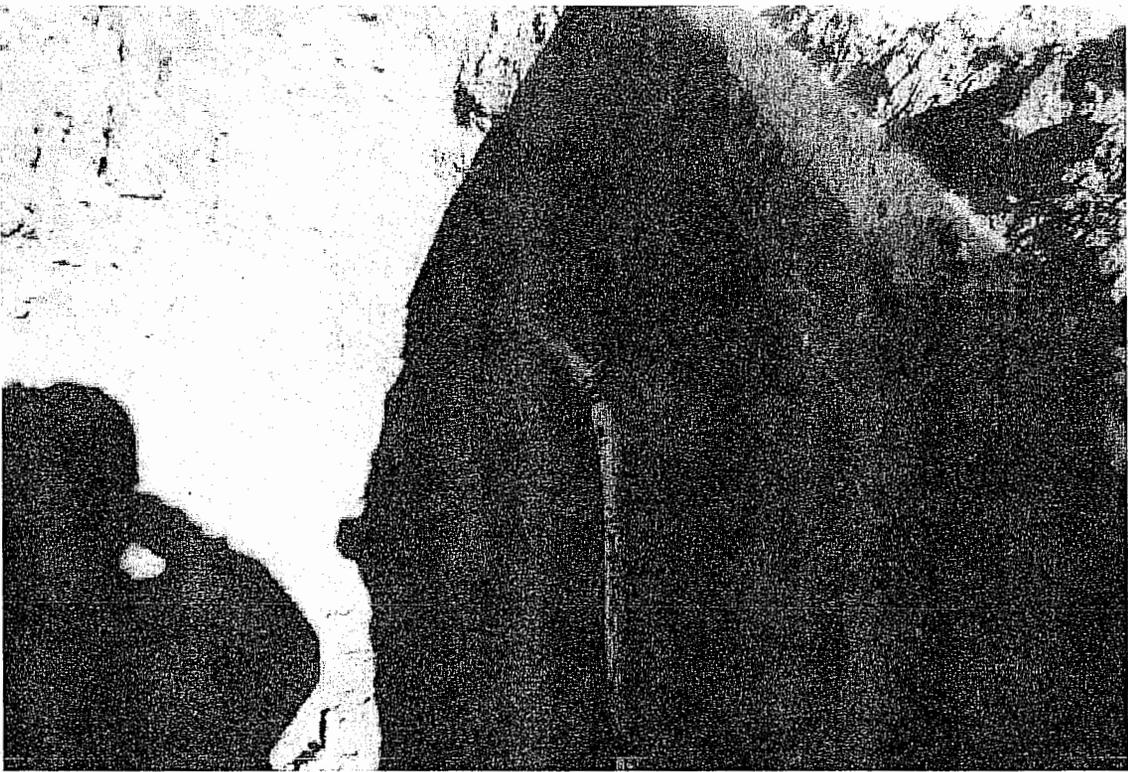


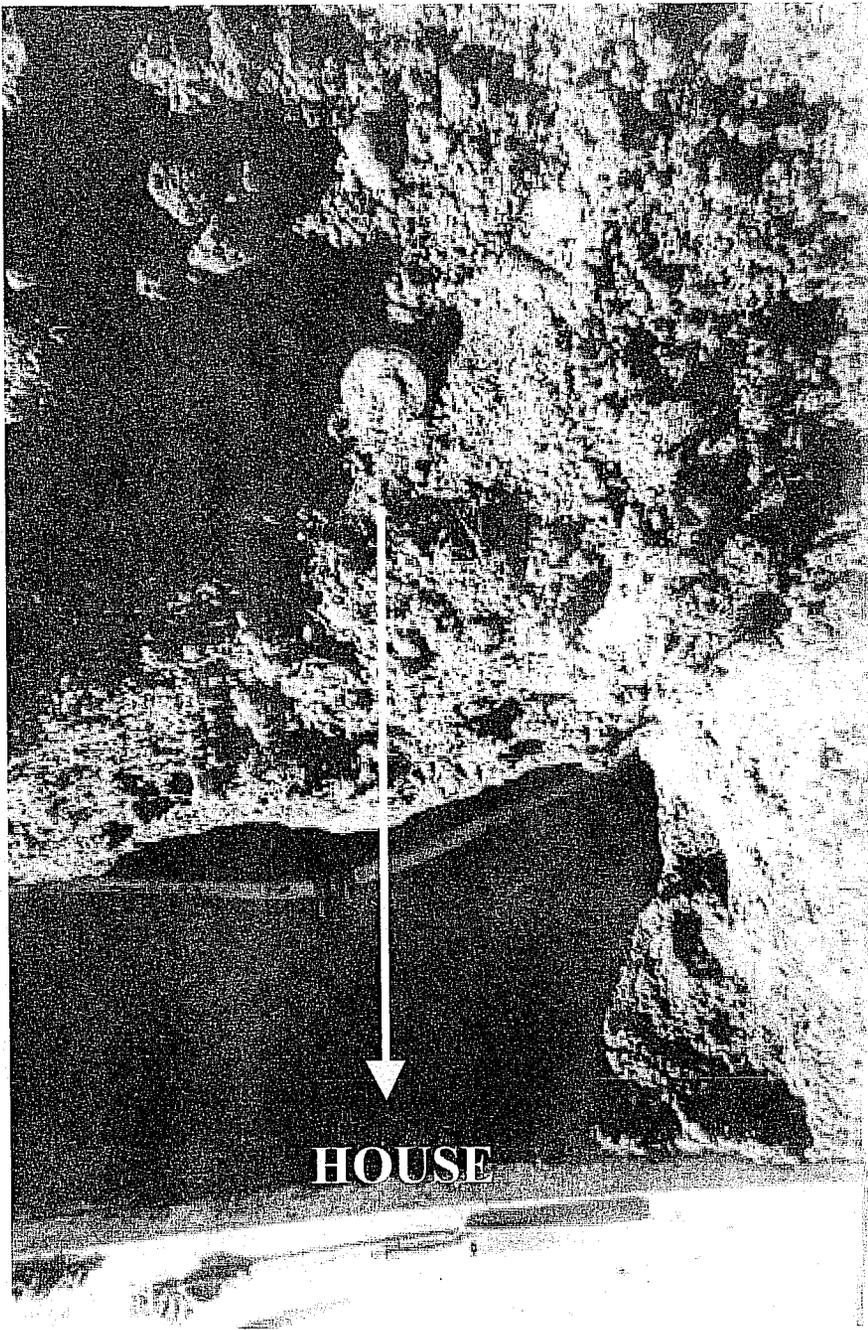
Close-up of damage and repair,



