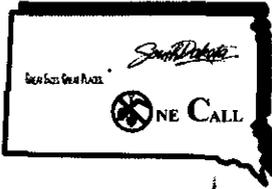


Safe digging is no accident. Always call 811 before digging.



**Know what's below.  
Call before you dig.**

**811**<sup>®</sup>

Larry Englerth  
Executive Director

1012 North Sycamore Ave.  
Sioux Falls, SD 57110

Tel/Fax (605) 339-0529  
Email: [exedir@sdonecall.com](mailto:exedir@sdonecall.com)

**TO: VANDERPOL DRAGLINE INC.**  
**FROM: SOUTH DAKOTA ONE CALL NOTIFICATION BOARD**  
**DATE: SEPTEMBER 3, 2008**  
**RE: NOTICE OF COMPLAINT; DEADLINE FOR ANSWER;**

**In the Matter of the Complaint OC08-004 & OC08-005 filed by Northwestern Energy against the Vanderpol Dragline Inc., regarding a failure to provide notification of proposed excavation as required by SDCL 49-7A-5.**

You are hereby notified that the enclosed complaints as referenced above has been filed with the South Dakota One Call Notification Board against the Vanderpol Dragline Inc. Pursuant to SDCL 49-7A-23 & SDCL 49-7A-24, you are required to answer these complaints in writing, no later than the close of business On September 24, 2008, by filing the original and two copies of the answer at the address listed below and by serving a copy on the complainant or you may file your response electronically at <http://www.state.sd.us/puc/EfilingOptions.aspx>.

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

Your answer should be as thorough and detailed as possible and should include any documentation that supports your position e.g. witness statements, pictures, etc. We would encourage you to specifically address the alleged violation of SDCL 49-7A-5 referenced in these complaints:

**OC08-004**

Failure to provide advance notification to the South Dakota One Call Notification Center prior to commencing excavation on August 18<sup>th</sup> at the North side of the intersection of SD Hwy 25 and Dollard Avenue in Scotland, SD.

**OC08-005**

Failure to provide advance notification to the South Dakota One Call Notification Center prior to commencing excavation on August 20<sup>th</sup> North of the intersection of SD Hwy 25 and Dollard Avenue in Scotland, SD.

Northwestern Energy has requested that penalties be assessed under SDCL 49-7A-19 on this complaint. The complaint alleges that no corrective action was

taken to be in compliance with South Dakota Statutes after the incident on August 18<sup>th</sup> and therefore, and additional penalty should be assessed for intentional disregard for the statute.

Pursuant to SDCL 49-7A-22 a panel of Board members will make a determination of probable cause based on the complaint and associated response. If probable cause is determined, the panel may recommend penalties under SDCL 49-7A-18 or SDCL 49-7A-19. If any financial penalties are assessed in response to Complaint OC08-004 & OC08-005, the amount will be based on the factors noted in SDCL 49-7A-26 which are as follows:

1. The amount of damage
2. The degree of threat to the public safety, and
3. The public inconvenience caused;
4. The respondent's plans and procedures to insure future compliance with statute and rules;
5. Any history of previous violations;
6. Other matters as justice requires.

You may address any of these items in your response if you believe it would be of value to the Enforcement Panel when they consider these complaints.

Pursuant to SDCL 15-6-55, failure to answer these Complaints 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.

A copy of the Operations Manual for Facility Operators and Excavators, the South Dakota One Call Statute and associated Administrative Rules are available on our web site [www.sdonecall.com](http://www.sdonecall.com).

Procedural questions may be directed to Larry Englerth, Executive Director to the South Dakota One Call Notification Board, at 605-339-0529 or by email to [exedir@sdonecall.com](mailto:exedir@sdonecall.com). I would request that you do not contact any members of the South Dakota One Call Notification Board to discuss this complaint. Since they may be involved in the Enforcement Panel review and/or a 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.

Enclosure: Copy of complaint

cc: Dan Wolf, Northwestern Energy (via email)

Received September 3, 2008

Larry,

I need to advise you of an error on a complaint filed by Northwestern Energy against Vanderpol Dragline, Inc of Mitchell, SD. On Complaint number OC08-004 - Section VI. Probable Violation, Northwestern Energy did not specifically reference the statute & on complaint number OC08-005 - Section VI. Probable Violation, Northwestern Energy referenced SDCL 49-7A-19. In both complaints reference should have been made to SDCL 49-7A-5, Notification of proposed excavation. We request these violations be treated under SDCL 49-7A-5.

Please let me know if you have questions.

