

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

Public Service Commission
Wagner Construction, Inc.
Damage Prevention Enforcement

Case No. PU-20-423

Public Service Commission,)
Complainant,)
vs.)
Wagner Construction, Inc.,)
Respondent.)

Complaint

The Public Service Commission of North Dakota (Commission), by and through Advocacy Staff (Staff), for its complaint against Wagner Construction, Inc., alleges and shows the following:

I

Wagner Construction, Inc. (Wagner) is a foreign corporation with offices located at 3151 Highway 53, International Falls, MN 56649-8969, and a registered agent address of Corporation Service Company, 1709 N 19th St, Suite 3, Bismarck, ND 58501-2121.

II

Montana-Dakota Utilities Co. (MDU) is a foreign corporation authorized to do business in North Dakota.

III

North Dakota Century Code (NDCC) section 49-23-05 provides:

To avoid damage to and minimize interference with underground facilities in and near the excavation area, a ticket holder shall:

1. Maintain a clearance between an underground facility and the cutting edge or point of any mechanized equipment, considering the known

- limit of control of the cutting edge or point to avoid damage to the facility.
2. Provide support in a manner approved by the operator for underground facilities in and near the construction area, including backfill operations to protect the facilities. Backfill must be of a material equal to or better in both quality and quantity to the existing backfill.
 3. Assume ownership of materials used to mark the facility, use reasonable efforts to maintain markings during excavation, and when possible remove all tangible marking materials used to mark the facility.
 4. Assume the cost of excavation to expose the facility unless otherwise indicated by owner of facility.
 5. Conduct the excavation in a careful and prudent manner.
 6. Properly manage spoil material to prevent shifting or falling material that could damage belowground facilities.

North Dakota Century Code (N.D.C.C.) 28-32-22 provides:

Unless otherwise prohibited by specific statute or rule, informal disposition may be made of any adjudicative proceeding, or any part or issue thereof, by stipulation, settlement, waiver of hearing, consent order, default, 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.

IV

On October 12, 2020, the Commission received a ND One-Call Complaint from Dawn Roness at MDU. The complaint alleges violations by Wagner of NDCC section 49-23-05(5) of the One-Call Excavation Notice System by failing to conduct its excavations in a careful and prudent manner.

V

On October 14, 2020, Commission staff issued a letter informing Wager of MDU's complaint filing, and requested a response by October 28, 2020, attached as Exhibit 1. Wagner's October 28, 2020 response asserted that the line strikes discussed in MDU's complaint were the result of inconsistent burial depths of the underground facilities, and MDU failing to adequately mark the end of an abandoned underground facility versus an active underground facility, attached as Exhibit 2.

VI

As alleged by MDU's complaint, on September 11, 2020, Wagner began an excavation as defined in NCCC section 49-23-01(7) while performing installation of storm sewer at the intersection of 31st Ave SE and 2nd St SW in Minot, ND. Based on its

investigation Staff determined that Wagner personnel provided an excavation notice to the North Dakota One Call Notification Center (NDOC) on August 31, 2020, with work to begin in the area cited in the complaint to begin on September 3, 2020. The NDOC assigned locate ticket number 20122223 to the excavation notice, which indicates the work was being performed to install storm sewer, attached as Exhibit 3. Under NDCC section 49-23-04(6)(g), the expiration date for the locate ticket is September 24, 2020. Wagner's September 11, 2020, excavation in this location resulted in damage to MDU's 4" plastic natural gas main line. MDU alleges the cost to repair this line was approximately \$525.

As alleged by MDU's complaint, on September 14, 2020, Wagner began an excavation as defined in NCCC section 49-23-01(7) while performing installation of storm sewer at 100 31st Ave SE in Minot, ND. Based on its investigation Staff determined that Wagner personnel provided an excavation notice to the NDOC on August 31, 2020, with work to begin in the area cited in the complaint to begin on September 3, 2020. The NDOC assigned locate ticket number 20122223 to the excavation notice, which indicates the work was being performed to install storm sewer, attached as Exhibit 3. Under NDCC section 49-23-04(6)(g), the expiration date for the locate ticket is September 24, 2020. Wagner's September 14, 2020, excavation in this location resulted in damage to MDU's 4" steel natural gas main line. MDU alleges the cost to repair this line was approximately \$10,684.86.

As alleged by MDU's complaint, on September 26, 2020, Wagner began an excavation as defined in NCCC section 49-23-01(7) while performing installation of storm sewer at 5 31st Ave SE in Minot, ND. Based on its investigation Staff determined that

Wagner personnel provided an excavation notice to the NDOC on September 23, 2020, with work to begin in the area cited in the complaint to begin on September 26, 2020. The NDOC assigned locate ticket number 20140113 to the excavation notice, which indicates the work was being performed to install storm sewer, attached as Exhibit 4. Under NDCC section 49-23-04(6)(g), the expiration date for the locate ticket is October 17, 2020. Wagner's September 26, 2020, excavation in this location resulted in damage to MDU's 3/4" plastic natural gas service line. MDU alleges the cost to repair this line was approximately \$772.50.

As alleged by MDU's complaint, on September 29, 2020, Wagner began an excavation as defined in NDCC section 49-23-01(7) while performing installation of storm sewer at 2 31st Ave SE in Minot, ND. Based on its investigation Staff determined that Wagner personnel provided an excavation notice to the NDOC on September 23, 2020, with work to begin in the area cited in the complaint to begin on September 26, 2020. The NDOC assigned locate ticket number 20140113 to the excavation notice, which indicates the work was being performed to install storm sewer, attached as Exhibit 4. Under NDCC section 49-23-04(6)(g), the expiration date for the locate ticket is October 17, 2020. Wagner's September 29, 2020, excavation in this location resulted in damage to MDU's 3/4" plastic natural gas service line. MDU alleges the cost to repair this line was approximately \$647.81.

VII

Wagner violated NDCC section 49-23-05(5) in each of the above four instances by failing to conduct its excavations in a careful and prudent manner.

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 Wagner Construction, Inc. in violation of NDCC section 49-23 for failing to comply with the One Call requirements enumerated in NDCC section 49-23-05(5).
2. That the Commission impose an appropriate civil penalty up to \$25,000, but at least \$13,800.
3. Such other relief that the Commission finds just and proper.

Dated this 3rd day of November, 2021.