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

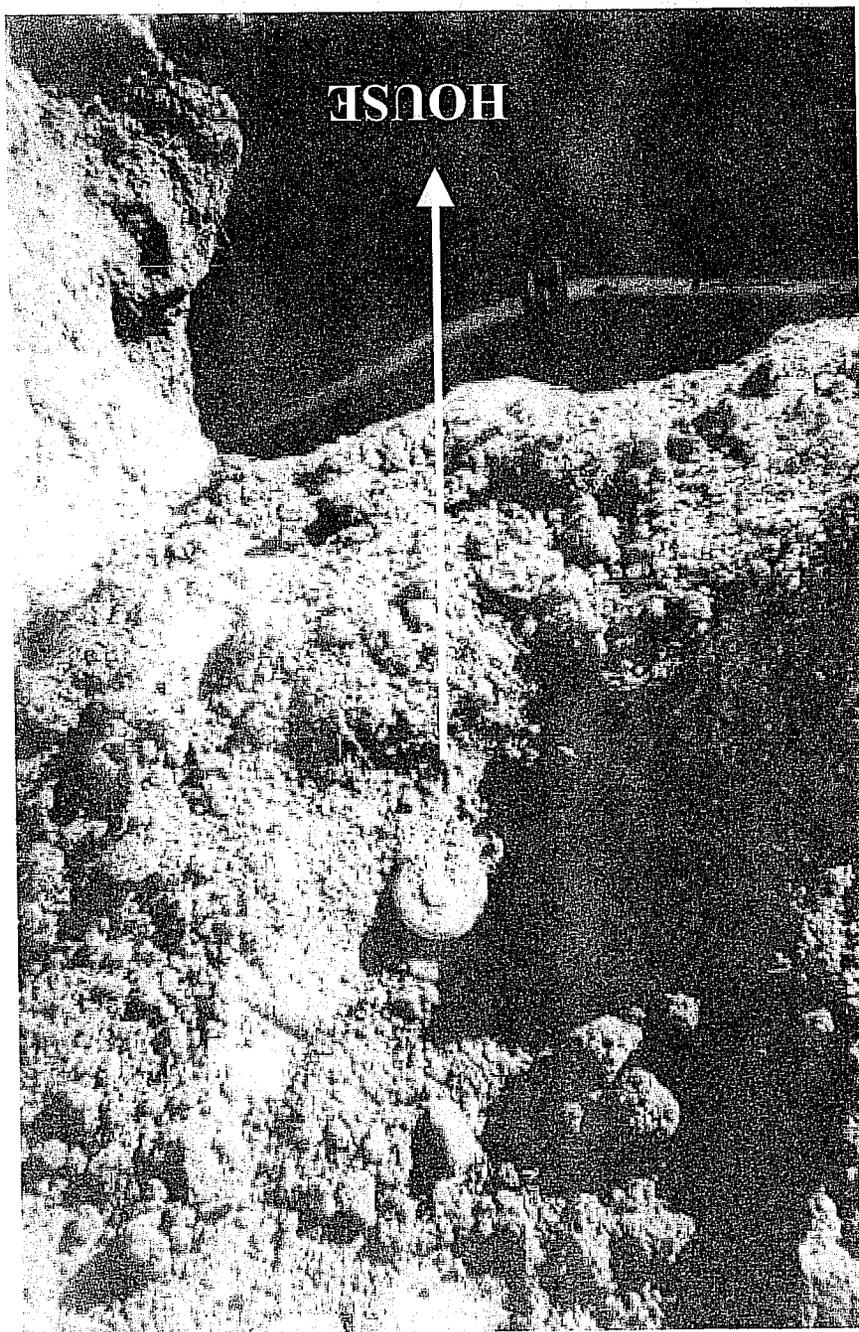
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	B
	11-8-05 CW

