

Utilities Section Newsletter

League of Nebraska Municipalities

April 2011

Nebraska Supreme Court rules on One-Call case

By Lash Chaffin,
Utilities Section Director, LNM

Recently, the Nebraska Supreme Court ruled on an issue relating to the Nebraska One-Call Act. In *The Village of Hallam, v. L.G. Barcus & Sons*, the Supreme Court was forced to look at two sections of the One-Call Act. Most importantly, the court looked at Neb. Rev. Stat. 76-2324 which provides:

An excavator who fails to give notice of an excavation pursuant to section 76-2321 and who damages an underground facility by such excavation shall be strictly liable to the operator of the underground facility for the cost of all repairs to the underground facility. An excavator who gives the notice and who damages an underground facility shall be liable to the operator for the cost of all repairs to the underground facility unless the damage to the underground facility was due to the operator's failure to comply with section 76-2323. An excavator who fails to give notice of an excavation pursuant to section 76-2321 and who damages an underground facility that is operated by the excavator shall not be in violation of the One-Call Notification System Act.

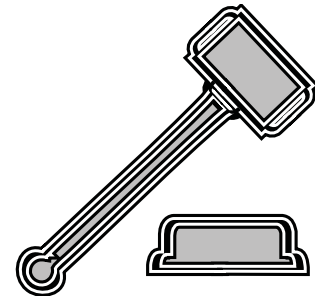
In addition to any liability provided in this section an opera-

tor of a damaged underground facility shall be entitled to any other remedies available at law or in equity provided by statute or otherwise.

Also discussed was Neb. Rev. Stat. 76-2318 which provides:

Operators of underground facilities shall become members of and participate in the state-wide one-call notification center.

On May 22, 2004, a tornado destroyed more than 150 homes and businesses in Hallam, including grain storage facilities owned by Farmers Cooperative, Inc. (Farmers). After the tornado and before Farmers began rebuilding its facilities, Hallam hired a company to inspect its sanitary sewer system and determine whether it had been damaged by the tornado. The company lowered a video camera into manholes throughout the village and produced videotapes showing the interior of all sewer lines owned and operated by the village. The inspection was completed on June 26, 2004. A civil engineer, reviewed the inspection video and advised Hallam that the portion of its sewer which lay beneath the Farmers property was unobstructed and not in need of repair.



In June or July 2004, Farmers entered into separate contracts with McPherson Concrete Storage Systems, Inc. (McPherson), and Frisbie Construction Co., Inc. (Frisbie), to construct two cylindrical concrete grain storage bins and related structures. Under the contracts, McPherson was responsible for the concrete construction and Frisbie was responsible for the "millwright work," which included metal legs and other structures attached and adjacent to the concrete structures. Hallam issued a building permit for the construction of the bins. In mid-June 2004, Terracon conducted soil testing for the project through a series of soil borings. Terracon notified the one-call center before performing the borings.

McPherson entered into a subcontract with Barcus to install an "AugerPile" foundation for the grain bins. The subcontract stated that Barcus' prices did not include the cost of location, removal,

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UTILITIES SECTION

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Utilities Section Director
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Utilities Field Representative

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protection or relocation of any underground or overhead obstructions or utilities which interfere with our work . . . special protection of existing structures, utilities or equipment . . . Our sole responsibility for pile location will be to accurately spot the auger on the stakes that you provide and drill the pile using our normal care.

An AugerPile foundation is constructed using an auger to drill a hole in the ground, and then the hole is filled with grout as the auger is withdrawn. The grout

used in this process is a substance similar to concrete but does not contain rock.

Frisbie's work on the project included construction of a pit in which grain would be dumped and then elevated for loading at the top of the bins. The pit was to be located between and slightly to the east of the bins. Frisbie's operations manager called the one-call center on July 1, 2004, to provide notification that Frisbie would be constructing the pit. He advised the one-call center that the maximum depth of the excavation

would be 14 feet. Frisbie began work on the pit during the first week of July. No underground facilities were marked in the vicinity of the pit when excavation commenced. No sewer pipe was encountered during the excavation for the pit, which was completed in less than one day. The concrete floor of the pit was completed approximately three days after excavation began. Frisbie did no other excavation on the project.

