

STATE OF SOUTH DAKOTA
COUNTY OF BEADLE

)
) SS
)

IN CIRCUIT COURT
THIRD JUDICIAL CIRCUIT

THE STATE OF SOUTH DAKOTA

vs.

SPLITROCK CONTRACTING INC

02CIV12-000588
NOTICE OF INTENT
TO DISMISS ACTION

The Beadle County Clerk's records indicate that there has been no activity of record in this matter for more than one year. SDCL 15-11-11 permits dismissal of this action unless a party shows good cause to the contrary.

Therefore, it is ordered

- 1) That the Court will dismiss the above entitled action unless a written objection is filed with the Beadle County Clerk of Court and served on opposing parties as required by law setting forth good cause to the contrary, on or before August 07, 2017.
- 2) After the filing of a timely objection to dismissal, the matter shall not be dismissed unless any other party or the Court of its own motion, shall notice the matter for hearing pursuant to SDCL 15-6-6(d), which hearing shall be held on September 25, 2017, at the Beadle County Courthouse, located in Huron, South Dakota at 9:30AM.
- 3) That the Clerk shall serve copies of this Notice upon the parties by U.S. mail pursuant to SDCL 15-6-5(b).

Dated this 28th day of July, 2017.

/s/ JON R. ERICKSON, Circuit Court Judge

ATTEST:

/s/ Marilyn McHenry, Clerk of Courts
by JSHU10202, Clerk/Deputy

AFFIDAVIT OF MAILING

The undersigned hereby certifies that a true and correct copy of the Notice of Intent to Dismiss Action was served on the following by placing a copy in an envelope and depositing the envelope, with sufficient postage, in the United States Mail:

THE STATE OF 500 EAST CAPITOL
SOUTH DAKOTA PIERRE SD 57501

SPLITROCK PO BOX 42
CONTRACTING INC HURON SD 57350

on this 28th day of July, 2017

/s/ Marilyn McHenry, Clerk of Courts
by JSHU10202, Deputy

Filed on: 7/28/2017 BEADLE County, South Dakota 02CIV12-000588

STATE OF SOUTH DAKOTA
COUNTY OF BEADLE

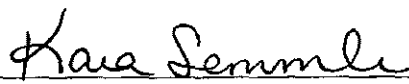
IN CIRCUIT COURT
THIRD JUDICIAL DISTRICT

THE STATE OF SOUTH DAKOTA,	*	CIV _____
	*	
Plaintiff,	*	
	*	
vs.	*	
	*	SUMMONS
	*	
SPLIT ROCK CONTRACTING, INC.,	*	
	*	
	*	
Defendant.	*	

TO THE ABOVE NAMED DEFENDANT:

You are hereby summoned and required to answer the Complaint of the above-named Plaintiff, which is herewith served upon you, and to serve a copy of your answer upon the subscribed at the South Dakota Public Utilities Commission, 500 E. Capitol Ave. Pierre, South Dakota 57501, within 30 days after service of this Summons and Complaint upon you, exclusive of the date of such service. You are further notified that if you fail to answer the Complaint within the time aforesaid, judgment by default may be rendered against you as requested in the Complaint.

Dated this 23 day of July, 2012 at Pierre, South Dakota.


Kara C. Semmler, Special Assistant Attorney General
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501
Ph (605) 773-3201
Attorney for Plaintiff,
South Dakota Public Utilities Commission

12-588
Circuit Court, Third Judicial District
BEADLE COUNTY, SOUTH DAKOTA
FILED 7-31-12
ANN HAZUKA
Clerk / Deputy

STATE OF SOUTH DAKOTA
COUNTY OF BEADLE

IN CIRCUIT COURT
THIRD JUDICIAL DISTRICT

THE STATE OF SOUTH DAKOTA,

Plaintiff,

vs.

SPLIT ROCK CONTRACTING, INC.,

Defendant.

*
*
*
*
*
*
*
*
*

CIV _____

COMPLAINT

Plaintiff State of South Dakota, by and through its undersigned Counsel, for its
Complaint states as follows.

