

STATE OF SOUTH DAKOTA
COUNTY OF MINNEHAHA

IN CIRCUIT COURT
SECOND JUDICIAL DISTRICT

THE STATE OF SOUTH DAKOTA,	*	CIV 10-651
	*	
Plaintiff,	*	
	*	
vs.	*	
	*	APPLICATION FOR
	*	DEFAULT JUDGEMENT
LOEWENBERG TECHNOLOGIES, INC	*	
	*	
	*	
Defendant.	*	

Plaintiff, the state of South Dakota by and through the Public Utilities Commission (“Plaintiff” or “Commission”) an agency of the State of South Dakota, hereby makes application to the Court for entry of judgment by default in the above-entitled action pursuant to SDCL 15-6-55(b).

1. The Commission commenced this action on February 17, 2010. February 18, 2010 The Minnehaha County Sheriff personally serviced the Summons and Complaint on Bruce Loewenberg the registered agent for Loewenberg Technologies, Inc. (herein “Loewenberg”). The Sheriff’s return of service is attached as Exhibit A.
2. Defendant neither Answered nor filed any other pleading in reply.
3. This action was originally brought pursuant to SDCL 49-7A-28 to recover the civil penalty assessed against Defendant by the South Dakota One-Call Notification Board (“One-Call”).
4. One-Call (“One-Call”) is a board established by SDCL 49-7A-2.
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 may, pursuant to SDCL 49-7A-18 and 49-7A-19, assess civil penalties against persons found to have violated these laws.

6. On July 20, 2009, pursuant to SDCL 49-7A-17, One-Call received a complaint filed by NuStar Pipeline Operating Partnership LP. The Complaint is based on Defendant's failure to properly have facilities marked prior to excavation in violation of SDCL 49-7A.

7. After notice of the Complaint was given pursuant to 49-7A-23 and 24, Defendant Answered on August 3, 2009. A five member panel, appointed by the Chairman of One Call pursuant to SDCL 49-7A-22, determined probable cause existed to believe a violation of SDCL 49-7A occurred.

8. A copy of the One-Call panel's recommendations was sent to the parties pursuant to SDCL 49-7A-27. Defendant, however, failed to respond to the recommendations. His failure to respond, and failure to request a hearing, constitutes acceptance of the panel's recommendation per SDCL 49-7A-27

9. The panel's recommendations include a civil penalty with a portion suspended based on the Defendant's compliance with two conditions. Specifically, the civil penalty against Defendant now totals One Thousand Dollars (\$1,000). Had the Defendant met two conditions, Seven-Hundred Fifty (\$750) was to be suspended. The conditions include: (i) no additional violations within twelve months, and (ii) payment of Two Hundred Fifty Dollars (\$250) within thirty days. The complete One-Call decision is attached hereto as Exhibit B.

10. The Order was served on Defendant via first class mail. The Defendant neither appealed the One-Call decision nor met the conditions in the Order, and accordingly, owes One Thousand Dollars (\$1,000) in civil penalties.

11. One-Call made a written demand to Defendant for payment of the civil penalties as required by SDCL 49-7A-33. The demand was served by first class mail on Defendant December 22, 2009. A copy of the written demand is attached hereto as Exhibit C.

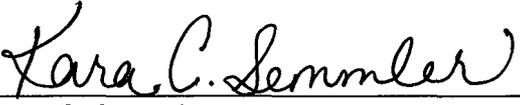
12. At the request of One-Call, the Commission brought an action in this court against Defendant to recover such penalty in accordance with SDCL 49-7A-28.

13. Defendant has neither paid anything to the Commission nor One-Call in satisfaction of the One Thousand Dollars (\$1,000) in civil fines levied by One-Call nor given any indication to the Commission or One-Call that he intends to pay the fines.

