

Moch, Alan G.

From: Patrick-Ward, Donna [Donna.Patrick@nustarenergy.com]
Sent: Monday, May 04, 2009 2:00 PM
To: Moch, Alan G.
Cc: Pfeifer, Jeff; Johnson, James; Moore, Brian; Simpson, Marvin
Subject: Near Miss West Fargo ND
Attachments: N DAKOTA VIOLATION 4-28-09.docx; NORTH DAKOTA LEGISLATION.pdf; Pipeline Encroachment Violation Form 4-28-09 (2).docx; Public Awareness Form 111807 4-28-09.docx; Riley Brothers Construction Violation - 4-28-09.docx

Mr. Moch:

My name is Donna Patrick, I am the One Call Coordinator for Nustar Pipeline Operating Partnership, L.P. (Nustar Energy). I am contacting you today concerning a violation by Riley Brothers Construction. The violation was discovered by our locator Jeff Pfeifer, on April 28, 2009. This job was being performed for the North Dakota DOT. I contacted your office on April 28th, and was informed that you were not in. I would like to file this complaint with your office, The North Dakota Public Service Commission. Please notify me as soon as possible with a report number, so I can keep it with this excavator's file. In the following attachments you will find a copy of all of the documentation that was sent to this excavator, with the exception of the North Dakota Excavator's Handbook. I look forward to hearing from you soon. If I can be of any assistance to you, please let me know.

Sincerely,

Donna Patrick
One Call Coordinator
Nustar Pipeline Operating Partnership L.P
7340 West 21st North., Suite 200
Wichita, KS 67205
316-721-7073
donna.patrick@nustarenergy.com

1 **WM-09-640** Filed: 5/4/2009 Pages: 11
Email with Third Party Damage Complaint



Pipeline Operating Partnership L.P.

7340 West 21st Street N., Suite 200 • Wichita, Kansas 67205
Telephone (316) 773-9000

5/1//09

Riley Brothers Construction
PO BOX 535
MORRIS, MN 56267

RE: Violation of North Dakota State Law "One-Call Notification System Act: Sections 49-23-04 (The entire Section is included in this packet).

Work was being performed for the North Dakota Department of Transportation. West Fargo City, Cass County, ND. TWP: 139 N RNG: 49W SEC/QTR: 16,17,20,21

Dear Mr. Nelson:

On April 28th, 2009 Nustar Pipeline Operating Partnership L.P. locator, Jeff Pfeifer discovered upon arrival at the site that your dozer operator was performing an excavation already in progress with your company's equipment. Jeff Pfeifer asked your employee if he was aware of a one call ticket that was generated for the work that was being performed; he stated that he was not aware of any. Jeff Pfeifer then asked him not to excavate any more dirt at this location and then Jeff proceeded to accurately locate our pipeline with his locator, at this time you approached him, and Jeff inquired as to your knowledge of a One Call ticket, it was noted that your response was that you were aware of where our pipeline was, and then you decided at that point that it may be a good idea to call in to the One Call Center and update a ticket that was generated last year. At that time Jeff had informed you of the North Dakota One Call Laws.

As the excavator of this site an update for this ticket should have been called into the North Dakota One Call Hotline. In addition to the violation of the law, this action placed your personnel, the general public and the environment at risk.

Making the proper notification allows the one-call center to notify utility companies to flag and locate their buried facilities on the property. North Dakota state law **requires** this to be performed. Any violation of this law could result in civil penalties being assessed upon the excavator, along with the costs for all repairs to the underground facility.

I have enclosed copies of literature that will assist you with your awareness to the one-call systems. I encourage you to review this information and make the required notifications anytime that you plan to excavate upon any property, even if you feel certain that you know where the buried facilities are located.



Pipeline Operating Partnership L.P.

