



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

June 8, 2010

Mr. Kevin Scotting
Kingsbury County Sheriff
101 2nd Street S.E.
DeSmet, SD 57231

Re: In the Matter of the Complaint filed by Larry Englerth against Mark Seifkes dba S.P.O.T., DeSmet, South Dakota - PUC Docket # OC9-002

Dear Mr. Scotting:

Enclosed you will find an original and copy of letter to Mark Seifkes dba S.P.O.T. and attachments in the above captioned matter. We would appreciate it if you would serve these documents on Mr. Seifkes. Please send us your Return of Service in the enclosed envelope and we will promptly remit payment. Thank you.

Sincerely,

Kara Semmler
Staff Attorney
Enc.



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June 8, 2010

Mr. Mark Seifkes
DBA SPOT
305 Highway 14 East
DeSmet, SD 57231

Re: PUC Docket OC-002

Dear Mr. Seifkes:

As you know from a previous proceeding, you are in violation of South Dakota statutes due to your failure to participate in the SD One Call System. According to One Call laws, your utilities that extend past your property line must be marked when excavation occurs in the area. You, as the owner of those facilities, are responsible. The system is designed to protect the public and we ask for your cooperation.

As was previously explained to you, the city of DeSmet is willing to assist you. The City, upon execution of a proper agreement is willing to mark the facilities on your behalf. Please advise if you have reconsidered this option and are willing to discuss it. If you agree to work with the City, we will dismiss this action against you. If, however, you fail to either personally participate in the One Call System or enter into an agreement with the City we will pursue judgment and collection of all civil penalties.

Due to your continued failure to observe the law, a Six Thousand Dollar (\$6,000) civil penalty has been accessed against you, the Order is enclosed. As the Order indicates, you had thirty days to either (i) join the One Call System and comply with all rules and regulations or (ii) contract with a third party to assume responsibility for receipt of excavation notifications. You failed to do either and as a result now owe the penalty.

The One Call Board remains open to resolution of this matter, but will pursue collection according to SDCL 49-7A-33 and 49-7A-28 if you do not either pay the penalty or immediately take steps to comply with relevant One Call laws. Please call me with any questions or information regarding your attempts to comply with relevant One Call laws.

Sincerely,

Kara Semmler
One Call Board Staff Attorney

BEFORE THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD

IN THE MATTER OF THE
COMPLAINT AGAINST
MARK SEIFKES dba S.P.O.T.

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ORDER
OC09-002

On March 3, 2009, the South Dakota Public Utilities Commission received a complaint from Larry Englerth against Mark Seifkes dba S.P.O.T. Mr. Seifkes did not reply to the complaint alleging he failed to join the One Call System per SDCL 49-7A-2.

The Enforcement Committee of the South Dakota One Call Board met on June 11, 2009, and determined sufficient probable cause existed to find a violation of SDCL 49-7A-2 occurred in docket OC09-002.

The committee recommended a penalty of one thousand dollars (\$1,000.00) pursuant to SDCL 49-7A-18 and five thousand dollars (\$5,000.00) pursuant to SDCL 49-7A-19 for a total fine of six thousand dollars (\$6,000.00). The entire six thousand dollar (\$6,000) penalty is suspended on the following conditions:

1. Within thirty days of the issuance of an order in Complaint OC09-002, Mark Seifkes dba S.P.O.T. fully complies with SDCL 49-7A by completing membership in the South Dakota One Call System and that he fully complies with SDCL 49-7A and ARSD 20:25 for twelve months following acceptance or resolution of Complaint OC09-002, or
2. Within thirty days of the issuance of an order in Complaint OC09-002, Mark Seifkes dba S.P.O.T. arrange with a third party, such as the City of DeSmet, to assume responsibility for receipt of excavation notifications marking of the sewer line operated by him.

The parties to docket OC09-002 were provided notice of the Enforcement Committee decision. Under SDCL 49-7A-27 failure to respond to said notice is considered acceptance of the Enforcement Committee recommendation and a right to a hearing is waived. Both parties accepted the Enforcement Committee decision. It is therefore

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

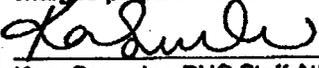
FURTHER ORDERED, that the docket in this matter shall be closed.

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 Pierre, South Dakota, this 21st day of July 2009.

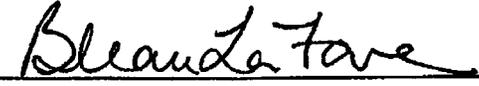
CERTIFICATE OF SERVICE

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.

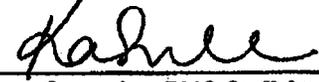

Kara Semmler, PUC Staff Attorney

Dated: July 21, 2009

BY ORDER OF THE SD ONE-CALL BOARD:


Bleau LaFave, Chairman

Under the Authority and on Behalf of the
Chairman


Kara Semmler, PUC Staff Attorney

ENFORCEMENT COMMITTEE ACTION
OC09-002
Larry Englerth v. Mark Seifkes dba S.P.O.T.

FINDINGS:
OC09-002

Alleged Violation of SDCL 49-7A-2 Establishment of One-Call Notification Board

Allegation is made by Larry Englerth that Mark Seifkes dba S.P.O.T., an operator, failed to join the South Dakota One Call notification center as required by SDCL 49-7A-2.

Mark Seifkes dba S.P.O.T. did not dispute the allegation.

In reviewing the complaint filed by Larry Englerth, the committee determined the following:

Mark Seifkes failed to join the South Dakota One Call System as statutorily required.

Based on the information noted above, the Committee found there is probable cause to find that Mark Seifkes dba S.P.O.T. violated SDCL 49-7A-2 by failing to become a member of the South Dakota One Call System as required by SDCL 49-7A-2.

The Committee further found, due to Mark Seifkes' failure to comply with a previously filed complaint (OC07-006) he intentionally violated, and remains out of compliance with SDCL 49-7A-2.

RECOMMENDATION
OC09-002

INTENTIONAL VIOLATION OF SDCL 49-7A-2:

The Committee found probable cause to conclude Mark Seifkes dba S.P.O.T. intentionally violated SDCL 49-7A-2 by his continued failure to join the South Dakota One Call System as required by SDCL 49-7A-2.

PROPOSED PENALTY FOR THIS VIOLATION AUTHORIZED UNDER SDCL 49-7A-18 and SDCL 49-7A-19:

The committee recommends a penalty of one thousand dollars (\$1,000.00) pursuant to SDCL 49-7A-18 and five thousand dollars (\$5,000.00) pursuant to SDCL 49-7A-19 for intentionally remaining out of statutory compliance, for a total fine of six thousand dollars (\$6,000.00). The entire six thousand dollar (\$6,000) penalty is suspended on the following conditions:

1. *Within thirty days of the issuance of an order in Complaint OC09-002, Mark Seifkes dba S.P.O.T. fully complies with SDCL 49-7A by completing membership in the South Dakota One Call System and that he fully complies with SDCL 49-7A and ARSD 20:25 for twelve months following acceptance or resolution of Complaint OC09-002, or*
2. *Within thirty days of the issuance of an order in Complaint OC09-002, Mark Seifkes dba S.P.O.T. arrange with a third party, such as the City of DeSmet, to assume responsibility for receipt of excavation notifications marking of the sewer line operated by him.*