WHEREFORE, Plaintiff requests that the Court enter judgment by default against Defendant as follows:

1. For a monetary judgment in the amount of \$1,000 against Defendant.

Dated this 29th day of April, 2010


Kara C. Semmler
Special Assistant Attorney General
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501
Ph (605) 773-3201
Fax 866-757-6031
Attorney for Plaintiff,
South Dakota Public Utilities Commission

RECEIVED

FEB 2 5 2010

STATE OF SOUTH DAKOTA,

COUNTY OF MINNEHAHA

SEND TO: SOUTH DAKOTA PUBLIC UTILITIES COMMISSION
SD PUBLIC UTILITIES COMMISSION
500 E CAPITOL AVE

PIERRE, SD
57501-5070

ENTRY	
ST OF SD	Plaintiff
- vs -	
LOWENBERG TECHNOLOGIES INC	Defendant
NONE	

AFFIDAVIT OF SERVICE:

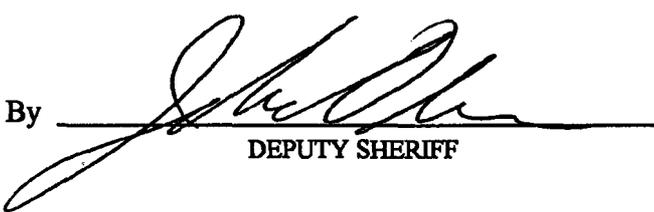
I, CIVIL SERVER JOHN OLSON, Sheriff of Minnehaha County, South Dakota, hereby certify and return that the annexed SUMMONS, COMPLAINT _____ came into my hands for service on the 18TH day of FEBRUARY, 2010. That I served the same on LOEWENBERG BRUCE REG AGENT by delivering and leaving a true copy thereof with BRUCE LOEWENBERG REG AGENT in Minnehaha County, State of South Dakota, on the 22ND day of FEBRUARY, 2010.

PAYMENT INSTRUCTIONS	
RETURN PAGE 2, ALONG WITH YOUR CHECK OR MONEY ORDER TO:	

MINNEHAHA COUNTY SHERIFF DEPARTMENT 320 W 4 TH STREET SIOUX FALLS, SOUTH DAKOTA 57104-2435	

SHERIFF'S FEES	
SUMMONS	25.00
COMPLAINT	25.00
MILEAGE	1.72
TOTAL FEES \$	26.72

SHERIFF

By 
DEPUTY SHERIFF

BEFORE THE SOUTH DAKOTA ONE CALL NOTIFICATION BOARD

IN THE MATTER OF THE)
COMPLAINT AGAINST LOEWENBERG)
TECHNOLOGIES)

ORDER
OC09-005

On July 22, 2009, the South Dakota Public Utilities Commission received a complaint from Nustar Pipeline Operating Partnership, LP against Loewenberg Technologies. Loewenberg Technologies did not dispute the allegation in the complaint that they had excavated without providing advance notice to the South Dakota One Call System.

On September 01, 2009, the Enforcement Committee of the South Dakota One Call Notification Board met and determined that probable cause exists in Docket OC09-005 in regards to the allegation that Loewenberg Technologies had violated SDCL 49-7A-5. The Enforcement Committee recommended a one-thousand dollars (\$1,000) penalty with seven-hundred fifty dollars (\$750) suspended on the grounds that Loewenberg Technologies fully comply with SDCL 49-7A and ARSD Article 20:25 for twelve months following the date of both parties signing the Enforcement Committee Action Agreement and that Loewenberg Technologies fully comply with the resolution of this complaint by making payment of two-hundred fifty dollars (\$250) within thirty days of the issuance of this order.

Neither party requested a hearing by rejecting the panel recommendation within the timeframe specified.

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 Rapid City, South Dakota, this 5th day of November 2009.

Exhibit B

CERTIFICATE OF SERVICE

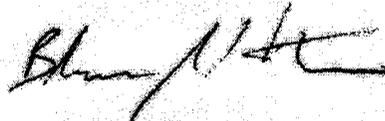
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.



