



Public Service Commission

State of North Dakota

COMMISSIONERS

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August 14, 2014

Ron Guier
On Grade Excavation LLC
2050 Texas Ridge Road
Dreary, ID 83823-9614

Dear Mr. Guier:

Enclosed is a copy of a Third Party Damage Complaint (Complaint) against On Grade Excavation LLC, received by the North Dakota Public Service Commission (Commission) on July 31, 2014, from Diane Schell, Auditor at the City of Underwood, North Dakota. The location identified in the complaint is 914 Marion Dr., Underwood, ND, 58576.

Please respond to Darrell Nitschke, Executive Secretary, North Dakota Public Service Commission, by **August 28, 2014**, with your written account of the event, including the applicable One Call locate ticket number(s) for work performed at the address indicated. Your response, the complaint, and other available information will be reviewed to determine whether Commission staff will file a formal complaint.

Your response should also address the following criteria used to determine the amount of civil penalty, if any, to be recommended by Commission staff as part of a formal complaint:

- a) The nature, circumstances, and severity of the complaint;
- b) The degree of suspected fault on the part of On Grade Excavation LLC;
- c) On Grade Excavation LLC's history of prior violations or complaints;
- d) On Grade Excavation LLC's ability to pay;
- e) Any good faith effort by On Grade Excavation LLC, in attempting to achieve compliance; and
- f) The effect the penalty may have on On Grade Excavation LLC's ability to continue in business.

North Dakota Century Code section 49-07-01.1 provides for a civil penalty not to exceed twenty-five thousand dollars for each violation of the One Call law.

Please contact me at 701-328-4188 or at jprescott@nd.gov with any questions regarding this correspondence.

Sincerely,

Julie Prescott
Compliance and Competitive Markets Division

Enc: Third Party Damage Complaint
c: Diane Schell, City of Underwood
Lexar Homes

3 **PU-14-664** Filed: 8/14/2014 Pages: 3
Revised letter enclosing North Dakota one call
complaint



ND ONE-CALL COMPLAINT

Public Service Commission

SFN 59067 (1-14)

To allege a violation of the One-Call Excavation Notice System Law: North Dakota Century Code Chapter 49-23

PART A – WHO IS SUBMITTING THIS COMPLAINT (COMPLAINANT)

Company/Person City of Underwood	Street Address PO Box 168	City Underwood	State and Zip Code ND, 58576-0168
Telephone and Cell Phone Number 701-442-5481	Email Address cityunder@westriv.com		Date 7/30/14
<input type="checkbox"/> Complainant is willing and able to testify on the complaint if matter goes to formal hearing			

PART B – WHO VIOLATED THE ONE-CALL REGULATIONS (RESPONDENT)

Company/Person Lexar Homes and On Grade Excavation	Street Address 740 Kirkwood Mall	City Bismarck	State and Zip Code ND, 58504
Telephone and Cell Phone Number 701-255-3519 701-202-4445	Email Address esundby@LexarHomes.com		

PART C – ALLEGED VIOLATION

<input type="checkbox"/> Operator failed to provide or update the information provided to the notification center on a timely basis <input checked="" type="checkbox"/> Excavator failed to provide excavation or location notice at least 48 hours before beginning any excavation <input type="checkbox"/> Excavator failed to provide required information in excavation or location notice <input type="checkbox"/> Notification center failed to transmit the notice to every operator that has an underground facility in the area of the excavation <input type="checkbox"/> Notification center failed to inform the excavator of the names of operators of underground facilities in the area <input type="checkbox"/> Operator failed to locate and mark underground facility within 48 hours <input type="checkbox"/> Excavation started prior to underground facility locate <input type="checkbox"/> Operator failed to mark underground facility within 24 inches horizontally <input type="checkbox"/> Excavator failed to renew excavation or location request prior to the expiration of the twenty-one-day period <input type="checkbox"/> Excavator failed to conduct the excavation in a careful and prudent manner to avoid damage of underground facilities <input type="checkbox"/> Excavator failed to maintain the markings during excavation <input type="checkbox"/> Other (identify the specific section of NDCC Chapter 49-23) _____
Location of Violation: 914 Marion Dr., Underwood, ND
Date and Time of Violation: April, 2013
Description (summarize the observations on which you rely to allege the violation) <i>If more space is required, please provide the description on a separate page.</i> Lexar Homes' subcontractor, On Grade Excavation, dug a basement at the above address in late April-early May, 2013 without notifying ND One Call or the City of Underwood. The City Superintendent spoke to the contractor who said they never call for locates on a basement/foundation. They were told that they MUST call for locates. The subcontractor did call for locates to dig in the utilities on May 30, 2013. Today, Lexar Homes and their subcontractor, On Grade Excavating, again tried to start digging foundations for a new home. The City Auditor, Diane Schell, had notified the property owner, Justin Adolf, yesterday afternoon that the City Office had not received notification that the contractor had called for locates. Adolf called the contractor and told him that they had to call for locates. Both Lexar Homes and On Grade Excavating stated that they never call for locates when digging a basement or foundation, only for digging

PART D – DAMAGE

Fatalities	Injuries	In-patient Hospitalization
Underground facility type(s) and Operator(s) affected:		
Estimated Value of Damage (damage as defined under NDCC Chapter 49-23): \$		Number of Customers Affected
Other impact of event:		
Please attach photos of Event Area or Damaged Facility		

PART I – SIGNATURE

Signature of Person Filing Complaint 	Date July 30, 2014
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Send Completed, Original Complaint To:
Public Service Commission
600 E Boulevard Ave Dept 408
Bismarck ND 58505-0480
Telephone: (701) 328-2400

Part C – Alleged Violation: (continued)

in utilities. Lexar Homes stated that they build homes all over Bismarck and other places and never call for locates until digging in the utilities. They said it was industry standard that the excavator doesn't call for basements/foundations. The City Auditor told both the contractor and Lexar Homes representatives that it was ND law that you MUST call for locates on any digging. The City Auditor called ND One Call representative, Ryan Schmaltz, who said he has no authority to fine companies, and that we should make a formal complaint with the ND Public Service Commission. The City Auditor mentioned to Lexar Homes representatives and On Grade Excavators that the Public Service Commission would be notified. On Grade Excavation then stated that they had called into ND One Call at 10 am and would be waiting to dig until after the utilities were able to complete their locates.

The City of Underwood was able to stop any digging this morning until locates can be made, but Lexar Homes and On Grade Excavating should be made aware of NDCC Chapter 49-23.