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



Public Service Commission
State of North Dakota

COMMISSIONERS

Brian Kroshus
Julie Fedorchak
Randy Christmann

600 East Boulevard, Dept. 408
Bismarck, North Dakota 58505-0480
Web: www.psc.nd.gov
E-mail: ndpsc@nd.gov
Phone: 701-328-2400
ND Toll Free: 1-877-245-6685
Fax: 701-328-2410
TDD: 800-366-6888 or 711

October 14, 2020

Kalan Wagner
Wagner Construction, Inc.
3151 Highway 53
International Falls, MN 56649

Re: ND One-Call Excavation Notice System: North Dakota Century Code Chapter 49-23

Dear Kalan:

Enclosed is a copy of a ND One-Call Complaint, against Wagner Construction, Inc., received by the North Dakota Public Service Commission on October 12, 2020, from Dawn Roness at Montana Dakota Utilities, of Minot, ND, Case Number PU-20-423. The location of the damages identified in the complaint is multiple addresses in Minot, ND.

I am sending you this information so that you are aware of the complaint and may respond with information concerning the complaint. **Please respond to Executive Secretary, North Dakota Public Service Commission, 600 East Boulevard Avenue, Dept 408, Bismarck, ND 58505-0480 by October 28, 2020**, with your written account of the event, including the applicable One Call locate ticket number for work performed at the address indicated.

Your response and the ND One-Call Complaint will be reviewed to determine whether there may be a violation of the One-Call Excavation Notice System law.

If I do not receive a response by the date noted, I will determine whether there was a violation, without your side of the story, based on the facts contained in this complaint. If I conclude a violation did occur I will file a formal complaint against Wagner Construction, Inc. with the Commission, which may result in a penalty up to \$25,000 per violation as approved by the North Dakota Legislative Assembly in 2013 under North Dakota Century Code Section 49-07-01.1.

Please contact me at 701-328-3397 or at vschock@nd.gov with any questions regarding this correspondence.

Sincerely,

Victor Schock
Public Utilities Division
North Dakota Public Service Commission
600 E Boulevard Ave, Dept 408
Bismarck, ND 58505-0480

Enc: ND One-Call Complaint
c: Dawn Roness

2

PU-20-423 Filed: 10/14/2020 Pages: 2
Letter enclosing North Dakota One-Call Complaint



ND ONE-CALL COMPLAINT

Public Service Commission

SFN 59067 (5-17)

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 Montana Dakota Utilities / Dawn Roness	Street Address 1130 20th Ave SW	City Minot	State and Zip Code ND 58701
Telephone and Cell Phone Number 701 857-9902 and 701 720-0879	Email Address dawn.roness@mdu.com		Date 10/12/2020
<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 Wagner Construction / Jesse McIntosh	Street Address 3151 HWY 53	City International Falls	State and Zip Code MN 56649
Telephone and Cell Phone Number 218-240-1462	Email Address unknown		

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 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 checked="" type="checkbox"/> Excavator failed to conduct the excavation in a careful and prudent manner to avoid damage of underground facilities <input checked="" 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: 5 31st Ave SE, 2 31st Ave SE, 100 31st Ave SE, 31st Ave SE & 2nd St
Date and Time of Violation: 9/29/2020, 9/26/2020, 9/14/2020, 9/11/2020
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> Currently for the 2020 construction season, Wagner Construction has been responsible for nine natural gas hit lines in the Minot area. In visiting with them, they have told us that they are implementing more safety practices and reviewing their procedures - only for MDU to be hit a couple of days later. In September alone, they have had four that they are responsible for. I listed the Operator, Jesse McIntosh, as he was on two of the four. At MDU safety is first and foremost - not only for our employees, but also the contractors working around our facilities and our customers. We would hope that by filing this complaint, Wagner Construction will do as they say and join us in having safety as a top priority. This can be achieved by spotting the underground facilities, refreshing the locates and hand digging when close to a facility.

PART D – DAMAGE

Fatalities None	Injuries None	In-patient Hospitalization None
Underground facility type(s) and Operator(s) affected: Natural Gas - Montana Dakota Utilities		
Estimated Value of Damage (damage as defined under NDCC Chapter 49-23): \$ varies - 1,000 - 6,0000	Number of Customers Affected 1 to 4	
Other impact of event: Not only is this an impact on their day - it also pulls MDU away from the scheduled work we have lined up. This impacts other customers that have been waiting for underground work.		
Please attach photos of Event Area or Damaged Facility		

PART I – SIGNATURE

Signature of Person Filing Complaint Dawn Roness	Date 10/12/2020
---	--------------------

Submit

If the "Submit" function is not working properly, please print the completed form and then either **email to** ndpsc@nd.gov, **fax to** 701-328-2410 or **send to** Public Service Commission, 600 E Boulevard Ave Dept 408, Bismarck ND 58505-0480.

Telephone: (701) 328-2400

1 PU-20-423 Filed 10/12/2020 Pages: 1
North Dakota One-Call Complaint
Montana-Dakota Utilities Co.
Dawn Roness



October 28, 2020

Darrell Nitschke, Executive Secretary
North Dakota Public Service Commission
600 East Boulevard, Department 408
Bismarck, ND 58505-0480

RE: ND One Call Excavation Notice System: North Dakota Century Code Chapter 49-23

Dear Mr. Nitschke:

This letter is in response to the One-Call complaint filed by Montana Dakota Utilities, of Minot, ND, Case Number PU-20-423. The locations of the damage identified in the complaint are as follows: 5 31st Ave SE, 2 31st Ave SE, 100 31st Ave SE & 31st Ave SE & 2nd St in Minot, North Dakota.

The complaint Part C alleged violation that Excavator failed to conduct the excavation in a careful and prudent manner to avoid damage to underground facilities is false. Throughout the course of this project Wagner Construction and our crews have done our best to ensure the integrity and safety of all the existing utilities that were present on this project for the North Dakota DOT. Due to the nature of this project in size and the sheer amount of existing utilities within the project area, we knew there would be challenges throughout construction in working around existing utilities.

It is prudent to mention that significant engineering went into the design of this project and relocation of many existing utilities could have been done during the plan review process when utilities companies were provided plans for review. With this in mind, Wagner held a preconstruction utility coordination meeting months prior to any work starting on the project with all affected utilities. There was then also another onsite utility coordination meeting prior to construction beginning where utilities were required to be moved prior to our work starting. This was completed so that Utility providers could adjust and relocate their lines so as to not affect our work. Additionally, three more coordination meetings were held, one per phase of the project. At these meetings we discussed with each utility company what facilities may be in conflict early on. Our superintendent, Jesse McIntosh also walked around at these meetings with our GPS Rover providing actual elevations for pipe and road grades to ensure no issues. These meetings allowed us to get will all providers to discuss phasing that would require additional locating services, oftentimes daily. Several companies provided this request and were onsite daily working with us.

With that said Wagner Construction understands that with our crews digging around utilities, there is always potential to hit and damage an existing utility. Wagner took precautions by hand digging and



exposing utilities as required. Wagner spent much time and resources throughout the course of this project to expose any utility that was marked so that it could be located and protected if it was within in our excavation area. A major challenge that was encountered throughout the project, was the amount of existing utilities and abandoned utilities that were not always clearly identified on the plans. Often times meaning large amounts of time were used to dig around and identify utilities.

