

STATE OF SOUTH DAKOTA  
COUNTY OF ROBERTS

IN CIRCUIT COURT  
FIFTH JUDICIAL DISTRICT

THE STATE OF SOUTH DAKOTA,  
  
Plaintiff,

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CIV \_\_\_\_\_

vs.

COMPLAINT

ROBERT KOHL d/b/a  
ROBERT KOHL CONSTRUCTION,  
  
Defendant.

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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 ("Commission"), an agency of the State of South Dakota created by SDCL 49-1-8.
2. Defendant, Robert Kohl ("Defendant") is a resident of Roberts County with a last known address of 12947 BIA Highway 700, Peever, South Dakota, 57257-7619. Defendant, at all times relevant to the allegation in the Complaint, operated a construction company as a sole proprietorship, doing business as Robert Kohl Construction. Part of Defendant's construction business activities involved land excavation.
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 Notification Board ("One-Call" or "One-Call Board").

4. One-Call is a board established under SDCL 49-7A-2 to provide a service through which a person is able to 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, such rules are 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 29, 2010, pursuant to SDCL 49-7A-17, One-Call received a complaint filed by Otter Tail Power Company ("OTP") against the Defendant. In this complaint, OTP alleged the Defendant failed to contact One-Call to determine the location of underground facilities prior to excavating at the location of 509 Old Agency St. Sisseton, South Dakota. As a result, Defendant or his agents/employees, damaged OTP's secondary electrical service facilities. The failure to contact One-Call prior to conducting excavation activities is a violation of SDCL 49-7A-5.

7. According to SDCL 49-7A-23, on November 30, 2010, notice of the OTP complaint and a copy of the complaint, were sent to Defendant by first class priority mail at his last known address, a copy has been attached hereto as Exhibit A. Defendant failed to respond to the complaint within the designated time period.

8. Pursuant to SDCL 49-7A-22, a panel was appointed by the Chairman of One-Call in order to determine whether there was probably cause to believe a violation

occurred according to the OTP complaint. The panel found probable cause existed to believe a violation of SDCL 49-7A-5 had taken place.

9. Based on its findings, the panel recommended the One-Call Board assess a penalty of one thousand dollars (\$1,000) with five hundred dollars (\$500.00) suspended on the condition that: (i) Robert Kohl Construction fully comply with SDCL 49-7A and article 20:25 for a period of twelve (12) months following issuance of the One-Call Board Order; and (ii) Robert Kohl Construction make payment within thirty (30) days of issuance of the One-Call Board Order.

10. On January 14, 2011, notice of the panel's recommendations and a copy of these recommendations, were mailed by first class priority mail to Defendant's last known address, a copy which has been attached hereto as Exhibit B.

11. The Defendant failed to respond to the panel's recommendations. A failure to respond, or 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's recommendations, the One-Call Board issued an Order on February 16, 2010, a copy of the Order has been 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 comply with the conditions in the Order, and Defendant now owes one thousand (\$1,000) dollars in civil penalties.

14. One-Call made a written demand to Defendant for payment of the civil penalties as required by SDCL 49-7A-33. The demand was mailed to Defendant's last known address, a copy is attached hereto as Exhibit D. More than thirty (30) days have

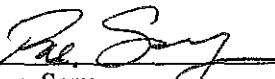
elapsed since the demand was sent and Defendant has failed to pay the prescribed civil penalties.

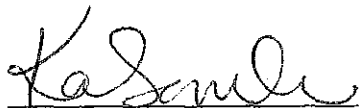
15. One-Call requested the Commission bring an action in this court against Defendant to recover such penalty in accordance with SDCL 49-7A-28.

WHEREFORE, Plaintiff seeks 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 17<sup>th</sup> day of June, 2011.

  
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