

ENFORCEMENT COMMITTEE ACTION

OC07-006

One Call Systems, Inc. vs. Mark Seifkes dba S.P.O.T.

FINDINGS:

OC07-006

Alleged Violation of § 49-7A-5 Notification of Proposed Excavation

Allegation is made by One Call Systems, Inc., the vendor that operates the South Dakota One Call System under contract with the South Dakota One Call Notification Board, that Mark Seifkes dba S.P.O.T. has either failed to become a member of the South Dakota One Call System or has failed to accept notification of excavation activity as required by § 49-7A-5.

Mark Seifkes dba S.P.O.T. responded that § 49-7A-15 exempts him from becoming a member of the South Dakota One Call System and he therefore, is not required to accept notification of excavation activity from One Call Systems, Inc.

In reviewing the complaint filed by One Call Systems, Inc. and the response from Mark Seifkes dba S.P.O.T., the committee determined the following:

The membership forms in the South Dakota One Call System were initiated by D & D Trailer Park, the previous owner of the property. The records provided do not show any transfer of ownership to Mark Seifkes dba S.P.O.T. Therefore, One Call Systems, Inc. can remove the membership of D & D Trailer Court and cease the transmission of notifications to Mark Seifkes dba S.P.O.T.

§ 49-7A-15 would exempt the actual trailer court property that is operated by Mark Seifkes dba S.P.O.T.

Mark Seifkes dba S.P.O.T. does own and operate a sewer line in the public right of way of South Dakota HWY 14 that goes north from his property across HWY 14 and follows the north ditch to the City Limits of DeSmet where it connects to the DeSmet municipal sewer system. This sewer line would not be exempt under § 49-7A-15 since it does extend beyond of the private property of Mark Seifkes dba S.P.O.T.

Based on the information noted above, the Committee found:

Since membership in the South Dakota One Call Systems had not been transferred to Mark Seifkes dba S.P.O.T., there was not probable cause that Mark Seifkes dba S.P.O.T. had violated § 49-7A-5 by failing to accept notification of excavation from One Call Systems, Inc.

Since Mark Seifkes dba S.P.O.T. is the operator of an underground sewer facility that is not located on the private property of Mark Seifkes dba S.P.O.T. there was probable cause that Mark Seifkes dba S.P.O.T. had violated § 49-7A-5 by not becoming a member of the South Dakota One Call Notification System.

RECOMMENDATION

OC07-006

VIOLATION OF SOUTH DAKOTA § 49-7A-5:

The Committee found there was there was not probable cause that Mark Seifkes dba S.P.O.T. had violated § 49-7A-5 by failing to accept notification of excavation from One Call Systems, Inc. and therefore dismisses this allegation against Mark Seifkes dba S.P.O.T. Therefore, One Call Systems, Inc. may cease providing excavation notifications to Mark Seifkes dba S.P.O.T. under the membership for D & D Trailer Court.

The Committee found there was probable cause that Mark Seifkes dba S.P.O.T. had violated § 49-7A-5 by operating an underground sewer facility and not registering as a member of the South Dakota One Call Notification System.

PROPOSED PENALTY FOR THIS VIOLATION AUTHORIZED UNDER § 49-7A-18:

The committee recommends a penalty of one-thousand dollars (\$1,000) with one-thousand dollars (\$1,000) suspended on the following conditions:

3. Within sixty-days of the issuance of an order in Complaint OC07-006, Mark Seifkes dba S.P.O.T. fully complies with § 49-7A -5 by completing membership in the South Dakota One Call System and that he fully complies with § 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC07-006 by both parties or
4. Within sixty- days of the issuance of an order in Complaint OC07-006, Mark Seifkes dba S.P.O.T. arranges with a third party, such as the City of DeSmet, to assume responsibility for the receipt of excavation notifications and marking of the sewer line operated by him.

COMMENTS:

If Mark Seifkes dba S.P.O.T. can provide documentation he is not the operator of this sewer facility the Enforcement Committee would reconsider the probable cause determination in Complaint OC07-006.