



Chris Nelson, Chair  
Kristie Fiegen, Vice Chair  
Gary Hanson, Commissioner

**SOUTH DAKOTA  
PUBLIC UTILITIES COMMISSION**

500 East Capitol Avenue  
Pierre, South Dakota 57501-5070  
[www.puc.sd.gov](http://www.puc.sd.gov)

Capitol Office  
(605) 773-3201  
1-866-757-6031 fax

Grain Warehouse  
(605) 773-5280  
(605) 773-3225 fax

Consumer Hotline  
1-800-332-1782

March 9, 2012

Robert Kohl Construction  
12947 BIA Highway 700  
Peever, SD 57257-7619

**RE: CIV 11-97 - STATE OF SOUTH DAKOTA V. ROBERT KOHL d/b/a ROBERT KOHL  
CONSTRUCTION**

Dear Mr. Kohl:

Enclosed you will find copy of all documents filed with the Clerk of Courts or drafted in preparation for the April 12, 2012 hearing to be held at the Roberts County Courthouse at 9:00 AM. Please contact me with any questions.

Sincerely,



Ryan Soye  
Staff Attorney

Enc.



Chris Nelson, Chair  
Kristie Fiegen, Vice Chair  
Gary Hanson, Commissioner

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March 9, 2012

Cindy Marohl  
Roberts County Clerk of Courts  
411 2nd Ave. East  
Sisseton, SD 57262

**RE: CIV 11-97 - STATE OF SOUTH DAKOTA V. ROBERT KOHL d/b/a ROBERT KOHL  
CONSTRUCTION**

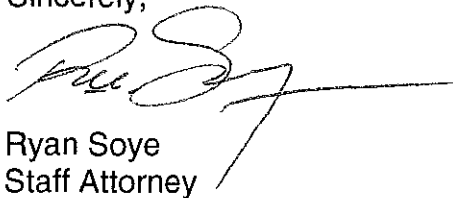
Dear Ms. Marohl:

In regards to the above-reference matter, enclosed for filing, please find:

1. Notice of Hearing on Motion for Default Judgment
2. Motion for Default Judgment
3. Affidavit of Default
4. Default Judgment (*Proposed*)
5. Certificate of Service

Do not hesitate to contact me with any questions or concerns.

Sincerely,



Ryan Soye  
Staff Attorney

Enc.



Chris Nelson, Chair  
Kristie Fiegen, Vice Chair  
Gary Hanson, Commissioner

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March 9, 2012

Jay Tasa  
Roberts County Sheriff's Department  
11924 BIA Hwy 700  
Sisseton, SD 57262

**RE: STATE OF SOUTH DAKOTA V. ROBERT KOHL d/b/a ROBERT KOHL  
CONSTRUCTION**

Dear Mr. Tasa:

Enclosed you will find two (2) copies of the following document in the above-captioned matter. Please serve one copy of each on Mr. Robert Kohl at 12947 BIA Highway 700, Peever, South Dakota, 57257-7619.

**Documents**

1. Notice of Hearing on Motion for Default Judgment
2. Motion for Default Judgment
3. Affidavit of Default
4. Default Judgment (*Proposed*)
5. Certificate of Service

When service upon Mr. Kohl is complete, please send us your return of service.

Thank you for your assistance. If you have any questions, feel free to contact me at my office.

Sincerely,

  
Ryan Soye  
Staff Attorney

STATE OF SOUTH DAKOTA  
COUNTY OF ROBERTS

IN CIRCUIT COURT  
FIFTH JUDICIAL DISTRICT

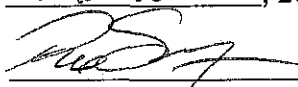
THE STATE OF SOUTH DAKOTA, \* CIV 11-97  
\*  
Plaintiff, \*  
\*  
vs. \*  
\*  
ROBERT KOHL d/b/a \*  
ROBERT KOHL CONSTRUCTION, \*  
\*  
\*  
Defendant. \*

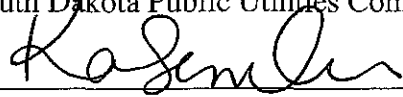
**NOTICE OF HEARING ON  
MOTION FOR DEFAULT  
JUDGMENT**

TO THE ABOVE-NAMED DEFENDANT:

PLEASE TAKE NOTICE that on April 12, 2012 at 9:00 AM, a hearing will be held in Roberts County Courthouse, 411 2nd Ave. East, Sisseton, SD 57262 in regards to the State of South Dakota's Application for Default Judgment. If you fail to appear at such place and time, judgment by default may be entered against you.

Dated this 9<sup>th</sup> day of March, 2012, at Pierre, South Dakota.

  
\_\_\_\_\_  
Ryan Soye  
Special Assistant Attorney General  
South Dakota Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501  
Ph: (605) 773-3201  
Attorney for Plaintiff,  
South Dakota Public Utilities Commission

  
\_\_\_\_\_  
Kara Semmler  
Special Assistant Attorney General  
South Dakota Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501  
Ph : (605) 773-3201  
Attorney for Plaintiff,  
South Dakota Public Utilities Commission

STATE OF SOUTH DAKOTA  
COUNTY OF ROBERTS

IN CIRCUIT COURT  
FIFTH JUDICIAL DISTRICT

---

THE STATE OF SOUTH DAKOTA,

\*  
\*

CIV 11-97

Plaintiff,

\*  
\*

vs.

\*  
\*

**MOTION FOR  
DEFAULT JUDGMENT**

ROBERT KOHL d/b/a  
ROBERT KOHL CONSTRUCTION,

\*  
\*

\*  
\*

Defendant.

\*

---

Plaintiff, the State of South Dakota, by and through the Public Utilities Commission ("Plaintiff" or "Commission") hereby makes application to the Court for entry of judgment by default in the above-titled action pursuant to SDCL 15-6-55(b) and states as follows:

1. On June 17, 2011, Plaintiff commenced this action pursuant to SDCL 49-7A-28 to recover the civil penalty of one thousand dollars (\$1,000.00) assessed against Defendant by the South Dakota One-Call Notification Board ("One-Call" or "One-Call Board") under the authority of SDCL 49-7A-18.