Below are pictures and explanations for the utility hits as described in MDU's complaint to the commission:

Utility Hit: 100 31st Ave SE, Minot, ND – September 14th, 2020

After an internal investigation and conversations with onsite personnel. Wagner Construction was excavating and installing Storm Sewer in this phase of construction. Throughout the course of this excavation and pipe installation, at approximately 7:00 PM Wagner hit an unmarked and supposedly abandoned MDU gas main. Throughout construction of pipe installation, Wagner had been given the go ahead to excavate and remove an abandoned in place MDU gas main. As we were removing this pipe we came to an intersection of 31st and an alley way where there was a 2" Gas main marked that the crew had exposed and had dug around the entire time. However when they got to the intersection the 4" abandoned gas main was no longer marked and had connected back into another feed point.

From conversations with the operator Andy Timmer, the metal main line pipe they had been removing turned down the alley, it then crossed the road, where it then transitioned to a cap and poly line. This line was fed from a different point than what was shown. We shut the crew down and notified MDU. It took some time for the MDU crew to figure out where the line was being fed from and ended up having to go down to the intersection of 31st Ave and Broadway at McDonalds to shut off the feed point.

This utility hit was not intentional as we had been notified by MDU that the line was dead and abandoned. Wagner would not have been able to anticipate that this pipe would have been live, considering that we had already removed the majority of this pipe from the trench we were excavating through. Wagner had taken every precaution to protect the utilities that had been marked and exposed them where required for this segment of pipe installation. Although unfortunate, this utility hit was clearly not intentional. Clearly MDU was at fault for this hit as they failed to properly mark a live line and hadn't verified the entire utility was dead.

Utility Hit: 5 31st Ave SE, Minot, ND – September 26th, 2020

After an internal investigation and conversations with the onsite personnel. Wagner Construction was prepping subgrade for placement of Class 5 prior to concrete pavement. The operator Jess Kindred was using a dozer to prep the area in front of the house at 31st and Main St. S when he caught the gas service line for the house with the corner of the dozer blade. Exhibit A shows the approximate location of the gas line hit. Prior to starting work at this location the operator had a laborer dug down and located the

service in the road at the main. They found the service at a depth of approx. 5-6" below the needed level for subgrade prep. However while prepping subgrade they caught the service line at the approximate centerline of where the new concrete curb was to be placed. The service line went from being flat to almost a 90° out of the road into the bank. See photos Exhibit B and Exhibit C. These show that the service line was well above the depth that was needed for the project.



Exhibit A



Exhibit B



Exhibit C

Upon further conversations with the operator and other crew members, it appears that previous discussions were had with MDU explaining that any utilities in this area of the project that were not at the specified grade would need to be lowered due to the contours and elevations of the new road. Jesse McIntosh had asked the MDU worker on site repairing the gas line why the service had not been lowered as previously discussed, to which he was told all utilities in this area had been lowered. This would have been improbable considering that Wagner had just removed the asphalt a few days prior to our work starting.

Wagner Construction took all necessary precautions to locate the gas service line prior to starting their grading work. It was assumed that the service line would have followed the same grade that it was found at when they crew members dug down and located it at the main. There was no way for Wagner to know that the service was going to jump up from the location it was found at below grade. Had this line been relocated to a proper depth prior to our work or had the service line been buried at the same depth across from where it was located at the main, no utility would have been hit.

Utility Hit: 2 31st Ave SE, Minot, ND – September 26th, 2020

After an internal investigation and conversations with the onsite personnel. Wagner Construction was again prepping subgrade for placement of Class 5 prior to concrete pavement. The operator Jess Kindred was using a dozer to prep the area in front of the house on the south side of 31st and Main St. S when he caught the gas service line for the house with the corner of the dozer blade. Exhibit D shows the approximate location of the gas line hit. Prior to starting work at this location the operator had Jesse McIntosh dig down and locate the service in the road at the main. They found the service was again at a depth of approx. 5-6" below the needed level for subgrade prep. However while prepping subgrade they caught the service line at the back of where the new concrete curb was to be placed. Meaning the existing gas service line would have been in the curb and needed to be relocated. The service line went from being flat to almost 45° out of the road into the bank. See photos Exhibit E and Exhibit F. These show that the service line was above the level required for the placement of the new curb and road.

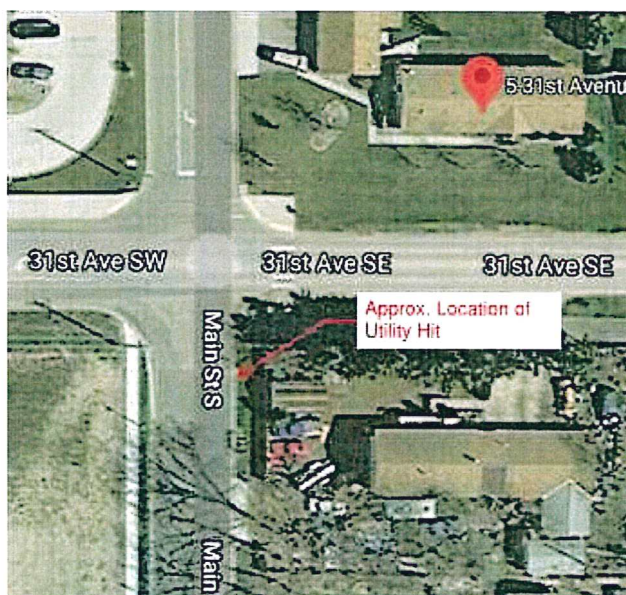


Exhibit D



Exhibit E



Exhibit F

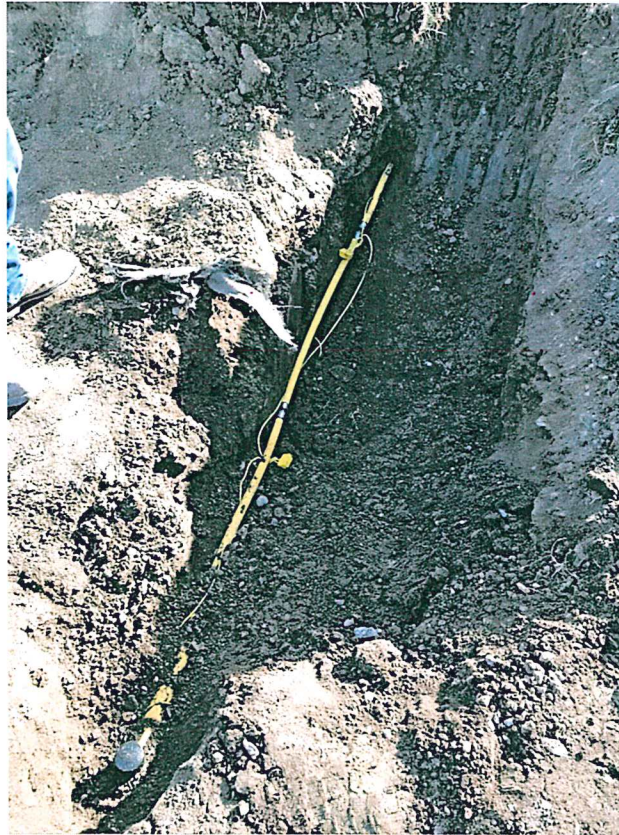


Exhibit G

Exhibit G shows the repaired gas line, MDU had to bring in a rubber tired backhoe to dig the line down to the proper depth.