Thanks,

Brad Wenande  
Area Manager / Yankton  
Northwestern Energy  
PO Box 777  
Yankton, SD 57078  
605-668-4609

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## **COMPLAINT**

**Allegation of Probable Violation(s) of South Dakota One Call Laws**

Received On August 21, 2008 2:25 pm

### **I. ACTION REQUESTED BY:**

**COMPLAINT FILED BY:** Company  
**PERSON FILING COMPLAINT:** Dan Wolf  
**COMPANY:** NorthWestern Energy  
**ADDRESS:** 313 Cedar St. Yankton, SD 57078  
**PHONE NUMBER:** (605) 668-4608  
**EMAIL:** dan.wolf@northwestern.com  
**DATE:** August 21, 2008

### **II. ACTION REQUESTED AGAINST:**

**NAME OF EXCAVATOR/FACILITY OPERATOR:** Vanderpol Dragline Inc.  
**PHONE NUMBER:** (605) 996-2036  
**ADDRESS:** 1001 Hot Rod Rd. Mitchell, SD 57301  
**WAS A LOCATED REQUESTED FROM SD ONE CALL?** No  
**LOCATE TICKET#:**  
**START DATE ON TICKET:**  
**DID EXCAVATOR WAIT UNTIL THE START DATE/TIME ON THE TICKET BEFORE COMMENCING EXCAVATION?** No  
**WERE BURIED FACILITIES EXPOSED BY HAND OR NON-INVASIVE EQUIPMENT PRIOR TO EXCAVATION?** No

### **III. FACILITY INVOLVED (IF ANY)**

**TYPE OF FACILITY INVOLVED:** 4" Gas Main  
**OPERATOR OF FACILITY:** NorthWestern Energy  
**OPERATOR ADDRESS:** 600 Market St. W. Huron, SD 57350  
**PHONE NUMBER:** (180) 024-5697  
**DEPTH OF COVER:** 6" (During Const)  
**PRESSURE:** 56lbs  
**VOLTAGE:**  
**NUMBER OF CABLE REPAIRS:**

**IV. MARKING**

**WERE FACILITIES MARKED?** No

**WAS THE MARKING COMPLETE PRIOR TO THE START TIME ON THE TICKET?** N/A

**DID EXCAVATOR PRE-MARK WITH WHITE PAINT?** No

**WAS THE FACILITY ACCURATELY MARKED (WITHIN 18 INCHES)?** N/A

**DID EXCAVATOR USE REASONABLE CARE TO MAINTAIN LOCATE MARKS FOR LIFE OF PROJECT?** No

**HAVE YOU DISCUSSED THE PREVIOUS STATEMENTS WITH THE OTHER PARTY?** No

**IS THERE AGREEMENT?** No

**IF NO, PLEASE EXPLAIN:**

**V. DAMAGE (IF ANY)**

**FATALITIES:** 0

**INJURIES:** 0

**LENGTH OF HOSPITALIZATION:** None

**ESTIMATED PROPERTY DAMAGE:**

**NUMBER OF CUSTOMERS AFFECTED:** 1

**DAMAGED IN:** Public

**PHOTOS OF THE DAMAGED FACILITY:** Yes

**ADDITIONAL INFORMATION:** Locates were not called in prior to removing dirt for road construction project. Prior locates were visible in area adjacent to work area, but no marks in work area. Contractor noted that they believed gas line was deeper than it was and did not think there was an issue.