Barcus arrived at the jobsite on July 20, 2004, and began installing AugerPiles on July 23.

McPherson marked the locations for the 200 AugerPiles, which would form the foundations of the bins, and a Frisbie employee marked the locations for the four AugerPiles which would form the foundation for the bulkweigher. Barcus employees did not notify the one-call center before commencing installation of the AugerPiles, because they did not consider such notification to be within the scope of their work.

Barcus installed the four AugerPiles for the bulkweigher on July 30,

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2004. Each of the four AugerPiles was 72 feet long and placed in a hole drilled to a depth of 73 feet, so that the top of each of the AugerPiles was beneath the surface of the ground. Barcus completed its work on the project and left the jobsite on August 10. Barcus' foreman recalled that one of the AugerPiles on the Farmers project required more grout than usual, but he testified that this was not uncommon and could have been caused by several factors.

On or about Aug. 23, 2004, Hallam began receiving reports that sewage was backing up into homes and businesses located west of the Farmers site. An attempt to clear the sewer obstruction with water jet flushing was unsuccessful, so a camera inspection was undertaken. The inspection video revealed that the blockage was caused by concrete and broken sewer pipe. Hallam then consulted an engineering and architectural consulting group, to develop a plan for repairing or replacing the damaged portion of the sewer line. The firm deter-

mined and advised Hallam that because of the nature and extent of the blockage, the sewer line could not be repaired and would need to be rerouted. Hallam accepted this advice and rerouted the sewer system based upon plans and specifications developed by Hevlin. The project cost \$96,007.74 as a consequence of the damage to its sanitary sewer.

Hallam filed suit to recover these costs against Farmers, McPherson, Barcus, and Frisbie. It alleged that all four of the defendants were negligent and that Barcus and McPherson were strictly liable under the Act because they failed to notify the one-call center

before installing the AugerPile foundation. In its answer, Barcus denied any liability on its part and alleged that Hallam was contributorily negligent for failure to comply with provisions of the Act that require operators of underground facilities to furnish certain information to the one-call center. Hallam was not a "member" of the One-Call system.

The Village's expert witness concluded to "a reasonable degree of certainty as a professional engineer" that the auger used by Barcus during the installation of the AugerPiles damaged the sewer line and introduced grout which

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Recycling equipment grants available

In a recent press release, the Nebraska State Recycling Association has announced that grant funds are available for municipalities, non-profits and recycling companies who wish to purchase recycling equipment. Interested parties should go to www.recyclenebraska.org and/or call Deb Rost at 402-933-3059 for more information. Grants may fund the purchase of recycling trailers, carts, dumpsters, balers, forklifts, trucks and more.

Water and Wastewater Operator License Classes and Test Dates

If you need to get a **Water Operator** licensed, the list of classes and test dates can be found at the following website: <http://www.dhhs.ne.gov/enh/WaterSpout.pdf>. Also, the application forms can be found at this website: <http://www.dhhs.ne.gov/enh/OpExamTrngApp.rtf>.

If you need to get a **Wastewater Operator** licensed, the list of test dates can be found at the following website: <http://www.deq.state.ne.us/WasteWat.nsf/Pages/Train05>.

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Continued from page 3 caused the obstruction. The expert further concluded, to the same degree of certainty, that Frisbie's construction of the pit did not cause the damage, because the elevation of the bottom of the pit was higher than the sewer line.

The district court entered judgment against Barcus in the amount of \$96,007.74. The court determined that Barcus was an "excavator" as defined by the Act and that its installation of the AugerPiles constituted an "excavation" as defined by the Act. The court further determined that Hallam was an "operator" of an underground facility as defined by the Act. The court reasoned that the fact that Hallam had not become a member of and had not participated in the one-call center was not a defense to its strict liability claim based upon Barcus' failure to call the one-call center before commencing excavation. The court concluded that Barcus, not McPherson or Frisbie, was obligated to give the notice required by the Act; that it was "clear . . . that the excavation engaged in by Barcus resulted in

damage to . . . Hallam's sewer line.

Through a series of legal procedures, the Nebraska Court of Appeals dismissed some of the actions and made reduction in the final award amount of \$30,000, and it entered final judgment against Barcus in the amount of \$66,007.74. Barcus appealed these actions to the Supreme Court.

