



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



**TO: MPNEXLEVEL**

**FROM: SOUTH DAKOTA ONE CALL NOTIFICATION BOARD**

**DATE: AUGUST 2, 2012**

**RE: NOTICE OF COMPLAINT; DEADLINE FOR ANSWER**

**In the Matter of the Complaint OC12-014 filed by TM Rural Water District against MPNEXLEVEL.**

You are hereby notified that the enclosed complaint as referenced above has been filed with the South Dakota One Call Notification Board against MPNEXLEVEL. Pursuant to SDCL 49-7A-23 & SDCL 49-7A-24, you are required to answer this complaint in writing, no later than the close of business on August 22, 2012 by filing the original copy 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 referenced in the complaint.

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 49-19. If any financial penalties are assessed in response to Complaint OC12-014

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 this complaint.

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.

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 Janes, 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.

Enclosures: Copy of complaint  
Operations Manual for Facility Operators and Excavators

cc: TM Rural Water District (via email)

**ONE CALL COMPLAINT FORM**  
South Dakota Public Utilities Commission  
500 East Capitol Avenue  
Pierre, Sd 57501-5070

## **COMPLAINT**

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

Received On August 2, 2012 11:33 am

**I. ACTION REQUESTED BY:**

**COMPLAINT FILED BY:** Company

**PERSON FILING COMPLAINT:** Jay Jorgensen

**COMPANY:** TM Rural Water District

**ADDRESS:** PO Box 445, Parker, SD 57053

**PHONE NUMBER:** (605) 297-3334

**EMAIL:** Jay.Jorgensen@tmruralwater.com

**DATE:** August 2, 2012

**ii. ACTION REQUESTED AGAINST:**

**NAME OF EXCAVATOR/FACILITY OPERATOR:** MPNEXLEVEL

**PHONE NUMBER:** (320) 963-2400

**ADDRESS:** 500 County Road 37 East, Maple Lake, MN 55358

**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:** 2" Rural Water Line

**OPERATOR OF FACILITY:** TM Rural Water District

**OPERATOR ADDRESS:** PO Box 445 Parker, SD 57053

**PHONE NUMBER:** (605) 297-3334

**DEPTH OF COVER:** 5' 6"

**PRESSURE:** 80 PSI

**VOLTAGE:** N/A

**NUMBER OF CABLE REPAIRS:** N/A

**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?** N/A

**HAVE YOU DISCUSSED THE PREVIOUS STATEMENTS WITH THE OTHER PARTY?** Yes

**IS THERE AGREEMENT?** Yes

**IF NO, PLEASE EXPLAIN:**

**V. DAMAGE (IF ANY)**

**FATALITIES:**

**INJURIES:**

**LENGTH OF HOSPITALIZATION:**

**ESTIMATED PROPERTY DAMAGE:** \$200.00

**NUMBER OF CUSTOMERS AFFECTED:** 3

**DAMAGED IN:** Private

**PHOTOS OF THE DAMAGED FACILITY:** Yes

**ADDITIONAL INFORMATION:** On July 26, at about 5:30pm TM operator received a call from Jarrod from Triotel asking if TM had a water line in a pasture located 1.5miles west of Salem on hwy 38. TM operator told him that we did and asked him what the contractor was doing in the pasture as the locate ticket was for the right-of-way only. His response was that there were no flags there. When TM operators arrived at the site they found that the MPNEXLEVEL contractor had plowed approximately 250' in the pasture of which 200' was directly over TM's 2" water line. TM operators were informed that the reason for the contractor going into the private easement was that the engineers had missed a culvert that crossed hwy 38, and the Triotel operator Jarrod had made the call to go around the culvert thereby going into the private easement where no locate had been made in the pasture. No locate call was made for this change. TM Operator made an emergency one-call in order to start the repair of TM's damaged facilities. TM operators discussed TM's concerns about no locates being called in by MPNEXLEVEL which caused TM facilities to be damaged with the MPNEXLEVEL representative Jerry Skjerven. This is the second of three complaints against this contractor by TM Rural Water District. The three complaints happened in a span of time covering July 24th through August 1st. On August first I contacted Tim Wenande of Triotel the company who has hired MPNEXLEVEL to place fiber for them and explained my concerns with this con

**VI. PROBABLE VIOLATION**

**SPECIFIC STATUE(S) OR RULE(S) THAT WAS VIOLATED:** No locate was called in by MPNEXLEVEL for excavation done at this location.

**ADDRESS/LOCATION OF PROBABLE VIOLATION:** 43942 Hwy 38 North side of Hwy 38 appox 600' East of Driveway

**DATE/TIME OF PROBABLE VIOLATION:** July 26, 2012 5:00 pm

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

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

**DESCRIPTION OF PROBABLE VIOLATION:** Contractor deviated from path where locates were valid in order to avoid a culvert. By doing so excavation was taking place where no valid locate ticket had been called in.







