

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Dean's Excavating
Damage Prevention Enforcement

Case No. PU-20-340

AFFIDAVIT OF SERVICE BY CERTIFIED 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 **7th day of October 2021**, she deposited in the United States Mail, at Bismarck, North Dakota, **two** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and containing a photocopy of:

- **Order and Notice of Default**

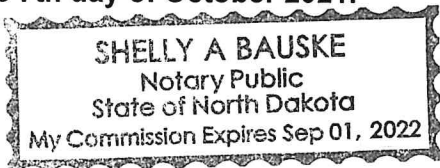
The envelopes were addressed as follows:

Dean Geiger
Dean's Excavating
207 121st Ave SW
Minot, ND 58701
Cert. No. 7020 1290 0000 1334 3782

Ardelle Biewer
Registered Agent for Dean's Excavating
201 121st Ave SW
Minot, ND 58701
Cert. No. 7020 1290 0000 1334 3799

The addresses shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me
this **7th day of October 2021**.



Notary Public

SEAL

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
Dean's Excavating
Damage Prevention Enforcement**

Case No. PU-20-340

ORDER AND NOTICE OF DEFAULT

October 6, 2021

Preliminary Statement

On July 10, 2020, the Commission received a ND One-Call Complaint from Cenex Pipeline, LLC (Cenex) alleging a violation by Dean's Excavating of North Dakota Century Code chapter 49-23: One-Call Excavation Notice System.

On July 10, 2020, Commission Staff sent a letter to Dean's Excavating enclosing the July 10, 2020 ND One-Call Complaint and requested a response by July 24, 2020. No response was received.

On June 16, 2021, Commission Advocacy Staff (Advocacy Staff) filed a Complaint alleging that Dean's Excavating, LLC (Dean's) violated North Dakota Century Code (NDCC) section 49-23-04(1) by failing to provide an excavation or location notice before beginning any excavation.

On July 14, 2021, the Commission found the Complaint stated a prima facie case, and service of the Complaint was initiated on July 15, 2021 and August 17, 2021.

On August 23, 2021, a return receipt was signed by Ardelle Biewer, Registered Agent for Dean's as evidenced by the return receipt on file with the Commission.

On September 15, 2021, Advocacy Staff filed and served a Notice of Motion for Order of Default and a Motion for Order of Default and Memorandum of Law requesting a Commission order declaring Dean's in default.

Discussion and Statement of Grounds for Default

Dean's Excavating, LLC is a domestic corporation with offices located at 207 121st Ave SW, Minot, ND 58701, and a registered agent address of Ardelle Biewer, 201 121st Ave SW, Minot, ND 58701.

As alleged by Cenex's complaint, on June 8, 2020, Dean's began an excavation as defined in NDCC section 49-23-01(7) while performing excavation for a building foundation at latitude 48.145347, longitude -101.157041. There was no evidence of Dean's contacting the North Dakota One Call Notification Center prior to beginning this excavation. No damage resulted from this excavation.

North Dakota Century Code(N.D.C.C.)49-23-04(1) provides:

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.

Dean's violated NDCC 49-23-04(1) by failing to provide an excavation or location notice before beginning any excavation.

The facts before the Commission indicate that Dean's is in default for failing to file an answer within 20 days after service of the Complaint.

Dean's failure to file an answer to the Complaint constitutes grounds for default under North Dakota Century Code Chapter 28-32 and North Dakota Administrative Code Chapter 69-02-02.

The Commission may impose a civil penalty up to \$25,000. In its Motion for Order of Default and Memorandum of Law, Advocacy Staff requests the Commission impose a penalty of at least \$500, and such other relief that the Commission finds just and proper.

This Order and Notice of Default constitutes written Notice of Default and a statement of the grounds for default.

The Commission issues the following:

Order and Notice of Default

The Commission Orders:

1. Dean's Excavating, LLC is in default under North Dakota Century Code Chapter 28-32 and North Dakota Administrative Code Chapter 69-02-02 for failing to file an answer to the Complaint within twenty days after service of the Complaint.
2. Dean's Excavating, LLC is in violation of North Dakota Century Code 49-23-04(1) by failing to provide an excavation or location notice before beginning any excavation.
3. Dean's Excavating, LLC is assessed a civil penalty of \$500.

4. Dean's Excavating, LLC shall remit the \$500 civil penalty, payable to the North Dakota Public Service Commission, within ten business days upon service of this Order and Notice of Default.

5. This Order and Notice of Default constitutes written Notice of Default and a statement of the grounds for default.

6. Under North Dakota Century Code Section 28-32-30(2), Dean's Excavating, LLC has seven days after service of this Order and Notice of Default to file a written motion requesting that the default order be vacated and stating the grounds relied upon. Unless Dean's Excavating, LLC, within seven days after service of this Order and Notice of Default, files a written motion requesting that the default order be vacated and stating the grounds relied upon, this Order and Notice of Default will be the final determination of this matter.

PUBLIC SERVICE COMMISSION



Randy Christmann
Commissioner



Julie Fedorchak
Chair



Brian Kroshus
Commissioner