Should you have any questions regarding this information feel free to contact me at (316) 721-7073, or our local representative, Mr. Jeff Pfeifer, at (218) 790-1494

Sincerely,
Donna M. Patrick
One Call System Coordinator

CC: Mr. Al Moch
Director of Testing & Safety Division – North Dakota Public Service Commission
600 E. Boulevard, Department 408
Bismarck, ND 58505-0480

Jeff Pfeifer, Nustar Pipeline Maintenance Technician II
Moorhead, ND

Jim Johnson, Nustar Director of Operations
North System

Marvin Simpson, Nustar HSE Area Supervisor
Kansas Office

Brian Moore, Nustar Project Engineer Manager
Kansas Office

Enclosures:

- North Dakota One Call Handbook
- Nustar Pipeline One Call Excavator Complaint
- Copy of the ticket that was called in to the One Call Center documenting that it was done after the fact that our locator had discovered excavating taking place
- North Dakota State Law One Call Notification System Act : Sections 49-23-04



PUBLIC AWARENESS DOCUMENTATION FORM

System(s):	North System	Segment or Facility:	Valley City to Moorhead		
County:	Cass	Nearest City:	West Fargo	State:	ND
GPS Coordinates (if known):	TWP 139 N Rng 49				

Category of Audience (check all that apply)

<input type="checkbox"/> General Affected Public	<input type="checkbox"/> Federal/State Agency	<input checked="" type="checkbox"/> Excavator/Contractor
<input type="checkbox"/> Reside/Work/Congregate near ROW	<input type="checkbox"/> Local Agency	<input type="checkbox"/> Pipeline/Utility Operator
<input type="checkbox"/> Landowner/Farmer/Tenant	<input type="checkbox"/> Emergency Mgmt Agency	<input type="checkbox"/> Road/Hwy Maintenance
<input type="checkbox"/> School/Church/Day Care	<input type="checkbox"/> Law Enforcement	<input type="checkbox"/> City/County Workers
<input type="checkbox"/> Hospital/Retirement Center	<input type="checkbox"/> Fire Department	<input type="checkbox"/> Land Developer/Home Builder
<input type="checkbox"/> Prison/Jail	<input type="checkbox"/> Mayor/Judge/Councilor	<input type="checkbox"/> Landscaper/Well Driller
<input type="checkbox"/> Other not listed:		

Contact was made by: <input checked="" type="checkbox"/> Face-to-face <input type="checkbox"/> Phone <input type="checkbox"/> Group Meeting <input type="checkbox"/> Other:					
Name(s) (attach list if necessary):			Title:		
Business or Agency Name:		Riley Brothers Construction			
Address:		PO Box 535		County:	
City:	Morris	State:	MN	Zip:	56267
Phone No.:	(320) -2871906	Fax No.:	(320) -5892545	Emergency No.:	()

Was this contact due to an <u>encroachment violation</u> and/or damage?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes
If so, be sure to fill out and attach the <i>Pipeline Encroachment Violation Form</i> :	<input checked="" type="checkbox"/> Attached
Did the audience already know of the pipeline's existence?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes
Can audience tell you about any prior advertisements, mailings, or presentations?	<input type="checkbox"/> No <input type="checkbox"/> Yes
If so, which?	

Example of Information Discussed

Public Education (General Public)	Emergency Responders/Public Officials	Damage Prevention (Excavators)
1. Safety precautions: ignition prevention, product contact avoidance, evacuation, basic first aid for product contact, emphasis on personal safety 2. Pipeline markers and signs: description & significance 3. Product information: common name & uses, product state when not contained, odor/ flammability characteristics, hazards 4. Importance of call before you dig: the law affects everyone 5. Leak detection methods and responses 6. Emergency telephone numbers; Control Center 1-800-481-0038	1. NuStar's anticipated course of action in the event of an incident such as a fire located near or involving a pipeline facility, explosions, natural disaster, product release 2. Only NuStar personnel should operate our equipment: stress NuStar's Training 3. Product information: common name & uses, product state when not contained, odor/ flammability characteristics, hazards 4. Agency response: resources and capabilities (fight fire, control crowd, etc.) 5. Leak detection methods and responses 6. Emergency telephone numbers; Control Center 1-800-481-0038	1. Safety precautions: ignition prevention, product contact avoidance, evacuation, basic first aid for product contact 2. Pipeline markers and signs: description & significance 3. Product information: common name & uses, product state when not contained, odor/ flammability characteristics, hazards 4. Importance of call before you dig; it's a law and can be enforced 5. Leak detection methods and responses 6. Emergency telephone numbers; Control Center 1-800-481-0038