Wagner Construction took all necessary precautions to locate the gas service line prior to starting their grading work. It was assumed that the service line would have followed the same grade that it was found at when the crew members dug down and located it at the main. There is no reasonable expectation that Wagner would have known that the service was going to jump up from the location it was found at below grade. Had this line been relocated to a proper depth prior to our work or had the service line been buried at the same depth across from where it was located at the main, no utility would have been hit.

The only way for Wagner to have known the true depth and location of these service lines, would have been to have a locator onsite at all times to ensure the marks that were provided for us were accurate and to check service depths. We would like to note that due to the complexity of this project and the amount of existing utilities, that SRT, Inc., provided the project with a representative who worked with Wagner everyday on the project to ensure that utilities were properly marked and if an issue was found in the field, their representative was able to help immediately and trace their utilities. Had MDU been



able to be more readily available for locating requests or provided a locator for the project, many of these minor gas line hits might have been avoidable.

We feel it is also notable to mention the considerable amount of utilities that were abandoned in place on this project. Many times throughout construction we would dig up old utilities, protect them in place only to find out later they were actually dead utilities. There was a considerable amount of resources used on this project by Wagner to dig around and locate utilities that were actually not active. While this is the nature of our work, it would beg the question who is responsible for all the time we have committed to locating old utilities no longer in use.

Therefore the complaint alleging that the Excavator failed to conduct the excavation in a careful and prudent manner to avoid damage to underground facilities is false. Wagner Construction and our crews have always done our best to ensure the integrity and safety of all the existing utilities that are present on our projects. While these gas hits were unfortunate, we feel we have complied with the One-Call Notice System Law as it pertains to acting as a responsible contractor.

In response to complaint Part C alleged violation that the Excavator failed to maintain the markings during the excavations is false. Wagner Construction was up to date on all required locates for the project for the dates that the gas line hits occurred. The applicable locate numbers for the time frames as denoted in the complaint are as follows, September 11-14th gas hits **#20122223** and Sept 26-29th gas hits **#20140114** and **#20140113**. If ever marks were removed due to excavation activities, refreshes were requested as needed.

For the Utility Hit at 100 31st Ave SE, Minot, ND on September 14th, 2020, after conversations with our operator Andy Timmer who hit the line he stated that the existing line we had been excavating was not marked due to it being removed. He stated that the existing 2" line they were digging around to expose and protect had been recently refreshed prior to work in area. The area in which the gas line was struck was not refreshed. It was only after striking the utility that they found one old faint paint mark approx. 10 feet from their excavation. This area of work would have been a part of the refresh that was called in on **#2012223** ticket. Had this area been fully refreshed and had the drawings matched what was supposedly underground, our crew would have been aware that the line may actually still be live, thus avoiding a utility hit.

For the two remaining utility strikes at houses 2 & 5 31st Ave SE, Minot, ND these had been refreshed on 9/23/2020 for work to start on 9/26/2020. No work was completed at this area until 9/26/2020 where the grading crew was prepping the subgrade for placement of Class 5. For the gas hit on 9/26, there was only one mark approximately 5-6' from back of curb with no other marks being present in the road way or on the bank showing where the gas line was prior to work starting. In the picture Exhibit C, below there is only one paint line that denotes where the gas line is located.



Exhibit C

For the gas line hit on 9/29/2020 again there was only one paint mark and flag on the back side of the curb. The marks were still present as no work had been completed in this area until 9/29 and there were no additional paint marks on the roadway or bank marking where the gas line came up at. See Exhibit H below. This was the only mark for MDU in this area. The gas main running in the roadway was never actually marked in the refresh as it ran north back to the intersection of 31st and Main. This photo was taken on 9/28, the day prior to any work commencing in this area of the project.



Exhibit H

These pictures show that the marks that had been provided in the refresh on 9/23/2020 were still present when we started construction meaning that Wagner had continued to maintain the marks that were provided to us prior to any gas hits. While these gas hits are unfortunate, we feel we have complied with the One-Call Notice System Law as it pertains to acting as a responsible contractor and maintaining the marks that were provided to us.

Throughout the course of our investigation into these utility hits and through conversations with not only Jesse McIntosh, Wager's Onsite Superintendent, Jess Kindred, Wagner's Operations Manager, and multiple operators on the project it has become apparent since the beginning of the project that we have continued to have issues with locates and relocates being performed for MDU by their locating service company, ELM. It is our belief that the locator has failed to comply with being a responsible contractor as their duties are to provide accurate and true locates. Many times throughout the project relocates would be submitted only to have the same marks occasionally be touched up with paint and often times no new marks being painted at all. While we don't make these statements lightly, we feel that it is in our best interest for the sake of this complaint to provide further documentation of the failures of the locating service to perform their due diligence for the operator.

We would like to note that Wagner Construction tried several times to reach out to MDU management and request a meeting to discuss the poor markings and discuss ways to help avoid utility hit. To which we did not ever receive a response.

Below are several pictures that I personally took on the afternoon of September 28, 2020, prior to the final gas line being struck by our dozer. In these pictures it show the marks that were provided by ELM, often times there only being one single mark within a 50 to 60 foot area. In pictures Exhibit I and J there is merely 2 flags and 2 paint marks for approximately 100-150 ft. While we were not working in this area these were the only marks that had been refreshed for the 9/23/2020 locates that had been called in. No marks were present in the road way or near the edge of roads we were working in.



Exhibit I



Exhibit J



Exhibit K



Exhibit L



Exhibit M

In pictures Exhibit K and L in the page above, the paint mark and flag shown was approximately 30' feet from our work area and no additional marks were present even though we were digging and preparing subgrade in the roadway. This area was supposedly refreshed with the locate #**20140113**, but this was the only mark provided in this refresh. In Exhibit M Wagner can be seen digging down to locate a gas service that crossed the road, but its actual location was only known because we had worked around it weeks earlier. Although we knew of the gas service location, it does not change the fact that no new marks were present across the road prior to the start of our work in this area.



