



Dustin Johnson, Chair
Steve Kolbeck, Vice Chair
Gary Hanson, Commissioner

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

500 East Capitol Avenue
Pierre, South Dakota 57501-5070
www.puc.sd.gov

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

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

Consumer Hotline
1-800-332-1782

February 17, 2010

Minnehaha Clerk of Courts
425 North Dakota Avenue
Sioux Falls, SD 57102-0136

Re: The State of South Dakota vs. Loewenberg Technologies, Inc.

Enclosed please find an original Summons and Complaint for filing. Also enclosed is the Civil Case Filing Statement, the \$50 filing fee and a return envelope. Please return a receipt upon filing. Please contact me with any questions or concerns.

Thank you.

Kara Semmler
PUC Staff Attorney

CIVIL CASE FILING STATEMENT

(Two-Party Cases)

Please check the case type you are filing:

CIV: Tort Contract Name Change Paternity* Quiet Title Claim and Delivery
 Foreign Judgment Administrative Appeal Condemnation Forcible Entry & Detainer
 Habeas Corpus Other Writ Other

DIV: Divorce* Annulment* Separate Maintenance*

SMC: Small Claims

Complete a form for each additional Plaintiff or Defendant

Plaintiff: The State of South Dakota
Last/Business name First Middle Suffix

Address: 500 E. Capitol Ave

City: Pierre State: SD Zip: 57501

Date of Birth:
mm dd yyyy

Social Security #: - - and/or Drivers license # State

Employer ID (if Plaintiff is a business or other entity)

Attorney: Semmler Kara C
Last First Middle Suffix

Address: 500 E. Capitol Ave Phone: 605-773-8182

City: Pierre State: SD Zip: 5701

Defendant: Loewenberg Technologies, Inc.
Last/Business name First Middle Suffix

Address: 1000 E. Benson Rd

City: Sioux Falls State: SD Zip: 57104

Date of Birth:
mm dd yyyy

Social Security #: - - and/or Drivers license # State

Employer ID (if Defendant is a business or other entity)

Attorney:
Last First Middle Suffix

Address: Phone:

City: State: Zip:

*For cases involving divorce, child support, and paternity, you must include your Social Security Number. 42 USC 666(a)(13)(B).

STATE OF SOUTH DAKOTA
COUNTY OF MINNEHAHA

IN CIRCUIT COURT
SECOND JUDICIAL DISTRICT

THE STATE OF SOUTH DAKOTA,

Plaintiff,

vs.

LOEWENBERG TECHNOLOGIES, INC

Defendant.

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*
*
*
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*

CIV _____

SUMMONS

TO THE ABOVE NAMED DEFENDANT:

You are hereby summoned and required to answer the Complaint of the above-named Plaintiff, which is herewith served upon you, and to serve a copy of your answer upon the subscribed at the South Dakota Public Utilities Commission, 500 E. Capitol Ave. Pierre, South Dakota 57501, within 30 days after service of this Summons and Complaint upon you, exclusive of the date of such service. You are further notified that if you fail to answer the Complaint within the time aforesaid, judgment by default may be rendered against you as requested in the Complaint.

Dated this 17 day of February, 2010 at Pierre, South Dakota.



Kara C. Semmler
Special Assistant Attorney General
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501
Ph (605) 773-3201
Fax 866-757-6031
Attorney for Plaintiff,
South Dakota Public Utilities Commission

THE STATE OF SOUTH DAKOTA,	*	CIV _____
	*	
Plaintiff,	*	
	*	
vs.	*	
	*	COMPLAINT
	*	
LOEWENBERG TECHNOLOGIES, INC.,	*	
	*	
	*	
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 (“Commission”), an agency of the state of South Dakota created by SDCL 49-1-8.

2. Defendant Loewenberg Technologies, Inc. (“Defendant”) is a corporation in good standing with its principal place of business located at 1000 E. Benson Rd, Sioux Falls, SD 57104. Bruce Loewenberg is its President and Registered Agent at the same address.

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 handles excavation telephonic and electronic notices and passes the excavation information on to facility owners in the excavation vicinity.

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 20, 2009, pursuant to SDCL 49-7A-17, One-Call received a complaint filed by NuStar Operating Partnership, LP (“NuStar”) against Defendant for excavating without properly notifying the One-Call Notification Center. As a result, utility operators in the excavation site were not notified and did not have an opportunity to mark facilities.

8. Although Defendant answered the Complaint after notice was given pursuant to 49-7A-23 and 24, it did not deny the One Call violation occurred.

9. Pursuant to SDCL 49-7A-22 a five member panel was appointed by the Chairman of One-Call. Based on the information available to it, the panel found probable cause existed to believe a violation of SDCL 49-7A-5 occurred.

10. 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.

11. The panel assessed civil penalties against Defendant in the total amount of One Thousand Dollars (\$1,000.00) with Seven Hundred Fifty (\$750) suspended if payment was received within 30 days from receipt of the One-Call Order. The complete One-Call decision is attached hereto as Exhibit A.

12. One-Call served its final decision on Defendant via mail. Time for Defendant to appeal the decision of One-Call has expired according to SDCL 1-26-31.

13. Defendant failed to meet the conditions in the Order, and Defendant now owes One Thousand Dollars (\$1,000) 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 served Defendant via mail. The demand letter is attached hereto as Exhibit B. More than thirty (30) days elapsed since the demand was sent and Defendant has failed to pay the prescribed civil penalties.