Barcus made several arguments, but most important to municipalities is the argument that Hallam was barred as a matter of law from asserting a remedy through its own non-compliance with the Act by not being a member of the One-Call system.

The Supreme Court agreed with the District Court that Hallam was in fact an "operator" of an underground facility as defined in the Act regardless of whether they had become members of the One-Call Center pursuant to the Act. They also agreed that Barcus was an "excavator" and subject to the liability provisions of §76-2324.

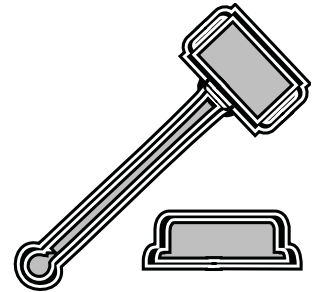
The Supreme Court noted the plain language of §76-2324:

The first sentence unambiguously states that an excavator who does not give notice

of an excavation as required by §76-2321 is strictly liable for damage to an underground facility caused by the excavation.

The second sentence states that an excavator who gives the required notice of an excavation *may* be liable for damage to an underground facility, unless the damage was due to the operator's failure to identify and mark the underground facility....Reading these two sentences together, it is clear that an operator's noncompliance with §76-2323 is a defense available to an excavator who gives the required notification, but not to the excavator who fails to give notice required by §76-2321.

The Supreme Court then went on to deal with other legal issues,



but ultimately reaffirmed the original judgment of \$96,007.74 to the Village of Hallam.

Long-time municipal employees will remember that the League originally opposed the legislation implementing the One-Call Center, but once the legislation was adopted, our advice has always been to ALWAYS notify the center if the municipality is acting as an excavator!!! The liability provisions of Neb. Rev. State. 76-2321 are too clear to take chances. This court case reasserts that position.

Has your wastewater facility/ personnel had a safe year?

A Nebraska Water Environment Association (NWEA) safety application has been included in this newsletter. Applications are also available on the NWEA

and League websites. The application deadline is July 15, 2011.

Be sure to acknowledge a safe workplace by filling out an application today.

Nebraska utilities history

The Utilities Section Newsletter will continue to feature histories of both utilities and associate members. Any historical data and/or photos of your utilities, a specific facility, or articles already written are welcome, along with permission to print. If you have questions, contact Rob at 402-476-2829 or robp@lonm.org.

By Rob Pierce,
Utilities Field Representative,
LNM

Hampton, located in Hamilton County, was first laid out around 1870, as settlers moved into the area. A Baptist Church was soon established in 1872. In October 1879, the initial six blocks were surveyed with the name of Plano initially proposed. This name and the name Murray were rejected by the railroad. Later, the name Hampton was decided upon and as the Burlington & Missouri River Railroad arrived, more land was platted, doubling the size of the town with a population over 200. A post office was moved from Williamsport, which was located just west of the new town site, in December 1879. A post office was established Feb. 18, 1880. By 1882, the community boasted 25 businesses, including a school, a railroad depot, grain elevator,

three general stores, hotel, lumberyard, drug store, Cox Brothers Bank, Methodist Church and Baptist Church.

The *Hampton Journal* newspaper was established by 1882. Hampton was incorporated as a village on Jan. 10, 1883. In 1885, a larger elementary school was built, the village boasted 49 businesses and the population was 534. In May 1893, a large two-story brick Opera House was built on the corner of North 3rd and B Streets and was officially dedicated in February 1894. By 1895, telephone poles lined the boardwalks of the main business street.

By the early 1900s, the population was 367 (1900) and the electric system was established (about 1905). On Feb. 20, 1910, the St. Peters German Lutheran Church was organized and by Oct. 22, the Hampton Cooperative Elevator Company was built. By 1915, Hampton offered both a municipal power plant and municipal water



Hampton water tower, 2010 photo.

works system. The power plant, with 100 horse-power steam engines and generators rate at 30 KVA, was installed at a cost of

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Nebraska utilities history

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\$3,300 with rates of \$0.20 per kilowatt hour. The waterworks was installed at an initial cost of about \$3,000 with flat rates fees. A new grade school was built in 1913 and on June 25, 1916, the Emmanuel Evangelical Lutheran Church was organized.

