

STATE OF SOUTH DAKOTA
COUNTY OF KINGSBURY

IN CIRCUIT COURT
THIRD JUDICIAL DISTRICT

THE STATE OF SOUTH DAKOTA,	*	CIV _____
	*	
Plaintiff,	*	
	*	
vs.	*	
	*	COMPLAINT
	*	
MARK SEIFKES d/b/a S.P.O.T.,	*	
	*	
	*	
Defendant.	*	

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 (“The Commission”), an agency of the state of South Dakota created by SDCL 49-1-8.

2. Defendant Mark Seifkes d/b/a S.P.O.T. (“Defendant”) is a resident of Kingsbury County with a residence located at 305 HWY 14 E., DeSmet, SD 57231. Defendant is a sole proprietorship doing business as S.P.O.T., a trailer park formerly known as D&D Trailer Park.

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.

4. The South Dakota One-Call Notification Board (“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. SDCL 49-7A-2. One-Call has promulgated rules and procedures pursuant to SDCL 49-7A-4 to regulate the notification process located at ARSD Article 20:25.

5. Specifically, One Call has the authority to contract with a One Call Notification center after a competitive bidding process. ARSD 20:25:04:01. Currently One Call Systems of Pittsburg, Pennsylvania answers excavation telephonic and electronic notices and passes the excavation information on to facility owners in the excavation vicinity.

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

6. On July 23, 2007, pursuant to SDCL 49-7A-17, One-Call received a complaint filed by One Call Systems of Pittsburg, Pennsylvania against D&D Trailer Park a/k/a S.P.O.T.

7. On August 21, 2007, One Call Systems revised its Complaint and named the defendant as Mark Seifkes d/b/a S.P.O.T. The Complaint is based on Defendant's refusal to join One Call Systems, and refusal to mark its utility facilities despite the fact it has utility facilities subject to the jurisdiction of One Call.

7. Defendant failed to respond to the Complaint after notice was given pursuant to 49-7A-23 and 24.

8. Pursuant to SDCL 49-7A-22 a five member panel was appointed by the Chairman of One-Call. The panel found probable cause existed to believe a violation of SDCL 49-7A-5 and SDCL 49-7A-12 occurred.

9. A copy of the One-Call panel's recommendations was sent to the parties pursuant to SDCL 49-7A-27. Defendant, however, failed to respond to the recommendations. His failure to respond, and failure to request a hearing, constitutes acceptance of the panel's recommendation per SDCL 49-7A-27

10. The panel's recommendation included a suspended fine based on the Defendant's compliance with at least one of two conditions. It further assessed civil penalties against Defendant in the total amount of One Thousand Dollars (\$1,000.00) if Defendant failed to comply with said condition. The complete One-Call decision is attached hereto as Exhibit A.

11. One Call attempted to serve its final decision on Defendant via mail. Defendant refused service. The Order was, however, ultimately served on Defendant via personal service on January 16, 2008. See Sheriff's return service attached hereto as Exhibit B. Time for Defendant to appeal the decision of One-Call has expired according to SDCL 1-26-31.

12. Defendant failed to meet the conditions in the Order, and Defendant now owes One Thousand Dollars in civil penalties.

13. One-Call made a written demand to Defendant for payment of the civil penalties as required by SDCL 49-7A-33. The demand was personally served on Defendant March 10, 2008. Sheriff's return service is attached hereto as Exhibit C.

More than thirty (30) days have elapsed since the demand was sent and Defendant has failed to pay the prescribed civil penalties.

14. 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 demands 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 21st day of May, 2008.



Kara C. Semmler
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South Dakota Public Utilities Commission
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Pierre, SD 57501
Ph . (605) 773-3201
Fax: 866-757-6031
Attorney for Plaintiff,
South Dakota Public Utilities Commission

BEFORE THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD

IN THE MATTER OF THE) ORDER
COMPLAINT AGAINST MARK) OC07-006
SEIFKES dba S.P.O.T)

On August 21, 2007, the South Dakota Public Utilities Commission received a complaint from One Call Systems, Inc. against Mark Seifkes dba S.P.O.T alleging two violations of SDCL 49-7A-5 (1) for not registering as a member of the South Dakota One Call System and (2) for failing to accept notification of excavation.