2. On July 18, 2011, Defendant was personally served by the Robert's County Sheriff's Department with a true and correct copy of the Summons and Complaint, as evidenced by the Return of Service. (Exhibit A, Pg. 1).

3. On August 10, 2011, Defendant contacted Plaintiff requesting accommodations be made to allow Defendant to satisfy the civil penalty. Plaintiff offered to allow Defendant (i) additional time to satisfy the civil penalty, (ii) the opportunity for

Defendant to structure a personal payment schedule, and (iii) a reduction of the penalty to Five Hundred Dollars (\$500.00), on the conditions that Defendant would satisfy the reduced penalty in the time identified by the payment structure to be offered.

4. On August 30, 2011, Defendant remitted a single payment in the amount of One Hundred and Fifty Dollars (\$150.00) as partial satisfaction of the assessed civil penalty.

5. Following the payment identified in Part 4, Defendant failed to make any additional payments, failed to offer a structured payment plan, and ceased all communications with Plaintiff.

6. On October 6, 2011, Plaintiff sent notice to Defendant that the One-Call Board had scheduled a meeting to discuss Defendant's failure to comply and to determine appropriate action. Specifically, Defendant was notified the One-Call Board would consider whether to reinstate the full One Thousand Dollar (\$1,000.00) civil penalty for Defendant's failure to comply with the accommodations specified. (Exhibit B, Pgs. 1-3).

7. On October 20, 2011, the One-Call Board provided Defendant with notice through certified mail stating, if Defendant failed to remit the Three Hundred and Fifty Dollars (\$350.00) remaining on the reduced penalty, no later than October 31, 2011; the One-Call Board approved reinstating the suspended portion of the civil penalty and the Board would resume its action in civil court to enforce any unpaid portion of the total One Thousand Dollar (\$1,000.00) penalty. (Exhibit C, Pg. 1).

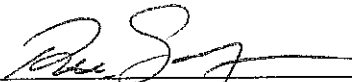
8. Defendant failed, or refused, to collect and sign for the certified letter which was returned to the South Dakota Public Utilities Commission on October 22, 2011.

9. It has now been approximately six (6) months since any communication has been received from Defendant.

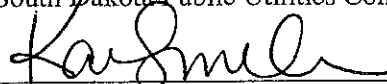
WHEREFORE, Plaintiff seeks judgment against Defendant as follows:

1. That this Court find the Defendant in default in this action and find in favor of Plaintiff in this Motion for Default Judgment
2. For a monetary judgment in the amount of One Thousand Dollars (\$1,000.00) minus any amounts of the total civil penalty already received by the Plaintiff from Defendant
3. For such other and further relief as the Court may deem just and proper.

Dated this 9th day of March, 2012.



Ryan Soye  
Special Assistant Attorney General  
South Dakota Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501  
Ph : (605) 773-3201  
Attorney for Plaintiff,  
South Dakota Public Utilities Commission



Kara Semmler  
Special Assistant Attorney General  
South Dakota Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501  
Ph : (605) 773-3201  
Attorney for Plaintiff,  
South Dakota Public Utilities Commission

26/20048



Roberts County Sheriff's Office  
Jay Tasa - Sheriff  
11924 BIA Hwy. 700  
PO BOX 937  
Sisseton, SD 57262  
Phone (605) 698-7667  
Fax (605) 698-7386

http://robertscosheriff.expage.com

**RECEIVED**  
JUL 19 2011  
SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

CIVIL/CRIMINAL PROCESS

Date Received: 6/21/11

Return #: 7387 Process #:

Attorney Received From: Ryan Soye

REF: State of South Dakota, Plaintiff vs. Robert Kohl d/b/a Robert Kohl Construction, Defendant

Address of Person to be Served: 12947 BIA Hwy. 700 Peever, SD 57257

Papers to be Served: Summons & Complaint

Expiration Date:

Date Attempted Service:	Round Trip Miles:
6/25/11	21
7/8/11	21
7/16/11	21
7/18/11 @ 6:36 AM	21

Service .....\$25.00  
Mileage ..... 84 Miles @ .41= \$34.44  
TOTAL ..... \$59.44

I, Ben Pallesen, Deputy Sheriff of Roberts County, South Dakota, hereby certify and return the annexed Summons & Complaint came into my hands for service on 6/21/11. That I served the same on Robert Kohl personally by delivering to and leaving a true copy thereof with Robert Kohl in Roberts County, South Dakota, on 7/18/11.

\_\_\_\_\_  
Roberts County Sheriff

  
\_\_\_\_\_  
Roberts County Deputy Sheriff

Date Returned Not Served:

Comments:

MAKE CHECK PAYABLE TO ROBERTS COUNTY SHERIFF'S OFFICE

CIV11-097

EXHIBIT

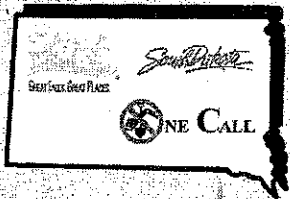
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PAGE

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Safe digging is no accident. Always call 811 before digging.



**Know what's below.  
Call before you dig.**



October 6, 2011

Robert Kohl Construction  
12947 BIA Highway 700  
Peever, SD 57257-7619

The South Dakota One Call Notification Board will consider taking legal action on several One Call Complaints at its October 13, 2011 Board Meeting in Ft. Pierre, SD. You are receiving this information because you are involved in one of the complaints to be considered, specifically Complaint Docket OC10-009.

