

November 18, 2024

North Dakota Public Service Commission  
Attn: Konrad Crockford  
600 East Boulevard Ave Dept 408  
Bismarck, ND 58505-480

VIA EMAIL 11/18/24: kcrockford@nd.gov

Mr. Crockford,

This letter is the response from Farden Construction regarding the Consent Agreement we received on Case No. DM-24-235 with a corresponding potential Civil Penalty to Farden Construction. On 11/15/2024, I contacted you at 701-328-4097 and left a message and am following-up with you via this letter.

The Alleged Violation 2 states, "Excavator Failed to Provide Site Identification". Paragraph two of the Consent Agreement states, "Having investigated the alleged violation, Staff believes Farden violated N.D.C.C 49-23-04(2) by failing to provide accurate excavation site identification.

N.D.C.C. 49-23-04(2) is listed as follows:

2. Unless otherwise exempted, the ticket request must include site identification information by one or more of the following means: white marking, digital white lining, project staking, geographic information system shape file, detailed drawing, map, or other means agreed upon by the parties to the ticket. Site identification under this subsection is not required if:
  - a. The precise location of excavation can be clearly and adequately identified on the location notice and is limited to a single street address or a platted lot number of record;
  - b. The precise location of excavation can be clearly and adequately identified on the location notice and the excavation is an emergency excavation; or
  - c. Prior to any excavation, the excavator requests and conducts a meeting with the affected operators at the location of the excavation.

At the time, the ND One Call was placed and even when it was modified to increase the work area, per our customer's request, the one call area was accurately marked/map utilizing the ND One Call online system's digital marking/mapping ability. Nowhere in the N.D.C.C. 49-23-04(2) does it state the area has to be accurate. However, we cannot ask the utility companies to mark outside the area and we may not excavate outside the area. This is the reason we modified our ND One Call and believe we had every right to request the ND One Call to be modified. And therefore, believe we should not and cannot be fined because of it.

We respectfully request your reconsideration of the Consent Agreement resulting in no Civil Penalty to Farden Construction.

Sincerely,



Steve Farden, President