



procedures pursuant to SDCL 49-7A-4 to regulate the notification process of the above, as provided by ARSD 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. Pursuant to SDCL 49-7A-18 and 49-7A-19, One-Call may assess civil penalties against persons found to have violated these laws.
6. On May 13, 2016, One-Call received a complaint against Defendant, pursuant to SDCL 49-7A-17. The complaint was filed by Montana-Dakota Utilities Co for an incident occurring in Pennington County at 6740 Prestwick Road in Rapid City, SD. The complaint is attached hereto as Exhibit A.
7. Pursuant to SDCL 49-7A-22, a five member panel ("Panel") was appointed by the Chairman of One-Call to hear the complaint. The Panel found probable cause existed to believe a violation of SDCL 49-7A-5 law occurred. Specifically, the Panel found Defendant performed excavation without making a locate request on March 31, 2016. The Panel did not find the violation to be intentional.
8. For the violation of SDCL 49-7A-5, the Panel recommended a penalty One Thousand Dollars (\$1000). The Panel found it proper, however, to suspend Two Hundred Fifty Dollars (\$250) on the condition that payment of the remaining amount be made within thirty days from the receipt of the One-Call Order, Defendant not be found guilty of a

One Call violation within the next twelve months, Defendant conduct an in-house safety meeting, and Defendant attend a Spring 2017 South Dakota One Call Excavator Meeting.

9. A copy of the Panel's recommendations was served on Defendant via first class mail. The Panel recommendations are attached hereto as Exhibit B. Defendant, however, failed to respond to the recommendations. Defendant's failure to respond and failure to request a hearing constitutes acceptance of the Panel's recommendations per SDCL 49-7A-27.
10. Based on Defendant's failure to respond or request a hearing, One-Call issued an Order on December 9, 2016. The One-Call Order was served on Defendant via first class mail on January 10, 2017. The One-Call Order is attached hereto as Exhibit C. The time for Defendant to appeal the decision of One-Call expired according to SDCL 1-26-31.
11. Defendant failed to pay the civil penalty or comply with the conditions of the suspended penalty, with the exception of attending the Spring 2017 One Call Excavator Meeting, and now owes One Thousand Dollars (\$1000) in civil penalties.
12. One-Call made a written demand to Defendant for payment of the civil penalties pursuant to SDCL 49-7A-33. The demand was served on Defendant via first class mail. A copy of the demand is attached hereto as Exhibit D. More than thirty (30) days have elapsed since

the demand letter was sent and Defendant failed to pay the prescribed civil penalties.

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

WHEREFORE, Plaintiff requests that the Court enter judgment by default against Defendant as follows:

1. For a monetary judgment in the amount of \$1000 against Defendant.

Dated this 1<sup>st</sup> day of June, 2017.

*Amanda M. Reiss*

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