On September 27, 2007, the Enforcement Committee of the South Dakota One Call Notification Board made the following findings:

1. The Committee found there was there was not probable cause that Mark Seifkes dba S.P.O.T. had violated § 49-7A-5 by failing to accept notification of excavation from One Call Systems, Inc. and therefore dismisses this allegation against Mark Seifkes dba S.P.O.T. Therefore, One Call Systems, Inc. may cease providing excavation notifications to Mark Seifkes dba S.P.O.T. under the membership for D & D Trailer Court.
2. The Committee found there was probable cause that Mark Seifkes dba S.P.O.T. had violated § 49-7A-5 by operating an underground sewer facility and not registering as a member of the South Dakota One Call Notification System.

All interested parties agreed with the recommendations of the Enforcement Committee. On October 3, 2007, One Call Systems, Inc. signed the Enforcement Committee Action Agreement and pursuant to § 49-7A-27 Mark Seifkes dba S.P.O.T. accepted the recommendation by not responding prior to October 22, 2007.

ORDERED, that the terms and conditions of the Enforcement Committee Action Agreement and the signed Acceptance of the recommended resolution by One Call Systems, Inc. shall be incorporated into this Order by reference and attached hereto, the same as if it was fully recited herein and shall as such be fully binding upon the parties to it; and it is

FURTHER ORDERED that the docket in this matter shall be closed.

The South Dakota One-Call Notification Board has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-7A, specifically 49-7A-5, 49-7A-18, 49-7A-20, 49-7A-22, 49-7A-26.

Dated at Sioux Falls, South Dakota, this 25th day of October, 2007.

EXHIBIT

A

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By: s/s Larry Englerth

Larry Englerth, Executive Director

Date: October 25, 2007

BY ORDER OF THE SD ONE-CALL BOARD:

s/s Jerry Schroeder

JERRY SCHROEDER, Chairman

s/s Larry Englerth

Under the Authority and on Behalf of the
Chairman

LARRY ENGLERTH, Executive Director

ENFORCEMENT COMMITTEE ACTION

OC07-006

One Call Systems, Inc. vs. Mark Seifkes dba S.P.O.T.

FINDINGS:

OC07-006

Alleged Violation of § 49-7A-5 Notification of Proposed Excavation

Allegation is made by One Call Systems, Inc., the vendor that operates the South Dakota One Call System under contract with the South Dakota One Call Notification Board, that Mark Seifkes dba S.P.O.T. has either failed to become a member of the South Dakota One Call System or has failed to accept notification of excavation activity as required by § 49-7A-5.

Mark Seifkes dba S.P.O.T. responded that § 49-7A-15 exempts him from becoming a member of the South Dakota One Call System and he therefore, is not required to accept notification of excavation activity from One Call Systems, Inc.

In reviewing the complaint filed by One Call Systems, Inc. and the response from Mark Seifkes dba S.P.O.T., the committee determined the following:

The membership forms in the South Dakota One Call System were initiated by D & D Trailer Park, the previous owner of the property. The records provided do not show any transfer of ownership to Mark Seifkes dba S.P.O.T. Therefore, One Call Systems, Inc. can remove the membership of D & D Trailer Court and cease the transmission of notifications to Mark Seifkes dba S.P.O.T.

§ 49-7A-15 would exempt the actual trailer court property that is operated by Mark Seifkes dba S.P.O.T.

Mark Seifkes dba S.P.O.T. does own and operate a sewer line in the public right of way of South Dakota HWY 14 that goes north from his property across HWY 14 and follows the north ditch to the City Limits of DeSmet where it connects to the DeSmet municipal sewer system. This sewer line would not be exempt under § 49-7A-15 since it does extend beyond of the private property of Mark Seifkes dba S.P.O.T.

Based on the information noted above, the Committee found:

Since membership in the South Dakota One Call Systems had not been transferred to Mark Seifkes dba S.P.O.T., there was not probable cause that Mark Seifkes dba S.P.O.T. had violated § 49-7A-5 by failing to accept notification of excavation from One Call Systems, Inc.

Since Mark Seifkes dba S.P.O.T. is the operator of an underground sewer facility that is not located on the private property of Mark Seifkes dba S.P.O.T. there was probable cause that Mark Seifkes dba S.P.O.T. had violated § 49-7A-5 by not becoming a member of the South Dakota One Call Notification System.