The South Dakota One Call Board issued an Order for payment on February 16, 2011, and did not receive payment of five hundred dollars as required by March 16, 2011. After civil action activity began, it did receive a partial payment on August 30, 2011 of one hundred fifty dollars. Although this was well past the original date, you were given the opportunity to work out a regularly scheduled payment plan. You have not followed through by providing a written schedule of payments and the amount that could be expected each month. I have made several unsuccessful attempts to contact you by calling your home telephone during the day and evening and by calling your now disconnected cell phone which you previously provided.

The decision made by the Board at the October 13<sup>th</sup> meeting, will be whether or not to pursue collection activity through civil court for the full \$1,000 penalty amount. Enclosed is a copy of the Board Meeting Agenda.

Please feel free to contact me with any questions you may have.

Larry L. Janes  
Executive Director  
South Dakota One Call  
(605) 339-0529

cc: Scott Fritz via email

EXHIBIT B, PAGE 1

# Meeting of the South Dakota One Call Notification Board

**October 13, 2011 8:00 AM CDT**

Ft. Pierre Holiday Inn Express

110 East Stanley Road

Ft. Pierre, SD

Board Members: Kurt Pfeifle, Mid-Dakota Rural Water System, Chairman; Erin Hayes, Midcontinent Communications, Vice Chairman; Fay Jandreau, Midstate Communications; Todd Chambers, Watertown Municipal Utilities; Kevin Kouba, Otter Tail Power Co; Ed Anderson, SDREA; Doug Larson, Northern Border Pipeline; Dan Kaiser, CenturyLink; Bleau LaFave, Northwestern Energy; Eugene Solseth, Hills Septic Service; Terry Larson, Heavy Constructors; Legal Counsel: Kara Semmler Executive Director: Larry Janes

## Agenda

1. Call to Order and Roll Call
2. Approval of Previous Minutes
  - a. June 28, 2011 Board Meeting Conference Call
3. Review and Approval of Financial Report
  - a. Financial Summary including expenditure details for July 2011 through September 2011.
  - b. 2012 Fiscal Year Budget
4. Operations
  - a. KorPartners Performance Results
  - b. Call volume trends
5. Executive Director Report Items
  - a. OC10-009, Ottertail Power Company against Robert Kohl Construction. On February 16, 2011 the South Dakota One Call Board Ordered that the penalty of \$1,000, with \$500 suspended to be paid within thirty days of issuance of the Order. Payment was not received and collection activity began. A partial payment of \$150 was received on August 30, 2011. Shall the Board accept the monthly payments by Mr. Kohl to satisfy the penalty amount minus the suspended portion, or shall the Board now apply the suspended portion of the Enforcement Panel Recommendation?
  - b. Complaint Dockets OC10-006, OC10-007, and OC10-008, NorthWestern Energy against Scott Olson Digging, Inc. – Bankruptcy was filed. Collection activity has ceased. Kara Semmler is licensed to practice in the SD Bankruptcy Court and entered SD One Call as a party to the business reorganization. If the court allows reorganization, the One Call debt remains intact and collectable. Does the Board wish to hire outside counsel at this time?
  - c. OC10-010, Watertown Municipal Utilities against Stromseth Construction. On February 16, 2011 the South Dakota One Call Board accepted the Enforcement Panel Recommendation of a \$1,000 penalty with \$0 suspended and a second \$1,000 penalty with \$0 suspended, because of two alleged violations of SD One Call laws, if payment was received within 30 days of issuance of the Order. No payment was received in March and collection activity began. Payment of \$2,000 was received on May 19, 2011.
  - d. OC11-002, Complaint against Carlson Excavating by Ottertail Power Company. The Enforcement Panel met and made a recommendation to the Board regarding final disposition of the Docket. Today shall the One Call Board accept the recommendation of the Enforcement Panel and shall the One Call Board Close the Docket?

- e. OC11-003, Complaint against Split Rock Contracting, Inc. by NorthWestern Energy. The Enforcement Panel met and made a recommendation to the Board regarding final disposition of the Docket. Today shall the One Call Board accept the recommendation of the Enforcement Panel and shall the One Call Board Close the Docket?
- f. OC11-004, Complaint against Oaklane Colony by Nustar Pipeline. The Enforcement Panel met and made a recommendation to the Board regarding final disposition of the Docket. Today shall the One Call Board accept the recommendation of the Enforcement Panel and shall the One Call Board Close the Docket?
- g. OC11-005, Complaint against Dakota Excavating by Watertown Municipal Utilities. The Enforcement Panel met and made a recommendation to the Board regarding final disposition of the Docket. Today shall the One Call Board accept the recommendation of the Enforcement Panel and shall the One Call Board Close the Docket?
- h. OC11-006, Complaint against Montana Dakota Utilities by Dr. Nathan Kadlec. The Enforcement Panel met and made a recommendation to the Board regarding final disposition of the Docket. Today shall the One Call Board accept the recommendation of the Enforcement Panel and shall the One Call Board Close the Docket?
- i. Policy Document. The One Call Board reviewed the South Dakota One Call Board Policy Document at the May 18, 2011 One Call Board Meeting. During the June 28, 2011 One Call Board Conference Call, it was suggested that the following items be included in the Policy Document: "15% of the annual operating expenses shall be held in reserve. This fund shall be used in the event the call center goes out of business, if funds run low and the Board elects not to raise fees, or during the winter when expenses remain high, but revenues are low". Those changes have now been incorporated into the document under "Financials", which replaces the "Rates" heading in the manual. The term "Financials" is used to better identify any future financial items in the Policy Manual. The insurance requirements of the Executive Director discussed at the June 28, 2011 Board Conference Call have also been included in the document. These requirements can be found in the Executive Director section. Today shall the One Call Board approve the South Dakota One Call Process and Procedures document?
- j. Insurance Requirements. The Executive Director has been asked to obtain Errors and Omissions insurance in the amount of \$1,000,000 and Fidelity Bond insurance in the amount of \$100,000. Today shall the Board approve the payment of Errors and Omissions and Fidelity Bond insurance for the Executive Director?
- k. Requests have been made to extend the response date of Complaint dockets for purposes of obtaining evidence. Shall the Board grant authority to the Executive Director to extend those dates when requested?
- l. Is the Board interested in introducing legislation to allow the Enforcement Panel to ask questions of the parties during the Enforcement Panel meetings?
- m. Discussion – PS10-002 - In the Matter of the Filing by Commission Pipeline Safety Staff Regarding Damage Prevention Programs.
- n. Legislative Breakfast. Thursday, January 26, 2012 has been reserved to host a legislative breakfast from 7 am to 10:30 am at the Capitol Building in Pierre, SD. Today shall the Board approve a budget for this breakfast?