1. Plaintiff, the State of South Dakota ("Plaintiff") brings this action by and through the South Dakota Public Utilities Commission ("The Commission"), an agency of the state of South Dakota created by SDCL 49-1-8.

2. Defendant Split Rock Contracting, Inc. ("Defendant") is a South Dakota corporation. The corporation's registered agent of record with the South Dakota Secretary of State is Richard A. Boomsma and its registered address is: 19975 394th Ave, Huron, SD 57350-6001

3. This action is brought pursuant to SDCL 49-7A-28 to recover the civil penalty assessed against Defendant by the South Dakota One-Call Board ("One-Call").

4. One-Call is a board established by SDCL 49-7A-2. One-Call was established to provide a service through which a person can notify the operators of underground facilities of plans to excavate, and to request the marking of the facilities.

One-Call has promulgated rules and procedures pursuant to SDCL 49-7A-4 to regulate the notification process of the above located at ARSD Article 20:25.

5. One-Call, pursuant to SDCL 49-7A-17, has the authority to receive complaints against persons who violate provisions of SDCL chapter 49-7A and rules promulgated by One-Call and, pursuant to SDCL 49-7A-18 and 49-7A-19, may assess civil penalties against persons found to have violated these laws.

6. On July 11, 2010, pursuant to SDCL 49-7A-2, One-Call received a complaint against Defendant. The complaint was filed by NorthWestern Corporation d/b/a NorthWestern Energy. The complaint is attached hereto as Exhibit A.

7. Pursuant to SDCL 49-7A-22 a five member panel was appointed by the Chairman of One-Call to hear the complaint (the "Panel"). The Panel found probable cause existed to believe a violation of South Dakota One Call law occurred.

8. The Panel found probable cause existed to believe a violation of SDCL 49-7A-5 occurred at McDonald Drive -13th Street to 14th Street, Huron, SD on June 1, 2011. Specifically, a natural gas facility was at risk.

9. The Panel recommended a civil penalty be assessed against Defendant in the amount of One Thousand Dollars (\$1,000).

10. A copy of the Panel's recommendations was served on Defendant via first class mail. The Panel decision is attached hereto as Exhibit B.

11. The Defendant failed to respond to the recommendations. Its failure to respond, and failure to request a hearing constitutes acceptance of the Panel's recommendation per SDCL 49-7A-27

12. Based on the Defendant's acceptance of the Panel recommendation, One-Call issued an Order on October 13, 2011. The One-Call Order was served on Defendant via first class mail on October 14, 2011. The One-Call Order is attached hereto as Exhibit C. Time for Defendant to appeal the decision of One-Call expired according to SDCL 1-26-31.

13. Defendant failed to pay the civil penalties as specified in the Order, and Defendant now owes One Thousand Dollars (\$1,000) in civil penalties.

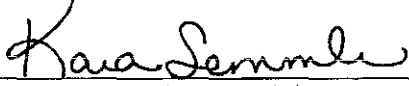
14. One-Call made a written demand to Defendant for payment of the civil penalty pursuant to SDCL 49-7A-33. The demand was served on Defendant via first class mail. A copy of the notice is attached hereto as Exhibit D. More than thirty (30) days have elapsed since the demand was sent and Defendant failed to pay the prescribed civil penalties.

15. One-Call requested the Commission bring an action in this Court against Defendant to recover such penalty in accordance with SDCL 49-7A-28.

WHEREFORE, Plaintiff demands judgment against Defendant as follows:

1. For a monetary judgment in the amount of One Thousand Dollars (\$1,000) plus Plaintiff's costs, disbursements and statutory interest to the extent allowed by law.
2. For such other and further relief as the Court may deem just and proper.

Dated this 23 day of July, 2012.


