



# Public Service Commission State of North Dakota

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COMMISSIONERS

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December 29, 2021

Mr. Steve Kahl  
Executive Secretary  
ND Public Service Commission  
600 E Boulevard Avenue Dept. 408  
Bismarck, ND 58505-0480

*via Hand Delivery*

Re: Case No. PU-20-423  
Public Service Commission  
Wagner Construction, Inc.  
Damage Prevention Enforcement

Dear Mr. Kahl:

Enclosed is a copy of the Consent Agreement to be filed in the above captioned cases.

Best Regards,

A handwritten signature in blue ink, appearing to read "BJ", with a long horizontal flourish extending to the right.

Brian Johnson  
Legal Counsel

Enclosure



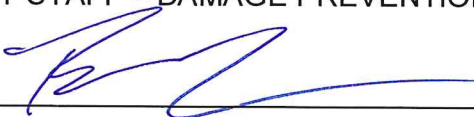
Wagner and Staff engaged in good faith settlement discussions resulting in this Consent Agreement. Having agreed that settlement of this proceeding will avoid further administrative proceedings or litigation and that entry of this Consent Agreement is the most appropriate means of resolving this administrative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

1. Wagner violated NDCC section 49-23-05(5) in four separate instances by failing to conduct its excavations in a careful and prudent manner.
2. Wagner agrees to be assessed a civil penalty of \$13,800. Wagner agrees to remit \$10,000 of the \$13,800, 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 \$3,800 civil penalty is suspended on the condition that Wager 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 Wager violated NDCC section 49-23 within five years of the date of the Order, Wager 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the date of the Order there is no subsequent violation of NDCC section 49-23 by Wager, the remaining \$3,800 penalty is withdrawn.
5. Staff agrees no other proceeding will be initiated and no other remedy or penalty will be sought based on the violations alleged in the Case.

6. Wagner consents to the filing of the Consent Agreement and an Order in the Cases 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, Wagner understands and agrees in the Cases 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.
7. There are no covenants, promises, undertakings, or understandings other than specifically set forth in this 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 Wagner and bind Wagner for purposes of this Consent Agreement, and knows and fully understands the content and effect.

Dated this 29<sup>th</sup> day of December, 2021

PUBLIC SERVICE COMMISSION  
ADVOCACY STAFF – DAMAGE PREVENTION

By: 

Brian Johnson  
Special Assistant Attorney General Bar ID 07397  
North Dakota Public Service Commission  
600 East Boulevard Avenue Dept. 408  
Bismarck ND, 58505  
701-328-2407

Dated this 29 day of December, 2021

Wagner Construction, Inc.

By: Kalan Wagner   
Digitally signed by Kalan Wagner  
DN: C=US,  
E=kalan@wagnerconstructioninc.com,  
O=Wagner Construction Inc., CN=Kalan  
Wagner  
Date: 2021.12.29 08:02:18-06'00'

Kalan Wagner (President)