



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](http://www.puc.sd.gov)

Capitol Office  
(605) 773-3201  
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Warehouse  
(605) 773-5280  
(605) 773-3225 fax

Consumer Hotline  
1-800-332-1782

September 9, 2009

Mr. Kevin Scotting  
Kingsbury County Sheriff  
101 2<sup>nd</sup> 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  
Docket OC09-002

Dear Mr. Scotting:

Enclosed you will find 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. Then, please send us your Return of Service and we will promptly remit.

Thank you very much.

Very truly yours,

Kara Semmler  
Staff Attorney

Enc.



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September 2, 2009

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

Dear Mr. Seifkes:

As the enclosed 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. It does not appear that you completed either option. As a result, a Six Thousand Dollar (\$6,000) penalty has been assessed.

Please make payment of said penalty within thirty days. If payment is not received, the One Call Board will pursue collection actions according to SDCL 49-7A-33 and 49-7A-28. Please advise if you took steps to otherwise comply with the One Call Order.

Sincerely,

Kara Semmler  
One Call Board Staff Attorney

**BEFORE THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD**

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IN THE MATTER OF THE	)	ORDER
COMPLAINT AGAINST	)	OC09-002
MARK SEIFKES dba S.P.O.T.	)	
	)	

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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

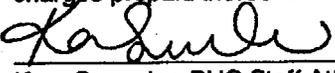
**FURTHER ORDERED**, that the docket in this matter shall be closed.

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.

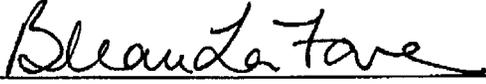
**CERTIFICATE OF SERVICE**

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.

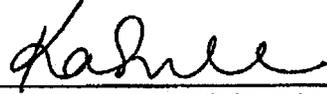
  
Kara Semmler, PUC Staff Attorney

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.*