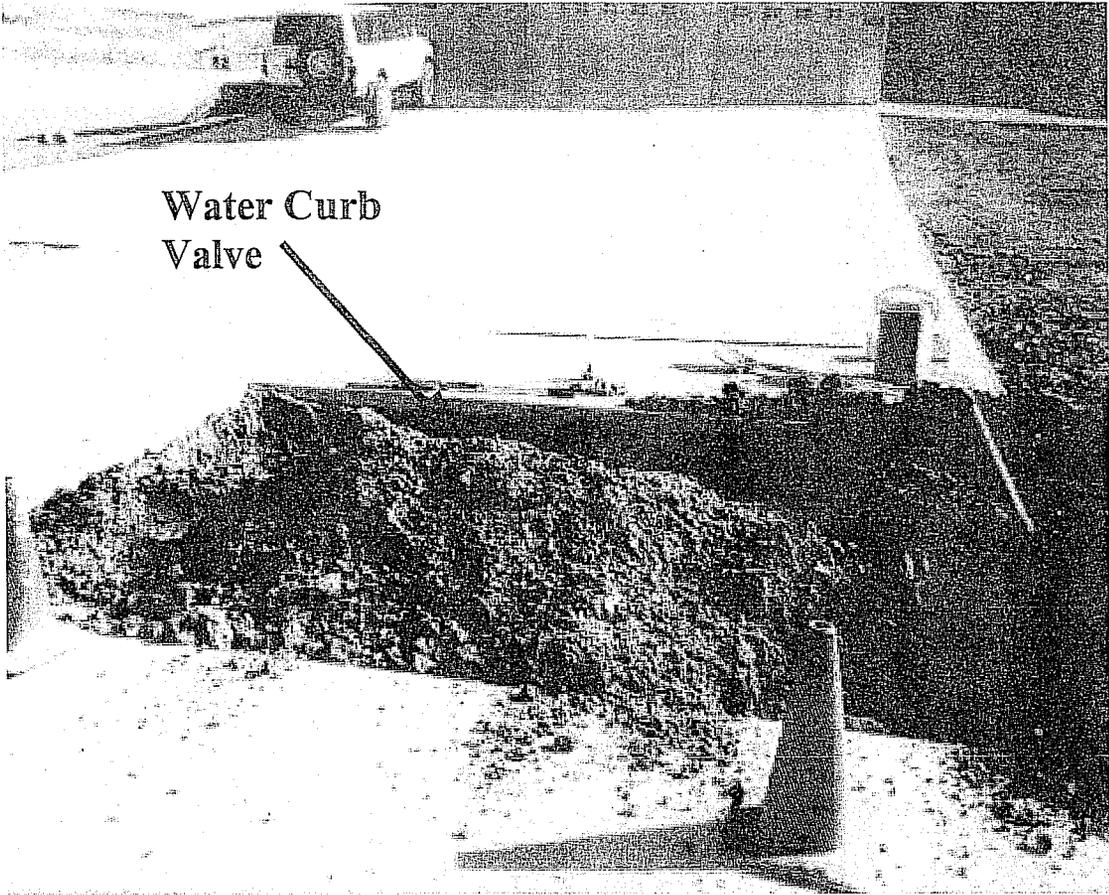




Water curb valve in relation to the damage line.