**ANNOUNCEMENTS:**

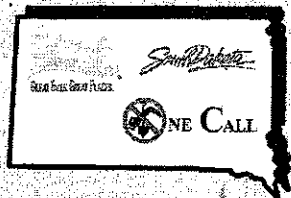
Dinner will be held at the Cattlemen's Club, 29608 SD Hwy 34 at 6:00 PM on October 12, 2011 for members of the South Dakota One Call Board.

Kurt Pfeifle, Fay Jandreau, and Larry Janes will be attending a meeting with Texas811 in Dallas on November 16, 2011.

Common Ground Alliance conference will be held in Las Vegas, March 6<sup>th</sup> – 8<sup>th</sup>, 2012.

Materials presented at this meeting are available by contacting the Executive Director in writing at [exedir@sdonecall.com](mailto:exedir@sdonecall.com) or by calling (605) 339-0529.

Safe digging is no accident. Always call 811 before digging.



**Know what's below.  
Call before you dig.**



October 20, 2011

Robert Kohl Construction  
12947 BIA Highway 700  
Peever, SD 57257-7619

Mr. Kohl,

On October 6, 2011, I mailed a Priority Mail letter to you explaining that the South Dakota One Call Notification Board would meet to discuss your payments in regards to Complaint Docket OC11-009. I explained that while you seemed to attempt to set things right by making one payment of \$150.00 on August 30, 2011, you had not followed through by providing a schedule of when you could make additional payments and then making them.

Because of your unwillingness to work out a satisfactory arrangement, a motion was made and passed unanimously by the South Dakota One Call Board to give you 10 days to pay the remainder of the \$500. As it stands now, the payment of \$350 must be received no later than Monday, October 31, 2011. If no payment is received, then civil action will resume. The \$350 plus the suspended portion of the penalty, which is an additional \$500, will be due.

Please make a payment of \$350 and mail it to:

South Dakota One Call  
c/o Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501

Larry L. Janes  
Executive Director  
South Dakota One Call  
(605) 339-0529

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THE STATE OF SOUTH DAKOTA,

Plaintiff,

vs.

ROBERT KOHL d/b/a  
ROBERT KOHL CONSTRUCTION,

Defendant.

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CIV 11-97

**AFFIDAVIT OF DEFAULT**

Ryan M. A. Soye, being first duly sworn on oath, deposes and states as follows:

1. I am one of the attorneys for the State of South Dakota, the Plaintiff, and I make this Affidavit in support of the Plaintiff's Motion for Default Judgment against Robert Kohl d/b/a Robert Kohl Construction, the Defendant.

2. Defendant was served with a true and correct copy of the Summons and Complaint in this action on July 18, 2011, as evidenced by the Return of Service on file herein.


3. More than thirty (30) days have passed since Defendant was served with the Summons and Complaint, and to the best of Plaintiff's knowledge, Defendant has failed to answer the Complaint or otherwise appear to contest the judgment sought by Plaintiff. Defendant is therefore in default.

4. To the best of Affiant's knowledge, information and belief, Defendant is over the age of eighteen (18) years, and is not on active duty with any branch of the United States armed forces.

5. The Plaintiff seeks a judgment of One Thousand Dollars (\$1000.00) minus any amounts received by Defendant prior to a judgment rendered.

6. To date, all amounts received by Plaintiff is equal to One Hundred and Fifty Dollars (\$150.00); leaving Eight Hundred Fifty Dollars (\$850.00) remaining for judgment.

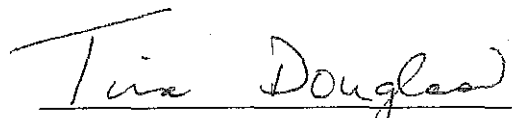
Dated at Sioux Falls, South Dakota, this 9<sup>th</sup> day of March, 2012.

  
\_\_\_\_\_  
Ryan M. A. Soye

STATE OF SOUTH DAKOTA )  
: SS  
COUNTY OF HUGHES )

On this, the 9<sup>th</sup> day of March, 2012, before me, the undersigned officer, personally appeared Ryan M. A. Soye, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

  
\_\_\_\_\_  
Tina Douglas

Notary Public -- South Dakota

My Commission Expires: \_\_\_\_\_ TINA DOUGLAS

My Commission Expires  
April 14, 2017

SEAL

STATE OF SOUTH DAKOTA  
COUNTY OF ROBERTS

IN CIRCUIT COURT  
FIFTH JUDICIAL DISTRICT

---

THE STATE OF SOUTH DAKOTA,

\*

CIV 11-97

\*

Plaintiff,

\*

\*

vs.

\*

**DEFAULT JUDGMENT**

\*

ROBERT KOHL d/b/a

\*

ROBERT KOHL CONSTRUCTION,

\*

\*

\*

Defendant.

\*

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**IT APPEARING** that ROBERT KOHL d/b/a ROBERT KOHL CONSTRUCTION, the Defendant in this action, was duly served with a copy of the Summons and Complaint on July 18, 2011, and it further appearing that the Defendant has failed to appear or answer within the thirty days required by law, and the Plaintiff having moved this Court for entry of default judgment in favor of Plaintiff and against Defendant, and good cause therefor appearing;

**DEFAULT JUDGMENT** is hereby granted in favor of Plaintiff and against Defendant in the amount of One Thousand Dollars (\$1,000.00), minus One Hundred Fifty Dollars (\$150.00) already received, for a **total judgment of Eight Hundred Fifty Dollars (\$850.00)**.

