



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.

North Dakota Century Code (N.D.C.C.) 49-07-01.1 provides:

Any person who violates any statute, commission order, or commission rule which applies to matters within the authority of the commission under chapters 8-08, 8-09, 8-10, 24-09, 32-25, and 51-05.1, titles 60 and 64, and title 49 except for chapters 49-22 and 49-23, shall, in addition to any other penalty provided, be subject to a civil penalty of not to exceed five thousand dollars. A violation occurring under chapter 49-23, in addition to any other penalty, is subject to a civil penalty not to exceed twenty-five thousand dollars. The commission shall develop policies for the assessment of penalties under chapter 49-23 which will take into consideration the severity of damages and the conduct of the offender. The civil penalty may be compromised by the commission. The amount of the penalty when finally determined or agreed upon in compromise, if not paid, may be recovered in a civil action in the courts of this state.

North Dakota Administrative Code section 69-02-04-05 provides:

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.

### III

On June 5, 2020, the Commission received a ND One-Call Complaint from David Lacy. The complaint alleges a violation by Bohlman of N.D.C.C. 49-23-04(1) of the One-

Call Excavation Notice System by failing to provide an excavation or location notice before beginning any excavation.

#### IV

On June 11, 2020, Commission staff issued a letter informing Bohlman of David Lacy's complaint filing, and requested a response by June 25, 2020, attached as Exhibit 1. During a phone conversation between David Bohlman and staff on June 15, 2021, Bohlman agreed that it did not have a valid locate ticket at the time of its excavation.

#### V

As alleged by David Lacy's complaint, on June 3, 2020, Bohlman personnel provided an excavation notice to the North Dakota One Call Notification Center (NDOC), with work to begin on June 6, 2020. The NDOC assigned locate ticket number 20058357 to the excavation notice, which indicates the work was installation of culvert and water lines at 514 1st Ave NE, Reynolds, ND. The expiration date for the ticket was June 27, 2020.

#### VI

On June 5, 2020, Bohlman began an excavation as defined in NCCC section 49-23-01(7) while performing excavation for installation of a culvert and water lines at the location cited in the excavation notice. No damage resulted from this excavation.

#### VII

Bohlman violated N.D.C.C. 49-23-04(1) by failing to provide an excavation or location notice before beginning any excavation.

## VIII

The Commission Damage Prevention Plan provides:

### **D PROPOSED CIVIL PENALTIES:**

1. The following criteria must be used by Commission staff to determine if a civil penalty should be proposed when filing a formal complaint:
  - a. The nature, circumstances and severity of the complaint;
  - b. The degree of suspected fault on the part of the respondent;
  - c. The respondent's history of prior violations or complaints;
  - d. The respondent's ability to pay;
  - e. Any good faith effort by the respondent in attempting to achieve compliance; and
  - f. The effect the penalty may have on the respondent's ability to continue in business.

## IX

The Respondent must serve an answer to this complaint upon the Complainant and the Commission within twenty days after service of the complaint, or the Commission may deem the complaint to be admitted. Answers must be served in the manner allowed for service under the North Dakota Rules of Civil Procedure.

### **Prayer for Relief**

Based on the foregoing, Staff seeks the following relief:

1. That the Commission find Bohlman Trenching Service, Inc. in violation of N.D.C.C. chapter 49-23 for failing to comply with the One Call requirements enumerated in North Dakota Century Code section 49-23-04(1).
2. That the Commission impose an appropriate civil penalty up to \$25,000, but at least \$500.
3. Such other relief that the Commission finds just and proper.

Dated this 4th day of August 2021.



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