

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Cass County Soil Conservation District
Damage Prevention Enforcement

Case No. PU-18-161

AFFIDAVIT OF SERVICE BY CERTIFIED AND REGULAR MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Geralyn R. Schmaltz deposes and says that:

she is over the age of 18 years and not a party to this action and on the **10th day of July 2018**, she deposited in the United States Mail, Bismarck, North Dakota, **one** envelope with certified postage, return receipt requested, fully prepaid, securely sealed and containing a photocopy of:

- **Order on Consent Agreement**

The envelope was addressed as follows:

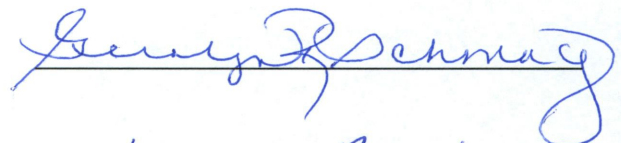
Troy Peterson, District Technician
Cass County Soil Conservation
1665 43rd Street S
Fargo, ND 58103-3319
Cert. No. 7017 2400 0001 0889 9017

Geralyn R. Schmaltz further deposes and says that on the **10th day of July 2018**, she deposited in the United States Mail, Bismarck, North Dakota, **one** envelope by regular mail, with postage fully prepaid, securely sealed, each containing a photocopy of the same.

Tina Beach - CHS, Inc.
803 Highway 212 S
Laurel, MT 59044

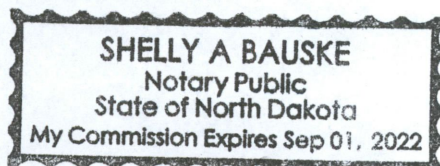
The addresses shown are the respective addressee's last reasonably ascertainable post office and electronic mail addresses.

Subscribed and sworn to before me
this **10th day of July 2018**.



Notary Public

SEAL



**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Public Service Commission
Cass County Soil Conservation District
Damage Prevention Enforcement**

Case No. PU-18-161

ORDER ON CONSENT AGREEMENT

July 9, 2018

Preliminary Statement

On May 18, 2018, the Commission received a ND One-Call Complaint from CHS Inc. (Complainant) alleging a violation by Cass County Soil Conservation District (CCSCD) of North Dakota Century Code chapter 49-23: One-Call Excavation Notice System.

On May 22, 2018, the Commission sent a letter to CCSCD enclosing the ND One-Call Complaint.

On June 25, 2018, the Public Service Commission Advocacy Staff (Advocacy Staff) and CCSCD filed a Consent Agreement for the resolution of the complaint.

Discussion

Cass County Soil Conservation District is a subdivision of the State of North Dakota with office(s) located at 1665 43rd St S, Fargo, North Dakota 58103.

Complainant alleges violations by CCSCD of North Dakota Century Code section 49-23-04(1) for failure to contact the notification center and provide an excavation or location notice before beginning an excavation. The Complaint did not identify damage to an underground facility.

North Dakota Century Code section 49-23-04(1) provides that "Except in an emergency, an excavator shall contact the notification center and provide an excavation or location notice before beginning any excavation. An excavation begins the first time excavation occurs in an area that was not previously identified by the excavator in an excavation notice."

As a result of its investigation, Advocacy Staff concluded that CCSCD violated North Dakota Century Code section 49-23-04(1).

CCSCD and Advocacy Staff engaged in good faith settlement discussions resulting in a Consent Agreement intended to avoid further administrative proceedings or litigation.

Under the Consent Agreement, CCSCD agrees to be assessed a civil penalty of \$500, payable to the North Dakota Public Service Commission, within ten business days of service of this Order Adopting Consent Agreement (Order).

Having considered this matter, the Commission finds the Consent Agreement filed on June 25, 2018, is reasonable and acceptable. Therefore, the Commission issues the following:

Order

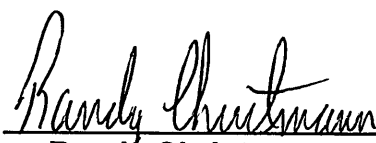
The Commission Orders:

1. CCSCD violated North Dakota Century Code section 49-23-04(1).
2. The Consent Agreement filed by CCSCD and Advocacy Staff on June 25, 2018, is approved. A copy of the Consent Agreement is attached to and made a part of this Order.
3. CCSCD is assessed a civil a penalty of \$500.
4. CCSCD shall remit \$500 civil penalty, payable to the North Dakota Public Service Commission within ten business days of service of this Order.

PUBLIC SERVICE COMMISSION



Brian Kroshus
Commissioner



Randy Christmann
Chairman



Julie Fedorchak
Commissioner

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION,)	
)	
Complainant,)	Case No. PU-18-161
)	
vs.)	
)	CONSENT AGREEMENT.
Cass County Soil Conservation District,)	
)	
Respondent .)	

Preliminary Statement

This Consent Agreement is entered into by and between Cass County Soil Conservation District (CCSCD) and the Public Service Commission Advocacy Staff (Staff) (together, the "Parties") for resolution of Docket No. PU-18-161.

On May 18, 2018, the Commission received a ND One-Call Complaint from CHS, Inc. under Case No. PU-18-161. The complaint alleged a violation by CCSCD of North Dakota Century Code section 49-23-04(1) for failure to contact the notification center and provide an excavation or location notice before beginning an excavation.

North Dakota Century Code section 49-23-04(1) provides that "Except in an emergency, an excavator shall contact the notification center and provide an excavation or location notice before beginning any excavation. An excavation begins the first time excavation occurs in an area that was not previously identified by the excavator in an excavation notice.

Having investigated the alleged violations, Staff has concluded that CCSCD violated North Dakota Century Code section 49-23-04(1). —

CCSCD and Staff engaged in good faith settlement discussions resulting in this Consent Agreement. Having agreed that settlement of this proceeding will avoid further administrative proceedings or litigation and that entry of this Consent Agreement is the most appropriate means of resolving this administrative action, Staff and CCSCD agree to the following, subject to the approval and acceptance of the Commission:

1. CCSCD violated North Dakota Century Code section 49-23-04(1) in Case No. PU-18-161 by failing to contact the notification center and provide an excavation or location notice before beginning an excavation.
2. CCSCD agrees to be assessed a civil penalty of \$500, payable to the North Dakota Public Service Commission within ten business days of service of an Order Adopting Consent Agreement (Order)
3. CCSCD consents to the filing of the Consent Agreement and an Order and hereby waives any further procedural requirements with respect to its issuance. Subject to the Order, CCSCD understands and agrees to waive all rights to contest the violations, the right to be represented by counsel, the right to present evidence and arguments to the Commission, the right to cross examine witnesses, or contest the validity of this Consent Agreement and Order Adopting this Consent Agreement, including all rights to administrative or judicial hearings or appeals.
4. There are no covenants, promises, undertakings, or understandings other than specifically set forth in this Agreement and Order.
5. This agreement may be executed in counterparts and duplicate copies, each which shall be deemed to be an original, and which, when taken together, shall

constitute one and the same instrument.

6. The undersigned is authorized to act on behalf of CCSCD and bind CCSCD for purposes of this Consent Agreement, and knows and fully understands the content and effect.

Dated this 25th day of June, 2018

PUBLIC SERVICE COMMISSION
ADVOCACY STAFF – DAMAGE PREVENTION

By: 

John M. Schuh
Advocacy Counsel
12th Floor, Dept. 408
600 Boulevard Ave.
Bismarck, ND 58505-0480

Dated this 20th day of June, 2018

Cass County Soil Conservation District

By: 