



Dustin Johnson, Chair
Steve Kolbeck, Vice Chair
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SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

500 East Capitol Avenue
Pierre, South Dakota 57501-5070
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(605) 773-3201
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(605) 773-5280
(605) 773-3225 fax

Consumer Hotline
1-800-332-1782

March 9, 2009

Mark Seifkes dba S.P.O.T.
305 Hwy 14 East
DeSmet, SD 57231

Re: One Call Complaint

Dear Mr. Seifkes:

Attached please find a copy of a recent complaint filed against you. Please pay particular attention to the procedures as is outlined in the attached memo. Please contact me with any questions.

Thank you.

Kara Semmler
Staff Attorney

TO: MARK SEIFKES dba S.P.O.T.
FROM: SOUTH DAKOTA ONE CALL NOTIFICATION BOARD
DATE: MARCH 9, 2009
RE: NOTICE OF COMPLAINT; DEADLINE FOR ANSWER;

In the Matter of the Complaint OC09-002 filed by Larry Englerth against Mark Seifkes dba S.P.O.T., regarding a failure become a member of the South Dakota One Call System as required by SDCL 49-7A-2.

You are hereby notified that the enclosed complaint as referenced above has been filed with the South Dakota One Call Notification Board against the Mark Seifkes dba S.P.O.T.. Pursuant to SDCL 49-7A-23 & SDCL 49-7A-24, you are required to answer this complaint in writing, no later than the close of business on March 30, 2009, by filing the original and two copies of the answer at the address listed below and by serving a copy on the complainant or you may file your response electronically at <http://www.state.sd.us/puc/EFilingOptions.aspx>.

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

Your answer should be as thorough and detailed as possible and should include any documentation that supports your position e.g. witness statements, pictures, etc. We would encourage you to specifically address the alleged violation of SDCL 49-7A-12 referenced in the complaint:

Failure to become a member of the South Dakota One Call System and to register the underground sewer line that runs from your property along HWY 14 to a connection point with the City of DeSmet.

Pursuant to SDCL 49-7A-22 a panel of Board members will make a determination of probable cause based on the complaint and associated response. If probable cause is

determined, the panel may recommend penalties under SDCL 49-7A-18 or SDCL 49-19. If any financial penalties are assessed in response to Complaint OC09-002 the amount will be based on the factors noted in SDCL 49-7A-26 which are as follows:

1. The amount of damage
2. The degree of threat to the public safety, and
3. The public inconvenience caused;
4. The respondent's plans and procedures to insure future compliance with statute and rules;
5. Any history of previous violations;
6. Other matters as justice requires.

You may address any of these items in your response if you believe it would be of value to the Enforcement Panel when they consider this complaint.

Pursuant to SDCL 15-6-55, failure to answer this Complaint could result in a default judgment being issued against you. Appropriate liens and other legal collection actions could result. You are strongly urged to reply to this Notice in the time frame described above and to obtain the advice of counsel should you have any legal questions.

A copy of the Operations Manual for Facility Operators and Excavators, the South Dakota One Call Statute and associated Administrative Rules are available on our web site www.sdonecall.com.

Procedural and legal questions may be directed to Kara Semmler, PUC Staff Attorney for the South Dakota One Call Notification Board at (605) 773-8182 or by email at Kara.Semmler@state.sd.us. I would request that you do not contact any members of the South Dakota One Call Notification Board to discuss this complaint since they may be involved in the Enforcement Panel review and/or a Chapter 1-26 hearing to resolve of the complaint; they have been advised by legal counsel to not discuss any pending complaint before the Board.

