



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



**TO: Menning Backhoe**

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

**DATE: APRIL 1, 2013**

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

**In the Matter of the Complaint OC13-001 filed by NorthWestern Energy against Menning Backhoe.**

You are hereby notified that the enclosed complaint as referenced above has been filed with the South Dakota One Call Notification Board against Menning Backhoe. 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 April 21, 2013 by filing the original copy of the answer electronically at <http://sdonecall.com/OneCallReplyForm.aspx> . This site can also be found by going to [www.sdonecall.com](http://www.sdonecall.com), clicking on Complaints, Forms, and then the Online Reply form. **OR** You may also file your response at the address listed below **and** by serving a copy on the complainant.

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 the complaint, 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, 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 the complaint. They have been advised by legal counsel not to discuss any pending complaint before the Board.

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

cc: NorthWestern Energy (via email)

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**From:** [donotreply@sdonecall.com](mailto:donotreply@sdonecall.com)[SMTP:DONOTREPLY@SDONECALL.COM]

**Sent:** Thursday, March 28, 2013 2:44:33 PM

**To:** PUC Docket Filings

**Subject:** New One Call Complaint Form

**Auto forwarded by a Rule**

**1. Action Requested By:**

**Complaint filed on behalf of or by:** NorthWestern Energy

**Contact Person:** Craig Fergen on behalf of Employees and Company

**Phone:** 605-995-4410 Ext:

**Street Address or PO Box:** 514 North Main Street

**City:** Mitchell

**State:** SD

**Zip:** 57301

**Fax:** 605-996-4147

**Email Address:** [craig.fergen@northwestern.com](mailto:craig.fergen@northwestern.com)

**Date:** 3/28/2013

**2. Action Requested Against:**

**Name of excavator / facility operator:** Menning Backhoe

**Phone:** 605-946-5571 Ext:

**Street Address Or PO Box:** 39169 274th St, Corsica, SD 57328

**City:** Corsica

**State:** SD

**Zip:** 57328

**Fax:** --

**Email Address:**

**Is this party aware of your allegations?:** Yes

**Provide detail including whom you spoke with:** District Supitendent for NorthWestern Energy in Corsica South Dakota happened to come across an excavation in progress by Menning Backhoe in the Corsica Industrial Park at the new business Dakota Sales and Rental. Scott noticed our service wire to the business exposed. He asked the equipment operator if he had locates and he said he was just the operator and didn't know. He then said he didn't think so. We check and have no locate request for this location.

**3. Basic Facts:**

**Street Address / location of alleged violation:** Industrial Road in Corsica at Dakota Sales and Rental

**City:** Corsica

**State:** SD

**Date of alleged violation:** 03/28/2013

**Time of alleged violation:** 11:00 a.m.

**Describe your allegation:** Menning Backhoe equipment operator digging without locates per Scott Olson NorthWestern Energy District Superintendent - Corsica

**Do you believe the alleged violation to be intentional?:** Not Sure

**Why or why not?:** Operator was unsure. We suspect business owner knows better, knows the laws, etc.

#### **4. Excavation / Locate Information:**

**Was a locate requested from SD One Call?:** No

**If a locate was requested:**

**Locate ticket #:**

**Start date and time on ticket:**

**Did the excavator wait until the start date / time on the ticket before commencing excavation?:**

**If no, when did excavation begin (date and time)?:**

**Did the excavator maintain a minimum horizontal clearance of 18 inches between a marked facility and mechanical equipment?:** No

**Explain:** We suspect equipment was used within 18 inches of the electric service line to Dakota Sales and Rental in Corsica.

**Were buried facilities exposed by hand or non-invasive equipment prior to excavation?:** No

**Were facilities marked?:** No

**Was the marking complete prior to the start time on the ticket?:** NA

**Did the excavator pre-mark with white paint?:** No

**Was the facility marked accurately (within 18 inches)?:** NA

**Did the excavator use reasonable care to maintain locate marks for the life of project?:** NA

**Type of facility involved:** Electric service line 120/240V 3 phase

**Operator of facility (if known):** NorthWestern Energy

**Operator address (Street or PO Box):** 514 N Main Street

**City:** Mitchell

**State:** SD

**Zip:** 57301

**Phone:** 800-245-6977

**Depth of Cover:** Minimum 24"

**Pressure:**

**Voltage:** 120/240V 3 phase

**# of cable pairs:**

#### **5. Damages**

**Was the facility damaged?:** No

**If yes, provide detail and an estimate of damage:**

**Were damages on public right of way or private property?:** Private

**Was anyone injured as a result of facility damage?:** No

**If yes, provide detail:**

**Length of hospitalization:**

**Were there fatalities?:** No

**If yes, provide detail:**

**Was operator service affected?: No**

**If yes, provide detail (how many customers for how long):**

**Other information regarding injuries or damages:**

**6. Statutory Violation**

**Specific statute(s) or rule(s) you believe were violated:**

**Other information to support your position:**