The 1920s saw the population rise to 457 and the opening of several businesses, including a meat market, the Hampton Grain Elevator, Farmers State Bank,

First National Bank, Cream Station, Auto Company, lumberyard, and an auto garage. By 1925, the municipal water system had water rates of \$0.10 per 1,000 gallons with a minimum of \$6 per year. Electric service in 1922 was provided by the Public Service Company. Electric rates in 1925 were between \$0.08 and \$0.15 per kilowatt hour.

The 1930s saw about a 20 percent decrease in population (369), the closing of the Farmers State

Bank in 1932, the village using natural gas the same year and an auditorium being built in 1939, partially with federal funds. By 1949, the Methodist Church had closed. In 1958, a new elementary school was built

The population had dropped to 289 by 1950, but saw an increase of 13 percent by 1960. By 1970, the population had rebounded with an increase of 36 residents (about 10 percent). A new school

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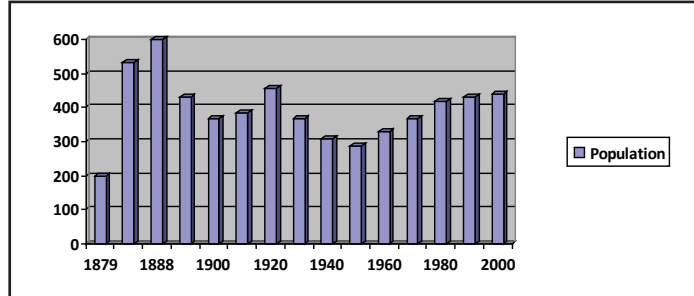
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Nebraska utilities history

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 was built in 1972, and by 1980, the population was slightly more than 400. The gas service was provided by Cengas. By 1986, Minnegasco operated the gas system, which changed to Peoples Natural Gas until 2002 when Aquila took over the system. Since 1992, the city has operated a facultative lagoon system designed for 0.041 million gallons per day (mgd). Also, a spheroid water tower was erected and many fire hydrants were installed in the late 1960s to 1970s. Today, 100 percent of the streets are paved, Black Hills Energy provides natural gas service and the electrical system is operated by the village and supplied by Nebraska Public

Power District. Hampton has been an incorporated village for 128 years and a member of the Utilities Section for more than 30 years.

References: *Nebraska Directory of Municipal Officials, 1956-2011*; *Nebraska Municipal Review Magazine, 1925, 1946*; *History of Hampton County, 1936*; *Water Resources of Nebraska, December 1936*; *Lincoln Journal Star Newspaper, 2008*; *Public*



Power Magazine, Vol. 51, Number 1, January-February 1993; *Nebraska Our Towns...Central Southwest, 1991*; *Maps Tell A Story, 1991*; *Centennial History of Hamilton County 1867-1967, 1967*; *Electric Power Development in U. S., Department of Agriculture, January 1916*; and *Nebraska Blue Book, 1915*.

2011 Solid Waste Screening Workshops held

Two Solid Waste Screening Workshops were held in Hastings (airport) and Gering (landfill) on March 16 and April 6, 2011. These five-hour workshops covered an overview of the "SWANA Solid Waste Screening Course," which included a PowerPoint pre-

sentation on the six chapters. The majority of the afternoon covered work procedures/practices dealing with inclement weather and emergency responses such as fires. This course meets the state of Nebraska's minimum requirement

for landfill and transfer station operators. These workshops are cosponsored by the League of Nebraska Municipalities and the Cornhusker Chapter of the Solid Waste Association of North America (SWANA).

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Safety meeting topics

Are you planning a safety meeting and need a topic for discussion? Your safety committee should be reviewing incidents and accidents in your department, facility or municipality annually. First, you should cover topics where injuries or incidents have occurred in your workplace. If no incidents or injuries have occurred, then cover areas about which the staff or the general public have voiced concerns.

Other places to find topics are OSHA's top 10 list of its most common violations from inspections or related reports. These can be found on OSHA's website or in other safety publications. In 2010, some of the most common violation areas included: scaffolding, fall protection, hazard communication, respiratory protection, ladders, lockout/tagout, electrical requirements, and powered industrial trucks.