Dated at Sioux Falls, South Dakota, this \_\_\_\_\_ day of April, 2012.

**BY THE COURT:**

\_\_\_\_\_  
JUDGE, Circuit Court Judge

ATTEST:

By: \_\_\_\_\_  
Clerk  
(SEAL)

STATE OF SOUTH DAKOTA  
COUNTY OF ROBERTS

IN CIRCUIT COURT  
FIFTH JUDICIAL DISTRICT

---

THE STATE OF SOUTH DAKOTA,

Plaintiff,

vs.

ROBERT KOHL d/b/a  
ROBERT KOHL CONSTRUCTION,

Defendant.

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CIV 11-97

**CERTIFICATE OF SERVICE**

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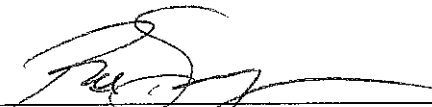
The undersigned hereby certifies that on March 9, 2012, true and correct copies of the following documents were served by United States first-class mail, postage prepaid, to the the last known address/es of the recipient/s identified below:

**Documents**

- Notice of Hearing on Motion for Default Judgment
- Motion for Default Judgment
- Affidavit of Default
- Default Judgment (*Proposed*)
- Certificate of Service

**Robert Kohl Construction**  
12947 BIA Highway 700  
Peever, SD 57257-7619

Dated this 9<sup>th</sup> day of March, 2012.

  
\_\_\_\_\_  
Ryan Soye, Attorney for Plaintiff  
Special Assistant Attorney General  
South Dakota Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501  
Ph: (605) 773-3201



STATE OF SOUTH DAKOTA  
COUNTY OF ROBERTS

IN CIRCUIT COURT  
FIFTH JUDICIAL DISTRICT

---

THE STATE OF SOUTH DAKOTA, \* CIV 11-97  
\*  
Plaintiff, \*  
\*  
vs. \*  
\*  
ROBERT KOHL d/b/a \*  
ROBERT KOHL CONSTRUCTION, \*  
\*  
\*  
Defendant. \*

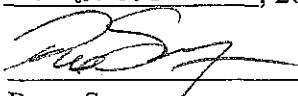
**NOTICE OF HEARING ON  
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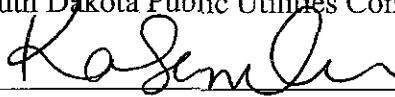
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TO THE ABOVE-NAMED DEFENDANT:

PLEASE TAKE NOTICE that on April 12, 2012 at 9:00 AM, a hearing will be held in Roberts County Courthouse, 411 2nd Ave. East, Sisseton, SD 57262 in regards to the State of South Dakota's Application for Default Judgment. If you fail to appear at such place and time, judgment by default may be entered against you.

Dated this 9th day of March, 2012, at Pierre, South Dakota.

  
\_\_\_\_\_  
Ryan Soye  
Special Assistant Attorney General  
South Dakota Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501  
Ph: (605) 773-3201  
Attorney for Plaintiff,  
South Dakota Public Utilities Commission

  
\_\_\_\_\_  
Kara Semmler  
Special Assistant Attorney General  
South Dakota Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501  
Ph : (605) 773-3201  
Attorney for Plaintiff,  
South Dakota Public Utilities Commission

---

THE STATE OF SOUTH DAKOTA,	*	CIV 11-97
	*	
Plaintiff,	*	
	*	
vs.	*	
	*	<b>MOTION FOR</b>
ROBERT KOHL d/b/a	*	<b>DEFAULT JUDGMENT</b>
ROBERT KOHL CONSTRUCTION,	*	
	*	
	*	
Defendant.	*	

---

Plaintiff, the State of South Dakota, by and through the Public Utilities Commission (“Plaintiff” or “Commission”) hereby makes application to the Court for entry of judgment by default in the above-titled action pursuant to SDCL 15-6-55(b) and states as follows:

1. On June 17, 2011, Plaintiff commenced this action pursuant to SDCL 49-7A-28 to recover the civil penalty of one thousand dollars (\$1,000.00) assessed against Defendant by the South Dakota One-Call Notification Board (“One-Call” or “One-Call Board”) under the authority of SDCL 49-7A-18.

2. On July 18, 2011, Defendant was personally served by the Robert’s County Sheriff’s Department with a true and correct copy of the Summons and Complaint, as evidenced by the Return of Service. (Exhibit A, Pg. 1).

3. On August 10, 2011, Defendant contacted Plaintiff requesting accommodations be made to allow Defendant to satisfy the civil penalty. Plaintiff offered to allow Defendant (i) additional time to satisfy the civil penalty, (ii) the opportunity for

Defendant to structure a personal payment schedule, and (iii) a reduction of the penalty to Five Hundred Dollars (\$500.00), on the conditions that Defendant would satisfy the reduced penalty in the time identified by the payment structure to be offered.

4. On August 30, 2011, Defendant remitted a single payment in the amount of One Hundred and Fifty Dollars (\$150.00) as partial satisfaction of the assessed civil penalty.

5. Following the payment identified in Part 4, Defendant failed to make any additional payments, failed to offer a structured payment plan, and ceased all communications with Plaintiff.

6. On October 6, 2011, Plaintiff sent notice to Defendant that the One-Call Board had scheduled a meeting to discuss Defendant's failure to comply and to determine appropriate action. Specifically, Defendant was notified the One-Call Board would consider whether to reinstate the full One Thousand Dollar (\$1,000.00) civil penalty for Defendant's failure to comply with the accommodations specified. (Exhibit B, Pgs. 1-3).

