

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
Bohlman Trenching Service, Inc.
Damage Prevention Enforcement**

Case No. PU-20-249

ORDER ON CONSENT AGREEMENT

September 22, 2021

Preliminary Statement

On June 5, 2020, the Commission received a ND One-Call Complaint from David Lacy alleging a violation by Bohlman Trenching Service, Inc. (Bohlman) of North Dakota Century Code (NDCC) chapter 49-23: One-Call Excavation Notice System.

On June 11, 2020, the Commission sent a letter to Bohlman enclosing the June 5, 2020 Complaint, requesting a response by June 25, 2020.

On August 4, 2021, Public Service Commission Advocacy Staff (Advocacy Staff) filed with the Commission a complaint against Bohlman alleging a violation by Bohlman of NDCC chapter 49-23 and seeking relief (Complaint).

On August 9, 2021, a Consent Agreement between Public Service Commission Advocacy Staff and Bohlman was filed for the resolution of the Complaint.

Discussion

Bohlman Trenching Service Inc. is a domestic corporation with a principal address of 1372 7th Ave NE, Thompson, ND 58278.

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.

On June 5, 2020, Bohlman began an excavation as defined in NDCC section 49-23-01(7) while performing culvert and water line installation at 514 1st Ave NE Reynolds, ND. The excavation took place prior to the work to begin date on the ticket. No damage resulted from this excavation.

The Complaint alleges that Bohlman violated NDCC section 49-23-04(1) by failing to provide an excavation or location notice before beginning any excavation.

NDCC section 49-23-04(1) states 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 violation, Advocacy Staff believes that Bohlman violated NDCC section 49-23-04(1).

Bohlman 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, Bohlman agrees to be assessed a civil penalty of \$500, with \$250 suspended on condition that Bohlman commits no further violation of the North Dakota One-Call Law (North Dakota Century Code chapter 49-23) within five years of the date of an Order accepting the Consent Agreement. Bohlman will make \$250 payable to the North Dakota Public Service Commission within ten business days of service of an Order accepting the Consent Agreement.

Having considered this matter, the Commission finds the Consent Agreement is reasonable and acceptable. Therefore, the Commission issues the following:

Order

The Commission Orders:

1. The Consent Agreement between Bohlman and Advocacy Staff, filed with the Commission on August 9, 2021, is approved. A copy of the Consent Agreement is attached to and made a part of this Order on Consent Agreement (Order).
2. Bohlman is assessed a civil penalty of \$500.
3. Bohlman shall remit \$250.00 civil penalty, payable to the North Dakota Public Service Commission, within ten business days of service of this Order. The remaining \$250.00 civil penalty is suspended on condition that Bohlman commit no further violation of North Dakota Century Code chapter 49-23 within five years of the date of this Order.

4. In the event the Commission finds Bohlman violated North Dakota One-Call Law within five years of the date of this Order, Bohlman shall remit the suspended portion of the penalty, \$250.00, within the time ordered by the Commission and remit any additional fines or penalties imposed for subsequent violation.

PUBLIC SERVICE COMMISSION



Randy Christmann
Commissioner



Julie Fedorchak
Chair



Brian Kroshus
Commissioner

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.

On June 5, 2020, Bohlman began an excavation as defined in NDCC section 49-23-01(7) while performing culvert and water line installation at the location cited in the excavation notice. This excavation took place prior to the work to begin date on the ticket. No damage resulted from this excavation.

NDCC section 49-23-04(1) states 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 violation, Staff believes that Bohlman violated NDCC section 49-23-04(1).

Bohlman 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 Bohlman agree to the following, subject to the approval and acceptance of the Commission:

1. Bohlman violated NDCC section 49-23-04(1) by failing to provide an excavation or location notice before beginning any excavation.
2. Bohlman agrees to be assessed a civil penalty of \$500. Bohlman agrees to remit \$250 of the \$500, payable to the North Dakota Public Service Commission within

ten business days of service of an Order accepting or approving the Consent Agreement (Order). The remaining \$250 civil penalty is suspended on the condition that Bohlman commits no further violation of NDCC section 49-23 within five years of the date of the Order

3. In the event the Commission finds Bohlman violated the NDCC section 49-23 within five years of the date of the Order, Bohlman shall remit the suspended portion of the penalty, within the time ordered by the Commission, in addition to any additional fines or penalties imposed for the subsequent violation.
4. If within five years of the date of the Order there is no subsequent violation of the NDCC section 49-23 by Bohlman, the remaining \$250 penalty is withdrawn.
5. Staff agrees no other proceeding will be initiated and no other remedy or penalty will be sought based on the violation alleged in the Case.
6. Bohlman consents to the filing of the Consent Agreement and an Order and hereby waives any further procedural requirements with respect to the Order's issuance. Provided the Public Service Commission adopts this Consent Agreement and issues an Order consistent with it, Bohlman understands and agrees to waive all rights to contest the violation, 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, including all rights to administrative or judicial hearings or appeals.
7. There are no covenants, promises, undertakings, or understandings other than specifically set forth in this Consent Agreement and Order.

8. 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.
9. The undersigned is authorized to act on behalf of Bohlman and bind Bohlman for purposes of this Consent Agreement and knows and fully understands the content and effect.

Dated this 9th day of August, 2021


PUBLIC SERVICE COMMISSION
ADVOCACY STAFF – DAMAGE PREVENTION

By:  _____

Brian Johnson
Special Assistant Attorney General Bar ID 07937
North Dakota Public Service Commission
600 East Boulevard Avenue Dept. 408
Bismarck ND, 58505
701-328-2407

Dated this 31 day of July, 2021

Bohlman Trenching Service, Inc.

By:  _____
Name: David Bohlman