Water systems that are AWWA facility members receive an annual publication called "Safety Talks," which have topics for weekly use (52 topics per year).

Topics for safety meetings should be both proactive and preventative in presentation. Safety should address working toward preven-

tion, minimization and elimination with a goal of zero accidents and injuries. This is one time that a grade of zero is good!

Successful time management tips

Since time or lack of time remains a persistent issue in the workplace, we need to make changes to meet the requirements or work load with which we deal on a daily basis. Here are five easy-to-incorporate tips to help minimize lost time:

- 1) Make effective use of downtime by having reading material with you such as books, manuals, SOPs, articles.
- 2) Break large projects into smaller components that can be easily accomplished each day.
- 3) Work to keep a clutter-free work area.
- 4) Attempt to touch paper

(including emails) only once and decide immediately what needs to be done with them.

5) Prioritize your to-do list and concentrate on the ones more important to your productivity.

Although these are somewhat vague and there are a multitude of tips or procedures to consider, just remember to minimize procrastination or your "to-do list" will multiply. One way to eliminate stress is to start with a fresh "to-do list" each day, because you have mastered the art of getting caught up. Good luck!

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American flag etiquette

Respect for the AMERICAN FLAG

By Bob Perry,
Loss Control Manager
for LARM and LNM

“I pledge allegiance to the flag of the United States of America, and to the republic for which it stands: one nation under God, indivisible, with liberty and justice for all.”

There is established etiquette to caring for our American Flag, established both by the federal government and by tradition. The section of law dealing with American Flag etiquette is generally referred to as the Flag Code.

Just as there is a proper way to display an American Flag, there is a proper way to care for it and handle the flag.

The American Flag should never be used as part of a costume or as part of an advertising campaign. This means you shouldn't place advertising on the flag pole or halyard.

The flag should never be dipped to any person or thing. It is flown

upside down only as a distress signal. The flag should not be used for any decoration in general. Bunting of blue, white and red stripes is available for these purposes. The blue stripe of the bunting should be on the top.

Most people fly their American flags most days of the year. There are specific days in which it especially should be flown.

WHEN TO DISPLAY THE FLAG

The flag should be displayed on all days when weather permits, especially on state, local and legal holidays or other special occasions. It is customary to display the flag from sunrise to sunset on a building or on stationary flagstaffs in the open. However, on special occasions it may be displayed at night, if illuminated by light. In several places, the flag flies day and night. Among these are the Capitol in Washington,



D.C. and the Fort Henry National Monument in Baltimore, which was the inspiration for “The Star Spangled Banner” by Francis Scott Key.

Municipal flags are commonly flown at libraries, main intersection flag poles and other municipal buildings and departmental complexes.

HOW TO FLY THE FLAG

The flag should be raised and lowered by hand. Never, raise the flag while it is furled; unfurl, then hoist quickly to the peak of the flagstaff. It should be lowered slowly and ceremoniously. The flag should never be allowed to touch anything beneath it, such as

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Photos: Tam Kessler, Scott Doherty



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American flag etiquette

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the ground or the floor.

The flying of the flag at half-staff is a sign of mourning. When flown at half-staff, the flag should be first hoisted to the peak, then immediately lowered to half-staff position. It should be raised to the peak again for a moment before it is lowered for the day.

“Half-staff” is the point midway between the top and bottom of the flagstaff. On Memorial Day in May, the flag should fly at half-staff from sunrise until noon and at full-staff from noon until sunset.

