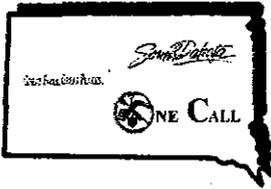


Safe digging is no accident. Always call 811 before digging.



**Know what's below.
Call before you dig.**



June 12, 2009

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

Dear Mr. Seifkes:

Under the authority granted by SDCL 49-7A-22, the Enforcement Committee of the South Dakota One Call Notification Board met on June 11, 2009, to determine whether there is probable cause to believe that a violation has occurred relative to Complaint OC09-002 filed by Larry Englerth against Mark Seifkes dba S.P.O.T.

By a unanimous vote of the Enforcement Committee, the recommended resolution to the alleged violation included in this complaint was determined to be as follows:

Complaint OC09-002

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

The Committee found there is probable cause Mark Seifkes dba S.P.O.T. violated SDCL 49-7A-2 by failing to become a member of the South Dakota One Call notification center as required by statute.

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 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 findings and recommendation of the Enforcement Committee are summarized on the attached form.

Under SDCL 49-7A-27, either party may accept the recommendation of the Enforcement Committee or reject the recommendation of the Enforcement Committee by requesting a formal hearing on the violation alleged in this complaint. **Under the same statute, failure to respond to this notice is considered acceptance of the Enforcement Committee recommendation and your right to a hearing is waived.** Your decision should be reflected on the "Acceptance or Rejection by Parties." **Please return the signed and dated form prior to the close of business on July 13, 2009.**

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

If both parties accept this resolution, the South Dakota One Call Notification Board is required to accept the resolution and close this complaint. If either party rejects the Enforcement Committee resolution of the alleged violation, the South Dakota One Call Notification Board will conduct a hearing as a contested case under Chapter 1-26 to resolve the allegation alleged in the rejected complaint. Following this hearing, the Board shall either render a decision dismissing the complaint for insufficient evidence or shall impose a penalty pursuant to SDCL 49-7A-18 or SDCL 49-7A-19.

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.**

If you have any procedural questions relative to this complaint, please contact me at 605-773-3201 or by e-mail 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 Chapter 1-26 hearing to resolve the complaint, they have been advised by legal counsel to not discuss any pending complaint before the Board.

Sincerely,



Kara Semmler
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.

**ACCEPTANCE OR REJECTION BY PARTIES
COMPLAINT OC09-002**

THE ENFORCEMENT COMMITTEE OF THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD HAS PROPOSED A RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC09-002.

IF BOTH PARTIES INVOLVED IN THIS COMPLAINT ACCEPT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC09-002, THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD IS REQUIRED BY SDCL 49-7A-27 TO ACCEPT THIS AS FINAL RESOLUTION OF COMPLAINT OC09-002.

IF EITHER PARTY INVOLVED IN THIS COMPLAINT REJECT THE COMMITTEE RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC09-002, THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD WILL SET UP A HEARING TO RESOLVE THE REJECTED RESOLUTION TO THE VIOLATION ALLEGED IN COMPLAINT NUMBER OC09-002. 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 SDCL 49-7A-18 OR SDCL 49-7A-19.

TO ACCEPT OR REJECT THE RESOLUTION OF THE ALLEGED VIOLATION, YOU SHOULD COMPLETE THE FOLLOWING AND RETURN TO THE ADDRESS BELOW PRIOR TO THE CLOSE OF BUSINESS ON JULY 13, 2009.

SOUTH DAKOTA ONE CALL NOTIFICATION BOARD
C/O PUBLIC UTILITIES COMMISSION
500 EAST CAPITOL AVENUE
PIERRE, SD 57501

PURSUANT TO SDCL 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.

OC09-002

VIOLATION OF SDCL 49-7A-2 Establishment of One-Call Notification Board

I ACCEPT THE COMMITTEE RESOLUTION TO COMPLAINT OC09-002 VIOLATION OF SDCL 49-7A-2 Establishment of One-Call Notification Board.

Signature

Date

I REJECT THE COMMITTEE RESOLUTION TO COMPLAINT OC09-002 VIOLATION OF SDCL 49-7A-2 ESTABLISHMENT OF ONE-CALL NOTIFICATION BOARD AND REQUEST A HEARING TO RESOLVE THE VIOLATION ALLEGED IN COMPLAINT OC09-002.

Signature

Date