Exhibit N

In Exhibit N this shows an area just east of the paint mark and flag as seen in Exhibit C, earlier in this report. This shows that there are no additional markings or flags after what was is seen in Exhibit C. This area was supposed to have been remarked prior to our start date of 9/26/2020 according to locate #**20140114** and #**20140113**, but not new marks had been placed.

Following conversations with our equipment operators, many time's paint marks appeared to not be refreshed at all with some saying they estimated the marks they would find being 2 or 3 locates old so that the lines were almost impossible to see. Which would have been the case with the second utility hit



on 9/14, when after the fact the crew found one paint mark 10' away that was so faint they could barely tell it was a paint mark. After talking with several of our crew members that day I decided to walk the majority of the project and often times during my walk I was lucky if I saw one flag and paint mark present for an entire block. We feel this should never have been the case and that ELM was not being a responsible contractor in regards to properly marking MDU's lines.

While it could be argued Wagner should know where all the facilities were located, we had many subcontractors that were working in the area that would not have been around during construction to know where underground utilities were located. If MDU was truly concerned for the safety of their facilities, they would have ensured that their subcontracted locator was marking their facilities properly, which could have prevented many of the gas utility hits on this project.

With that said we understand that every project has its challenges, but we feel had ELM been properly locating all facilities and had MDU had a representative that was readily available to perform locates as needed on site similar to SRT most if not all of the gas hits on this project could have been avoided.

We acknowledge that any utility hit is unfortunate, as it not only brings our work to a stop but also the work of the utility companies involved when they must mobilize to site and make repairs. Our number one priority is the safety of our crews and anyone that lives or works on one of our projects. To be proactive with the safety of our crews we perform weekly toolbox talks. I have attached at the end of this report, Attachment A, which includes several underground utility toolbox meetings that our crews had completed throughout the course of this project.

Wagner is committed to working towards preventing any and all utility hits. With that said, we believe that the statements in the complaint filed by MDU are false and feel we have complied with the One-Call Excavation Notice System Law as it pertains to acting as a responsible contractor.

Sincerely,

A handwritten signature in black ink that reads "Trevor Plasky".

Trevor Plasky
Project Manager/Safety Compliance Officer
Wagner Construction Inc.



Weekly Safety Meetings

Safety Training for the Construction Industry

© 2019 Safety Meeting Outlines, Inc.

Standard
Subscription

A Near Miss is a Big Deal

A near miss is an unplanned event that didn't result in injury, illness, or damage, but easily could have. In a near miss, it's usually just luck or quick reflexes that prevents an injury, fatality, or property damage. We all need to take near misses more seriously.

It's almost certain that you've experienced a near miss. Did you shrug it off, or figure your speed and strength kept you safe? When you ignore a near miss, you're underestimating the risk and exposing others to that same risk in the future.

Consider this situation: A co-worker walks down a job-built ramp. An extension cord is strung across the ramp. As he walks down the ramp, his feet get tangled up in the cord. He begins to fall, but manages to catch himself by grabbing the handrail. He's just missed falling on his face, but he's got work to do so he just walks away. What about the next person walking down that ramp? What about other cords on the jobsite that need to be picked up?

When you talk about near misses, it's natural to say things like: "Nobody got hurt, so it's not a big deal." But it could be a big deal and a big accident if it happens again. By dismissing the incident, you dismiss the opportunity to learn about the problem and prevent an accident. Instead, use the near miss to identify and control a hazard, change a dangerous practice, or fix a bad habit. Unless you examine the near miss and correct the hazard, the incident could happen again, maybe to you, maybe to a friend. It might even lead to a fatality.

How can we improve safety after a near miss?

- Report the near miss to your supervisor, just like you'd report an actual accident. Be prepared to explain what happened and all the steps that led up to the near miss.
- Ask yourself what happened at each step.
- Ask others what they think and what steps they would take to prevent a similar occurrence.
- Take action—don't just walk on by. Correct the hazards and problems you know how to fix. Tell your supervisor about other ones right away.
- Are there behaviors that need to be changed or practices that need to be updated? Do you or your co-workers need a refresher course on a specific safety practice?
- You and your supervisor can probably develop safer work practices, change work habits, and correct unsafe conditions in order to prevent future problems. But you can only do so if you know that an accident almost happened.

Think of a near miss as a warning of what could have happened. A near miss is a big deal. Don't ignore it.

SAFETY REMINDER

Pay attention and work safely. Being aware of your surroundings and making safe choices is the best way to avoid accidents and near misses.

NOTES:

SPECIAL TOPICS /EMPLOYEE SAFETY RECOMMENDATIONS/NOTES:

MEETING DOCUMENTATION:

JOB NAME: Job #4 20101

MEETING DATE: 4/28/2020

SUPERVISOR: Jesse McIntosh

ATTENDEES:

Jesse McIntosh

Jesse McIntosh

Scott Miller

These instructions do not supersede local, state, or federal regulations.



Weekly Safety Meetings

Safety Training for the Construction Industry

© 2019 Safety Meeting Outlines, Inc.

Standard
Subscription

Utility Hazards

Damaging utility lines can be deadly. The damage can also be very disruptive for lots of people. If you've seen reports on the news, you've seen the chaos—homes blown to pieces, deaths from power line contact, water boil notices, interruptions to phone and cell phone service, even disruptions to air travel because communication lines to air traffic control centers were cut.

Cranes, or even forklifts, can make contact with overhead power and communication lines. Excavators strike gas, water, power, communication, and sewer lines. Let's discuss how to work safely around utilities to prevent deaths and disruption.

Before digging in the ground, take a minute to think about what utilities may lie below the surface. Always call 811 before you dig. Once you call 811, the utility company will send a utility locator to scan for any existing lines and mark their locations. This service is free, but you typically have to call at least 48 hours before you dig. Keep in mind that marking companies usually don't locate private utility lines. Make sure you identify private lines too. Don't begin any excavation, no matter how minor it seems, until the site is marked. Once utilities are marked, dig with care when you approach the location of any utility lines. Use hand tools or a vacuum excavation system.

You need to know what the marking colors mean, so you understand the dangers. These are the standard colors used for marking utility lines:

- **Red** is for electrical power lines, cables, conduits, and lighting cables.
- **Yellow** identifies gas, oil, steam, petroleum, and gaseous materials.
- **Orange** is for communication, alarm, and signal lines, cables, and conduit.
- **Blue** identifies drinking water.
- **Green** is for sewer and drain lines.
- **Pink** is for temporary survey markings.
- **Violet** identifies reclaimed water, irrigation, and slurry lines.
- **White** is for the proposed excavation limits and the excavation route.

