

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



**Public Service Commission**  
**Robert Gibb & Sons, Inc.**  
**Damage Prevention Enforcement**

**Case No. GS-13-613**

**CONSENT ORDER**

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

1. Robert Gibb & Sons, Inc. (Gibb & Sons) is a North Dakota corporation with principal offices at 204 40<sup>th</sup> St SW in Fargo, ND 58106-0188.
2. Cenex Pipeline, LLC (Cenex) is a North Dakota Limited Liability Company with principle offices at 803 Highway 212 South, Laurel, MT 59044.
3. On July 11, 2013, the Commission received a Third Party Damage Complaint from Cenex. The complaint alleged a violation by Gibb & Sons of North Dakota Century Code Chapter 49-23.
4. North Dakota Public Service Commission Staff (Staff) conducted an investigation including communication with Gibb & Sons, Cenex, and North Dakota One Call (One Call).
5. Based on its investigation, Staff determined that on July 9, 2013, Gibb & Sons personnel began an excavation as defined under North Dakota Century Code section 49-23-01(7) to install a water line at 25<sup>th</sup> Street and 139<sup>th</sup> Ave, (N 47.78260 W 103.56694) near the city of Arnegard, in McKenzie County, in North Dakota.

6. 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.

7. North Dakota Century Code §49-23-04 (3) g. 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 has made previous arrangements with the operators affected.

8. North Dakota Century Code §49-23-06 (2) a. states:

If an excavator fails to comply with this chapter or damages an underground facility, the excavator is liable for all damages caused by the failure to comply with this chapter and for all damages to the facilities and must reimburse the operator for the cost of repair and restoration, loss of product, and interruption of service occurring because of the damage or injury to the facilities, together with reasonable costs and expenses of suit, including reasonable attorney's fees.

9. North Dakota Century Code §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 §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 Gibb & Sons personnel did not provide an excavation or location notice as required by state law at least forty-eight hours before the excavation.

12. Based on its investigation, Staff concluded that damage to an 8 inch refined fuels interstate transmission pipeline occurred at the excavation location. The estimated amount of damages is \$575,000.00 and no payment has been received by Cenex Pipeline, LLC.

13. Based on its investigation, Staff concluded that Gibb & Sons did not notify Cenex of the excavation and, therefore, there could have been no agreement between Gibb & Sons and Cenex under North Dakota Century Code §49-23-04(1) prior to excavation that would relieve Gibb & Sons of its obligation to provide excavation notice at least forty-eight hours before the excavation.

14. Based on its investigation, Staff concluded that the excavation was not being made in a time of emergency under North Dakota Century Code §49-23-04(4), therefore Gibb & Sons would not be relieved of its obligation to provide excavation notice at least forty-eight hours before the excavation.

15. Based on its investigation, Staff concluded that Gibb & Sons violated North Dakota Century Code §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.

16. The Commission finds that Robert Gibb & Sons, Inc. violated North Dakota Century Code §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 excavation.

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

18. Gibb & Sons 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 Gibb & Sons expressly waives those rights.

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

20. For purposes of resolving this matter, without further administrative proceedings, Gibb & Sons and the Commission have agreed to enter into the following order.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. Robert Gibb & Sons, Inc. 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 \_\_\_ day of \_\_\_\_\_, 2013.

**PUBLIC SERVICE COMMISSION**

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**Randy Christmann**  
**Commissioner**

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**Brian Kalk**  
**Chairman**

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**Julie Fedorchak**  
**Commissioner**

CONSENT TO ENTRY OF ORDER

The undersigned, on behalf of Robert Gibb & Sons, Inc. states that he is authorized to act on behalf of Robert Gibb & Sons, Inc. and bind Robert Gibb & Sons, Inc. 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 Robert Gibb & Sons, Inc. 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 1 day of November, 2013.

Robert Gibb & Sons, Inc.

By 

Its VP

{TITLE}

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**Commissioner**

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**Commissioner**

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DATED this 1 day of November, 2013.

Robert Gibb & Sons, Inc.

By 

Its 

{TITLE}