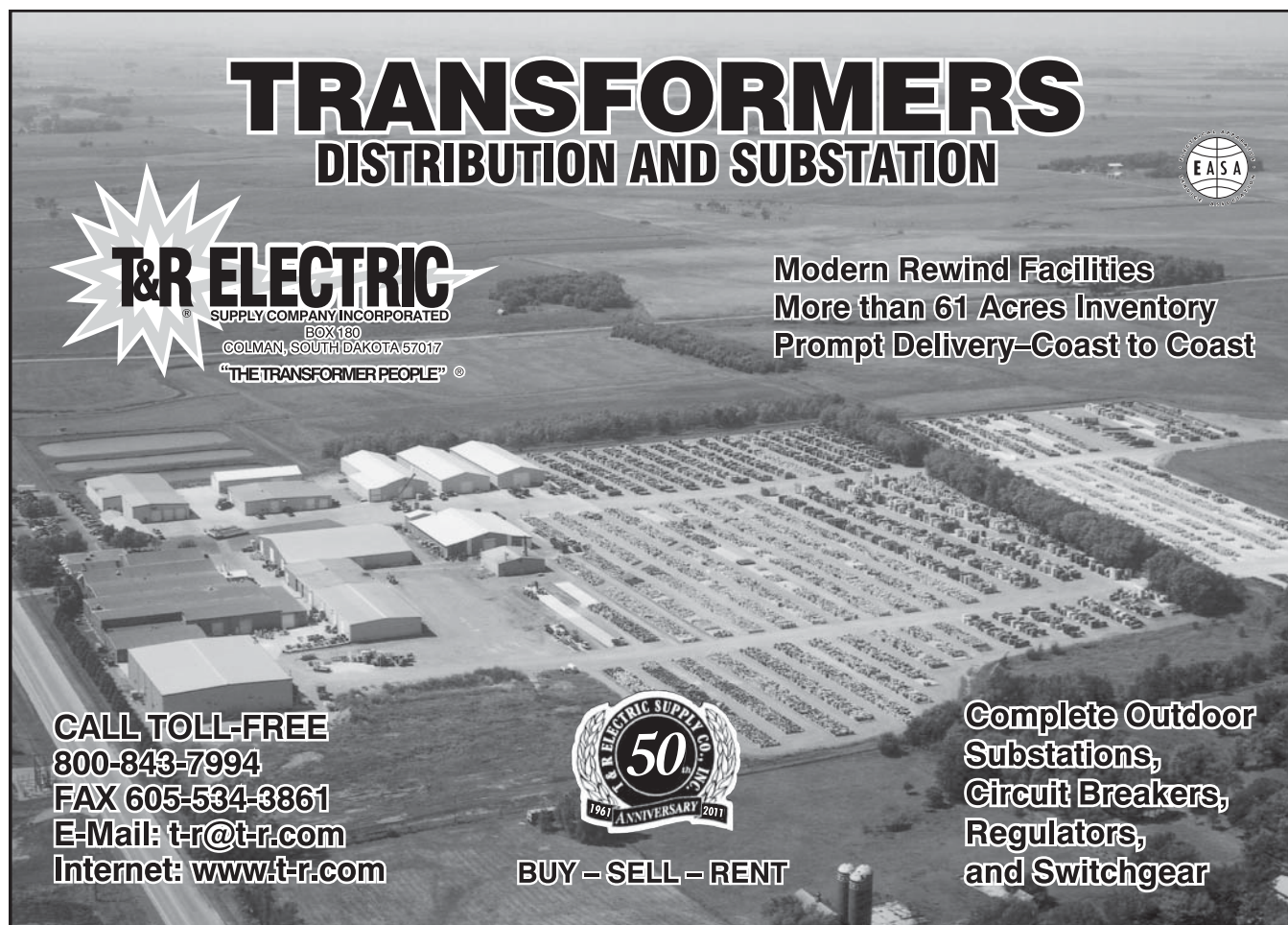
No other flag may be flown above the U.S. Flag except at the United Nations Headquarters. The UN flag

may be placed above all flags of all member nations. In the UN enclave, national flags of all members are flown with equal prominence. When the flags of two or more nations are displayed together, they should be flown from separate staffs of the same height and the flags should be of approximately equal size.

International usage forbids the display of the flag of one nation above that of another in a time of peace.



When flying your city, state or organization flag from the same pole as the U.S. Flag, the U.S. Flag should always be at the top of the pole. This is the position of honor.

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American flag etiquette

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WHEN AND HOW TO DISPOSE OF WORN FLAGS

Perhaps the most important thing to remember about American Flag etiquette is the flag should be clean and never have any drawings, markings, words or numbers on it. If the flag becomes worn, it should either be mended or be properly disposed of by burning in a dignified manner. Having a flag that has faded or is torn, is not an honor to our country. In many communities, local veterans' groups will accept worn flags, which they later destroy in the proper way.