It's not just the lines under the ground that can hurt you. Look up and watch out for overhead power lines and communication lines. Coming in contact with overhead lines can be deadly. As you work, remember the saying "Look up and live." Keep a minimum distance of 10 feet from power lines; that distance increases with higher voltages in the lines. Don't let any tools or equipment come in contact with any overhead lines. Be aware of all utility hazards on the jobsite.

SAFETY REMINDER

Refer to the American Public Works Association (APWA) Uniform Color Code for Marking Underground Facilities for more information.

NOTES:

SPECIAL TOPICS /EMPLOYEE SAFETY RECOMMENDATIONS/NOTES:

MEETING DOCUMENTATION:

JOB NAME: Job#4 20101

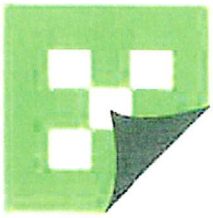
MEETING DATE: 5/12/2020

SUPERVISOR: Jesse McIntosh

ATTENDEES:

Jesse McIntosh
[Signature]
[Signature]

These instructions do not supersede local, state, or federal regulations.



Weekly Safety Meetings

Safety Training for the Construction Industry

© 2019 Safety Meeting Outlines, Inc.

Select Edition

Wagner Construction, Inc.

Utility Hazards: Underground and Overhead

The American Public Works Association (APWA) encourages every industry involved in excavation to adopt their Uniform Color Code when marking underground utilities. The marking guide provides for universal use and understanding of the temporary marking of subsurface utilities to prevent accidents, damage, or service interruption by contractors, excavators, or others working on or near underground utilities. You should become familiar with the APWA Uniform Color Code and learn which utility each color represents:

- **Red:** Electric power lines, cables, conduit, and lighting cables.
- **White:** Proposed excavation.
- **Blue:** Potable water.
- **Yellow:** Gas, oil, steam, petroleum, or gaseous materials.
- **Orange:** Communication, alarm or signal lines, cable television, or conduit.
- **Green:** Sewers and drain lines.
- **Pink:** Temporary survey markings.
- **Purple:** Reclaimed water, irrigation, and slurry lines.

When you dig for small jobs around the house, remember to have underground utilities located before you dig. Whether at home or at work, always plan ahead. Contact the utility locator in advance so they can mark utility lines.

Utilities are also found overhead, so remember to look for power lines above you. Ninety percent of power line accidents occur from contact with wires found on local streets and in neighborhoods. Overhead power lines are not insulated. If your body, tools, or equipment comes into contact with a wire, the results can be deadly. When working near power lines, make sure you maintain at least the minimum distance of 10 feet. Transmission and other high-voltage lines require more clearance. Keep scaffolds, cranes, metal building materials, and ladders away from overhead lines. Aluminum ladders are lightweight, sturdy, and easy to handle, but remember that all metal conducts electricity. Use non-conductive wood or fiberglass ladders when you work near power lines.

.....
SAFETY REMINDER

Even interior work can have utility hazards.

Before you open a wall, make sure you know where electric and gas lines are located.

NOTES:

SPECIAL TOPICS /EMPLOYEE SAFETY RECOMMENDATIONS/NOTES:

MEETING DOCUMENTATION:

JOB NAME: 20101

MEETING DATE: 7/21/2020

SUPERVISOR: Jesse McIntosh

ATTENDEES:

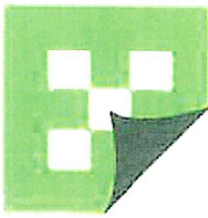
Jesse McIntosh

Chris

Samuel

John

These instructions do not supersede local, state, or federal regulations.



Weekly Safety Meetings Select Edition

Safety Training for the Construction Industry

© 2019 Safety Meeting Outlines, Inc.

Wagner Construction, Inc.

Utility Hazards: Underground and Overhead

The American Public Works Association (APWA) encourages every industry involved in excavation to adopt their Uniform Color Code when marking underground utilities. The marking guide provides for universal use and understanding of the temporary marking of subsurface utilities to prevent accidents, damage, or service interruption by contractors, excavators, or others working on or near underground utilities. You should become familiar with the APWA Uniform Color Code and learn which utility each color represents:

- **Red:** Electric power lines, cables, conduit, and lighting cables.
- **White:** Proposed excavation.
- **Blue:** Potable water.
- **Yellow:** Gas, oil, steam, petroleum, or gaseous materials.
- **Orange:** Communication, alarm or signal lines, cable television, or conduit.
- **Green:** Sewers and drain lines.
- **Pink:** Temporary survey markings.
- **Purple:** Reclaimed water, irrigation, and slurry lines.

When you dig for small jobs around the house, remember to have underground utilities located before you dig. Whether at home or at work, always plan ahead. Contact the utility locator in advance so they can mark utility lines.

Utilities are also found overhead, so remember to look for power lines above you. Ninety percent of power line accidents occur from contact with wires found on local streets and in neighborhoods. Overhead power lines are not insulated. If your body, tools, or equipment comes into contact with a wire, the results can be deadly. When working near power lines, make sure you maintain at least the minimum distance of 10 feet. Transmission and other high-voltage lines require more clearance. Keep scaffolds, cranes, metal building materials, and ladders away from overhead lines. Aluminum ladders are lightweight, sturdy, and easy to handle, but remember that all metal conducts electricity. Use non-conductive wood or fiberglass ladders when you work near power lines.

.....
SAFETY REMINDER

Even interior work can have utility hazards.

Before you open a wall, make sure you know where electric and gas lines are located.

NOTES:

SPECIAL TOPICS /EMPLOYEE SAFETY RECOMMENDATIONS/NOTES:

MEETING DOCUMENTATION:

JOB NAME: 20101

MEETING DATE: 9/22/2020

SUPERVISOR:

ATTENDEES:

[Handwritten signature]

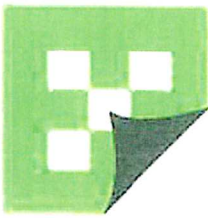
[Handwritten signature]

[Handwritten signature]

[Handwritten signature]

[Handwritten signature]

These instructions do not supersede local, state, or federal regulations.



Weekly Safety Meetings Select Edition

Safety Training for the Construction Industry

© 2019 Safety Meeting Outlines, Inc.

Wagner Construction, Inc.