RECOMMENDATION

OC07-006

VIOLATION OF SOUTH DAKOTA § 49-7A-5:

The Committee found there was there was not probable cause that Mark Seifkes dba S.P.O.T. had violated § 49-7A-5 by failing to accept notification of excavation from One Call Systems, Inc. and therefore dismisses this allegation against Mark Seifkes dba S.P.O.T. Therefore, One Call Systems, Inc. may cease providing excavation notifications to Mark Seifkes dba S.P.O.T. under the membership for D & D Trailer Court.

The Committee found there was probable cause that Mark Seifkes dba S.P.O.T. had violated § 49-7A-5 by operating an underground sewer facility and not registering as a member of the South Dakota One Call Notification System.

PROPOSED PENALTY FOR THIS VIOLATION AUTHORIZED UNDER § 49-7A-18:

The committee recommends a penalty of one-thousand dollars (\$1,000) with one-thousand dollars (\$1,000) suspended on the following conditions:

3. Within sixty-days of the issuance of an order in Complaint OC07-006, Mark Seifkes dba S.P.O.T. fully complies with § 49-7A -5 by completing membership in the South Dakota One Call System and that he fully complies with § 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC07-006 by both parties or
4. Within sixty- days of the issuance of an order in Complaint OC07-006, Mark Seifkes dba S.P.O.T. arranges with a third party, such as the City of DeSmet, to assume responsibility for the receipt of excavation notifications and marking of the sewer line operated by him.

COMMENTS:

If Mark Seifkes dba S.P.O.T. can provide documentation he is not the operator of this sewer facility the Enforcement Committee would reconsider the probable cause determination in Complaint OC07-006.

ACCEPTANCE OR REJECTION BY PARTIES
COMPLAINT OC07-006

THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC07-006.

IF BOTH PARTIES INVOLVED IN THIS COMPLAINT ACCEPT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC07-006, THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY § 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT OC07-006.

IF EITHER PARTY INVOLVED IN THIS COMPLAINT REJECT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC07-006. THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD WILL SET UP A HEARING TO RESOLVE THE REJECTED RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC07-006. THIS HEARING SHALL BE CONDUCTED AS A CONTESTED CASE UNDER CHAPTER 1-26. FOLLOWING THE HEARING, THE BOARD SHALL EITHER RENDER A DECISION DISMISSING THE COMPLAINT FOR INSUFFICIENT EVIDENCE OR SHALL IMPOSE A PENALTY PURSUANT TO THE PROVISIONS OF § 49-7A-18 OR § 49-7A-19.

TO REJECT THE RESOLUTION OF THE ALLEGE VIOLATION AND REQUEST A HEARING ON THIS COMPLAINT, YOU SHOULD COMPLETE THE FOLLOWING AND RETURN TO THE ADDRESS BELOW PRIOR TO THE CLOSE OF BUSINESS ON OCTOBER 22, 2007. PURSUANT TO § 49-7A-27 FAILURE TO REJECT THE RESOLUTION REQUEST A HEARING WILL BE CONSIDERED AS ACCEPTANCE OF THE PROPOSED RESOLUTION TO THIS COMPLAINT.

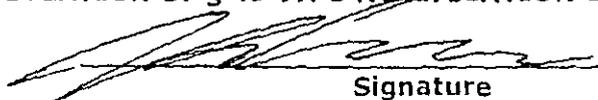
SOUTH DAKOTA ONE CALL NOTIFICATION BOARD
1012 N. SYCAMORE AVENUE
SIOUX FALLS, SD 57110-5747

PURSUANT TO § 15-6-55, FAILURE TO ANSWER THIS COMPLAINT RESOLUTION COULD RESULT IN A DEFAULT JUDGMENT BEING ISSUED AGAINST YOU. APPROPRIATE LIENS AND OTHER LEGAL COLLECTION ACTIONS COULD RESULT.

OC07-006

VIOLATION OF § 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION

I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC07-006
VIOLATION OF § 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION.


Signature

10/3/07
Date

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC07-006
VIOLATION OF § 49-7A-5 NOTIFICATION OF PROPOSED EXCAVATION AND
REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT
OC07-006.