Does audience feel this meeting/information was beneficial?	<input type="checkbox"/> No <input type="checkbox"/> Yes
Brochures/handouts provided? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	Which? EXCAVATOR HANDBOOK MAILED TO THE EXCAVATOR ON 5-1-09 BY DONNA PATRICK ONE CALL COORDINATOR. NOTE ADDED ON 5-1-09 BY DONNA PATRICK.
Other information discussed (particular event/scenario):	



NuStar representative(s) making contact:	Jeff Pfeifer
Date of contact:	4/28/2009



PIPELINE ENCROACHMENT VIOLATION FORM

(*must be used in conjunction with *Public Awareness Documentation Form**)

System(s):	North System	Segment or Facility:	Valley City to Moorhead	
County:	Cass	Nearest City:	West Fargo	State: ND
GPS Coordinates (if known):	TWP 139 N Rng 49			
This contact was made because of: <input checked="" type="checkbox"/> Near Miss (Encroachment Violation) <input type="checkbox"/> Damage <input type="checkbox"/> Rupture/Release				
Description:	Contractor was excavating on the 9 th st overpass construction project in West Fargo over the NuStar pipeline and did not make a one call. Pipeline Tech was driving by and noticed the contractor moving dirt with a bulldozer on top of the pipeline. The contractor was approached by Technician and asked if he made a one call. The contractor did not make a call. The technician had him stop work immediatily.			
1. Was a locate request made as required by law?			<input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes – Ticket #:
If so, was adequate information given (date, location, etc.)?			<input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes
If not, describe:				
2. Did excavator give a 48 hr notice prior to excavation as required?			<input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes
If not, describe consequences (fire, injury, death):				
3. Was the excavation area "white-lined"?			<input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes
4. Were NuStar underground facilities marked timely and accurately?			<input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes
If not, describe what was wrong:			No One Call Made to notify NuStar	
5. Who performed the NuStar line locate?		NA		
6. What markings were used?		<input type="checkbox"/> Paint <input type="checkbox"/> Flags <input type="checkbox"/> Stakes <input type="checkbox"/> Other:		
7. Were markings still visible at time of excavation?			<input type="checkbox"/> No	<input type="checkbox"/> Yes
8. Did the NuStar locator meet with the excavator prior to excavation?			<input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> By phone only
If so, what actions were discussed?				
9. Were NuStar employee(s) on-site at time of excavation?			<input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes
10. What type of excavation equipment was being used?		Bulldozer		



Other information/notes:

NuStar representative:

Jeff Pfeifer

e. The notification center must be in operation by March 1, 1998.

49-23-04. Excavation.

1. Except in an emergency, an excavator shall contact the notification center and provide an excavation or location notice at least forty-eight hours before beginning any excavation, excluding Saturdays, Sundays, and holidays, unless otherwise agreed to between the excavator and operator. If an operator determines more time is necessary for location, the operator may request a twenty-four-hour extension of the excavation or location notice by notifying the notification center. The notification center shall notify the excavator of the extension. An excavation begins the first time excavation occurs in an area that was not previously identified by the excavator in an excavation notice. The notice must contain:

- a. The name, address, and telephone number of the person making the notification;
- b. The name, address, and telephone number of the excavator;
- c. The date and time when excavation is scheduled to begin;
- d. The depth of planned excavation;
- e. The type and extent of excavation being planned, including whether the excavation involves tunneling or horizontal boring;
- f. Whether the use of explosives is anticipated and any other information as may be required by the notification center; and
- g. The location of the excavation by any one or more of the following means:
 - (1) A specific street address;
 - (2) A reference to a platted lot number of record; or
 - (3) A specific quarter section by section number, range, township, and county. In this case, the location shall be further described by coordinates measured in feet from the nearest one-fourth corner or section corner.

