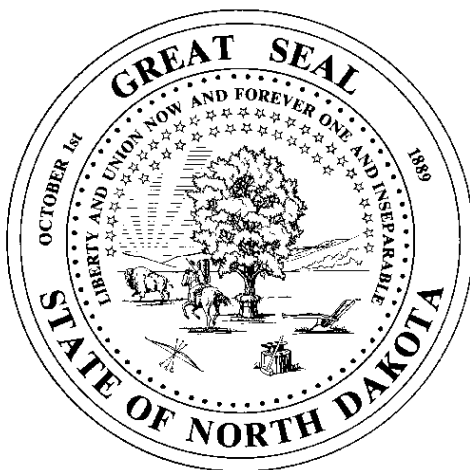


NORTH DAKOTA PUBLIC SERVICE COMMISSION

Damage Prevention Plan

August 12, 2009



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DAMAGE PREVENTION PROGRAM PROCEDURES

The following procedures, as set forth in Chapter 49, North Dakota Century Code, and the PIPES Act of 2006 to be used by the North Dakota Public Service Commission:

PURPOSE AND SCOPE

The purpose of this document is to provide a means by which the laws of North Dakota applicable to the Public Service Commission's Gas Pipeline Safety Program and the laws of North Dakota applicable to underground damage prevention can be uniformly interpreted and applied in an efficient and consistent manner. The Commission may modify this document as necessary based upon future changes in both federal and state regulations.

The scope of this document includes guidelines to be used by the North Dakota Public Service Commission in carrying out duties relating to enforcement of North Dakota's minimum gas pipeline safety standards (as they apply to damage prevention), Section 69-09-03-02, North Dakota Administrative Code, as adopted from 49 CFR Parts 192, and 198 U.S. Department of Transportation, Office of Pipeline Safety standards, and One Call Excavation Notice System under Chapter 49 of the North Dakota Century Code. It also includes the incorporation of the nine elements as specified by the PIPES Act.

A) GENERAL:

The PIPES Act specifies nine elements of an effective damage prevention program. The Commission believes that North Dakota's program can be improved by the incorporation of these nine elements. This document examines each of them in some detail, and outlines on each may be implemented at the state level.

B) GENERAL – NINE ELEMENTS - IMPLEMENTATION:

1. Through effective leadership and various means of written and electronic communication, the Commission will seek to enhance the participation by operators, excavators, the general public, and other stakeholders in the development and implementation of methods for establishing and maintaining effective communications between stakeholders from receipt of an excavation notification until successful completion of the excavation, as appropriate.
2. The Commission will liaison with the North Dakota One Call Board (NDOCB) and the North Dakota Pipeline Association (NDPA) in an effort to ensure the support and partnership of stakeholders, including excavators, operators, locators, designers, and local government in all phases of the program.

3. During the annual records audits, construction inspections, and through operator qualification inspections of the State's pipeline operators, the Commission will review the adequacy of internal performance measures regarding persons performing locating services and quality assurance programs. The Commission may poll other stakeholders for their opinion on the adequacy of persons performing locating services.
4. The Commission may encourage the participation by operators, excavators, and other stakeholders in any future Commission development of employee or stakeholder employee training programs. This joint participation will ensure that all stakeholders have adequate input in the design and implementation of any training.
5. The Commission, through its liaison with the NDPA and the NDOCB, will encourage the active participation by all stakeholders in public education for damage prevention activities. The Commission will participate in this process through its own public education activities.
6. In order to foster its role as a partner and facilitator in resolving disputes, the Commission will attempt to resolve any disputes brought before them by the informal complaint process prior to exercising any formal enforcement action through the Commission's formal complaint process.
7. The Commission, through the complaint process, will strive to enforce State damage prevention laws for all aspects of the damage prevention process, including the use of civil penalties for violations when appropriate.
8. The Commission will seek input on how the effectiveness of this program might be measured from each stakeholder's perspective. This will be accomplished through active participation and interaction between Commission staff, the NDOCB.
9. The Commission will collect, evaluate, and maintain data which will enable it to evaluate trends on the number of pipeline damages per 1,000 locate requests. It will also maintain in its data management system complete records of any damage enforcement activities, analysis, and documentation. This data will assist the Commission in the periodic review of its damage prevention program.

The Commission recognizes the importance of, and supports the damage prevention efforts of the Common Ground Alliance (CGA). Its Best Practices provide excellent guidelines for all stakeholders. For reference purposes, see Appendix C of this document for a PDF version of CGA's Best Practices Version 6.0.

C) GENERAL – ENFORCEMENT THROUGH COMPLAINT:

All matters coming before the Commission are governed by North Dakota Century Code Chapter 28-32 and North Dakota Administrative Code Article 69-02.

When a violation of the One Call law is alleged, the allegation may be filed as a formal or informal complaint. The procedures for filing both informal and formal complaints are governed by North Dakota Administrative Code Chapter 69-02-02 (see Appendix A - sample complaint form).

All complaints regarding possible violations of the One Call law must be in writing and include sufficient relevant information to enable staff to make a thorough and appropriate review.

The following must be included or addressed in any formal or informal complaint

1. The date and time of the alleged incident;
2. The name, address and contact information of the complainant;
3. Copies of any supporting documents or photos;
4. The location of the incident;
5. A brief description of the incident;
6. Statement of the excavation law allegedly violated;
7. Statement of the evidence upon which the alleged violation is based;
8. The response options available;
9. Amount of proposed civil penalty, if any, for each alleged violation (SEE PART D BELOW);
10. A statement of the proposed remedial action being sought if a proposed compliance order is included in lieu of a civil penalty;
11. Whether a proposed compliance order accompanies the notice;
12. How to distinguish between the response options listed in the notice; and
13. The amount of time available to the person to provide a written response.
14. The proposed civil penalty for each potential violation alleged in the Complaint
15. Any other information pertinent to the complaint.

Once a complaint is filed, staff will review the complaint and supporting documentation to ensure that the Commission has all of the pertinent information to go forward with the case. If any required information is missing the GSPM will contact the complainant to obtain the missing information. Upon receipt of all necessary incident information, the GSPM will prepare a memo regarding the complaint and supporting information for review by the Legal Division.

INFORMAL COMPLAINTS

Upon receipt of an informal complaint and after review by staff, staff will forward the complaint to the party complained about for response. Upon receipt and review of the response, staff will determine how to proceed. Staff options include filing a formal complaint based on the informal filing and response, continuing discussions with the parties, other alternative dispute resolution avenues, preparing a memorandum of understanding, preparing a consent order, or recommending to the Commission that no

further action be taken and the case be closed. A consent order may include a penalty consistent with North Dakota Century Code Chapter 49-07.

Any staff recommendation on an informal complaint, any formal document prepared by staff for Commission action, and the Commission's decision will be served on the party filing the informal complaint and the party against whom the informal complaint was filed.

If staff determines that a formal complaint should be filed, staff will prepare the formal complaint from the information provided by the complainant and the respondent, and any independent investigation conducted by staff, and file the complaint with the Commission. The procedure followed on formal complaints is set for the below.

If staff files a formal complaint based on an informal complaint, the party filing the informal complaint must be willing and available to testify on the complaint in person or, with approval of the hearing officer, in writing. If the complainant is not so willing and available, no formal complaint will be filed and the matter will be handled informally.

FORMAL COMPLAINTS

Upon receipt of a formal complaint and after review by staff, the Commission will determine if the complaint states a *prima facie* case. This will be done by a formal motion and vote at a regular meeting, based on the information filed and the recommendations of staff. If the Commission finds that the complaint states a *prima facie* case, the complaint will be served on the respondent in accordance with law.

The respondent then has 20 days to answer the complaint or risk an adverse default determination. Once an answer is filed with the Commission and served on the Complainant (and if there are no intervening motions or other pleadings by the parties), the Commission will determine whether to proceed to hearing and when. If there are intervening motions or other pleadings, the Commission will decide them and proceed as appropriate and necessary.

If a public hearing will be held, a Notice of Hearing will be issued and served on both the complainant and the respondent at least 45 days before the hearing.

At the hearing, the complainant has the burden of proof and the burden of going forward with the evidence. The respondent may also present evidence, as may the staff of the Commission or the One Call Board. All evidence must be given under oath and subject to cross-examination. All hearings are public, and any member of the public may appear and testify.

