

STATE OF SOUTH DAKOTA )  
                                  ) :SS  
COUNTY OF LINCOLN       )

IN CIRCUIT COURT  
  
SECOND JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,                   \*  
                                  Plaintiff,                   \*  
vs.   \*  
   \*  
STONE HILL CONSTRUCTION, INC.,       \*  
                                  Defendant.                   \*

CIV. 14-\_\_\_\_\_  
  
COMPLAINT

---

COMES NOW, Plaintiff, the State of South Dakota, through and by its undersigned Counsel, and states as follows:

1. 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 Stone Hill Construction, Inc. is a South Dakota Corporation in good standing with the South Dakota Secretary of State, as of September 1, 2014. Defendant's last known mailing address is: 3800 W. 93<sup>rd</sup> Street, Sioux Falls, South Dakota 57108. Defendant's registered agent is United States Corporation Agents, Inc. dba USCA, Inc., 300 N. Dakota Avenue, Suite 212, Sioux Falls, SD 57104.
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, 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 November 4, 2013, One-Call received a complaint against Defendant, pursuant to SDCL 49-7A-17. The complaint was filed by MidAmerican Energy Company. 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 a valid ticket on August 6, 2013. The Panel found the violation to be intentional.
8. For the violation of SDCL 49-7A-5, the Panel recommended a penalty Seven Hundred Fifty Dollars (\$750). 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 2014 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 February 21, 2014. The One-Call Order was served on Defendant via first class mail on March 3, 2014. 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 2014 One Call Excavator Meeting, and now owes Seven Hundred Fifty Dollars (\$750) 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 \$750 against Defendant.

Dated this 7<sup>th</sup> day of October, 2014.



Kristen N. Edwards  
Special Assistant Attorney General  
South Dakota Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501