

Service Date: May 16, 2019

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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WASH. UT. & TP. COMM

NOTICE OF PENALTIES INCURRED AND DUE
FOR VIOLATIONS OF LAWS AND RULES

PENALTY ASSESSMENT: DG-190250
PENALTY AMOUNT: \$1,000
Investigation #7954

UBI: 602-346-720
Phone: 509-542-8322

Big D's Excavation, LLC
3902 N Swallow Ave.
Pasco, WA 99301

The Washington Utilities and Transportation Commission (Commission) believes that you have violated Revised Code of Washington (RCW) 19.122.030(6) by failing to request an updated dig ticket prior to continuing excavation and damaging an underground natural gas facility. RCW 19.122.055 states, in part, that any excavator who fails to notify a one-number locator service and causes damage to a hazardous liquid or gas facility is subject to a civil penalty of not more than \$10,000 for each violation.

Commission staff (Staff) conducted an investigation that included reviewing damage reports submitted by Cascade Natural Gas Corporation (CNGC) that identified a natural gas damage event involving Big D's Excavation, LLC. (Big D's or Company). Accordingly, the Commission hereby notifies you that it is assessing a penalty against you for \$1,000 on the following grounds:

On July 14, 2016, the Commission mailed an Alleged Violation of Washington Dig Law letter to Big D's. The letter included detailed information about Washington state's underground utility damage prevention act, requirements for submitting utility locate requests before excavating, and the possibility of penalties for each violation. The Commission sent the letter after receiving a report of damage caused by Big D's on April 28, 2016, that occurred because Big D's failed to submit a request to locate underground utilities before excavating.

On November 15, 2018, Big D's was excavating at Road 84 & Massey Dr., Pasco, Washington. While grading, Big D's workers struck and damaged an underground CNGC gas facility. The Damage Information Reporting Tool report submitted by CNGC on November 28, 2018, indicated that the Company was excavating without a valid request to locate underground utilities, which resulted in damage to the underground gas utility. Big D's submitted a request to locate underground utilities at this location on May 2, 2018. This request expired on June 16, 2018, 151 days before the damage incident.

Staff recommends the Commission assess a \$1,000 penalty against Big D's for one violation of RCW 19.122.030(6) for failing to provide the required additional notice to a one-number locator service for excavation extending beyond 45 days of a previous notice, as follows:

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- No penalty for the violation of RCW 19.122.030(2) that occurred on July 14, 2016; and
- \$1,000 penalty for the violation of RCW 19.122.030(6) that occurred on November 15, 2018.

Staff's research indicates that Big D's has submitted 158 requests to locate underground utilities since 2014, and the violation appears to be the result of the Company's negligence rather than a lack of knowledge of the requirements of Washington state's dig law. After considering all of the circumstances, Staff recommends that the Commission offer to suspend the \$1,000 penalty amount for a period of one year, subject to the conditions that: (1) the Company incurs no further violations of RCW 19.122 within 12 months of the date of this Notice; and (2) Big D's management and field crew responsible for excavation complete Dig Safe Training provided through the National Utility Contractors Association (NUCA) within 12 months of the date of this Notice.

The Commission agrees with Staff's recommendation and assesses a penalty of \$1,000, with an offer to suspend, and ultimately waive, the entire \$1,000 penalty amount subject to the conditions listed above. If the Company fails to comply with the conditions, the \$1,000 suspended penalty will become immediately due and payable, in addition to any new penalties that the Commission may assess for additional violations.

These facts, if not contested or if proved at a hearing and not rebutted or explained, are sufficient to support the penalty assessment.

Your penalty is due and payable now. If you believe the violation did not occur, you may deny committing the violation and contest the penalty through evidence presented at a hearing or in writing. Or, if there is a reason for the violation that you believe should excuse you from the penalty, you may ask for mitigation (reduction) of the penalty through evidence presented at a hearing or in writing. The Commission will grant a request for hearing only if material issues of law or fact require consideration of evidence and resolution in a hearing. Any request to contest the violation or for mitigation of the penalty must include a written statement of the reasons supporting that request. Failure to provide such a statement will result in denial of the request. *See* RCW 81.04.405.