2. The notification center shall:

- a. Provide a toll-free telephone number and assign an inquiry identification number to each excavation notice and retain a record of all excavation notices received for at least six years.
- b. Immediately transmit the information contained in an excavation notice to every operator that has an underground facility in the area of the proposed excavation.
- c. Inform the persons giving notice of an intent to engage in an excavation activity the names of participating operators of underground facilities to whom the notice will be given. d. Establish procedures for assuring positive response from the affected operator in all emergency excavation

notices.

3. a. An operator, within forty-eight hours, or any extension of that period, after receiving an excavation notice from the center, excluding Saturdays, Sundays, and holidays, unless otherwise agreed to between the excavator and operator, shall locate and mark or otherwise provide the approximate horizontal location of the underground facilities of the operator.

b. For purposes of this section, the approximate horizontal location of the underground facilities is a strip of land two feet [60.96 centimeters] on either side of the underground facilities. This subdivision does not apply to an underground facility to convey water.

c. When an operator cannot establish the exact location of the underground facility to convey water, the operator shall mark the location as accurately as possible and the excavator may proceed with caution. When excavation operations approach the estimated location of the underground facility to convey water, the exact location of the facility must be determined by safe and acceptable means. The uncovered facility must be supported and protected to prevent damage.

d. Markers used to designate the approximate location of underground facilities must follow the current color code standard used by the American public works association.

e. If the operator cannot complete marking of the excavation area before the excavation commencement time stated in the excavation notice, the operator shall promptly contact the excavator.

f. After facilities are located by an operator, an excavator shall notify the notification center if:

(1) The excavator postpones the excavation commencement time stated in the excavation notice by more than forty-eight hours, or any extension of that period, or cancels the excavation;

(2) The markings have been obliterated or obscured;

(3) Weather conditions have impeded visibility of the markings;

(4) The site shows evidence of recent excavation; or

(5) The excavator has other reason to believe the markings are incorrect or missing.

g. An excavator may not use a location more than ten days, or any extension of that period, after the planned excavation date unless the excavator has made previous arrangements with the operators affected.

h. If in the course of excavation the excavator is unable to locate the underground facility or discovers that the operator of the underground facility has incorrectly located the underground facility, the excavator shall promptly notify the operator or, if unknown, the one-call notification center.

i. A facility owner, excavator, or other person may not present or presume that an underground facility is abandoned, or treat an underground facility as abandoned, unless the facility has been verified as abandoned by reference to installation records or by testing. The notification center shall establish a method of providing personnel from a facility owner qualified to safely inspect and verify whether a facility is abandoned or inactive if necessary. An inactive facility must be considered active for purposes

NUSTAR PIPELINE OPERATING PARTNERSHIP L.P.
ONE CALL EXCAVATOR COMPLAINT

ALLEGATION OF PROBABLE VIOLATION (S) OF ONE CALL LAWS

COMPLAINT FILED WITH:	NORTH DAKOTA PUBLIC SERVICE COMMISSION	STATE:	ND
ATTENTION:	AL MOCH	DATE:	04/30/09

I. ACTION REQUESTED BY: NUSTAR PIPELINE OPERATING PARTNERSHIP LP

PERSON FILING COMPLAINT: DONNA PATRICK EMAIL ADDRESS: donna.patrick@nustarenergy.com
ADDRESS: 7340 WEST 21ST ST. N., SUITE 200, WICHITA, KS. 67205
PHONE NUMBER: 316-721-7073 FAX NUMBER: 316-773-9020