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

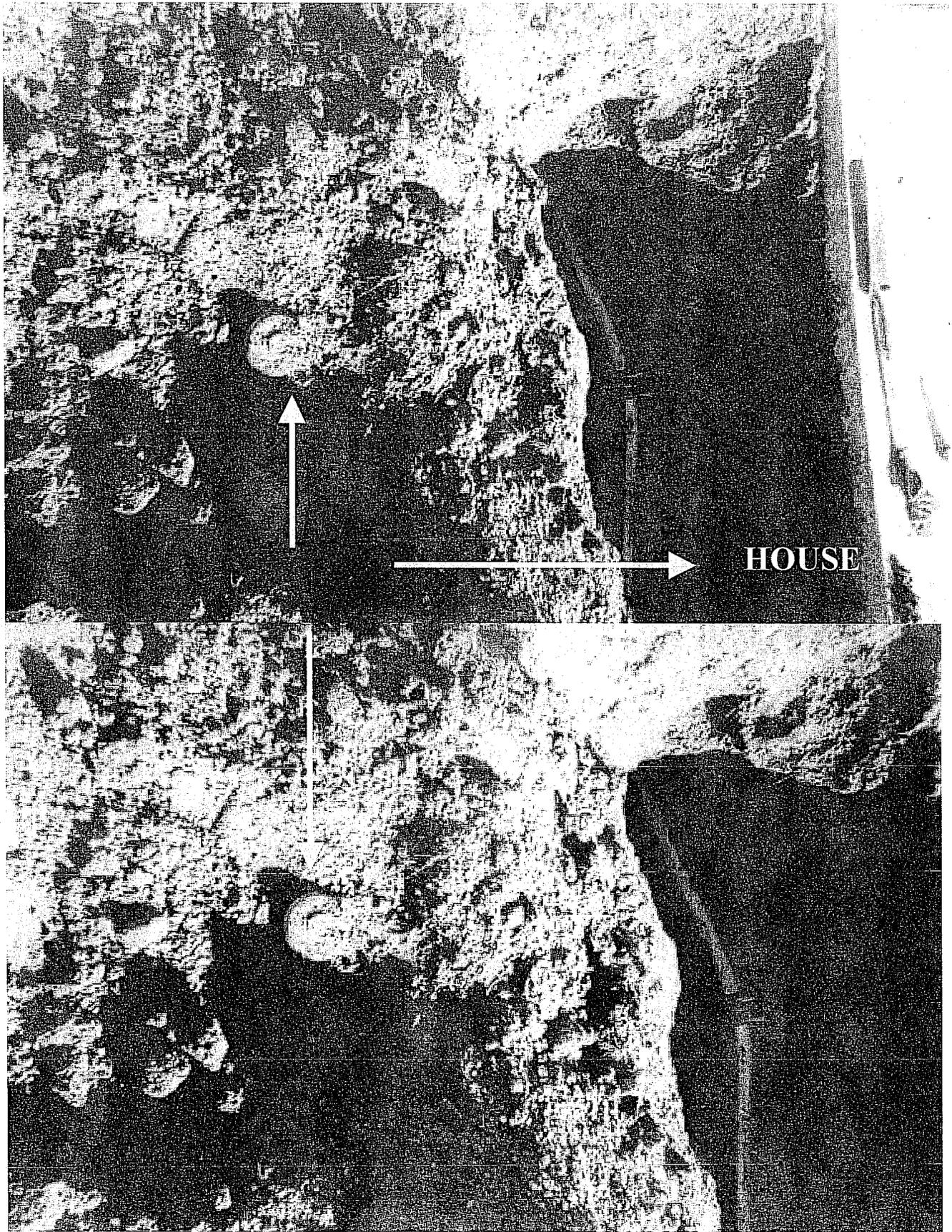




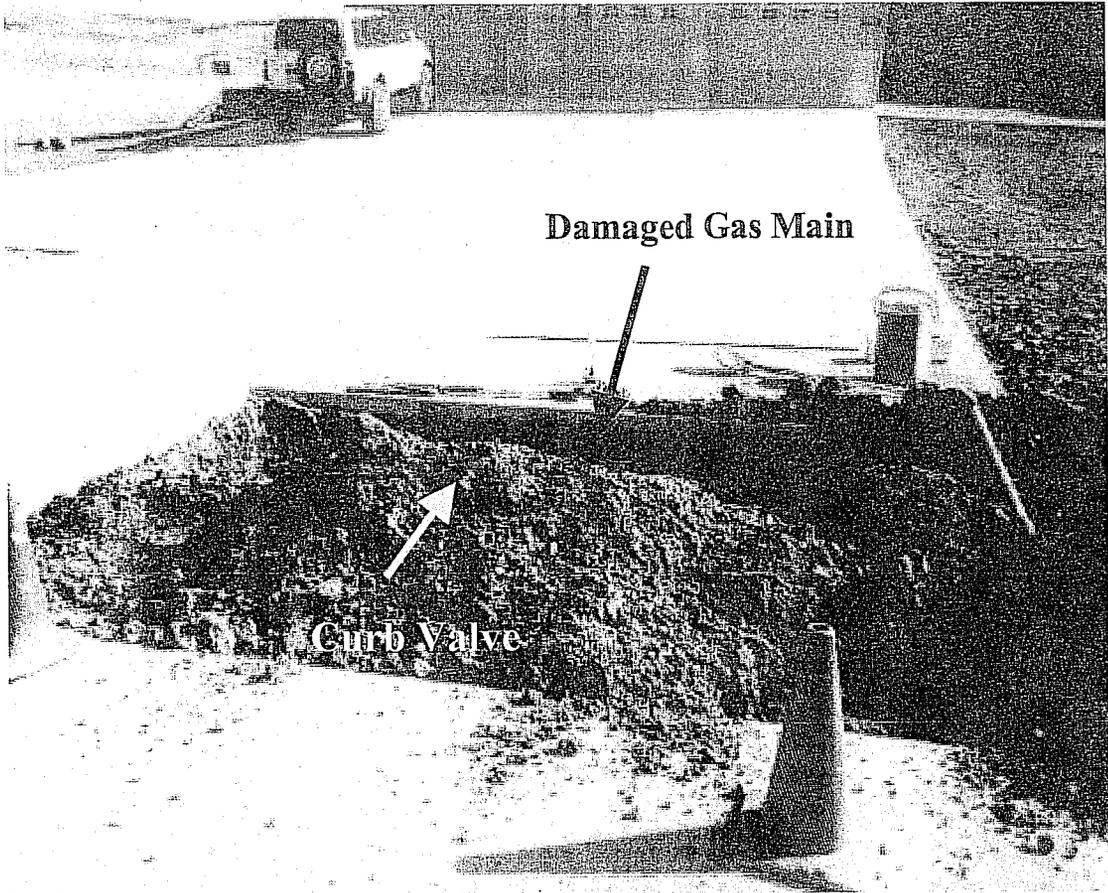
A view of the concrete removal and excavation in relation to the house.



Perspective of depth on the damaged line.



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



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

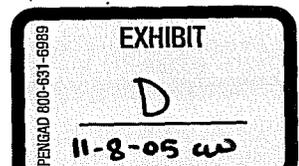
Explanation of Damage (Please be Specific – attach another page if necessary)

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
 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.

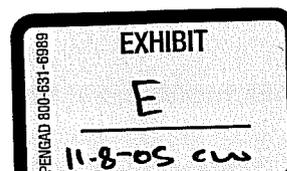
Gary tried calling Vince Finkhouse and left several voice mails. Mr. Finkhouse would not return the calls. After no response from numerous voice mails, I called Complete Homebuilders and informed them of the situation. The person I talked to at Complete Homebuilders was Cheryl. I informed her of the 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.

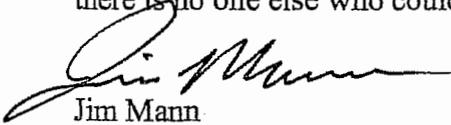
Vince Finkhouse had informed me that he did not call for locates prior to excavation. I asked SD One Call to search their database for any tickets that could match this area for the month of December. The only tickets that were close were tickets number 043330011 and 04333012 (the copies I have are hard 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.

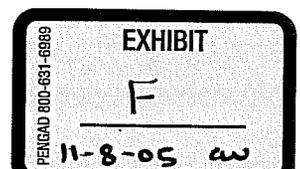


Jim Mann
Region Gas Superintendent
Montana-Dakota Utilities Co.