7. On October 20, 2011, the One-Call Board provided Defendant with notice through certified mail stating, if Defendant failed to remit the Three Hundred and Fifty Dollars (\$350.00) remaining on the reduced penalty, no later than October 31, 2011; the One-Call Board approved reinstating the suspended portion of the civil penalty and the Board would resume its action in civil court to enforce any unpaid portion of the total One Thousand Dollar (\$1,000.00) penalty. (Exhibit C, Pg. 1).

8. Defendant failed, or refused, to collect and sign for the certified letter which was returned to the South Dakota Public Utilities Commission on October 22, 2011.

9. It has now been approximately six (6) months since any communication has been received from Defendant.

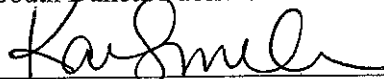
WHEREFORE, Plaintiff seeks judgment against Defendant as follows:

1. That this Court find the Defendant in default in this action and find in favor of Plaintiff in this Motion for Default Judgment
2. For a monetary judgment in the amount of One Thousand Dollars (\$1,000.00) minus any amounts of the total civil penalty already received by the Plaintiff from Defendant
3. For such other and further relief as the Court may deem just and proper.

Dated this 9<sup>th</sup> day of March, 2012.



Ryan Soye  
Special Assistant Attorney General  
South Dakota Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501  
Ph : (605) 773-3201  
Attorney for Plaintiff,  
South Dakota Public Utilities Commission



Kara Semmler  
Special Assistant Attorney General  
South Dakota Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501  
Ph : (605) 773-3201  
Attorney for Plaintiff,  
South Dakota Public Utilities Commission

261200048



**Roberts County Sheriff's Office**

Jay Tasa - Sheriff  
11924 BIA Hwy. 700  
PO BOX 937  
Sisseton, SD 57262  
Phone (605) 698-7667  
Fax (605) 698-7386

<http://robertscosheriff.expage.com>

**RECEIVED**

**JUL 19 2011**

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

**CIVIL/CRIMINAL PROCESS**

Date Received: 6/21/11

Return #: 7387 Process #:

Attorney Received From: Ryan Soye

REF: State of South Dakota, Plaintiff vs. Robert Kohl d/b/a Robert Kohl Construction, Defendant

Address of Person to be Served: 12947 BIA Hwy. 700 Peever, SD 57257

Papers to be Served: Summons & Complaint

Expiration Date:

Date Attempted Service:	Round Trip Miles:
6/25/11	21
7/8/11	21
7/16/11	21
7/18/11 @ 6:36 AM	21

Service ..... \$25.00

Mileage ..... 84 Miles @ .41= \$34.44

TOTAL ..... \$59.44

I, Ben Pallesen, Deputy Sheriff of Roberts County, South Dakota, hereby certify and return the annexed Summons & Complaint came into my hands for service on 6/21/11. That I served the same on Robert Kohl personally by delivering to and leaving a true copy thereof with Robert Kohl in Roberts County, South Dakota, on 7/18/11.

\_\_\_\_\_  
Roberts County Sheriff

  
\_\_\_\_\_  
Roberts County Deputy Sheriff

Date Returned Not Served:

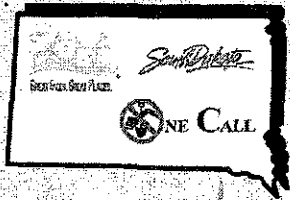
Comments:

MAKE CHECK PAYABLE TO ROBERTS COUNTY SHERIFF'S OFFICE

CIV11-097

EXHIBIT A PAGE 1

Safe digging is no accident. Always call 811 before digging.



**Know what's below.  
Call before you dig.**



October 6, 2011

Robert Kohl Construction  
12947 BIA Highway 700  
Peever, SD 57257-7619

The South Dakota One Call Notification Board will consider taking legal action on several One Call Complaints at its October 13, 2011 Board Meeting in Ft. Pierre, SD. You are receiving this information because you are involved in one of the complaints to be considered, specifically Complaint Docket OC10-009.

The South Dakota One Call Board issued an Order for payment on February 16, 2011, and did not receive payment of five hundred dollars as required by March 16, 2011. After civil action activity began, it did receive a partial payment on August 30, 2011 of one hundred fifty dollars. Although this was well past the original date, you were given the opportunity to work out a regularly scheduled payment plan. You have not followed through by providing a written schedule of payments and the amount that could be expected each month. I have made several unsuccessful attempts to contact you by calling your home telephone during the day and evening and by calling your now disconnected cell phone which you previously provided.

The decision made by the Board at the October 13<sup>th</sup> meeting, will be whether or not to pursue collection activity through civil court for the full \$1,000 penalty amount. Enclosed is a copy of the Board Meeting Agenda.

Please feel free to contact me with any questions you may have.

Larry L. Janes  
Executive Director  
South Dakota One Call  
(605) 339-0529

cc: Scott Fritz via email

EXHIBIT B, PAGE 1

# Meeting of the South Dakota One Call Notification Board

October 13, 2011 8:00 AM CDT

Ft. Pierre Holiday Inn Express  
110 East Stanley Road  
Ft. Pierre, SD

Board Members: Kurt Pfeifle, Mid-Dakota Rural Water System, Chairman; Erin Hayes, Midcontinent Communications, Vice Chairman; Fay Jandreau, Midstate Communications; Todd Chambers, Watertown Municipal Utilities; Kevin Kouba, Otter Tail Power Co; Ed Anderson, SDREA; Doug Larson, Northern Border Pipeline; Dan Kaiser, CenturyLink; Bleau LaFave, Northwestern Energy; Eugene Solseth, Hills Septic Service; Terry Larson, Heavy Constructors; Legal Counsel: Kara Semmler Executive Director: Larry Janes

