

STATE OF SOUTH DAKOTA
COUNTY OF PENNINGTON

IN CIRCUIT COURT
SEVENTH JUDICIAL DISTRICT

THE STATE OF SOUTH DAKOTA,	*	CIV 06-1141
	*	
Plaintiff,	*	
	*	
vs.	*	
	*	
	*	APPLICATION FOR DEFAULT
VINCE FINKHOUSE,	*	JUDGMENT
d/b/a Eagle Excavating,	*	
	*	
Defendant.	*	

Plaintiff, the state of South Dakota by and through the Public Utilities Commission (“Plaintiff” or “Commission”) an agency of the State of South Dakota, hereby makes application to the Court for entry of judgment by default in the above-entitled action pursuant to SDCL 15-6-55(b).

1. The Commission commenced this action on October 24, 2006. Vince Finkhouse, the Defendant was served the Summons and Complaint on June 6, 2007.
2. Between October 24, 2006 and June 4, 2007 the Commission made various attempts to locate Vince Finkhouse (“Defendant” or “Finkhouse”). The Commission was able to confirm an address for Finkhouse, and a Summons and Complaint were sent to the Pennington County Sheriff for personal service on Finkhouse on June 4, 2007. It was personally served on the Defendant by the Sheriff on June 6, 2007. The Sheriff’s return of service is attached as Exhibit A.
3. Defendant has filed neither an Answer nor any other pleading in this case.

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

5. One-Call ("One-Call") is a board established by SDCL 49-7A-2.

6. 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 may, pursuant to SDCL 49-7A-18 and 49-7A-19, assess civil penalties against persons found to have violated these laws.

7. On July 1, 2005, pursuant to SDCL 49-7A-17, One-Call received a complaint filed by Montana-Dakota Utilities Co. of Rapid City, South Dakota against Vince Finkhouse d/b/a Eagle Excavating of Rapid City, SD.

8. The One Call Board levied a fine of Six Thousand, Five Hundred Dollars (\$6,500) against Defendant at the conclusion of the One Call process. Specifically, a 5 member panel found probable cause existed to believe a violation of SDCL 49-7A-5 and SDCL 49-7A-12 occurred. Finkhouse failed to respond to the panels recommendations and consequently, a hearing was necessary. Finkhouse failed to appear at the hearing and One Call found him guilty of a violation of SDCL 49-7A-5 and SDCL 49-7A-12.

9. One-Call's final decision was served on Finkhouse on December 2, 2005. Finkhouse did not appeal the decision.

10. One-Call made a written demand to Defendant for payment of the civil penalties as required by SDCL 49-7A-33 and Defendant failed to pay the prescribed civil penalties.

11. At the request of One-Call, the Commission brought an action in this court against Defendant to recover such penalty in accordance with SDCL 49-7A-28.

12. Defendant has neither paid anything to the Commission nor One-Call in satisfaction of the \$6,500 in civil fines levied by One-Call nor given any indication to the Commission or One-Call that he intends to pay the fines.

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

1. For a monetary judgment in the amount of \$6,500 against Defendant.

Dated this 1th day of May, 2008



Kara C. Semmler
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South Dakota Public Utilities Commission
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Attorney for Plaintiff,
South Dakota Public Utilities Commission

Process # 70353
Return # 168966

Court # CIR-

SHERIFF'S RETURN AND DAY BOOK ENTRY

STATE OF SOUTH DAKOTA, County of Pennington

C-Mail	0	0.00
Pub		0.00
Sheriff's Sale		0.00
Subpoena		0.00
Service		16.50
Mile 1	14	5.32
Mile 2		0.00
Misc 1		0.00
Misc 2		0.00
Misc 3		0.00
Total		21.82
Paid		0.00
Due		21.82

Attorney SD PUBLIC UTILITIES COMMISSION
500 E CAPITOL AVE
PIERRE
SD 57501-5070

Plaintiff THE STATE OF SD

RECEIVED

JUN 0 8 2007

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

SS. VS.

Defendant FINKHOUSE, VINCE DBA EAGLE EXCAVATING

I, Don Holloway, Sheriff of Pennington County, South Dakota, hereby certify and return the annexed
SUMMONS; COMPLAINT

came into my hands on the 06/04/2007 for service on:
FINKHOUSE, VINCE

that I served personally by delivering a true copy thereof with
FINKHOUSE, VINCE ON 06/06/2007 @ 1405 AT 3736 CANYON LAKE DR, RAPID CITY, SD

substituted service at his/her dwelling
Pennington county, South Dakota, in the presence of and with a member of his/her family over the age
of fourteen years, to wit:

returned unserved because of the following reason:

in Pennington county, State of south Dakota, on 6 day of June, 2007

Pennington County Sheriff
300 Kansas City Street Ste 100
Rapid City, SD 57701

Don Holloway
by: FULLEN, CINDY

Sheriff
Deputy

EXHIBIT

A