If you properly present your request for a hearing and the Commission grants that request, the Commission will review the evidence supporting your dispute of the violation or application for mitigation in a Brief Adjudicative Proceeding before an administrative law judge. The administrative law judge will consider the evidence and will notify you of his or her decision.

You must act within 15 days after receiving this notice to do one of the following:

- Pay the \$1,000 penalty amount due; or
- Notify the Commission that you accept the offer to suspend, and ultimately waive, the entire \$1,000 penalty subject to the following conditions:
 - Big D's field crew responsible for excavation, including management, attend the Dig Safe training provided through NUCA within twelve (12) months of the date of this Notice; and

- Submit documentation of attendance to the Commission within five (5) days of attending the training; and
- Commit no further violations of RCW 19.122 within 12 months of the date of this Notice; or
- Request a hearing to contest the occurrence of the violation; or
- Request mitigation to reduce the amount of the penalty.

Please indicate your selection on the enclosed form and send it to the Washington Utilities and Transportation Commission, P.O. Box 47250, Olympia, Washington 98504-7250, **within FIFTEEN (15) days** after you receive this notice.

If you do not act within 15 days, the Commission may refer this matter to the Office of the Attorney General for collection. The Commission may then sue you to collect the penalty.

DATED at Olympia, Washington, and effective May 16, 2019.

/s/ Rayne Pearson
RAYNE PEARSON
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT DG-190250, Investigation #7954

PLEASE NOTE: You must complete and sign this document, and send it to the Commission within 15 days after you receive the penalty assessment. Use additional paper if needed.

I have read and understand RCW 9A.72.020 (printed below), which states that making false statements under oath is a class B felony. I am over the age of 18, am competent to testify to the matters set forth below and I have personal knowledge of those matters. I hereby make, under oath, the following statements:

- 1. **Payment of penalty.** I admit that the violation occurred and enclose \$1,000 in payment of the penalty.
- 2. **Accept conditions.** I admit that the violation occurred and accept the Commission's offer to suspend, and ultimately waive, the entire \$1,000 penalty amount subject to the following conditions:
 - Big D's employees, including ownership and field crew involved in excavations, attend the Dig Safe training provided through NUCA within twelve (12) months of this Notice; and
 - Submit documentation of that attendance to the Commission **within five (5) days** of attending the training; and
 - Commit no further violations of RCW 19.122 within twelve (12) months of the date of this Notice.

- 3. **Contest the violation.** I believe that the alleged violation(s) did not occur for the reasons I describe below (if you do not include reasons supporting your contest here, your request will be denied): *GAS LINE WAS INSTALLED AT A SHALLOW DEPTH WITHIN OUR SUBGRADE. LINE WAS MET DURING GRADING PROCESS. SEE PIC. GAS LINE WAS NOT INSTALLED TO PROPER DEPTH.*
 - a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision.
 - OR b) I ask for a Commission decision based solely on the information I provide above.

- 4. **Request mitigation.** I admit the violation, but I believe that the penalty should be reduced for the reasons set out below (if you do not include reasons supporting your application here, your request will be denied):
 - a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision.
 - OR b) I ask for a Commission decision based solely on the information I provide above.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing, including information I have presented on any attachments, is true and correct.

Dated: 5/30/2019 [Month/Day/Year], at PASCO WA [City, State]

Big D's Construction
Name of Respondent (company) – please print

[Signature]
Signature of Applicant

RCW 9A.72.020:

“Perjury in the first degree. (1) A person is guilty of perjury in the first degree if in any official proceeding he makes a materially false statement which he knows to be false under an oath required or authorized by law. (2) Knowledge of the materiality of the statement is not an element of this crime, and the actor’s mistaken belief that his statement was not material is not a defense to a prosecution under this section. (3) Perjury in the first degree is a class B felony.”