Enclosure: Copy of complaint,

cc: Larry Englerth (via email)

ONE CALL COMPLAINT FORM
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, Sd 57501-5070

COMPLAINT

Allegation of Probable Violation(s) of South Dakota One Call Laws

Received On March 3, 2009 2:29 pm

I. ACTION REQUESTED BY:

COMPLAINT FILED BY: individual

PERSON FILING COMPLAINT: Larry Englerth

COMPANY: (605) 339-0529

ADDRESS: 2801 E Madison; Unit 107

PHONE NUMBER: (605) 339-0529

EMAIL: exedir@sdonecall.com

DATE: March 3, 2009

ii. ACTION REQUESTED AGAINST:

NAME OF EXCAVATOR/FACILITY OPERATOR: Mark Seifkes dba S.P.O.T.

PHONE NUMBER: (605) 854-3982

ADDRESS: 305 Hwy 14 East, DeSmet, SD 57231

WAS A LOCATED REQUESTED FROM SD ONE CALL? No

LOCATE TICKET#:

START DATE ON TICKET:

DID EXCAVATOR WAIT UNTIL THE START DATE/TIME ON THE TICKET BEFORE COMMENCING EXCAVATION? No

WERE BURIED FACILITIES EXPOSED BY HAND OR NON-INVASIVE EQUIPMENT PRIOR TO EXCAVATION? No

III. FACILITY INVOLVED (IF ANY)

TYPE OF FACILITY INVOLVED: Sewer Line

OPERATOR OF FACILITY: Mark Seifkes dba S.P.O.T.

OPERATOR ADDRESS: 305 Hwy 14 E, Desmet, SD

PHONE NUMBER: (605) 854-3982

DEPTH OF COVER:

PRESSURE:

VOLTAGE:

NUMBER OF CABLE REPAIRS:

IV. MARKING

WERE FACILITIES MARKED? N/A

WAS THE MARKING COMPLETE PRIOR TO THE START TIME ON THE TICKET? N/A

DID EXCAVATOR PRE-MARK WITH WHITE PAINT? N/A

WAS THE FACILITY ACCURATELY MARKED (WITHIN 18 INCHES)? N/A

DID EXCAVATOR USE REASONABLE CARE TO MAINTAIN LOCATE MARKS FOR LIFE OF PROJECT? N/A

HAVE YOU DISCUSSED THE PREVIOUS STATEMENTS WITH THE OTHER PARTY? No

IS THERE AGREEMENT? No

IF NO, PLEASE EXPLAIN:

V. DAMAGE (IF ANY)

FATALITIES:

INJURIES:

LENGTH OF HOSPITALIZATION:

ESTIMATED PROPERTY DAMAGE:

NUMBER OF CUSTOMERS AFFECTED:

DAMAGED IN:

PHOTOS OF THE DAMAGED FACILITY: No

ADDITIONAL INFORMATION:

VI. PROBABLE VIOLATION

SPECIFIC STATUE(S) OR RULE(S) THAT WAS VIOLATED: SDCL 49-7A-2 Failure of Mark Seikfes dba S.P.O.T. to become a member of the South Dakota One Call System as required by statute

ADDRESS/LOCATION OF PROBABLE VIOLATION: 305 Hwy 14 E, DeSmet, SD 57231

DATE/TIME OF PROBABLE VIOLATION: March 3, 2009 12:00 am

HAVE YOU DISCUSSED THE PROBABLE VIOLATION WITH THE PARTY THE ACTION IS FILED AGAINST? False

IF YES, NAME THE PARTY WITH WHOM YOU DISCUSSED THE PROBABLE VIOLATION:

DESCRIPTION OF PROBABLE VIOLATION: Mr. Seikfes owns a sewer line that runs from his trailer park east of DeSmet and connects to the City of DeSmet near municipal boundary. SDCL 49-7A-1 defines "operator" as 'any person who operates an underground facility' which Mr. Seifkes dba S.P.O.T clearly does. SDCL 49-7A-2 clearly states that all operators are subject to this chapter and all rules promulgated thereto. The same statute states that any member who fails to become a member is subject to applicable penalties. Mr. Seikfes is aware of the requirement to become a member of the South Dakota One Call System as a similar complaint was filed against him in 2007.