

STATE OF SOUTH DAKOTA
COUNTY OF BROOKINGS

IN CIRCUIT COURT
THIRD JUDICIAL DISTRICT

THE STATE OF SOUTH DAKOTA,

Plaintiff,

vs.

EAGLE WEST INC.,

Defendant.

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CIV _____

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 Eagle West, Inc. ("Defendant") is a Minnesota Corporation in good standing with the Minnesota Secretary of State. It does not appear the Defendant, a foreign corporation, has a certificate from the South Dakota Secretary of State to do business in South Dakota. As a result Plaintiff is unaware of a South Dakota registered agent. The chief executive officer in Minnesota is: Steven Skepper, 6325 Eagle Lake Drive, Maple Grove MN 55369

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 November 14, 2011, pursuant to SDCL 49-7A-2, One-Call received two complaints against Defendant. Both complaints were filed by the City of Aurora. Both complaints are 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 both complaints (the "Panel"). The Panel found probable cause existed, in both, to believe violations of South Dakota One Call law occurred.

COMPLAINT 1

8. The Panel found probable cause existed to believe a violation of SDCL 49-7A-5 occurred at 101 S. Broadway, Street, Aurora, SD on November 13, 2011. Specifically, the Defendant failed to deny it engaged in excavation activity without a One Call Ticket.

9. The Panel recommended a civil penalty be assessed against Defendant in the amount of Five Hundred Dollars (\$500).

10. A copy of the Panel's recommendations was served on Defendant's Chief Executive Officer (CEO) 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 January 25, 2012. The One-Call Order was served on Defendant's CEO via first class mail on January 26, 2012. 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 Five Hundred Dollars (\$500) in civil penalties.

COMPLAINT 2

14. The Panel found probable cause existed to believe a violation of SDCL 49-7A-5 occurred at 210 Redmond Road, Aurora, SD on November 13, 2011. Specifically, once again, Defendant engaged in excavation activity without a One Call ticket.

15. The Panel recommended a civil penalty be assessed against Defendant in the amount of Five Hundred Dollars (\$500).

16. A copy of the Panel's recommendation was served on Defendant's CEO via first class mail. The complete Panel decision is attached hereto as Exhibit D.

17. 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

18. Based on the Defendants acceptance of the Panel recommendation, One-Call issued an Order on January 25, 2012. The One-Call Order was served on Defendant's CEO via first class mail on January 26, 2012. The One-Call Order is attached hereto as Exhibit E. Time for Defendant to appeal the decision of One-Call expired according to SDCL 1-26-31.

19. Defendant failed to pay the civil penalties as specified in the Order, and Defendant now owes Five Hundred Dollars (\$500) in civil penalties.

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

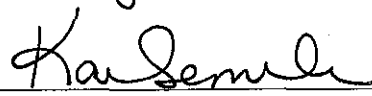
22. One-Call requested the Commission bring an action in this Court against Defendant to recover such penalty in accordance with SDCL 49-7A-28.

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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