Kara C. Semmler, Special Assistant Attorney General
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501
Ph (605) 773-3201
Attorney for Plaintiff,
South Dakota Public Utilities Commission

12-588
Circuit Court, Third Judicial Circuit
BEADLE COUNTY, SOUTH DAKOTA
FILED 7-24-13
ANN HAZUKA
Clerk / Deputy

ONE CALL COMPLAINT FORM
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, Sd 57501-5070

COMPLAINT

Allegation of Probable Violation(s) of South Dakota One Call Laws

Received On July 11, 2011 4:00 pm

I. ACTION REQUESTED BY:

COMPLAINT FILED BY: Company

PERSON FILING COMPLAINT: Sara Greff Dannen

COMPANY: NorthWestern Corporation d/b/a NorthWestern Energy

ADDRESS: 3010 West 69th Street, Sioux Falls, SD 57108

PHONE NUMBER: (605) 978-2942

EMAIL: sara.dannen@northwestern.com

DATE: July 11, 2011

II. ACTION REQUESTED AGAINST:

NAME OF EXCAVATOR/FACILITY OPERATOR: Split Rock Contracting, Inc.

PHONE NUMBER: (605) 352-0785

ADDRESS: PO Box 1402, Huron, SD 57350

WAS A LOCATED REQUESTED FROM SD ONE CALL? Yes

LOCATE TICKET#: 111510134

START DATE ON TICKET: June 2, 2011

DID EXCAVATOR WAIT UNTIL THE START DATE/TIME ON THE TICKET BEFORE COMMENCING EXCAVATION? No

WERE BURIED FACILITIES EXPOSED BY HAND OR NON-INVASIVE EQUIPMENT PRIOR TO EXCAVATION? No

III. FACILITY INVOLVED (IF ANY)

TYPE OF FACILITY INVOLVED: Gas Main

OPERATOR OF FACILITY: NorthWestern Energy

OPERATOR ADDRESS: 600 Market Street West, Huron, SD 57350

PHONE NUMBER: (605) 353-7527

DEPTH OF COVER: 30 inches

PRESSURE: 29 psi

VOLTAGE: N/A

NUMBER OF CABLE REPAIRS: N/A

Exhibit A

IV. MARKING

WERE FACILITIES MARKED? No

WAS THE MARKING COMPLETE PRIOR TO THE START TIME ON THE TICKET? N/A

DID EXCAVATOR PRE-MARK WITH WHITE PAINT? N/A

WAS THE FACILITY ACCURATELY MARKED (WITHIN 18 INCHES)? N/A

DID EXCAVATOR USE REASONABLE CARE TO MAINTAIN LOCATE MARKS FOR LIFE OF PROJECT? N/A

HAVE YOU DISCUSSED THE PREVIOUS STATEMENTS WITH THE OTHER PARTY? Yes

IS THERE AGREEMENT? Yes

IF NO, PLEASE EXPLAIN:

V. DAMAGE (IF ANY)

FATALITIES:

INJURIES:

LENGTH OF HOSPITALIZATION:

ESTIMATED PROPERTY DAMAGE:

NUMBER OF CUSTOMERS AFFECTED:

DAMAGED IN:

PHOTOS OF THE DAMAGED FACILITY: No

ADDITIONAL INFORMATION:

VI. PROBABLE VIOLATION

SPECIFIC STATUTE(S) OR RULE(S) THAT WAS VIOLATED: SDCL 49-7A-5, Notification of proposed excavation

ADDRESS/LOCATION OF PROBABLE VIOLATION: McDonald Drive (13th Street to 14th Street), Huron, SD

DATE/TIME OF PROBABLE VIOLATION: June 1, 2011 10:00 am

HAVE YOU DISCUSSED THE PROBABLE VIOLATION WITH THE PARTY THE ACTION IS FILED AGAINST? True

IF YES, NAME THE PARTY WITH WHOM YOU DISCUSSED THE PROBABLE VIOLATION: Scott Olson

DESCRIPTION OF PROBABLE VIOLATION: Split Rock Contracting started work on the site prior to the due date on the locate ticket. On June 1, 2011, when NorthWestern Energy's technician arrived at the site to mark the locates, the crew from Split Rock Contracting had already completed digging at the site and was backfilling. Attached as Exhibit A is a copy of locate ticket number 111510134, which has a start date of June 2, 2011.

NorthWestern Energy previously filed complaints against Scott Olson Digging, Inc. in docket numbers OC10 006, OC10 007, and OC10 008. NorthWestern Energy believes that Scott Olson and Lori Olson operate both Scott Olson Digging, Inc. and Split Rock Contracting, Inc. See attached Affidavit of Sara Greff Dannen.