II. ACTION REQUESTED AGAINST: RILEY BROTHERS CONSTRUCTION

CONTACT PERSON:	DARLENE HENNEN	PHONE NUMBER:	320-589-2500
ADDRESS:	MAILING ADDRESS: PO BOX 535 MORRIS, MN 56267	CELL NUMBER:	
		FAX NUMBER:	320-589-2545

WAS A ONE-CALL TICKET REQUESTED? YES: **TICKET WAS MADE AFTER THE DISCOVERY OF EXCAVATOR DIGGING.**

LOCATE TICKET #: 9010220 START DATE ON TICKET: 04/30/09

DID EXCAVATOR WAIT UNTIL THE START DATE/TIME ON THE TICKET BEFORE COMMENCING WITH THE EXCAVATION? YES: NO:

III. DAMAGE (IF ANY): PIPELINE DAMAGED

FATALITIES: NO INJURIES: NO LENGTH OF HOSPITALIZATION: NA

ESTIMATED PROPERTY DAMAGE: NONE DAMAGED IN: PUBLIC: NO

PRIVATE (RIGHT-OF-WAY) NO

ARE PHOTOS OF THE DAMAGED FACILITY AVAILABLE? NO: **ADDITIONAL INFORMATION:**

OUR LOCATOR JEFF PFIEFER REPORTED THAT HE WAS ON HIS WAY TO A LOCATE REQUEST IN WEST FARGO ON 4-28-09 THE TIME WAS APPROX. 10:30AM WHEN HE NOTICED EXCAVATING ACTIVITY OVER OUR 10' PIPELINE ON THE 9TH STREET OVERPASS PROJECT. JEFF APPROACHED THE DOZER OPERATOR AND ASKED HIM IF HE HAD A GENERATED ONE CALL TICKET FOR THE DIRT WORK HE WAS DOING BUT THE OPERATOR WAS UNSURE. JEFF ASKED HIM NOT TO EXCAVATE ANY MORE DIRT AT THIS LOCATION AND JEFF PROCEEDED TO HOOK UP HIS LOCATOR TO DETERMINE THE EXACT LOCATION OF OUR PIPELINE AND CHECK THE DEPTH. THE FOREMAN'S NAME, HE BELIEVES, WAS DANA, HE APPROACHED JEFF AND JEFF QUIZZED HIM ON THE FACT THAT HE HAD NOT SEEN A TICKET GENERATED FOR THE WORK THAT WAS BEING PERFORMED, THE FORMAN STATED THAT HE KNEW WHERE THE LINE WAS, HE THEN DETERMINED THAT HE SHOULD CALL AND UPDATE THE TICKET THAT WAS GENERATED LAST YEAR. JEFF INFORMED HIM OF THE LAWS

NUSTAR PIPELINE OPERATING PARTNERSHIP LP
ONE CALL EXCAVATOR COMPLAINT

ALLEGATION OF PROBABLE VIOLATION (S) OF ONE CALL LAWS

IV. PROBABLE VIOLATION:

SPECIFIC STATUTE (S) OR RULE (S) THAT WAS VIOLATED:

VIOLATION OF SECTION 49-23-04, please refer to the attachment NORTH DAKOTA LEGISLATIONS

ADDRESS/LOCATION OF PROBABLE VIOLATION:

CITY: WEST FARGO CITY

STATE: NORTH DAKOTA

COUNTY: CASS

LEGALS: Twp: 139N – Rng-49N Sect/Qtr -16, 17, 20, 21

ADDRESS: 9TH ST.

REMARKS:

NEAREST INTERSECTION 19TH ST.

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

YES: NO:

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

DANA NELSON

BY WHAT NUSTAR REPRESENTATIVE:

JEFF PFEIFER

DESCRIPTION OF PROBABLE VIOLATION: