

BEFORE THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD

IN THE MATTER OF THE COMPLAINT)	ENFORCEMENT PANEL
FILED BY NORTHWESTERN ENERGY,)	RECOMMENDATION TO
MITCHELL, SOUTH DAKOTA, AGAINST)	THE SD ONE CALL BOARD
MENNING BACKHOE, CORSICA, SOUTH)	
DAKOTA, FOR AN INCIDENT)	OC13-001
OCCURRING ON MARCH 28, 2013, IN)	
CORSICA, SOUTH DAKOTA)	

On March 28, 2013, the South Dakota Public Utilities Commission received a complaint from NorthWestern Energy, Mitchell, South Dakota against Menning Backhoe LLC of Corsica, South Dakota. The complaint alleges that on or about March 28, 2013, Menning Backhoe performed excavation without valid locates.

A copy of the complaint was sent to Menning Backhoe on April 1, 2013. Menning Backhoe responded to the Complaint on April 10, 2013. In its response Menning Backhoe admits the incident occurred.

On April 30, 2013, pursuant to SDCL 49-7A-22 a panel of five One Call Board members (herein "Panel") convened. The Panel met to determine whether probable cause exists to believe the violation occurred as described in the complaint. The Panel found sufficient evidence was presented to determine probable cause exists to believe a violation of SDCL 49-7A-5 occurred. Specifically, the Panel found Menning Backhoe dug without valid locates, as the locate tickets were expired. The Panel did not find the violation to be intentional.

The Panel found it proper to assess a Five Hundred Dollars (\$500) penalty for this first time offense. Based, however, on Menning Backhoe's safe excavation history, the Panel found it proper to conditionally suspend Two Hundred Fifty Dollars (\$250) of the penalty under the following conditions:

- (i) Menning Backhoe shall make payment of the **Two Hundred Fifty Dollar (\$250) unsuspended portion** of the penalty within thirty days of issuance of the final SD One Call Board Order.
- (ii) Menning Backhoe shall attend an excavating seminar in the spring of 2014.
- (iii) Menning Backhoe shall conduct an in-house safety meeting for its employees to review the One Call laws. The meeting shall be held within 30 days of the final One Call Order. Documentation shall include the printed and signed names of meeting participants, details of the material discussed, and the date and length of the meeting. Documentation shall be submitted to the Executive Director of South Dakota One Call.

If any of the conditions are not met, the entire Five Hundred Dollar Penalty (\$500) will be immediately due and owing.

The Panel recommends the South Dakota One Call Board accept its findings and recommendations herein. If either party to this Complaint disagrees or objects to the recommendations or findings herein, a hearing may be requested. To request a hearing a party must reply within twenty days from the date of service of this notice. Failure to request a hearing is considered acceptance of the recommendations and findings herein.

The South Dakota One-Call Notification Board has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-7A and ARSD 20:25.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile by first class mail, or by other electronic means.


Larry L. Janes, Executive Director

Date 4-30-2013

**REQUEST FOR A HEARING
COMPLAINT OC13-001**

**I REJECT THE PANEL RESOLUTION TO COMPLAINT OC13-001 AND
REQUEST A HEARING.**

Signature – Menning Backhoe, LLC

Date

**I REJECT THE PANEL RESOLUTION TO COMPLAINT OC13-001 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 will result in acceptance of the Enforcement Panel's
Recommendation by the South Dakota One Call Board. The Board will then
Order the Recommendation as the final disposition of this Complaint.**