After hearing and once the record is closed, the Commission will make a decision based on the record evidence. The decision may include a penalty consistent with North Dakota Century Code Chapter 49-07.

At any point in the formal complaint process, the Commission may appoint an Administrative Law Judge to serve as a procedural or substantive hearing officer.

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.

The criteria may also be used by Commission staff in making a recommendation to the Commission regarding a proposed penalty requested in a formal complaint filed by entity other than staff, and by the Commission in determining whether or not to impose a penalty and the amount of that penalty.

- 2) North Dakota Century Code section 49-07-01.1. provides a civil penalty not to exceed five thousand dollars for violations of the One Call law. Any penalty may be compromised by the commission and may be recovered in a civil action in district court.

**DAMAGE PREVENTION PLAN
APPENDIX**

A) Sample Complaint Form

B) Common Ground Alliance Best Practices Version 6.0 (*edited)

*The complete current version can be found at:

[http://www.commongroundalliance.com/Content/NavigationMenu/Best_Practices/
Best_Practices_2009/BestPractices_6.0_Final_February2009.pdf](http://www.commongroundalliance.com/Content/NavigationMenu/Best_Practices/Best_Practices_2009/BestPractices_6.0_Final_February2009.pdf)



THIRD PARTY DAMAGE COMPLAINT

Public Service Commission

SFN 59067 (7-09)

PART A – WHO IS SUBMITTING THIS COMPLAINT

Information Being Submitted By <input type="checkbox"/> Individual <input type="checkbox"/> Company*	Company/Organization	Person Filing Information	Position	
Address of Person Filing Information	City		State	Zip Code
Telephone Number	Email Address		Date	

PART B – DATE AND LOCATION OF THE EVENT

Date of Event	Description of Event	Address of the Excavation and/or Damage		
County	City	State	Zip Code	

PART C – WHO ALLEGEDLY VIOLATED THE ONE-CALL REGULATIONS

Name of Excavator		Telephone Number		
Address	City	State	Zip Code	
Name of Entity for Which Excavation Was Performed		Telephone Number		
Address	City	State	Zip Code	

PART D – ADDITIONAL INFORMATION

Was a locate requested from North Dakota One-Call?	
<input type="checkbox"/> Yes Locate Ticket Number	Start Date on Ticket
<input type="checkbox"/> No	
<input type="checkbox"/> Unknown	
Did excavator wait until the start date/time on the ticket before commencing excavation?	
<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown <input type="checkbox"/> N/A	
Were buried facilities exposed by hand or non-invasive equipment prior to excavation?	
<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown <input type="checkbox"/> N/A	

PART E – FACILITY INVOLVED

Type of Facility Involved	Operator of Facility and Contact Person (if known)		
Address	City	State	Zip Code
Telephone Number	Email Address (if known)		
Brief Description of Facility Involved			

PART F – MARKING

Were facilities marked?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> N/A
Were utility/facility marks visible in the area of excavation?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> N/A
Were the utility/facilities marked correctly?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> N/A
Was the marking complete prior to the start time on the ticket?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> N/A
Did the excavator pre-mark with white paint?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> N/A
Was the facility marked accurately (within 18 inches)?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> N/A
Did the excavator use reasonable care to maintain locate marks for the life of project?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown	<input type="checkbox"/> N/A

PART G – DAMAGE (if applicable)

Fatalities	Injuries	Length of Hospitalization, If Applicable
Estimated Value of Property Damage: \$		Number of Customers Affected
Damaged In <input type="checkbox"/> Public <input type="checkbox"/> Private		Photos of Damaged Facility <input type="checkbox"/> Yes <input type="checkbox"/> No (If yes, please include copies)
Additional Information		

PART H – SIGNATURE

Signature of Person Filing Complaint	Date
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Please include additional documents and photos, if applicable.

***If you are filing on behalf of a company, please provide information supporting your authority to file this complaint.**

Send Completed, Original Complaint To:
 Public Service Commission
 Testing and Safety Division
 600 E Boulevard Ave Dept 408
 Bismarck ND 58505-0480
 Telephone: (701) 328-2400