## Agenda

1. Call to Order and Roll Call
2. Approval of Previous Minutes
  - a. June 28, 2011 Board Meeting Conference Call
3. Review and Approval of Financial Report
  - a. Financial Summary including expenditure details for July 2011 through September 2011.
  - b. 2012 Fiscal Year Budget
4. Operations
  - a. KorPartners Performance Results
  - b. Call volume trends
5. Executive Director Report Items
  - a. OC10-009, Ottertail Power Company against Robert Kohl Construction. On February 16, 2011 the South Dakota One Call Board Ordered that the penalty of \$1,000, with \$500 suspended to be paid within thirty days of issuance of the Order. Payment was not received and collection activity began. A partial payment of \$150 was received on August 30, 2011. Shall the Board accept the monthly payments by Mr. Kohl to satisfy the penalty amount minus the suspended portion, or shall the Board now apply the suspended portion of the Enforcement Panel Recommendation?
  - b. Complaint Dockets OC10-006, OC10-007, and OC10-008, NorthWestern Energy against Scott Olson Digging, Inc. – Bankruptcy was filed. Collection activity has ceased. Kara Semmler is licensed to practice in the SD Bankruptcy Court and entered SD One Call as a party to the business reorganization. If the court allows reorganization, the One Call debt remains intact and collectable. Does the Board wish to hire outside counsel at this time?
  - c. OC10-010, Watertown Municipal Utilities against Stromseth Construction. On February 16, 2011 the South Dakota One Call Board accepted the Enforcement Panel Recommendation of a \$1,000 penalty with \$0 suspended and a second \$1,000 penalty with \$0 suspended, because of two alleged violations of SD One Call laws, if payment was received within 30 days of issuance of the Order. No payment was received in March and collection activity began. Payment of \$2,000 was received on May 19, 2011.
  - d. OC11-002, Complaint against Carlson Excavating by Ottertail Power Company. The Enforcement Panel met and made a recommendation to the Board regarding final disposition of the Docket. Today shall the One Call Board accept the recommendation of the Enforcement Panel and shall the One Call Board Close the Docket?

- e. OC11-003, Complaint against Split Rock Contracting, Inc. by NorthWestern Energy. The Enforcement Panel met and made a recommendation to the Board regarding final disposition of the Docket. Today shall the One Call Board accept the recommendation of the Enforcement Panel and shall the One Call Board Close the Docket?
- f. OC11-004, Complaint against Oaklane Colony by Nustar Pipeline. The Enforcement Panel met and made a recommendation to the Board regarding final disposition of the Docket. Today shall the One Call Board accept the recommendation of the Enforcement Panel and shall the One Call Board Close the Docket?
- g. OC11-005, Complaint against Dakota Excavating by Watertown Municipal Utilities. The Enforcement Panel met and made a recommendation to the Board regarding final disposition of the Docket. Today shall the One Call Board accept the recommendation of the Enforcement Panel and shall the One Call Board Close the Docket?
- h. OC11-006, Complaint against Montana Dakota Utilities by Dr. Nathan Kadlec. The Enforcement Panel met and made a recommendation to the Board regarding final disposition of the Docket. Today shall the One Call Board accept the recommendation of the Enforcement Panel and shall the One Call Board Close the Docket?
- i. Policy Document. The One Call Board reviewed the South Dakota One Call Board Policy Document at the May 18, 2011 One Call Board Meeting. During the June 28, 2011 One Call Board Conference Call, it was suggested that the following items be included in the Policy Document: "15% of the annual operating expenses shall be held in reserve. This fund shall be used in the event the call center goes out of business, if funds run low and the Board elects not to raise fees, or during the winter when expenses remain high, but revenues are low". Those changes have now been incorporated into the document under "Financials", which replaces the "Rates" heading in the manual. The term "Financials" is used to better identify any future financial items in the Policy Manual. The insurance requirements of the Executive Director discussed at the June 28, 2011 Board Conference Call have also been included in the document. These requirements can be found in the Executive Director section. Today shall the One Call Board approve the South Dakota One Call Process and Procedures document?
- j. Insurance Requirements. The Executive Director has been asked to obtain Errors and Omissions insurance in the amount of \$1,000,000 and Fidelity Bond insurance in the amount of \$100,000. Today shall the Board approve the payment of Errors and Omissions and Fidelity Bond insurance for the Executive Director?
- k. Requests have been made to extend the response date of Complaint dockets for purposes of obtaining evidence. Shall the Board grant authority to the Executive Director to extend those dates when requested?
- l. Is the Board interested in introducing legislation to allow the Enforcement Panel to ask questions of the parties during the Enforcement Panel meetings?
- m. Discussion – PS10-002 - In the Matter of the Filing by Commission Pipeline Safety Staff Regarding Damage Prevention Programs.
- n. Legislative Breakfast. Thursday, January 26, 2012 has been reserved to host a legislative breakfast from 7 am to 10:30 am at the Capitol Building in Pierre, SD. Today shall the Board approve a budget for this breakfast?

**ANNOUNCEMENTS:**

Dinner will be held at the Cattlemen's Club, 29608 SD Hwy 34 at 6:00 PM on October 12, 2011 for members of the South Dakota One Call Board.

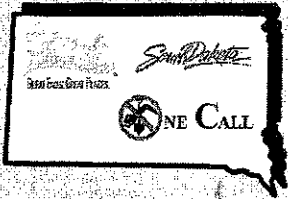
Kurt Pfeifle, Fay Jandreau, and Larry Janes will be attending a meeting with Texas811 in Dallas on November 16, 2011.

Common Ground Alliance conference will be held in Las Vegas, March 6<sup>th</sup> – 8<sup>th</sup>, 2012.

Materials presented at this meeting are available by contacting the Executive Director in writing at [exedir@sdonecall.com](mailto:exedir@sdonecall.com) or by calling (605) 339-0529.



Safe digging is no accident. Always call 811 before digging.