Utility Hazards: Underground and Overhead

The American Public Works Association (APWA) encourages every industry involved in excavation to adopt their Uniform Color Code when marking underground utilities. The marking guide provides for universal use and understanding of the temporary marking of subsurface utilities to prevent accidents, damage, or service interruption by contractors, excavators, or others working on or near underground utilities. You should become familiar with the APWA Uniform Color Code and learn which utility each color represents:

- **Red:** Electric power lines, cables, conduit, and lighting cables.
- **White:** Proposed excavation.
- **Blue:** Potable water.
- **Yellow:** Gas, oil, steam, petroleum, or gaseous materials.
- **Orange:** Communication, alarm or signal lines, cable television, or conduit.
- **Green:** Sewers and drain lines.
- **Pink:** Temporary survey markings.
- **Purple:** Reclaimed water, irrigation, and slurry lines.

When you dig for small jobs around the house, remember to have underground utilities located before you dig. Whether at home or at work, always plan ahead. Contact the utility locator in advance so they can mark utility lines.

Utilities are also found overhead, so remember to look for power lines above you. Ninety percent of power line accidents occur from contact with wires found on local streets and in neighborhoods. Overhead power lines are not insulated. If your body, tools, or equipment comes into contact with a wire, the results can be deadly. When working near power lines, make sure you maintain at least the minimum distance of 10 feet. Transmission and other high-voltage lines require more clearance. Keep scaffolds, cranes, metal building materials, and ladders away from overhead lines. Aluminum ladders are lightweight, sturdy, and easy to handle, but remember that all metal conducts electricity. Use non-conductive wood or fiberglass ladders when you work near power lines.

.....
SAFETY REMINDER

Even interior work can have utility hazards.

Before you open a wall, make sure you know where electric and gas lines are located.

NOTES:

SPECIAL TOPICS /EMPLOYEE SAFETY RECOMMENDATIONS/NOTES:

MEETING DOCUMENTATION:

JOB NAME: 20101

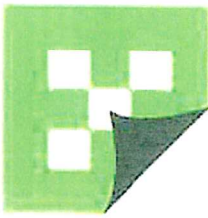
MEETING DATE: 9-23-2020

SUPERVISOR: Will

ATTENDEES:

.....

These instructions do not supersede local, state, or federal regulations.



Weekly Safety Meetings Select Edition

Safety Training for the Construction Industry

© 2019 Safety Meeting Outlines, Inc.

Wagner Construction, Inc.

Utility Hazards: Underground and Overhead

The American Public Works Association (APWA) encourages every industry involved in excavation to adopt their Uniform Color Code when marking underground utilities. The marking guide provides for universal use and understanding of the temporary marking of subsurface utilities to prevent accidents, damage, or service interruption by contractors, excavators, or others working on or near underground utilities. You should become familiar with the APWA Uniform Color Code and learn which utility each color represents:

- **Red:** Electric power lines, cables, conduit, and lighting cables.
- **White:** Proposed excavation.
- **Blue:** Potable water.
- **Yellow:** Gas, oil, steam, petroleum, or gaseous materials.
- **Orange:** Communication, alarm or signal lines, cable television, or conduit.
- **Green:** Sewers and drain lines.
- **Pink:** Temporary survey markings.
- **Purple:** Reclaimed water, irrigation, and slurry lines.

When you dig for small jobs around the house, remember to have underground utilities located before you dig. Whether at home or at work, always plan ahead. Contact the utility locator in advance so they can mark utility lines.

Utilities are also found overhead, so remember to look for power lines above you. Ninety percent of power line accidents occur from contact with wires found on local streets and in neighborhoods. Overhead power lines are not insulated. If your body, tools, or equipment comes into contact with a wire, the results can be deadly. When working near power lines, make sure you maintain at least the minimum distance of 10 feet. Transmission and other high-voltage lines require more clearance. Keep scaffolds, cranes, metal building materials, and ladders away from overhead lines. Aluminum ladders are lightweight, sturdy, and easy to handle, but remember that all metal conducts electricity. Use non-conductive wood or fiberglass ladders when you work near power lines.

.....
SAFETY REMINDER

Even interior work can have utility hazards.
Before you open a wall, make sure you know where electric and gas lines are located.

NOTES:

SPECIAL TOPICS /EMPLOYEE SAFETY RECOMMENDATIONS/NOTES:

MEETING DOCUMENTATION:

JOB NAME: 20101

MEETING DATE: 9/28/2020

SUPERVISOR: Jesse Mcintosh

ATTENDEES:

Kyle Beantone

JW

AW

These instructions do not supersede local, state, or federal regulations.

North Dakota One Call

Ticket No: 20122223
LORQ ROUTINE
Relocated by: 20125055
Original Call Date: 08/31/20 08:50 am
Op: webusr5
Work to Begin Date: 09/03/20 12:01 am
Op: webusr5
Expiration Date: 09/24/20 12:01 am

CALLER INFORMATION

Company Name: WAGNER CONSTRUCTION
Contact Name: BEN DEEDRICK
Phone: 218-240-1361
Alt Contact: MATT GUERTON
Alt. Phone: 218-240-9045
Caller Address: 3151 HWY 53 SUITE 1 INTERNATIONAL FALLS, MN 56649
Email Address: ben@wagnerconstructioninc.com

DIG SITE INFORMATION

Type of Work: INSTALL STORM SEWER
Work Being Done For: CITY OF MINOT
Depth: OVER 10FT
Explosives: N
Tunneling/Boring: N
White Lining/Site Identification: OTHER