Larry L. Janes, Executive Director

Date November 5, 2009

BY ORDER OF THE SD ONE-CALL BOARD:



Bleau LaFave, Chairman

Under the Authority and on Behalf of the
Chairman



LARRY L. JANES, Executive Director

ENFORCEMENT COMMITTEE ACTION OC09-005

**Nustar Pipeline Operating Partnership, LP
vs.
Loewenberg Technologies**

FINDINGS: OC09-005

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

Allegation is made by Nustar Pipeline Operating Partnership, LP that Loewenberg Technologies commenced excavation at Yankton Trail Park in Sioux Falls, South Dakota, without providing advance notification to the South Dakota One Call System as required by SDCL 49-7A-5.

Loewenberg Technologies did not dispute the allegation that excavation activity had commenced without providing advance notification to the South Dakota One Call System.

In reviewing the complaint filed by Nustar Pipeline Operating Partnership, LP and the response from Loewenberg Technologies, the committee determined the following:

Loewenberg Technologies had commenced excavation without providing advanced notification to the South Dakota One Call System.

Based on the information noted above, the Committee found there is probable cause to find that Loewenberg Technologies violated SDCL 49-7A-5 by commencing excavation at Yankton Trail Park, Sioux Falls, South Dakota without providing advance notification to the South Dakota One Call System as required by SDCL 49-7A-5.

RECOMMENDATION OC09-005

VIOLATION OF SOUTH DAKOTA SDCL 49-7A-5:

The Committee found there was probable cause that Loewenberg Technologies had violated SDCL 49-7A-5 by commencing excavation at Yankton Trail Park, Sioux Falls, South Dakota, without providing advance notification to the South Dakota One Call System as required by SDCL 49-7A-5.

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

The committee recommends a penalty of one thousand dollars (\$1,00.00) with seven hundred fifty dollars (\$750.00) suspended on the following conditions:

- Loewenberg Technologies fully complies with SDCL 49-7A and ARSD Article 20:25 for twelve months following acceptance of resolution of Complaint OC09-005 by both parties.
- Loewenberg Technologies fully complies with the resolution of Complaint OC09-005 by making payment of the two hundred fifty dollars (\$250) within thirty (30) days of the issuance of the Order to close Complaint OC09-006.
- Loewenberg Technologies should be aware that any future violation of SDCL 49-7A or ARSD 20:25 within twelve months from the date of the final order are be subject to additional penalties up to a maximum of \$5000 under SDCL 49-7A-18.



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

Capitol Office
(605) 773-3201
1-866-757-6031 fax

Warehouse
(605) 773-5280
(605) 773-3225 fax

Consumer Hotline
1-800-332-1782

December 22, 2009

Loewenberg Technologies
Mr. Bruce Loewenberg
1000 East Benson
Sioux Falls SD 57104

Dear Mr. Loewenberg:

On September 1, 2009 the Enforcement Committee of the South Dakota One Call Notification Board met regarding OC09-005, Nustar Pipeline Operating Partnership, LP vs. Loewenberg Technologies. The Committee found probable cause to believe Loewenberg Technologies violated SDCL 49-7A-5, Notification of Proposed Excavation. The Committee assessed a one thousand dollar (\$1,000.00) penalty against Loewenberg Technologies. Seven hundred dollars (\$750.00) of the penalty was suspended based on several conditions. ~~Your company had until October 30, 2009 to either accept or decline the Committee's findings and resulting Order.~~

Your failure to reply to the Committee's findings resulted in acceptance of said penalty. As a result, Loewenberg Technologies could have paid \$250, the portion of the penalty not suspended. Your company again failed to comply within necessary deadlines. Your company now owes the full \$1000 penalty.

You are hereby demanded, pursuant to SDCL 49-7A-33 to pay said penalty within thirty days of receipt of this letter. If you do not pay the penalty, the Public Utilities Commission may bring an action in the name of the State of South Dakota against your company in circuit court. See SDCL 49-7A-28. Please contact me with any questions.

Sincerely,

Kara Semmler
Public Utilities Commission, Staff Attorney

Exhibit C