

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

Public Service Commission  
Pro Pipe Corporation  
Damage Prevention Enforcement

Case No. GS-12-57

AFFIDAVIT OF SERVICE BY CERTIFIED MAIL

STATE OF NORTH DAKOTA  
COUNTY OF BURLEIGH

Cara DeSaye deposes and says that:

she is over the age of 18 years and not a party to this action and, on the 1<sup>st</sup> day of **June, 2012**, she deposited in the United States Mail, at Bismarck, North Dakota, **one** envelope with certified postage, return receipt requested, fully prepaid, securely sealed, containing a photocopy of:

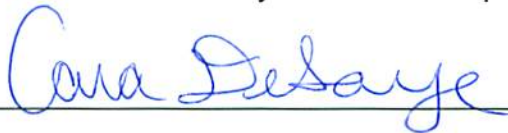
**Consent Order**

The envelope was addressed as follows:

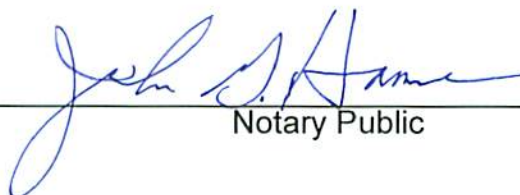
Ron Marsh  
Pro Pipe Corporation  
PO Box 307  
Frenchtown MT 59834-0307

**Certified No. 7011 2000 0002 0363 3141**

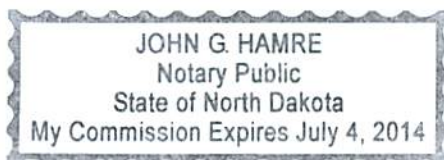
The address shown is the respective addressee's last reasonably ascertainable post office address.

  
\_\_\_\_\_

Subscribed and sworn to before me  
this 1<sup>st</sup> day of **June, 2012**

  
\_\_\_\_\_  
Notary Public

SEAL



**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Public Service Commission  
Pro Pipe Corporation  
Damage Prevention Enforcement**

**Case No. GS-12-57**

**CONSENT ORDER**

The North Dakota Public Service Commission (Commission) has determined as follows:

1. Pro Pipe Corporation (Pro Pipe) is a North Dakota corporation with principal offices at PO Box 307, Frenchtown, MT 59834-0307.
2. Belle Fourche Pipeline Company (Belle Fourche) is a Wyoming corporation with principle offices at 455 N Poplar PO Box 2360, Casper, WY 82602-2360.
3. On January 30, 2012, the Commission received a Third Party Damage Complaint from Belle Fourche. The complaint alleged a violation by Pro Pipe of North Dakota Century Code Chapter 49-23.
4. North Dakota Public Service Commission Staff (Staff) conducted an investigation including communication with Pro Pipe, Belle Fourche, and North Dakota One Call (One Call).
5. Based on its investigation, Staff determined that on October 12, 2011 Pro Pipe called for a locate ticket for work to begin on October 14, 2011 for the purpose of pipeline trenching in McKenzie County, North Dakota, TWN 151N, R101W, Section 7 and 18, ticket number 11131708.

6. Staff also determined that on December 6, 2011 Pro Pipe personnel began an excavation as defined under North Dakota Century Code section 49-23-01(7) to install a crude oil pipeline in McKenzie County, North Dakota, TWN 151N, R101W, Section 7 and 18.

7. North Dakota Century Code § 49-23-04(1) states:

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.

8. North Dakota Century Code § 49-23-04(3) states:

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 had made previous arrangements with the operators affected.

9. North Dakota Century Code section 28-32-22 states:

Unless otherwise prohibited by specific statute or rule, informal disposition may be made of any adjudicative proceeding, or any part or issue thereof, by stipulation, settlement, waiver of hearing, consent order, default, alternative dispute resolution, or other informal disposition, subject to agency approval. Any administrative agency may adopt rules of practice or procedure for informal disposition if such rules do not substantially prejudice the rights of any party. Such rules may establish procedures for converting an administrative matter from one type of proceeding to another type of proceeding.

