

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



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



December 16, 2010

Scott Olson
Scott Olson Digging, Inc.
1906 Maple Drive
P.O. Box 1402
Huron, SD 57350

Sara Greff Dannen
NothWestern Corporation dba NorthWestern Energy
3010 West 69th Street
Sioux Falls, SD 57108

Re: OC10-008 Northwestern Energy against Scott Olson Digging, Inc.

Under the authority granted by SDCL-49-7A-22, the Enforcement Committee of the South Dakota One Call Notification Board met on December 6, 2010, 2010, to determine whether there is probable cause to believe a One Call violation occurred. The Enforcement Committee's findings are enclosed. You may request a hearing according to SDCL-49-7A-27, if you disagree with the Enforcement Committee findings. If you do request a hearing you must present your case to the One Call Board. **Failure to respond to this notice or request a hearing is considered acceptance of the Enforcement Committee recommendation and your right to hearing is waived.**

If you choose to request a hearing please return the signed and dated form prior to the close of business on January 18, 2011 to:

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

If you have procedural questions relative to this complaint, please contact me at 605-339-0529 or by email at exedir@sdonecall.com. Do Not Contact any members of the South Dakota One Call Notification Board to discuss this complaint since members may be involved in a hearing if one is requested.

Larry L. Janes
Executive Director
South Dakota One Call

ENFORCEMENT COMMITTEE RECOMMENDATION
OC10-008

Northwestern Energy filed a South Dakota One Call complaint with the Public Utilities Commission on August 27, 2010 against Scott Olson Digging, Inc. alleging that a violation of 49-7A-5 occurred at Lawnridge Ave SD from Third Street SD to Seventh Street, Huron, South Dakota at approximately 12:00 pm on August 27, 2010 by completing work prior to the site being located.

Scott Olson Digging, Inc. responded on October 11, 2010 by stating, "Previous markings were still on site from the first One Call".

A panel of five board members of the State One Call Notification Board was appointed per SDCL 49-7A-22 to determine whether probable cause exists to believe a violation of SD One Call statutes or rules occurred. The Enforcement Committee of the South Dakota One Call Board first met regarding this complaint on October 28, 2010. The Enforcement Committee did not make a probable cause determination at that time; instead it requested further evidence from both parties. Subsequent to that meeting Legal Counsel advised the Enforcement Committee that additional information cannot be requested to make a determination of probable cause. **SDCL 49-7A-25. Complaint, answer to be sole basis for probable cause determination.** "A determination of probable cause shall be made by the panel solely on these submissions and no further evidence shall be considered".

Based on this information the Enforcement Committee of the South Dakota One Call Board met again on December 6, 2010 to reconsider OC10-008. The Enforcement Committee determined, by unanimous vote, probable cause exists to find Scott Olson Digging, Inc. violated South Dakota One Call statutes in SDCL 49-7A when it performed excavation prior to the legal start time. In making its determination, the Committee relied on the written complaint and accompanying pictures. The pictures, taken after excavation work was complete, do not show any utility markings. The pictures illustrate the Complainant's assertion that excavation was complete prior to the time utilities were marked.

The Enforcement Committee then discussed the proper penalty and recommends a penalty of five thousand dollars (\$5,000) with two thousand five hundred dollars (\$2,500.00) suspended on the following conditions:

1. Scott Olson Digging, Inc. fully complies with SDCL 49-7A and article 20:25 for twelve months following the date of the Board's Order.
2. Scott Olson Digging, Inc. should be aware that any future violation of SDCL 49-7A and article 20:25 within twelve months from the date of the of the Board's Order are subject to additional penalties up to a maximum of \$5,000 under SDCL 49-7A-18.
3. Scott Olson Digging, Inc. must make payment within 30 days of issuance of the Board's Order.

The Enforcement Committee considered the factors in SDCL 49-7A-26 when making its recommendation. Specifically, due to the nature of the facilities the excavator put the public in great danger and failed to put forth any plans or procedures to prevent future mistakes of this kind. Further, this complaint is the third in a serious of complaints filed against the excavator. As a result, according to SDCL 49-7A-18, the elevated penalty applies.

**REQUEST FOR A HEARING
COMPLAINT OC10-008**

**I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC10-008
AND REQUEST A HEARING.**

Signature – Scott Olson Digging, Inc.

Date

**I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC10-008
AND REQUEST A HEARING.**

Signature –Northwestern Energy

Date

**YOUR REQUEST FOR A HEARING MUST BE SENT TO ALL OTHER
PARTIES INCLUDING:**

**SOUTH DAKOTA ONE CALL NOTIFICATION BOARD
C/O SOUTH DAKOTA PUBLIC UTILITIES COMMISSION
500 E. CAPITOL AVE.
PIERRE, SD 57501-5070**

**Failure to request a hearing, results in acceptance of the Enforcement
Committee's recommendation as to the final disposition of this Complaint.**