Signature

Date

**SHERIFF'S RETURN
AND DAY BOOK ENTRY**

7241

STATE OF SOUTH DAKOTA, COUNTY OF KINGSBURY, SS.

I, the undersigned, sheriff within and for the said County of Kingsbury, hereby certify and return; that on the 16th day of January, 2008, in said county and state, I did then and there serve the annexed Complaint, Order, Findings & Recommendation

on Mark Seifkes dba S.P.O.T. the party named therein, by then and there delivering to and leaving with him a full, true and correct copy thereof.

SHERIFF'S FEES		ENTRY		
Summons	\$ _____	John McNamara		
Garnishee Summons	\$ _____	One Call Systems, Inc.		
Complaint	\$ <u>25.00</u>	Plaintiff.		
Affidavit	\$ _____	-vs-		
Warrant of Attachment	\$ _____	Mark Seifkes dba S.P.O.T.		
Notice	\$ _____	Defendant.		
Order	\$ <u>X</u>	<u>Larry L. Englerth</u>		
Petition	\$ _____	ATTORNEY RECEIVED FROM		
Levy	\$ _____	1012 N Sycamore Ave., Sioux Falls, SD 5711		
Subpoena	\$ _____	ATTORNEY'S ADDRESS		
Undertaking	\$ _____	<u>01-15-08</u> <u>01-16-08</u> <u>01-16-08</u>		
Demand	\$ _____	DATE RECEIVED DATE SERVED DATE RETURNED		
Execution.....	\$ _____	Same as listed above		
Other.....	\$ <u>X</u>	KIND OF PROCESS		
.....Copies	\$ _____	Third J.C.		
Mileage.....	\$ <u>1.00</u>	IN WHAT COURT		
Total Fees	\$ <u>26.00 paid</u>	Kevin M. Scotting		
		BY WHOM SERVED		
		Mark Seifkes		
		UPON WHOM PAPERS WERE SERVED		

Dated at DeSmet, South Dakota, this 16th day of January, 2008

Kevin M. Scotting
Kevin M. Scotting Sheriff of Kingsbury County

By _____
Deputy

EXHIBIT

B

**SHERIFF'S RETURN
AND DAY BOOK ENTRY**

7282

STATE OF SOUTH DAKOTA, COUNTY OF KINGSBURY, SS.

I, the undersigned, sheriff within and for the said County of Kingsbury, hereby certify and return;
that on the 10th day of March, 2008, in said county and state,
I did then and there serve the annexed 30 Day Notice

on Mark Seifkes the party named therein,
by then and there delivering to and leaving with him a full, true and correct copy thereof.

SHERIFF'S FEES		ENTRY		
Summons	\$ _____	South Dakota Public Utilities Commission		
Garnishee Summons	\$ _____	Plaintiff.		
Complaint	\$ _____	-vs-		
Affidavit	\$ _____	Mark Seifkes dba S.P.O.T.		
Warrant of Attachment	\$ _____	Defendant.		
Notice	\$ _____	Larry L. Englerth		
Order	\$ <u>25.00</u>	ATTORNEY RECEIVED FROM		
Petition	\$ _____	1012 N Sycamore Ave.		
Levy	\$ _____	Sioux Falls, SD 57110-5747		
Subpoena	\$ _____	ATTORNEY'S ADDRESS		
Undertaking	\$ _____	<u>03-10-08</u>	<u>03-10-08</u>	<u>03-10-08</u>
Demand	\$ _____	DATE RECEIVED	DATE SERVED	DATE RETURNED
Execution.....	\$ _____	<u>30 Day Notice</u>		
Other.....	\$ _____	KIND OF PROCESS		
.....Copies	\$ _____	<u>Third J.C.</u>		
Mileage.....	\$ <u>1.00</u>	IN WHAT COURT		
Total Fees	\$ <u>26.00 paid</u>	<u>Wade Hoefert</u>		
		BY WHOM SERVED		
		<u>Mark Seifkes</u>		
		UPON WHOM PAPERS WERE SERVED		

Dated at DeSmet, South Dakota, this 10th day of March, 2008
By Wade Hoefert 42-1B
Sheriff of Kingsbury County Wade Hoefert Deputy

EXHIBIT

C