

Service Date: April 25, 2023

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: D-230104
PENALTY AMOUNT: \$1,000
Investigation # 8691

SERVICE VIA EMAIL

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YOU MUST RESPOND WITHIN 15 DAYS OF THIS NOTICE

The Washington Utilities and Transportation Commission (Commission) believes that the City of Spokane Water Department (City of Spokane or Company) violated Revised Code of Washington (RCW) 19.122.030(3)(a) by failing to provide the excavator with reasonably accurate information by marking the location of its locatable underground facilities.

RCW 19.122.070(1) states, in part, that violations of any provision of the chapter are subject to a civil penalty of not more than \$1,000 for an initial violation and not more than \$5,000 for each subsequent violation within a three-year period.

On February 8, 2023, the Washington State Dig Law Safety Committee (Safety Committee) heard case 22-049 filed by M&L Construction (M&L or Complainant) against the City of Spokane and determined the City of Spokane violated RCW 19.122.030(3)(a) by failing to provide the excavator with reasonably accurate information by marking the location of its locatable underground facilities. The Safety Committee recommended that the Commission impose a \$1,000 penalty.

Commission staff (Staff) conducted an investigation that included reviewing documents, reports, and communications with the Safety Committee and all parties involved.

The Commission reviewed the findings and recommendations made by the Safety Committee and hereby notifies you that it is assessing a \$1,000 penalty (Penalty Assessment) against you on the following grounds:

1. **Alleged Violation:**

The Complainant, M&L, states that on September 30, 2022, it arrived on site to perform work at 2017 N. Monroe St., Spokane, and noticed there were no locates for a City of Spokane water facility that was known to be in its work area. M&L

reported that it contacted the City of Spokane who explained to M&L that it would have to submit a new locate ticket because the instructions were not clear on the original locate ticket. M&L explained that no one notified them that there was a problem with the ticket, and that the locator never called to ask for clarification. M&L explained that it would be a significant hardship to have to call in a new locate ticket, wait two days, and reschedule its work plans. M&L believed the ticket was accurately completed and there were white marks on the ground.

2. **Analysis:**

The alleged violation concerns RCW 19.122.030(3)(a) which states, in part, that a facility operator must provide the excavator with reasonably accurate information by marking the location of its locatable underground facilities. Staff was present during the Safety Committee's review of this case and heard the evidence provided by both parties. The City of Spokane acknowledged during the review that it failed to accurately locate its facilities and explained this was due to internal miscommunication about when to request a new locate ticket and when to call the excavator for clarification. The City of Spokane was apologetic for this incident and explained it has updated its internal processes to avoid this happening again.

The Commission considered the following factors in determining the appropriate penalty amount for the violation:

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

This incident could have caused severe harm to employees, or the public, and could have resulted in additional undue expenses and hardships.

2. **Whether the violation is intentional.**

The violation does not appear to be intentional, but rather due to a lack of clear process and procedure between the City of Spokane and its contract locators.

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

The City of Spokane did not self-report the violation. The Commission became aware of the violation when M&L filed a complaint with the Safety Committee.

4. **The likelihood of recurrence.**

The likelihood of recurrence depends on the City of Spokane's actions going forward, and its willingness to follow through with the improved processes it implemented, and to comply with the Dig Safe training recommendation.

5. **The Company's previous violations and penalties.**

- **Warning Letter**

On July 30, 2013, the Commission mailed an Alleged Violation of Washington Dig Law letter to the City of Spokane. 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 mailed the letter after receiving a report of damage caused by

City of Spokane on April 8, 2013, that occurred because the Company failed to submit a request to locate underground utilities before excavating.

The Commission has considered these factors and agrees with the Safety Committee's findings of probable violation and penalty recommendation, as follows:

- \$1,000 penalty for one violation of RCW 19.122.030(3)(a) with an offer to suspend an \$800 portion of the penalty for one year, and then waive it, subject to the conditions that:
 - 1) The City of Spokane field management complete Dig Safe Training provided through the National Utility Contractors Association (NUCA) within 90 days of this Penalty Assessment;
 - 2) The City of Spokane must submit documentation of that attendance to the Commission within 5 days of attending training; and
 - 3) The City of Spokane must not commit any further violations of RCW 19.122 within 12 months of the date of this Penalty Assessment.

These facts, if proven 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 a 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 their decision.

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

- Pay the \$1,000 penalty amount due; or
- Pay \$200 and notify the Commission that you accept the offer to suspend an \$800 portion of the penalty amount subject to the following conditions:
 - The City of Spokane field management staff responsible for excavation must complete NUCA Dig Safe Training (<https://utc-9183.quickbase.com/db/bpkt6vndh>) within 90 days of service of this Penalty Assessment; and
 - **The Company must submit documentation of that attendance to the Commission within 5 days of attending training; and**

- The City of Spokane must not incur any additional violations of RCW 19.122 within 12 months of the date of this Penalty Assessment; or
- Request a hearing to contest the occurrence of the violations; or
- Request mitigation to reduce the amount of the penalty.

Please indicate your selection on the enclosed form and submit it electronically through the Commission's web portal at <https://efiling.utc.wa.gov/Form> **within FIFTEEN (15) days** after you receive this Penalty Assessment. If you are unable to use the web portal, you may submit it via email to records@utc.wa.gov. If you are unable to submit the form electronically, you may send a paper copy to the Washington Utilities and Transportation Commission, P.O. Box 47250, Olympia, Washington 98504-7250.

If you wish to make your payment online, please use this link: [Make a Payment Now \(wa.gov\)](#).¹

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

DATED at Lacey, Washington, and effective April 25, 2023.

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

¹ <https://www.utc.wa.gov/documents-and-proceedings/online-payments/make-payment-now>.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT D-230104 Investigation # 8691

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, 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.
OR [] Attest that I have paid the penalty in full through the Commission's payment portal.
- [] 2. **Accept conditions.** I admit that the violation occurred and enclose \$200 toward the payment of the penalty. I also accept the Commission's offer to suspend, and ultimately waive, the remaining \$800 penalty amount subject to the following conditions:
- o The City of Spokane field management staff must attend Dig Safe training provided through NUCA within 90 days of service of this Penalty Assessment; and
 - o The City of Spokane must submit documentation of that attendance to the Commission **within five (5) days** of attending the training; and
 - o The City of Spokane must not commit any 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 did not occur for the reasons I describe below (**if you do not include reasons supporting your contest 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 provided 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 provided 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: _____ [Month/Day/Year], at _____ [City, State]

Name of Respondent (Company) – please print

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 or she makes a materially false statement which he or she 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 or her 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.