

STATE OF SOUTH DAKOTA

SOUTH DAKOTA ONE CALL NOTIFICATION BOARD

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NORTHWESTERN ENERGY, * OC No. 09-001
*
Complainant, *
-vs- *
* RESPONSE TO COMPLAINT
*
ARDEN LEMKE, dba LEMKE *
DIGGING AND GEO THERMO *
DRILLING, *
Respondent. *

* * * * *

Arden Lemke, dba Lemke Digging and Geo Thermo Drilling
(Lemke), for his Response to the Complaint filed by Northwestern
Energy, states and alleges as follows:

1. Sometime prior to March 24, 2004, Bob Lorenz contacted Lemke and told him that he had a water service leak; and that he needed the old water service line dug up and a whole new water line installed.
2. On or about March 24, 2004, Lemke called South Dakota One Call to have them mark the various underground lines.
3. On or about March 29, 2004, Lemke started digging with his mini-excavator in the areas where there were no markings for underground lines.
4. At the same time, Lemke's former employee, Bob Kampshoff, was digging with a hand shovel near where the lines were marked.

5. Lemke also had to dig out into the street to shut off the water service.

6. Lemke hauled out all the dirt that was excavated because it was so wet.

7. Once Lemke got everything dug out, Bailey Plumbing of Mitchell, South Dakota, removed the old water line and installed a new water line.

8. Lemke then had new dirt hauled in. The new dirt was laid in. Lemke then compacted the new soil, using the flat-plated jackhammer attachment on his mini-excavator.

9. Once the new dirt was compacted, Lemke then spread a layer of base gravel on the street portion of the excavation; and Clark Paving laid the asphalt.

10. While performing all of this work, Lemke did not hit or damage the Northwestern Energy pipeline.

11. At all times, it has been Lemke's standard practice to call Northwestern Energy if one of their lines is hit or damaged, so that Northwestern Energy can inspect the pipeline and fix it if necessary.

12. At 11:31 a.m. on March 8, 2007 (almost three years after Lemke's excavation), Mr. Lorenz' house, which was located at 1612 Bridle Drive in Mitchell, South Dakota, exploded.

13. Adjacent homes were also damaged.

14. A leak on the bottom side of a 2-inch steel gas main located in the boulevard in front of the Lorenz residence was found by Northwestern Energy.

15. Although Northwestern Energy had re-routed the gas service, it took it upon itself to remove the damaged portion of the gas line and did not allow others, including Lemke, to inspect the gas line before the damaged portion was removed.

16. Northwestern Energy did not properly secure the damaged portion of the pipe, but instead allowed this damaged portion to roll around in the back of a pickup on more than one occasion.

17. In either the removal of the damaged pipe or allowing the damaged pipe to roll around in the back of a pickup, certain material evidence relating to the damaged portion of the pipe was "lost."

18. It is Lemke's contention that the actions of Northwestern Energy constitute spoliation of evidence.

19. Although the Complaint refers to photos of the damaged facility, none were provided with Lemke's copy of the Complaint.

20. The Complaint also refers to "other documents or photos"; however, the only "document" that was provided with Lemke's copy was the first page of a report from EN Engineering dated November 20, 2008. In that report, reference is made to

the examination and laboratory testing that was performed at Stork Twin Cities Testing on January 16 and 17, 2008, under the direction of Dr. John Kiefner of Kiefner & Associates, Inc. As noted in that report, Dr. Kiefner was retained at the request of the South Dakota Public Utility Commission, with the testing performed in accordance with a test protocol prepared by Dr. Kiefner that was agreed to by the parties witnessing the testing.

21. In his report, Dr. Kiefner concluded:

- The damage that caused the failure is not new, but it was not possible to establish when it occurred.
- Whether or not the multiple impacts, noted at locations that would have required more than one motion of a single piece of excavating equipment, were created during a single excavation or during more than one excavation could not be determined.

22. As noted above, Lemke maintains that he did not use the mini-excavator in the area marked for this pipeline. Instead, his former employee used a hand shovel to dig on, around and below the pipe. Therefore, the "teeth" marks on the damaged pipe could not have been caused by Lemke or his employee.

23. The PUC staff concluded that based on available facts the freeze-thaw cycles on the pipe, which was weakened from third-party mechanical damage, resulted in a sudden one-stage large volume leak (estimated by Staff's expert witness at 277 cubic feet per hour). The leaking gas may have traveled beneath the frozen topsoil through the less dense soil backfill of the 2004 waterline trench excavation, entering the Lorenz house in

the basement. In all likelihood, an appliance in the basement ignited the gas when the lower explosive limit concentration was reached.

24. Lemke has been in the excavation business for 19 years. Lemke has considerable experience regarding the location of utility services and always contacts South Dakota One Call before beginning any excavation. Lemke makes it a point to conduct excavations in a safe and proper manner. In the event a pipe is hit or damaged during an excavation, Lemke contacts the appropriate entity regarding the same. Lemke had no reason not to do so on or about March 29, 2004, and would have done so if Northwestern Energy's pipeline had been hit or damaged.

25. There is no proof whatsoever that Lemke damaged Northwestern Energy's pipeline during the March, 2004, excavation.

Dated this 6th day of February, 2009.

RICHARDSON, WYLY, WISE, SAUCK
& HIEB, LLP

By 
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CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for Arden Lemke, dba Lemke Digging and Geo Thermo Drilling, hereby certifies that on the 6th day of February, 2009, a true and correct copy of **RESPONSE TO COMPLAINT** was filed at:

South Dakota One Call Notification Board
<http://www.state.sd.us/puc/EFilingOptions.aspx>

and served by e-mail on:

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