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.



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 cathodically 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

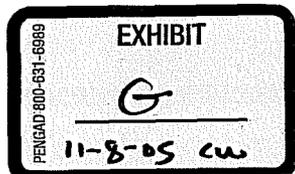
If a DOT Reportable Leak: _____ Date and Time of Telephone report: 2/18/2005 9:00

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



REPORT OF DAMAGE TO COMPANY-OWNED PROPERTY

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

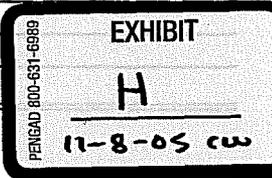
Part A

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)

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

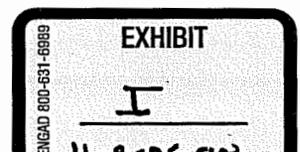
INVOICE NUMBER
 336026

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



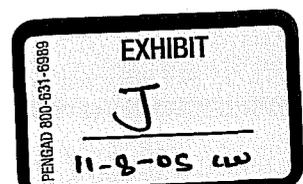
June 23, 2005

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 was 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
Don Osborne
Fitter Operator
Montana Dakota Utilities



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.

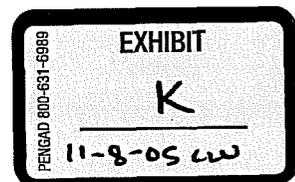
John Miller the Service person was already there when he called me (Henry McIntosh) to check out the leak. When we arrived at 9:30 am I asked John what he had found. He had 90% gas right over our 2 inch gas main. I (Henry McIntosh) noticed a section of the concrete driveway was cut out due to a water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

Henry McIntosh
Working Foreman
Montana Dakota Utilities

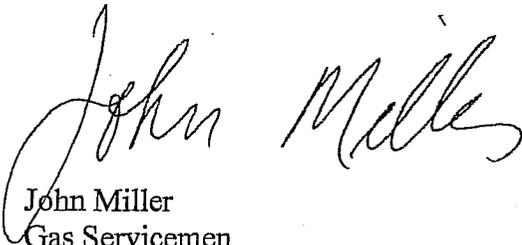


June 29, 2005

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.

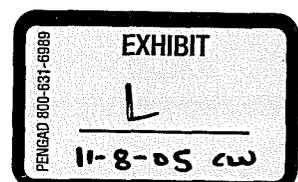
Then I proceeded to go into the home to check for gas in the basement, no gas was present. At that time I informed the customer what I had found and that we had a crew on the way to dig up the area where gas leak was located. She informed me that they had a water leak there previously and that someone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





South Dakota One Call Notification Board

201 E. Capitol Avenue, Rapid City, SD 57110
Tel/Fax (605) 339-0529
Email: exedir@sdonecall.com

August 22, 2005

Jim Mann
Montana-Dakota Utilities Co.
PO Box 1060
Rapid City, SD 57709

Vince Finkhouse
dba Eagle Excavating
4201 S. Interstate 90
Rapid City, SD 57703

Under the authority granted by SDCL 49-7A-22, the Enforcement Committee of the South Dakota One Call Notification Board met on August 19, 2005, to determine whether there is probable cause to believe that violations had occurred relative to Complaint OC05-005 filed Montana-Dakota Utilities Company against Vince Finkhouse, dba Eagle Excavating.

By a unanimous vote of the Enforcement Committee, the recommended resolutions to the alleged violations included in this complaint were determined to be as follows:

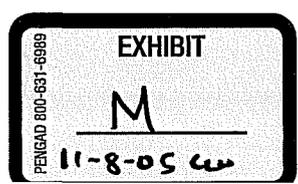
Complaint OC05-005(A)

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

The Committee found there was probable cause that Vince Finkhouse, dba Eagle Excavating, had violated SDCL 49-7A-5 by commencing excavation at 16630 Elk Horn Road in Piedmont, SD, without providing advance notification to the South Dakota One Call System as required by statute.

The committee recommends a penalty of five hundred dollars (\$500.00) be assessed against Vince Finkhouse, dba Eagle Excavating for this violation.

The committee also found that the conditions cited in the complaint did not meet the requirement to assess additional penalties under SDCL 49-7A-19.



Complaint OC05-005(B)

Alleged Violation of SDCL 49-7A-8 - Marking

A Violation of SDCL 49-7A-8 would require that an underground facility was marked prior to the excavation activity commencing for an excavator to be in violation of this statute. Therefore, the Committee found that probable cause could not be substantiated that Vince Finkhouse, dba Eagle Excavating, had violated SDCL 49-7A-8 by excavating at 16630 Elk Horn Road, Piedmont, SD, without maintaining a minimum horizontal clearance of eighteen inches between a marked underground facility and the cutting edge of any mechanical equipment as required by SDCL 49-7A-8.

Complaint OC05-005(C)

Alleged Violation of SDCL 49-7A-12 Failure to provide notification of damage to an underground facility

The Committee found there was probable cause that Vince Finkhouse, dba Eagle Excavating, had violated SDCL 49-7A-12 by damaging an underground facility at 16630 Elk Horn Road in Piedmont, SD, without providing notice of the damage to Montana-Dakota Utilities or the South Dakota One Call Center.

The committee recommends a penalty of one-thousand dollars (\$1000.00) be assessed against Vince Finkhouse, dba Eagle Excavating for this violation.