Every precaution should be taken to prevent the flag from becoming soiled. When a flag is in such condition, through wear or damage, that is no longer an emblem for display, it should be destroyed privately in a dignified manner. Contact any local veteran organization, because many of these groups collect flags for appropriate and respectful disposal.

SOME COMMON FLAG TIPS

- THE FLAG SHOULD NEVER be tilted (dipped) even momentarily to any person or thing.

Regimental colors, state flags, organization or institutional flags may be tilted as the mark of honor.

- THE FLAG SHOULD NEVER be displayed with the union down except as a signal of distress.
- THE FLAG SHOULD NEVER be carried flat or horizontally, but always aloft and floating free.
- THE FLAG SHOULD NEVER be displayed on a float, motor car or boat, except from a staff.
- THE FLAG SHOULD NEVER be allowed to touch the ground or floor or brush against objects.
- THE FLAG SHOULD NEVER have objects placed on, over it or be used as a covering for a ceiling.
- THE FLAG SHOULD NEVER have any mark, insignia, letter, work, figure, picture or drawing of any nature placed upon or attached to it.
- THE FLAG SHOULD NEVER be used as a receptacle for carrying anything or be used to cover a statue or monument. If used in connection with unveiling ceremonies, it should not serve as a covering of the object



being unveiled.

- THE FLAG SHOULD NEVER be used for advertising purposes by having advertising signs fastened to its staff or halyard.
- THE FLAG SHOULD NEVER be embroidered on such articles as handkerchiefs or cushions or be printed or otherwise impressed on boxes.
- THE FLAG SHOULD NEVER be used as a costume or athletic uniform or part of one.
- THE FLAG SHOULD NEVER be used as drapery of any sort whatsoever, never festooned, drawn back or up in fold, but always allowed to fall free. Bunting of blue, white and red—always arranged with the blue above, white in the middle and red below should be used for such purposes of decoration as covering a speaker's desk or draping the front of a platform.

If you would like to receive your *Utilities Section Newsletter* by email rather than regular mail, please contact Brenda at brendae@lonm.org. Thank you!

If your municipal system or employees receive recognition, promotions, awards, etc., contact the League office so we can recognize them in our publications.

Training calendar for 2011

June

June 15-17.....Municipal Accounting & Finance Conference Ramada Inn, Kearney
June 30ATV Workshop..... Nebraska LTAP Building, Lincoln

July

July 6.....Water Operator Training Workshop Service Building, Lexington
July 7.....Water Operator Training Workshop Mid-Plains Community College,
North Platte
July 12.....Safety Workshop Fire Hall, Gering
July 26.....Street Lighting Workshop Grand Island

August

Aug. 23-25Electric Rubber Gloving Wheatbelt PPD Training Field, Sidney
Aug. 31-Sept. 1 ..Electric Underground Wheatbelt PPD Training Field, Sidney

September

Sept. 6Backflow Workshop Fire Hall, Ogallala
Sept. 15Tree Trimming Workshop Fire Hall, Gering
Sept. 20Backflow Workshop Grand Island
Sept. 21Backflow Workshop Fire Hall, Wayne
Sept. 22Backflow Workshop BPW Building, Beatrice

October

Oct. 4.....Water Operator Training Workshop Fire Hall, St. Paul
Oct. 5.....Water Operator Training Workshop Library, David City
Oct. 6.....Water Operator Training Workshop Fire Training Center, Norfolk
Oct. 11Tree Trimming Workshop Grand Island
Oct. 25-27Power Generation Conference (Diesel Conf.) Downtown Holiday Inn, Lincoln
Oct. 27Safety Workshop Downtown Holiday Inn, Lincoln

November

Nov. 29Water Operator Training Workshop Community Center, Bridgeport

December

Dec. 1Water Operator Training Workshop City Hall, Fairbury
Dec. 13Water Operator Training Workshop Fire Hall, South Sioux City
Dec. 14Water Operator Training Workshop Christensen Field, Fremont
Dec. 15Water Operator Training Workshop Lincoln Water System, Lincoln

Workshops also are listed on our website at www.lonm.org "Calendar of Events."