**Know what's below.  
Call before you dig.**



October 20, 2011

Robert Kohl Construction  
12947 BIA Highway 700  
Peever, SD 57257-7619

Mr. Kohl,

On October 6, 2011, I mailed a Priority Mail letter to you explaining that the South Dakota One Call Notification Board would meet to discuss your payments in regards to Complaint Docket OC11-009. I explained that while you seemed to attempt to set things right by making one payment of \$150.00 on August 30, 2011, you had not followed through by providing a schedule of when you could make additional payments and then making them.

Because of your unwillingness to work out a satisfactory arrangement, a motion was made and passed unanimously by the South Dakota One Call Board to give you 10 days to pay the remainder of the \$500. As it stands now, the payment of \$350 must be received no later than Monday, October 31, 2011. If no payment is received, then civil action will resume. The \$350 plus the suspended portion of the penalty, which is an additional \$500, will be due.

Please make a payment of \$350 and mail it to:

South Dakota One Call  
c/o Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501

Larry L. Janes  
Executive Director  
South Dakota One Call  
(605) 339-0529

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THE STATE OF SOUTH DAKOTA,	*	CIV 11-97
	*	
Plaintiff,	*	
	*	
vs.	*	
	*	<b>AFFIDAVIT OF DEFAULT</b>
ROBERT KOHL d/b/a	*	
ROBERT KOHL CONSTRUCTION,	*	
	*	
	*	
Defendant.	*	

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Ryan M. A. Soye, being first duly sworn on oath, deposes and states as follows:

1. I am one of the attorneys for the State of South Dakota, the Plaintiff, and I make this Affidavit in support of the Plaintiff's Motion for Default Judgment against Robert Kohl d/b/a Robert Kohl Construction, the Defendant.
2. Defendant was served with a true and correct copy of the Summons and Complaint in this action on July 18, 2011, as evidenced by the Return of Service on file herein.
3. More than thirty (30) days have passed since Defendant was served with the Summons and Complaint, and to the best of Plaintiff's knowledge, Defendant has failed to answer the Complaint or otherwise appear to contest the judgment sought by Plaintiff. Defendant is therefore in default.
4. To the best of Affiant's knowledge, information and belief, Defendant is over the age of eighteen (18) years, and is not on active duty with any branch of the United States armed forces.

5. The Plaintiff seeks a judgment of One Thousand Dollars (\$1000.00) minus any amounts received by Defendant prior to a judgment rendered.

6. To date, all amounts received by Plaintiff is equal to One Hundred and Fifty Dollars (\$150.00); leaving Eight Hundred Fifty Dollars (\$850.00) remaining for judgment.

Dated at Sioux Falls, South Dakota, this 9<sup>th</sup> day of March, 2012.

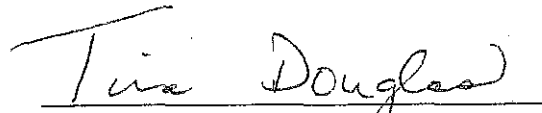


Ryan M. A. Soye

STATE OF SOUTH DAKOTA )  
: SS  
COUNTY OF HUGHES )

On this, the 9<sup>th</sup> day of March, 2012, before me, the undersigned officer, personally appeared Ryan M. A. Soye, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Notary Public -- South Dakota

My Commission Expires:            TINA DOUGLAS  
My Commission Expires  
April 14, 2017

SEAL

STATE OF SOUTH DAKOTA  
COUNTY OF ROBERTS

IN CIRCUIT COURT  
FIFTH JUDICIAL DISTRICT

---

THE STATE OF SOUTH DAKOTA,

\*

CIV 11-97

\*

Plaintiff,

\*

vs.

\*

\*

**DEFAULT JUDGMENT**

\*

ROBERT KOHL d/b/a

\*

ROBERT KOHL CONSTRUCTION,

\*

\*

\*

Defendant.

\*

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**IT APPEARING** that ROBERT KOHL d/b/a ROBERT KOHL CONSTRUCTION, the Defendant in this action, was duly served with a copy of the Summons and Complaint on July 18, 2011, and it further appearing that the Defendant has failed to appear or answer within the thirty days required by law, and the Plaintiff having moved this Court for entry of default judgment in favor of Plaintiff and against Defendant, and good cause therefor appearing;

**DEFAULT JUDGMENT** is hereby granted in favor of Plaintiff and against Defendant in the amount of One Thousand Dollars (\$1,000.00), minus One Hundred Fifty Dollars (\$150.00) already received, for a **total judgment of Eight Hundred Fifty Dollars (\$850.00)**.

Dated at Sioux Falls, South Dakota, this \_\_\_\_\_ day of April, 2012.

**BY THE COURT:**

\_\_\_\_\_  
JUDGE, Circuit Court Judge

ATTEST:

By: \_\_\_\_\_  
Clerk  
(SEAL)

STATE OF SOUTH DAKOTA  
COUNTY OF ROBERTS

IN CIRCUIT COURT  
FIFTH JUDICIAL DISTRICT

---

THE STATE OF SOUTH DAKOTA,

Plaintiff,

vs.

ROBERT KOHL d/b/a  
ROBERT KOHL CONSTRUCTION,

Defendant.

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CIV 11-97

**CERTIFICATE OF SERVICE**

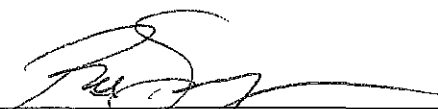
The undersigned hereby certifies that on March 9, 2012, true and correct copies of the following documents were served by United States first-class mail, postage prepaid, to the the last known address/es of the recipient/s identified below:

**Documents**

- Notice of Hearing on Motion for Default Judgment
- Motion for Default Judgment
- Affidavit of Default
- Default Judgment (*Proposed*)
- Certificate of Service

**Robert Kohl Construction**  
**12947 BIA Highway 700**  
**Peever, SD 57257-7619**

Dated this 9<sup>th</sup> day of March, 2012.

  
\_\_\_\_\_  
Ryan Soye, Attorney for Plaintiff  
Special Assistant Attorney General  
South Dakota Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501  
Ph: (605) 773-3201