BEFORE THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD

IN THE MATTER OF THE COMPLAINT)	ENFORCEMENT PANEL
BY NORTHWESTERN ENERGY)	RECOMMENDATION TO
AGAINST SPLIT ROCK)	THE SD ONE CALL BOARD
CONTRACTING, INC.)	

OC11-003

On July 11, 2011, the South Dakota Public Utilities Commission received a complaint from NorthWestern Energy (herein "NorthWestern") against Split Rock Contracting, Inc. (herein "Split Rock"). The complaint alleges Split Rock did not wait the statutorily required time prior to excavation. Specifically, NorthWestern arrived at the planned excavation site on June 1, 2011 to locate facilities pursuant to a locate ticket with an excavation start date of June 2, 2011. On June 1, NorthWestern alleges excavation had already occurred and was complete.

Split Rock replied to the complaint on August 1, 2011. The reply states Split Rock originally requested facilities to be marked on April 24, 2011. The company explains it then requested facilities to be relocated on May 31, 2011. Although Split Rock does not specify when, it states it met with NorthWestern regarding the location of facilities prior to excavation. The company does not address whether it performed excavation outside the legally proper time. Rather, it stated "all marks were present from the first locate request."

On August 30, 2011, pursuant to SDCL 49-7A-22 a panel of five One Call Board members (herein "Panel") convened. The Panel met to determine whether probable cause exists to believe the violation occurred as described in the complaint and whether penalties are appropriate.

The Panel found probable cause exists to believe a violation of SDCL 49-7A-5 occurred. Specifically, the April 24, 2011 ticket had expired and was no longer valid and Split Rock did not wait the requisite 48 hours pursuant to the May 31, 2011 ticket. Due to the other action taken, however, to protect the facilities the Panel did not find the violation to be intentional. As such the Panel looked to SDCL 49-7A-18 to determine proper penalties.

The Panel found it proper to assess a One Thousand Dollar (\$1,000) penalty against Split Rock due to: its lack of plans or procedures to prevent future violations of One Call laws and rules and the fact that principal officers of Split Rock have been involved in three other One Call compliance filings. The Panel found it proper, however, to suspend Five Hundred Dollars (\$500) of the penalty because: no damage was done nor was there an unusual degree of threat to the public. See SDCL 49-7A-26

Exhibit B

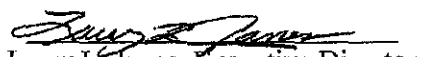
The Panel further recommends the suspended Five Hundred Dollar (\$500) penalty become immediately due and payable if: (i) Split Rock is found guilty of an additional violation of SDCL 49-7A or ARSD Article 20:25 within the twelve months following the date of the final South Dakota One Call Board Order or (ii) if it fails to make payment of the remaining un-suspended Five Hundred Dollars (\$500) within thirty days of receipt of the final One Call Board Order.

The Panel recommends the South Dakota One Call Board accept its findings and recommendations herein. If either party to this Complaint disagrees or objects to the recommendations or findings herein, a hearing may be requested. To request a hearing you must reply within twenty days from the date of service of this notice. Failure to request a hearing is considered acceptance of the recommendations and findings herein.

The South Dakota One-Call Notification Board has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-7A and ARSD 20:25.

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 by first class mail, or by other electronic means.


Larry L. Janes, Executive Director

Date 8-31-2011

BEFORE THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD

IN THE MATTER OF THE COMPLAINT	)	ORDER ADOPTING ENFORCEMENT
BY NORTHWESTERN ENERGY	)	PANEL RECOMMENDATION AND
AGAINST SPLIT ROCK	)	CLOSING DOCKET
CONTRACTING, INC.	)	

OC11-003

On July 11, 2011, the South Dakota Public Utilities Commission received a complaint from NorthWestern Energy (herein "NorthWestern") against Split Rock Contracting, Inc. (herein "Split Rock"). The complaint alleges Split Rock did not wait the statutorily required time prior to excavation. Specifically, NorthWestern arrived at the planned excavation site on June 1, 2011 to locate facilities pursuant to a locate ticket with an excavation start date of June 2, 2011. On June 1, NorthWestern alleges excavation had already occurred and was complete.