The committee also found that the conditions cited in the complaint met the requirement to assess additional penalties under SDCL 49-7A-19.

The committee recommends an additional penalty of five-thousand dollars (\$5000) for this violation.

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

Under SDCL 49-7A-27 either party may accept the recommendations of the Enforcement Committee or reject the recommendations of the Enforcement Committee by requesting a formal hearing on any of the violations alleged in this complaint. Your decision should be reflected on the third page of the attachments with the header "Acceptance or Rejection by Parties. **Please return the signed and dated form prior to the close of business on September 9, 2005 to:**

South Dakota One Call Notification Board
1012 N. Sycamore Avenue
Sioux Falls, SD 57110-5747

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

Pursuant to SDCL 15-6-55, failure to answer any of the violations alleged in 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. 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

OC05-005(A)

Montana-Dakota Utilities Co. vs. Vince Finkhouse, dba Eagle Excavating

FINDINGS:

OC05-005(A)

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

Allegation is made by Montana-Dakota Utilities Co. that Vince Finkhouse, dba Eagle Excavating, commenced excavation at 16630 Elk Horn Road, Piedmont, SD, without providing prior notification to the South Dakota One Call System as required by SDCL 49-7A-5.

No response was received from Vince Finkhouse, dba Eagle Excavating relative to the complaint filed.

Prior to reviewing the complaint, and in view of the fact that no response was received from Vince Finkhouse, dba Eagle Excavating, the committee reviewed the following process for notifying Vince Finkhouse, dba Eagle Excavating:

- Notification of the Complaint was mailed to Vince Finkhouse, dba Eagle Excavating, on July 7, 2005.
- Carolyn Bunnell signed for the delivery of the complaint on July 14, 2005.
- Vince Finkhouse, dba Eagle Excavating, failed to respond within the legal time frame (July 29, 2005)
- Larry Englerth, Executive Director to the South Dakota One Call Notification Board, left messages for Mr. Finkhouse on Friday July 29th and Saturday July 30th.
- Mr. Finkhouse contacted Larry Englerth, Executive Director to the South Dakota One Call Notification Board, on Monday August 1, 2005 and discussed the complaint process and agreed to file a response regarding this complaint with the South Dakota One Call Notification Board by Friday August 5, 2005.
- The South Dakota One Call Notification Board sent a letter on August 6th advising Vince Finkhouse, dba Eagle Excavating of their failure to receive a response to the complaint.
- Vince Finkhouse, dba Eagle Excavating, failed to meet the commitment to respond to the complaint and no response has been received at the time of the Enforcement Committee on August 19, 2005.

The Committee determined that all appropriate steps had been taken to insure that Vince Finkhouse, dba Eagle Excavating, had the opportunity and notification to respond to this complaint within the timelines established in SDCL 49-7A-23.

In reviewing the Complaint filed by Montana-Dakota Utilities Company, the following items were noted:

- Complete Homebuilders had provided information that they had hired Vince Finkhouse, dba Eagle Excavating, to repair a leaking water service at this address.
- Mr. Finkhouse had acknowledged to a representative of Montana-Dakota Utilities that he had done the excavation work at this address.

Based on the information noted above, the Committee found that there was probable cause that Vince Finkhouse, dba Eagle Excavating, had violated SDCL 49-7A-5 without providing advance notice to the South Dakota One Call System.

RECOMMENDATION

OC05-005(A)

VIOLATION OF SOUTH DAKOTA SDCL 49-7A-5:

The Committee found there was probable cause that Vince Finkhouse, dba Eagle Excavating, had violated SDCL 49-7A-5 by commencing excavation at 16630 Elk Horn Road, Piedmont, SD, without providing advance notification to the South Dakota One Call System as required by statute.

PROPOSED PENALTY FOR THIS VIOLATION AUTHORIZED UNDER SDCL 49-7A-18:

The committee recommends a penalty of five hundred dollars (\$500.00) against Vince Finkhouse, dba Eagle Excavating, for this violation.

PROPOSED ADDITIONAL PENALTIES FOR THIS VIOLATION AUTHORIZED UNDER SDCL 49-7A-19:

The committee found there was insufficient information provided to establish that the excavation at this site was intentionally done without providing notice to the South Dakota One Call Center.

COMMENTS:

**ACCEPTANCE OR REJECTION BY PARTIES
COMPLAINT OC05-005(A)**

THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC05-005(A).

IF BOTH PARTIES INVOLVED IN THIS COMPLAINT ACCEPT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC05-005(A) , THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY SDCL 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT OC05-005(A) .

IF EITHER PARTY INVOLVED IN THIS COMPLAINT REJECT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC05-005(A). THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD WILL SET UP A HEARING TO RESOLVE THE REJECTED RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC05-005(A). 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 ALLEGE VIOLATION, YOU SHOULD COMPLETE THE FOLLOWING AND RETURN TO THE ADDRESS BELOW PRIOR TO THE CLOSE OF BUSINESS ON SEPTEMBER 9, 2005, 2005.

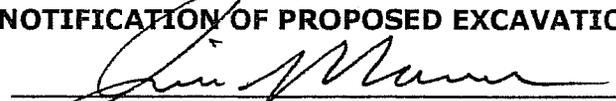
SOUTH DAKOTA ONE CALL NOTIFICATION BOARD
1012 N. SYCAMORE AVENUE
SIOUX FALLS, SD 57110-5747

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

OC05-005(A)

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

I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC05-005(A) VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION.



Signature- Montana-Dakota Utilities Company

9/7/05

Date

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC05-005(A) VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC05-005(A).

