

STATE OF SOUTH DAKOTA
COUNTY OF BEADLE

IN CIRCUIT COURT
THIRD JUDICIAL DISTRICT

THE STATE OF SOUTH DAKOTA,

Plaintiff,

vs.

SPLIT ROCK CONTRACTING, INC.,

Defendant.

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COMPLAINT

Plaintiff State of South Dakota, by and through its undersigned Counsel, for its
Complaint states as follows.

1. Plaintiff, the State of South Dakota ("Plaintiff") brings this action by and through the South Dakota Public Utilities Commission ("The Commission"), an agency of the state of South Dakota created by SDCL 49-1-8.

2. Defendant Split Rock Contracting, Inc. ("Defendant") is a South Dakota corporation. The corporation's registered agent of record with the South Dakota Secretary of State is Richard A. Boomsma and its registered address is: 19975 394th Ave, Huron, SD 57350-6001

3. This action is brought pursuant to SDCL 49-7A-28 to recover the civil penalty assessed against Defendant by the South Dakota One-Call Board ("One-Call").

4. One-Call is a board established by SDCL 49-7A-2. One-Call was established to provide a service through which a person can notify the operators of underground facilities of plans to excavate, and to request the marking of the facilities.

One-Call has promulgated rules and procedures pursuant to SDCL 49-7A-4 to regulate the notification process of the above located at ARSD Article 20:25.

5. One-Call, pursuant to SDCL 49-7A-17, has the authority to receive complaints against persons who violate provisions of SDCL chapter 49-7A and rules promulgated by One-Call and, pursuant to SDCL 49-7A-18 and 49-7A-19, may assess civil penalties against persons found to have violated these laws.

6. On July 11, 2010, pursuant to SDCL 49-7A-2, One-Call received a complaint against Defendant. The complaint was filed by NorthWestern Corporation d/b/a NorthWestern Energy. The complaint is attached hereto as Exhibit A.

7. Pursuant to SDCL 49-7A-22 a five member panel was appointed by the Chairman of One-Call to hear the complaint (the "Panel"). The Panel found probable cause existed to believe a violation of South Dakota One Call law occurred.

8. The Panel found probable cause existed to believe a violation of SDCL 49-7A-5 occurred at McDonald Drive -13th Street to 14th Street, Huron, SD on June 1, 2011. Specifically, a natural gas facility was at risk.

9. The Panel recommended a civil penalty be assessed against Defendant in the amount of One Thousand Dollars (\$1,000).

10. A copy of the Panel's recommendations was served on Defendant via first class mail. The Panel decision is attached hereto as Exhibit B.

11. The Defendant failed to respond to the recommendations. Its failure to respond, and failure to request a hearing constitutes acceptance of the Panel's recommendation per SDCL 49-7A-27

12. Based on the Defendant's acceptance of the Panel recommendation, One-Call issued an Order on October 13, 2011. The One-Call Order was served on Defendant via first class mail on October 14, 2011. The One-Call Order is attached hereto as Exhibit C. Time for Defendant to appeal the decision of One-Call expired according to SDCL 1-26-31.

13. Defendant failed to pay the civil penalties as specified in the Order, and Defendant now owes One Thousand Dollars (\$1,000) in civil penalties.

14. One-Call made a written demand to Defendant for payment of the civil penalty pursuant to SDCL 49-7A-33. The demand was served on Defendant via first class mail. A copy of the notice is attached hereto as Exhibit D. More than thirty (30) days have elapsed since the demand was sent and Defendant failed to pay the prescribed civil penalties.

15. One-Call requested the Commission bring an action in this Court against Defendant to recover such penalty in accordance with SDCL 49-7A-28.

WHEREFORE, Plaintiff demands judgment against Defendant as follows:

1. For a monetary judgment in the amount of One Thousand Dollars (\$1,000) plus Plaintiff's costs, disbursements and statutory interest to the extent allowed by law.
2. For such other and further relief as the Court may deem just and proper.

Dated this 23 day of July, 2012.



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