**VI. PROBABLE VIOLATION**

**SPECIFIC STATUE(S) OR RULE(S) THAT WAS VIOLATED:** SDCL 49-7A-20

**ADDRESS/LOCATION OF PROBABLE VIOLATION:** North side of intersection of SD Hwy 25 and Dollard Ave in Scotland, SD

**DATE/TIME OF PROBABLE VIOLATION:** August 18, 2008 2:00 pm

**HAVE YOU DISCUSSED THE PROBABLE VIOLATION WITH THE PARTY THE ACTION IS FILED AGAINST?** False

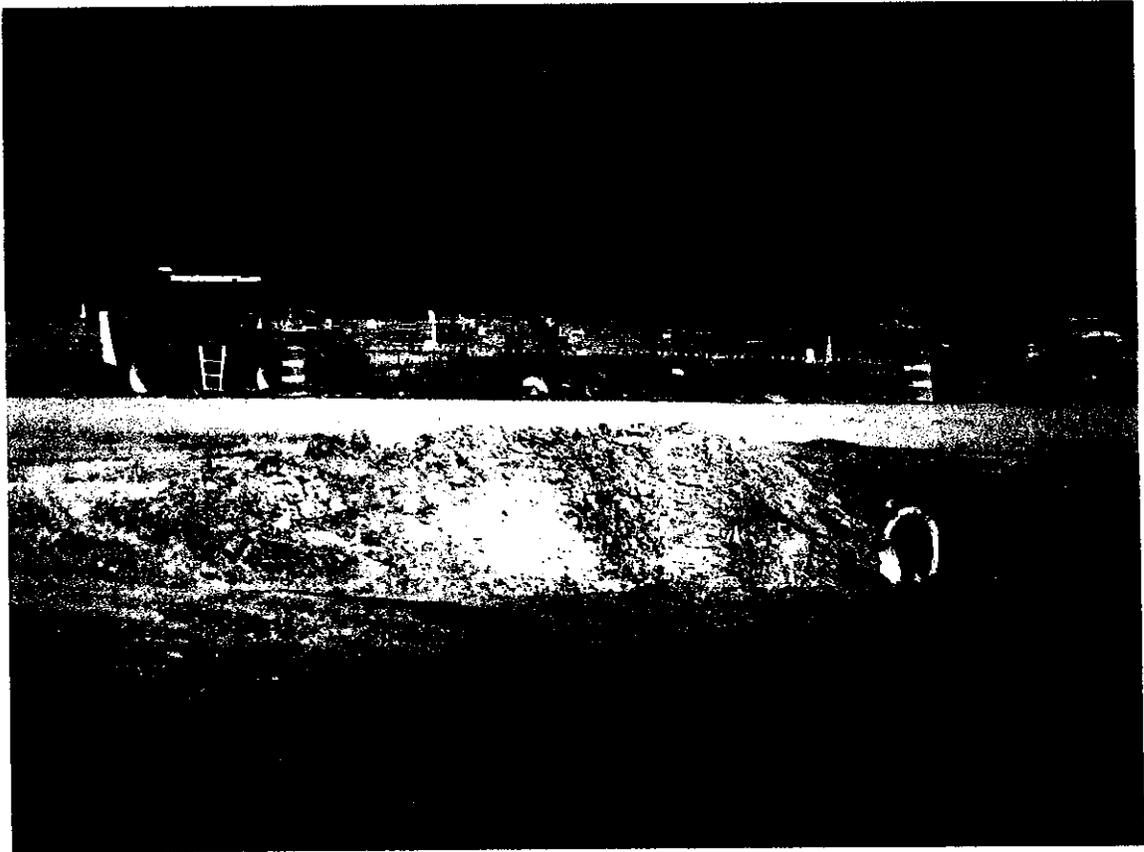
**IF YES, NAME THE PARTY WITH WHOM YOU DISCUSSED THE PROBABLE VIOLATION:**

**DESCRIPTION OF PROBABLE VIOLATION:** On 8/18/2008 and employee of Vanderpol Dragline Inc was digging with a tractor and drag disk without locates or spotting nearby utilities and caused damage

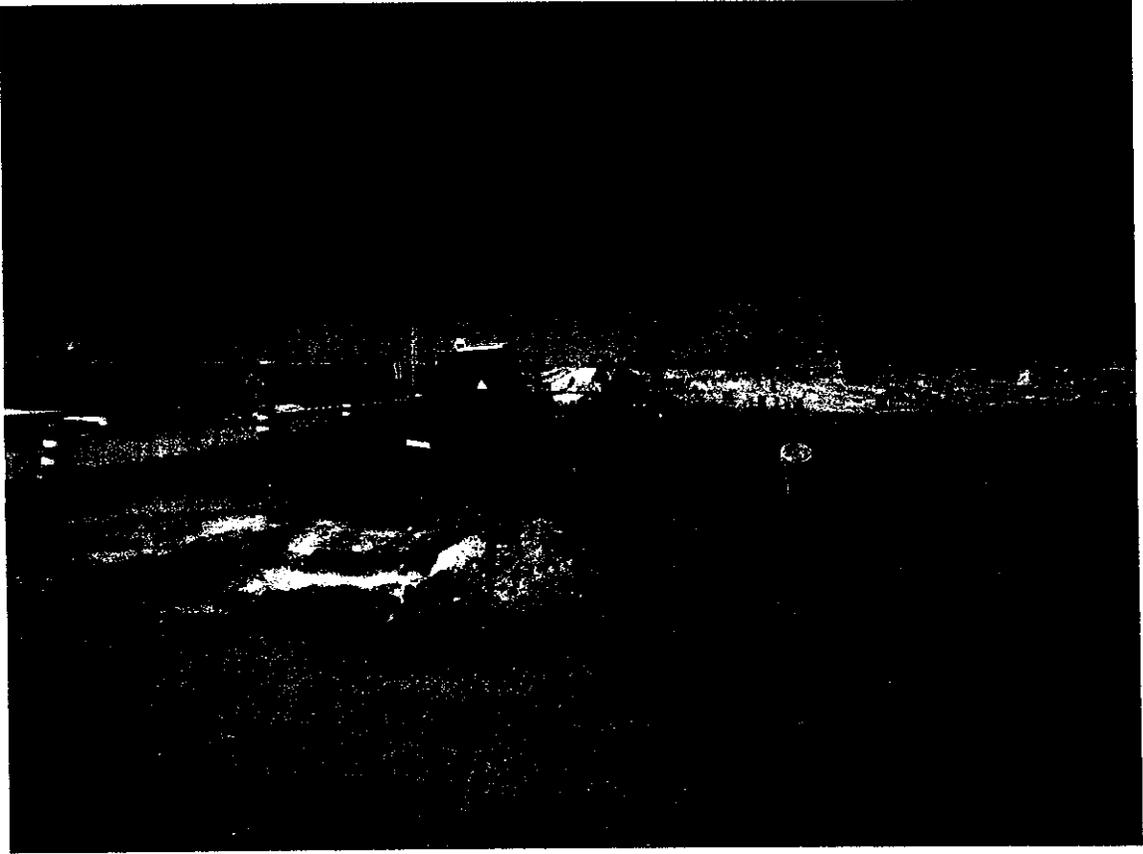
OC08-004



OC08-004



OC08-004



OC08-004