DIG SITE LOCATION

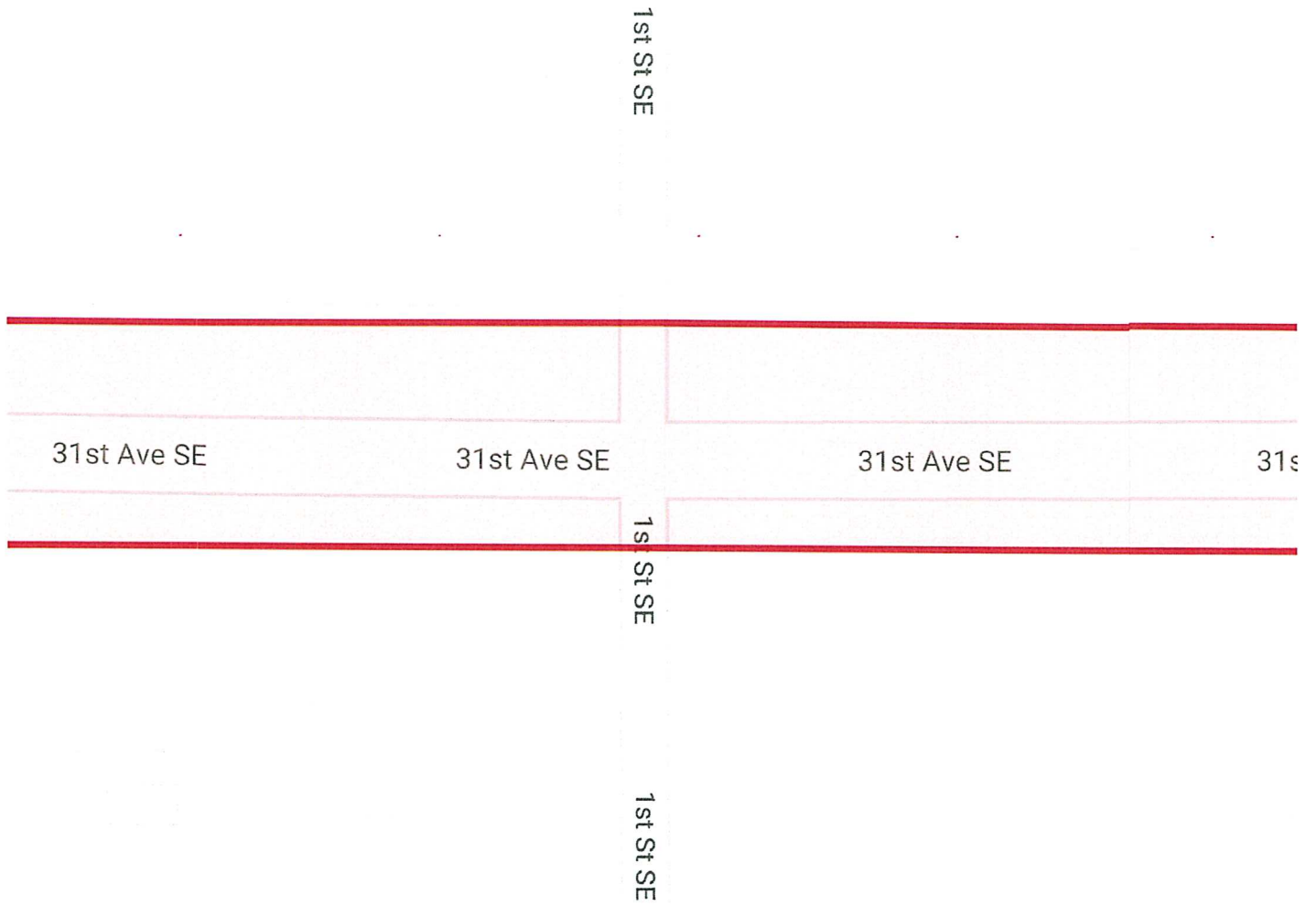
County: WARD
Place: MINOT
City Limits: Y
Address:
Street: 31ST AVE SE
Intersecting Street: MAIN ST S
Location of Work: FROM THE INTERSECTION OF MAIN ST S HEAD E 0 FEET ON 31ST AVE SE TO THE BEGINNING OF THE ROUTE. MARK 40 FEET EITHER SIDE OF THE CENTERLINE OF 31ST AVE SE FOLLOWING THE ROUTE E FOR 659 FEET.
Remarks:
Map Twp: 155N
Rng: 83W
Sect-Qtr: 36-SW
Map Coord NW Lat: 48.2024349
Lon: -101.2934184
SE Lat: 48.2022089
Lon: -101.2903815

MEMBERS NOTIFIED

District	Company Name	Marking Concerns	Status
MDU01	MONTANA DAKOTA UTILITIES CO	406-728-9343	Marked
MIDCON26	MIDCONTINENT CABLE	605-271-0202	Marked
MINOT01	CITY OF MINOT WATER SEWER DEPT	701-857-4140	Marked
MINOT02	CITY OF MINOT LIGHTING SIGNALS	701-857-4100	Marked
NDXCEL01	XCEL ENERGY	800-848-7558	Clear/No conflict
SOURIS01	SOURIS RIVER TELECOMMUNICATION	888-355-2515	Marked
VEREND01	VERENDRYE ELECTRIC COOPERATIVE	888-355-2515	Clear/No conflict

Legend: Locate Polygon

Lat/Lon



10 m

Map data ©2021

North Dakota One Call

Ticket No: 20140113
 LORG RESPOT
Relocate Counter: 3
Update of: 20132730
Relocated by: 20149170
Original Call Date: 09/23/20 06:29 pm
Op: webusr5
Work to Begin Date: 09/26/20 12:01 am
Op: webusr5
Expiration Date: 10/17/20 12:01 am

CALLER INFORMATION

Company Name: WAGNER CONSTRUCTION
Contact Name: BEN DEEDRICK
Phone: 218-240-1361
Alt Contact: MATT GUERTON
Alt. Phone: 218-240-9045
Caller Address: 3151 HWY 53 SUITE 1 INTERNATIONAL FALLS, MN 56649
Email Address: ben@wagnerconstructioninc.com

DIG SITE INFORMATION

Type of Work: INSTALL STORM SEWER
Work Being Done For: CITY OF MINOT
Depth: OVER 10FT
Explosives: N
Tunneling/Boring: N
White Lining/Site Identification: OTHER

DIG SITE LOCATION

County: WARD
Place: MINOT
City Limits: Y
Address:
Street: 31ST AVE SE
Intersecting Street: MAIN ST S
Location of Work: FROM THE INTERSECTION OF MAIN ST S HEAD E 0 FEET ON 31ST AVE SE TO THE BEGINNING OF THE ROUTE. MARK 40 FEET EITHER SIDE OF THE CENTERLINE OF 31ST AVE SE FOLLOWING THE ROUTE E FOR 659 FEET.
Remarks: UPDATE: RE-SPOT >>
Map Twp: 155N
Rng: 83W
Sect-Qtr: 36-SW
Map Coord NW Lat: 48.2024349
Lon: -101.2934184
SE Lat: 48.2022089
Lon: -101.2903815

MEMBERS NOTIFIED

District	Company Name	Marking Concerns	Status
MDU01	MONTANA DAKOTA UTILITIES CO	406-728-9343	Marked
MIDCON26	MIDCONTINENT CABLE	605-271-0202	Marked
MINOT01	CITY OF MINOT WATER SEWER DEPT	701-857-4140	Clear/No conflict (Private construction site Water and Sewer lines on this site are private consult the Engineer and or contractor on site Call with Questions (701) 833-7587)
MINOT02	CITY OF MINOT LIGHTING SIGNALS	701-857-4100	Marked (Private construction site electrical lines have been removed and lighting has been removed we have no records or Maps please consult the contractor or engineer on site)
NDXCEL01	XCEL ENERGY	800-848-7558	Clear/No conflict
SOURIS01	SOURIS RIVER TELECOMMUNICATION	888-355-2515	Marked
VEREND01	VERENDRYE ELECTRIC COOPERATIVE	888-355-2515	Clear/No conflict

Legend:  Locate Polygon

Lat/Lon