Split Rock replied to the complaint on August 1, 2011. The reply states Split Rock originally requested facilities to be marked on April 24, 2011. The company explains it then requested facilities to be relocated on May 31, 2011. Although Split Rock does not specify when, it states it met with NorthWestern regarding the location of facilities prior to excavation. The company does not address whether it performed excavation outside the legally proper time. Rather, it stated "all marks were present from the first locate request."

On August 30, 2011, pursuant to SDCL 49-7A-22 a panel of five One Call Board members (herein "Panel") convened. The Panel found probable cause exists to believe a violation of SDCL 49-7A-5 occurred.

The Panel assessed a One Thousand Dollar (\$1,000) penalty against Split Rock and suspend Five Hundred Dollars (\$500) of the penalty if the following two conditions are met: (i) Split Rock is not found guilty of an additional violation of SDCL 49-7A or ARSD Article 20:25 within the twelve months following the date of this Order and (ii) if Split Rock pays remaining un-suspended Five Hundred Dollars (\$500) within thirty days of receipt of this Order. In making its recommendation the Panel considered all factors in SDCL 49-7A-26.

Neither party requested a hearing in this matter and pursuant to SDCL 49-7A-27 the Panel's recommendation is considered accepted by both.

At its scheduled meeting of October 13, 2011, the South Dakota One Call Board, pursuant to SDCL 49-7A-27, reviewed the Panel's procedure and approved its findings.

THE ONE CALL BOARD OF SOUTH DAKOTA HEREBY ORDERS, the terms and conditions as recommended by the Panel as final resolution of this complaint. The

Exhibit C

STATE OF SOUTH DAKOTA
COUNTY OF BEADLE

IN CIRCUIT COURT
THIRD JUDICIAL DISTRICT

THE STATE OF SOUTH DAKOTA,	*	CIV _____
	*	
Plaintiff,	*	
	*	
vs.	*	
	*	NOTICE AND ADMISSION
	*	OF SERVICE OF SUMMONS AND
SPLIT ROCK CONTRACTING, INC.,	*	COMPLAINT BY MAIL
	*	
	*	
Defendant.	*	

To: Richard A. Boomsma, Registered Agent for Split Rock Contracting, Inc.

The enclosed summons and complaint are served upon you pursuant to § 15-6-4(i). You must complete the admission part of this form and return one copy of the completed form to the sender within twenty days.

You must sign and date the admission. You are being served on behalf of a corporation, and must indicate under your signature your relationship to that entity.

If you do not complete and return the form to the sender within twenty days, you or the above-named Defendant may be required to pay any expenses incurred in serving a summons in any other manner permitted by law.

If you do complete and return this form, the above-named Defendant must answer within thirty days. If you fail to do so, judgment by default will be taken against Defendant, for the relief demanded in the Complaint.

I hereby certify that this Notice and Admission of Service and the Summons and Complaint in this action were mailed on July 23, 2012.



Kara Semmler, Special Asst. Attorney General
Attorney for Plaintiff, SD PUC

12-588
Circuit Court, Third Judicial District
BEADLE COUNTY, SOUTH DAKOTA
FILED 7-31-13
ANN HAZUKA
Clerk Deputy

STATE OF SOUTH DAKOTA
COUNTY OF BEADLE

IN CIRCUIT COURT
THIRD JUDICIAL DISTRICT

THE STATE OF SOUTH DAKOTA,

Plaintiff,

VS.

SPLIT ROCK CONTRACTING, INC.,

Defendant.

*
*
*
*
*
*
*
*
*

CIV _____

NOTICE AND ADMISSION
OF SERVICE OF SUMMONS AND
COMPLAINT BY MAIL

ADMISSION OF SERVICE OF SUMMONS AND COMPLAINT

Personal service of the Summons and Complaint by mail in the above-captioned action is hereby admitted by Split Rock Contracting, Inc. by receipt of copies thereof by mail by its registered agent Richard A. Boomsma at 19975 394th Ave, Huron, SD 57350-6001 on the _____ day of _____, 2012.

Richard A. Boomsma
Registered Agent for Defendant

Date: _____