Signature- Montana-Dakota Utilities Company

Date

ENFORCEMENT COMMITTEE ACTION

OC05-005(B)

Montana-Dakota Utilities Co. vs. Vince Finkhouse, dba Eagle Excavating

FINDINGS:

OC05-005(B)

Alleged Violation of SDCL 49-7A-8 Location of Underground Facilities - Marking

Allegation is made by Montana-Dakota Utilities Co. that Vince Finkhouse, dba Eagle Excavating, excavated at 16630 Elk Horn Road, Piedmont, SD, without maintaining a minimum horizontal clearance of eighteen inches between a marked underground facility and the cutting edge of any mechanical equipment as required by SDCL 49-7A-8.

No response was received from Vince Finkhouse, dba Eagle Excavating relative to the complaint filed.

Prior to reviewing the complaint, and in view of the fact that no response was received from Vince Finkhouse, dba Eagle Excavating, the committee reviewed the following process for notifying Vince Finkhouse, dba Eagle Excavating:

- Notification of the Complaint was mailed to Vince Finkhouse, dba Eagle Excavating, on July 7, 2005.
- Carolyn Bunnell signed for the delivery of the complaint on July 14, 2005.
- Vince Finkhouse, dba Eagle Excavating, failed to respond within the legal time frame (July 29, 2005)
- Larry Englerth, Executive Director to the South Dakota One Call Notification Board, left messages for Mr. Finkhouse on Friday July 29th and Saturday July 30th.
- Mr. Finkhouse contacted Larry Englerth, Executive Director to the South Dakota One Call Notification Board, on Monday August 1, 2005 and discussed the complaint process and agreed to file a response regarding this complaint with the South Dakota One Call Notification Board by Friday August 5, 2005.
- The South Dakota One Call Notification Board sent a letter on August 6th advising Vince Finkhouse, dba Eagle Excavating of their failure to receive a response to the complaint.
- Vince Finkhouse, dba Eagle Excavating, failed to meet the commitment to respond to the complaint and no response has been received at the time of the Enforcement Committee on August 19, 2005.

The Committee determined that all appropriate steps had been taken to insure that Vince Finkhouse, dba Eagle Excavating, had the opportunity and notification to respond to this complaint within the timelines established in SDCL 49-7A-23.

In reviewing the Complaint filed by Montana-Dakota Utilities Company, the following items were noted:

- Vince Finkhouse, dba Eagle Excavating, had not provided notification to the South Dakota One Call Center prior to the start of excavation at this address.
- No locate request had been sent to Montana-Dakota Utilities Company relative to this excavation activity.
- The buried gas line was not marked prior to the excavation activity.

RECOMMENDATION

OC05-005(B)

VIOLATION OF SOUTH DAKOTA SDCL 49-7A-8:

Violation of SDCL 49-7A-8 would require that an underground facility was marked prior to the excavation activity commencing for an excavator to be in violation of this statute. Therefore, the Committee found that probable cause could not be substantiated that Vince Finkhouse, dba Eagle Excavating, had violated SDCL 49-7A-8 by excavating at 16630 Elk Horn Road, Piedmont, SD, without maintaining a minimum horizontal clearance of eighteen inches between a marked underground facility and the cutting edge of any mechanical equipment as required by SDCL 49-7A-8.

**ACCEPTANCE OR REJECTION BY PARTIES
COMPLAINT OC05-005(B)**

THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC05-005(B).

IF BOTH PARTIES INVOLVED IN THIS COMPLAINT ACCEPT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC05-005(B), THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY SDCL 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT OC05-005(B).

IF EITHER PARTY INVOLVED IN THIS COMPLAINT REJECT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC05-005(B). THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD WILL SET UP A HEARING TO RESOLVE THE REJECTED RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC05-005(B). 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 ALLEGE VIOLATION, YOU SHOULD COMPLETE THE FOLLOWING AND RETURN TO THE ADDRESS BELOW PRIOR TO THE CLOSE OF BUSINESS ON SEPTEMBER 9, 2005, 2005.

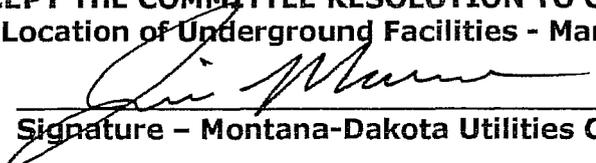
SOUTH DAKOTA ONE CALL NOTIFICATION BOARD
1012 N. SYCAMORE AVENUE
SIOUX FALLS, SD 57110-5747

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

OC05-005(B)

VIOLATION OF SDCL 49-7A-8 Location of Underground Facilities - Marking

I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC05-005(B) VIOLATION OF SDCL 49-7A-8 Location of Underground Facilities - Marking.



Signature - Montana-Dakota Utilities Company

9/7/05

Date

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC05-005(B) VIOLATION OF SDCL 49-7A-8 Location of Underground Facilities - Marking AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC05-005(B).

Signature - Montana-Dakota Utilities Company

Date

ENFORCEMENT COMMITTEE ACTION

OC05-005(C)

Montana-Dakota Utilities Co. vs. Vince Finkhouse, dba Eagle Excavating

FINDINGS:

OC05-005(C)

Alleged Violation of SDCL 49-7A-12 Notification of Damage to Underground Facility

Allegation is made by Montana-Dakota Utilities Co. that Vince Finkhouse, dba Eagle Excavating, while excavating at 16630 Elk Horn Road, Piedmont, SD, damaged an underground gas line and failed to notify Montana-Dakota Utilities or the South Dakota One Call Center as required by SDCL 49-7A-12.