15. One-Call requested, at a public Commission meeting on February 9, 2009, the Commission bring an action in this court against Defendant to recover such penalty in accordance with SDCL 49-7A-28. The Defendant was notified regarding the public meeting and did not respond nor appear at said meeting.

16. The Commission authorized this suit at the February 9, 2009 public meeting.

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 17 day of February, 2010.



Kara C. Semmler
Special Assistant Attorney General
South Dakota Public Utilities Commission
500 East Capitol Avenue
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)
COMPLAINT AGAINST LOEWENBERG)
TECHNOLOGIES)

ORDER
OC09-005

On July 22, 2009, the South Dakota Public Utilities Commission received a complaint from Nustar Pipeline Operating Partnership, LP against Loewenberg Technologies. Loewenberg Technologies did not dispute the allegation in the complaint that they had excavated without providing advance notice to the South Dakota One Call System.

On September 01, 2009, the Enforcement Committee of the South Dakota One Call Notification Board met and determined that probable cause exists in Docket OC09-005 in regards to the allegation that Loewenberg Technologies had violated SDCL 49-7A-5. The Enforcement Committee recommended a one-thousand dollars (\$1,000) penalty with seven-hundred fifty dollars (\$750) suspended on the grounds that Loewenberg Technologies fully comply with SDCL 49-7A and ARSD Article 20:25 for twelve months following the date of both parties signing the Enforcement Committee Action Agreement and that Loewenberg Technologies fully comply with the resolution of this complaint by making payment of two-hundred fifty dollars (\$250) within thirty days of the issuance of this order.

Neither party requested a hearing by rejecting the panel recommendation within the timeframe specified.

ORDERED, that the terms and conditions of the Enforcement Committee Action Agreement 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 Rapid City, South Dakota, this 5th day of November 2009.

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.



Larry L. Janes, Executive Director

Date November 5, 2009

BY ORDER OF THE SD ONE-CALL BOARD:



Bleau LaFave, Chairman

Under the Authority and on Behalf of the
Chairman



LARRY L. JANES, Executive Director

ENFORCEMENT COMMITTEE ACTION OC09-005

**Nustar Pipeline Operating Partnership, LP
vs.
Loewenberg Technologies**

FINDINGS: OC09-005

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

Allegation is made by Nustar Pipeline Operating Partnership, LP that Loewenberg Technologies commenced excavation at Yankton Trail Park in Sioux Falls, South Dakota, without providing advance notification to the South Dakota One Call System as required by SDCL 49-7A-5.

Loewenberg Technologies did not dispute the allegation that excavation activity had commenced without providing advance notification to the South Dakota One Call System.

In reviewing the complaint filed by Nustar Pipeline Operating Partnership, LP and the response from Loewenberg Technologies, the committee determined the following:

Loewenberg Technologies had commenced excavation without providing advanced notification to the South Dakota One Call System.

Based on the information noted above, the Committee found there is probable cause to find that Loewenberg Technologies violated SDCL 49-7A-5 by commencing excavation at Yankton Trail Park, Sioux Falls, South Dakota without providing advance notification to the South Dakota One Call System as required by SDCL 49-7A-5.

RECOMMENDATION OC09-005

VIOLATION OF SOUTH DAKOTA SDCL 49-7A-5:

The Committee found there was probable cause that Loewenberg Technologies had violated SDCL 49-7A-5 by commencing excavation at Yankton Trail Park, Sioux Falls, South Dakota, without providing advance notification to the South Dakota One Call System as required by SDCL 49-7A-5.

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

The committee recommends a penalty of one thousand dollars (\$1,00.00) with seven hundred fifty dollars (\$750.00) suspended on the following conditions:

- Loewenberg Technologies fully complies with SDCL 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC09-005 by both parties.
- Loewenberg Technologies fully complies with the resolution of Complaint OC09-005 by making payment of the two hundred fifty dollars (\$250) within thirty (30) days of the issuance of the Order to close Complaint OC09-006.
- Loewenberg Technologies should be aware that any future violation of SDCL 49-7A or ARSD 20:25 within twelve months from the date of the final order are be subject to additional penalties up to a maximum of \$5000 under SDCL 49-7A-18.



Dustin Johnson, Chair
Steve Kolbeck, Vice Chair
Gary Hanson, Commissioner

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December 22, 2009

Loewenberg Technologies
Mr. Bruce Loewenberg
1000 East Benson
Sioux Falls SD 57104

Dear Mr. Loewenberg:

On September 1, 2009 the Enforcement Committee of the South Dakota One Call Notification Board met regarding OC09-005, Nustar Pipeline Operating Partnership, LP vs. Loewenberg Technologies. The Committee found probable cause to believe Loewenberg Technologies violated SDCL 49-7A-5, Notification of Proposed Excavation. The Committee assessed a one thousand dollar (\$1,000.00) penalty against Loewenberg Technologies. Seven hundred dollars (\$750.00) of the penalty was suspended based on several conditions. ~~Your company had until October 30, 2009 to either accept or decline the Committee's findings and resulting Order.~~

Your failure to reply to the Committee's findings resulted in acceptance of said penalty. As a result, Loewenberg Technologies could have paid \$250, the portion of the penalty not suspended. Your company again failed to comply within necessary deadlines. Your company now owes the full \$1000 penalty.

You are hereby demanded, pursuant to SDCL 49-7A-33 to pay said penalty within thirty days of receipt of this letter. If you do not pay the penalty, the Public Utilities Commission may bring an action in the name of the State of South Dakota against your company in circuit court. See SDCL 49-7A-28. Please contact me with any questions.

Sincerely,

Kara Semmler
Public Utilities Commission, Staff Attorney

Exhibit B