

BEFORE THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD

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

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

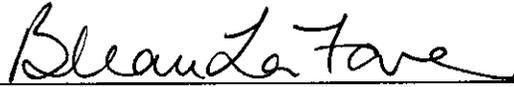
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.



Kara Semmler, PUC Staff Attorney

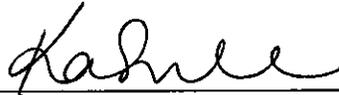
Dated: July 21, 2009

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.*