



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



November 10, 2008

Bryan VanderPol  
Vanderpol Dragline, Inc.  
1001 Hot Rod Rd.  
Mitchell, SD 57301

Dan Wolf  
Northwestern Energy  
313 Cedar St.  
Yankton, SD 57078

Under the authority granted by SDCL 49-7A-22, the Enforcement Committee of the South Dakota One Call Notification Board met on November 10, 2008, to determine whether there is probable cause to believe that a violation has occurred relative to Complaint OC08-005 filed by Northwestern Energy against VanderPol Dragline Inc.

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

**Complaint OC08-005**

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

The Committee found there is probable cause VanderPol Dragline Inc. violated SDCL 49-7A-5 by commencing excavation North of SD Hwy 25 and Dollard Avenue in Scotland South Dakota, 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).:

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

Under SDCL 49-7A-27 either party may accept the recommendation of the Enforcement Committee or reject the recommendation of the Enforcement Committee by requesting a formal hearing on the violation alleged in this complaint. **Under the same statute, failure to respond to this notice is considered acceptance of the Enforcement Committee recommendation and your right**

**to a hearing is waived.** Your decision should be reflected on the second page of the attachment with the header "Acceptance or Rejection by Parties. **Please return the signed and dated form prior to the close of business on December 5, 2008, to:**

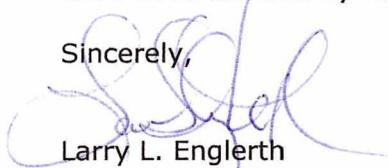
South Dakota One Call Notification Board  
c/o Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501

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

Pursuant to SDCL 15-6-55, failure to answer this Complaint could result in a default judgment being issued against you. Appropriate liens and other legal collection actions could result. **You are strongly urged to reply to this Notice in the time frame described above and to obtain the advice of counsel should you have any legal questions.**

If you have any procedural questions relative to this complaint, please contact me at 605-339-0529 or by email at [exedir@sdonecall.com](mailto:exedir@sdonecall.com). I would request that you do not contact any members of the South Dakota One Call Notification Board to discuss this complaint. Since they may be involved in the Chapter 1-26 hearing to resolve of the complaint, they have been advised by legal counsel to not discuss any pending complaint before the Board.

Sincerely,



Larry L. Englerth  
Executive Director

# **ENFORCEMENT COMMITTEE ACTION**

## **OC08-005**

### **Northwestern Energy vs. VanderPol Dragline Inc.**

#### **FINDINGS:**

#### **OC08-005**

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

Allegation is made by Northwestern Energy that VanderPol Dragline Inc. commenced excavation North of SD Hwy 25 and Dollard Avenue in Scotland, South Dakota, without providing advance notification to the South Dakota One Call System as required by SDCL 49-7A-5.

VanderPol Dragline Inc. did not dispute the allegation that excavation activity had commenced without providing advance notification to the South Dakota One Call System. VanderPol Dragline Inc. did provide ticket #080980243 which expired on May 1, 2008.

In reviewing the complaint filed by Northwestern Energy and the response from VanderPol Dragline Inc., the committee determined the following:

VanderPol Dragline Inc. had commenced excavation without providing advanced notification to the South Dakota One Call System.

Based on the information noted above, the Committee found there is probable cause to find the VanderPol Dragline Inc. violated SDCL 49-7A-5 by commencing excavation North of SD Hwy 25 and Dollard Avenue in Scotland South Dakota without providing advance notification to the South Dakota One Call System as required by SDCL 49-7A-5.

### **RECOMMENDATION**

#### **OC08-005**

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

The Committee found there was probable cause that VanderPol Dragline Inc. had violated SDCL 49-7A-5 by commencing excavation North of SD Hwy 25 and Dollard Avenue in Scotland, South Dakota, without providing advance notification to the South Dakota One Call System as required by SDCL 49-7A-5.

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

The committee recommends a penalty of five hundred dollars (\$500.00).

**ACCEPTANCE OR REJECTION BY PARTIES  
COMPLAINT OC08-005**

**THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC08-005.**

**IF BOTH PARTIES INVOLVED IN THIS COMPLAINT ACCEPT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC08-005, THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY SDCL 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT OC08-005.**

**IF EITHER PARTY INVOLVED IN THIS COMPLAINT REJECT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC08-005. THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD WILL SET UP A HEARING TO RESOLVE THE REJECTED RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC08-005. 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 DECEMBER 5, 2008.**

**SOUTH DAKOTA ONE CALL NOTIFICATION BOARD  
C/O PUBLIC UTILITIES COMMISSION  
500 EAST CAPITOL AVENUE  
PIERRE, SD 57501**

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

**OC08-005**

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

**I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC08-005 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC08-005 VIOLATION OF SDCL 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC08-005.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date