No response was received from Vince Finkhouse, dba Eagle Excavating relative to the complaint filed.

Prior to reviewing the complaint, and in view of the fact that no response was received from Vince Finkhouse, dba Eagle Excavating, the committee reviewed the following process for notifying Vince Finkhouse, dba Eagle Excavating:

- Notification of the Complaint was mailed to Vince Finkhouse, dba Eagle Excavating, on July 7, 2005.
- Carolyn Bunnell signed for the delivery of the complaint on July 14, 2005.
- Vince Finkhouse, dba Eagle Excavating, failed to respond within the legal time frame (July 29, 2005)
- Larry Englerth, Executive Director to the South Dakota One Call Notification Board, left messages for Mr. Finkhouse on Friday July 29th and Saturday July 30th.
- Mr. Finkhouse contacted Larry Englerth, Executive Director to the South Dakota One Call Notification Board, on Monday August 1, 2005 and discussed the complaint process and agreed to file a response regarding this complaint with the South Dakota One Call Notification Board by Friday August 5, 2005.
- The South Dakota One Call Notification Board sent a letter on August 6th advising Vince Finkhouse, dba Eagle Excavating of their failure to receive a response to the complaint.
- Vince Finkhouse, dba Eagle Excavating, failed to meet the commitment to respond to the complaint and no response has been received at the time of the Enforcement Committee on August 19, 2005.

The Committee determined that all appropriate steps had been taken to insure that Vince Finkhouse, dba Eagle Excavating, had the opportunity and notification to respond to this complaint within the timelines established in SDCL 49-7A-23.

In reviewing the Complaint filed by Montana-Dakota Utilities Company, the following items were noted:

- Complete Homebuilders had provided information that they had hired Vince Finkhouse, dba Eagle Excavating, to repair a leaking water service at this address.
- Mr. Finkhouse had acknowledged to a representative of Montana-Dakota Utilities that he had done the excavation work at this address.
- During this excavation, damage had occurred to an underground gas line owned and operated by Montana-Dakota Utilities Company at 16630 Elk Horn Road, Piedmont, SD.
- Vince Finkhouse, dba Eagle Excavating, had failed to notify Montana-Dakota Utilities Company or the South Dakota One Call Center of this damage.
- Vince Finkhouse, dba Eagle Excavating had attempted to repair the damage to the underground gas line at 16630 Elk Horn Road, Piedmont, SD.

Based on the information noted above, the Committee found there was probable cause that Vince Finkhouse, dba Eagle Excavating, while excavating at 16630 Elk Horn Road, Piedmont, SD, had damaged

an underground gas line and failed to notify Montana-Dakota Utilities or the South Dakota One Call Center as required by SDCL 49-7A-12.

RECOMMENDATION

OC05-005(C)

VIOLATION OF SOUTH DAKOTA SDCL 49-7A-12:

The Committee found there was probable cause that Vince Finkhouse, dba Eagle Excavating, while excavating at 16630 Elk Horn Road, Piedmont, SD, had damaged an underground gas line and failed to notify Montana-Dakota Utilities or the South Dakota One Call Center as required by SDCL 49-7A-12.

PROPOSED PENALTY FOR THIS VIOLATION AUTHORIZED UNDER SDCL 49-7A-18:

The committee recommends a penalty of one-thousand dollars (\$1000) against Vince Finkhouse, dba Eagle Excavating, for this violation.

PROPOSED PENALTY FOR THIS VIOLATION AUTHORIZED UNDER SDCL 49-7A-19:

The committee determined that the conditions identified in this complaint clearly indicate that SDCL 49-7A-19 applies to this violation.

In addition to the previously identified penalty under SDCL 49-7A-18 the committee recommends an additional penalty of five-thousand dollars (\$5000) against Vince Finkhouse, dba Eagle Excavating for this violation.

**ACCEPTANCE OR REJECTION BY PARTIES
COMPLAINT OC05-005(C)**

THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC05-005(C).

IF BOTH PARTIES INVOLVED IN THIS COMPLAINT ACCEPT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC05-005(C) , THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY SDCL 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT OC05-005(C) .

IF EITHER PARTY INVOLVED IN THIS COMPLAINT REJECT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC05-005(C). THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD WILL SET UP A HEARING TO RESOLVE THE REJECTED RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC05-005(C). 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 ALLEGE VIOLATION, YOU SHOULD COMPLETE THE FOLLOWING AND RETURN TO THE ADDRESS BELOW PRIOR TO THE CLOSE OF BUSINESS ON SEPTEMBER 9, 2005, 2005.

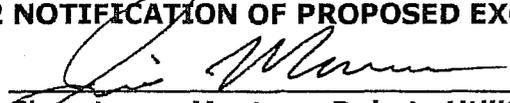
SOUTH DAKOTA ONE CALL NOTIFICATION BOARD
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SIOUX FALLS, SD 57110-5747

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

OC05-005(C)

VIOLATION OF SDCL 49-7A-12 NOTIFICATION OF PROPOSED EXCAVATION

I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC05-005(C) VIOLATION OF SDCL 49-7A-12 NOTIFICATION OF PROPOSED EXCAVATION.



Signature - Montana-Dakota Utilities Company

9/7/05

Date

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC05-005(C) VIOLATION OF SDCL 49-7A-12 NOTIFICATION OF PROPOSED EXCAVATION AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC05-005(C).

Signature - Montana-Dakota Utilities Company

Date