**MEMORANDUM**

Date: May 4, 2018

To: Rayne Pearson, Interim Director
Administrative Law Division

From: Sean C. Mayo, Director

 Darren Tinnerstet, Investigator

 Pipeline Safety Program

Subject: Docket D-180343, Penalty Assessment recommendation of $1,000 against Bulldog Concrete Services, LLC for violation of RCW 19.122.

**I. Background**

The Washington State Dig Law Safety Committee (Safety Committee) received two complaints against Bulldog Concrete Services, LLC (Bulldog Concrete or Company) regarding potential violations of the Washington state Dig Law, RCW 19.122, for work performed in 2018. The complainant in this case was Puget Sound Energy (PSE).

On April 18, 2018, the Safety Committee heard the complaints for cases 18-013 and 18-014 against Bulldog Concrete. The Safety Committee determined that Bulldog Concrete committed the following violation:

* Two violations of RCW 19.122.030(2) for failing to request locates prior to excavating.

The Safety Committee recommended that the following penalty be assessed against Bulldog Concrete:

* $1,000 penalty for one violation of RCW 19.122.030(2); and
* The opportunity to suspend $800 of the penalty if the owner of Bulldog Concrete completes National Utility Contractor Association (NUCA) Dig Safe Training within six months of the issuance of a penalty assessment by the Commission, and incurs no additional dig law violations within 12 months.

**II. Analysis**

**Case 18-013**

The alleged violation concerns RCW 19.122.030(2), which states, in part, that an excavator must provide the notice required by subsection (1) to a one-number locator service not less than two business days prior to excavating. Subsection (1) states that before commencing excavation, the excavator must mark the boundary of the excavation area with white paint, then provide notice of the scheduled excavation to all facility operators through a one-number locator service.

The complainant, PSE, alleges that on Jan. 16, 2018, Bulldog Concrete failed to request utility locates prior to excavating at 16628 133rd St. SE, in Monroe, WA. PSE Damage Prevention Field Representative Roger Arrington observed a Bulldog Concrete crew excavating at the above address. Mr. Arrington proceeded to contact the Company owner, Tomas Castellon, to advise him of the potential violation of digging without locates. A check was done with the one-call ticket management database and it was determined that Bulldog Concrete had not requested a utility locate for this address. Mr. Arrington proceeded to take pictures of the job site, which were ultimately submitted to the Safety Committee for review.

Staff investigated this referral from the Safety Committee and found that Bulldog Concrete did not submit a utility locate request for this location. Staff determined that Bulldog Concrete committed one violation of RCW 19.122.030(2), by failing to request locates prior to excavating.

**Case 18-014**

PSE alleges that on Jan. 16, 2018, Bulldog Concrete failed to request utility locates prior to excavating at 16604 133rd St. SE, in Monroe, WA. PSE Damage Prevention Field Representative Roger Arrington again observed a Bulldog Concrete crew excavating at the above address. This was on the same date and in the same neighborhood as the violation in Case 18-013. A check was done with the one-call ticket management database and it was determined that Bulldog Concrete had not requested a utility locate for this address. Mr. Arrington proceeded to take pictures of the job site, which were ultimately submitted to the Safety Committee for review.

Staff investigated this referral from the Safety Committee and found that no utility locate request was submitted by Bulldog Concrete for this location. Staff determined that Bulldog Concrete committed one violation of RCW 19.122.030(2), by failing to request locates prior to excavating.

Staff relied upon the information provided by PSE and Bulldog Concrete to the Safety Committee for this investigation. The documents for this case included multiple photographs of the excavation area. Staff also took into consideration the following factors in determining the appropriate penalty amounts:

1. **How serious or harmful the violation is to the public.**

While no damage occurred, the incident was very serious and could have been harmful to the public. The incident could have resulted in serious injury to the excavator and the general public.

1. **Whether the violation is intentional.**

The violations appear to be due to a lack of knowledge regarding Washington state’s dig law. The Company was not entirely clear that its practice of preparing concrete forms constituted an excavation. Staff’s research also indicates that Bulldog Concrete has a relatively small history of requesting utility locates. Since Jan. 1, 2017, Bulldog Concrete has only requested a total of 14 utility locates in the state of Washington.

1. **Whether the company self-reported the violation.**

The company did not self-report the violations. The commission became aware of the violation after PSE filed a complaint with the Safety Committee

1. **The likelihood of recurrence.**

The likelihood of recurrence depends on the company’s actions going forward. The Company demonstrated a desire to take proactive measures to ensure that no future violations of Washington state’s dig law occur.

**III. Recommendation**

RCW 19.122.070(1) authorizes a penalty of not more than $1,000 for an initial violation, and not more than $5,000 for each subsequent violation in a three-year period, to anyone who violates any provision of RCW 19.122.[[1]](#footnote-1)

Staff’s investigation concurred with the Safety Committee’s recommendation. Accordingly, Staff recommends the commission assess a $1,000 penalty against Bulldog Concrete for one violation of RCW 19.122.030(2) for failing to provide the required notice to a one-number locator service not less than two business days before excavating. The recommended penalty is as follows:

* No Penalty for one violation of RCW 19.122.030(2), which occurred on Jan. 16, 2018 (Case 18-013); and
* $1,000 penalty for one violation of RCW 19.122.030(2), which occurred Jan. 16, 2018 (Case 18-014); and
* The opportunity to suspend $800 of the penalty if the owner of Bulldog Concrete completes National Utility Contractor Association (NUCA) Dig Safe Training within six months of the issuance of a penalty assessment by the Commission, and incurs no additional dig law violations within 12 months.
1. Except for violations of RCW 19.122.055, which consists of failing to notify a one-number locator service and causing damage to a hazardous liquid or gas underground facility. This violation is subject to a civil penalty of not more than $10,000 for each violation. [↑](#footnote-ref-1)