10. North Dakota Administrative Code section 69-02-04-05 states:

In any proceeding in which the commission is authorized to act after opportunity for hearing, opportunity is afforded by service of notice fixing a reasonable period of time within which any person desiring to

be heard may file a protest or request for a hearing. If a protest or request for hearing is not filed within the time provided, the commission may dispose of the matter on the basis of the pleadings, other submittals, and the studies and recommendations of the staff. A party not requesting oral hearing in the party's pleading is deemed to have waived a hearing for the purpose of the decision, but not for the purpose of applying for rehearing with respect to the decision. If a person requests a hearing but does not show good cause, the commission may determine the matter without a hearing.

11. Based on its investigation, Staff concluded that Pro Pipe personnel was operating under an expired One Call ticket and therefore did not provide an excavation or location notice as required by state law.

12. Based on its investigation, Staff determined that Pro Pipe did not notify Belle Fourche of the excavation and, therefore, there could have been no agreement between Pro Pipe and Belle Fourche under North Dakota Century Code Section 49-23-04(1) prior to excavation that would relieve Pro Pipe of its obligation to provide excavation notice at least forty-eight hours before the excavation.

13. Staff concluded that the excavation was not being made in a time of emergency under North Dakota Century Code Section 49-23-04(4), allowing the excavator to give notification after the start of the excavation.

14. Pro Pipe violated North Dakota Century Code Section 49-23-04 by failing to contact the notification center, North Dakota One Call, and provide an excavation or location notice at least forty-eight hours before beginning its excavation.

15. The Commission is authorized by North Dakota Century Code section 49-07-01.1 to impose a fine of up to \$5,000 for violations of the North Dakota One Call law.

16. Pro Pipe acknowledges that at the time of signing the Consent to Entry of

Order, it was aware of or had been advised of its rights to a hearing in this matter, to consult an attorney, to present argument to the Commission, and to appeal from any adverse determination after a hearing, and Respondent Pro Pipe expressly waives those rights.

17. There are no covenants, promises, undertakings, or understanding other than as specifically set forth in this Order.

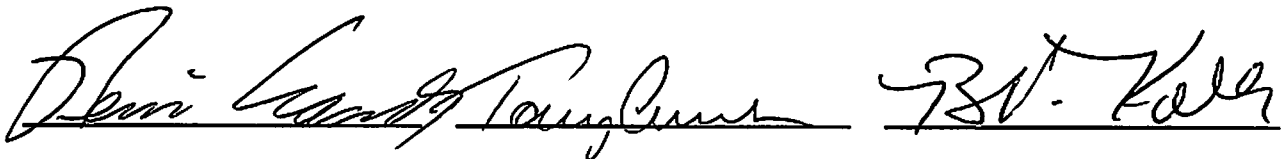
18. For purposes of resolving this matter, without further administrative proceedings, Pro Pipe and the Commission have agreed to enter into the following order.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. Pro Pipe Corporation agrees to pay a fine of \$1000 payable to the North Dakota Public Service Commission within ten business days of the effective date of this Order.

DATED this 30<sup>th</sup> day of MAY, 2012.

**PUBLIC SERVICE COMMISSION**



**Kevin Cramer  
Commissioner**

**Tony Clark  
Chairman**

**Brian P. Kalk  
Commissioner**

**CONSENT TO ENTRY OF ORDER**

The undersigned, on behalf of Pro Pipe Corporation states that he is authorized to act on behalf of Pro Pipe Corporation and bind Pro Pipe Corporation for purposes of this Consent Order, that he has read the foregoing Consent Order, that he knows and

fully understands its content and effect, that he has been advised of the right to a hearing in this matter, the right to be represented by legal counsel, the right to present evidence and arguments to the Commission, and the right to appeal from an adverse determination after hearing; and that by signing this Consent to Entry of Order he waives those rights in their entirety on behalf of Pro Pipe Corporation and consents to entry of this Order by the North Dakota Public Service Commission. It is further expressly understood that this Order constitutes the entire settlement agreement between the parties, there being no other promises or agreements, either express or implied.

DATED this 4<sup>th</sup> day of May, 2012.

Pro Pipe Corporation

By Ronald Mark

Its President  
{TITLE}