

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment  
Against

BIG D'S EXCAVATION, LLC

in the amount of \$1,000

DOCKET DG-190250

ORDER 01

DENYING CONTEST OF  
VIOLATION; IMPOSING PENALTY

**BACKGROUND**

*1* On May 16, 2019, the Washington Utilities and Transportation Commission (Commission) issued a Notice of Penalties against Big D's Excavation, LLC (Big D's or Company) in the amount of \$1,000, alleging one violation of RCW 19.122.030(6) for failing to provide the required additional notice to a one-number locator service for an excavation extending beyond 45 days of a previous notice (Notice of Penalties). In the Notice of Penalties, the Commission offered to suspend the entire \$1,000 penalty for one year, and then waive it, if the Company accepts and complies with the following conditions:

- (1) The Company must incur no further violations of RCW 19.122 within 12 months of the date of the Notice of Penalties;
- (2) The Company's management and field crew responsible for excavation must complete Dig Safe training provided through the National Utility Contractors Association (NUCA) within 12 months of the date of the Notice of Penalties; and
- (3) The Company must submit documentation of attendance at the Dig Safe training to the Commission within five days of attending the training.

2 The Notice of Penalties explains the facts resulting in the violation and penalty as follows:<sup>1</sup>

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 [Cascade Natural Gas Company] gas facility. The Damage Information Reporting Tool 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. The request expired on June 16, 2018, 151 days before the damage incident.

3 On June 4, 2019, Big D's responded to the Notice of Penalties by contesting the violation, explaining in full: "Gas line was installed at a shallow depth within our subgrade. Line was hit during grading process. See pic. Gas line was not installed to proper depth." The Company also provided a photograph of the site showing the damaged gas line.

4 On June 19, 2019, Commission staff (Staff) filed a response recommending the Commission uphold the penalty. In its response, Staff explained that the law does not exempt an excavator from penalties on the basis of the depth of a buried gas line. Staff explains that the law requires excavators to give additional notice to a facility operator if the excavation extends beyond the 45-day window for which a dig ticket is valid, and that Big D's dig ticket for this location expired 151 days before the damage incident occurred. Further, any excavator who fails to notify a one-number locator service and causes damage to a hazardous liquid or gas underground facility is subject to a civil penalty of not more than \$10,000 for each violation.

5 In addition, Staff stated that the damage report submitted to the Commission by Cascade Natural Gas Corporation (CNGC) indicates that the depth of the facility was 18 inches. Finally, Staff explained that "the depth of an underground facility is subject to change

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<sup>1</sup> The Notice of Penalties also describes a previous report of damage on April 28, 2016 that occurred because Big D's failed to submit a request to located underground utilities before excavating. The Commission responded to that report on July 14, 2016, by mailing the Company detailed information about the Underground Utility Damage Prevention Act.

based on environmental factors and excavation activity that occurs around the buried line after installation.”<sup>2</sup>

### DISCUSSION AND DECISION

- 6 RCW 19.122.030(1) requires excavators to “mark the boundary of the excavation area with white paint applied on the ground of a worksite, then provide notice of the scheduled commencement of excavation to all facility operators through a one-number locator service.” Further, an excavator is prohibited from excavating “until all known facility operators have marked or provided information regarding underground facilities.”<sup>3</sup> “A facility operator’s markings of underground utilities expire forty-five calendar days from the date that the excavator provided notice to a one-number locator service pursuant to [RCW 19.122.030(1)]. For excavation occurring after that date, an excavator must provide additional notice to a one-number locator service pursuant to [RCW 19.122.030(1)]”<sup>4</sup> Excavators who violate these provisions are subject to penalties of up to \$10,000 per violation.<sup>5</sup>
- 7 In this case, Big D’s does not dispute that it obtained a dig ticket for the site on May 2, 2018, and that it failed to renew the ticket after 45 days. In addition, Big D’s does not dispute that on November 15, 2018, Big D’s struck the CNGC line while grading the site. The undisputed facts establish that Big D’s failed to satisfy the requirements in RCW 19.122.030(6) when it excavated at the site without providing additional notice to a one-number locator service. Big D’s is therefore subject to civil penalties.
- 8 Big D’s, however, contests the penalty on the basis that CNGC’s gas line was not installed to a proper depth. Staff responded that the depth of the gas line is not relevant here. We agree with Staff. The dig law requirements in RCW 19.122.030 apply to all excavations except those expressly excluded. Grading of land is included within the definition of “excavation,” and there is no exemption related to the depth of excavation that applies here.

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<sup>2</sup> Docket DG-190250, Commission Staff’s Response to Contest of Violations, June 19, 2019.

<sup>3</sup> RCW 19.122.030(5).

<sup>4</sup> RCW 19.122.030(6).

<sup>5</sup> RCW 19.122.055.

- 9 For purposes of RCW 19.122, the term “excavation” is defined as “any operation, including the installation of signs, in which earth, rock, or other material *on or below the ground* is moved or otherwise displaced by any means.”<sup>6</sup> Grading land clearly falls within this definition because it involves moving earth located on or below the ground.
- 10 RCW 19.122.031 lists exemptions from RCW 19.122.030, several of which exclude activities occurring above a certain depth. But, none of these exemptions apply under the facts of this case. For example, RCW 19.122.031(1)(b) exempts an “excavation of less than twelve inches in depth on private noncommercial property, if the excavation is performed by the person or an employee of the person who owns or occupies the property on which the excavation is being performed.” In this case, the gas line was buried at 18 inches, so this exemption does not apply.<sup>7</sup> RCW 19.122.031(1)(c) exempts the tilling of soil for agricultural purposes at specified depths depending on the location. Because Big D’s is not engaged in tilling soil for agricultural purposes, this exemption also does not apply. Finally, RCW 19.122.031(1)(e) exempts certain road maintenance activities involving excavations of less than six inches in depth. As Big D’s was not engaged in road maintenance and hit a gas line buried at 18 inches, this exemption likewise does not apply.
- 11 We find that Big D’s excavated land without first providing notice to a one-number locator service as required by RCW 19.122.030(6), which caused damage to an underground gas facility. Big D’s contested the violation on the basis that the gas line was installed at a shallow depth. We reject Big D’s argument, concluding there is no exemption related to the depth of the gas line or otherwise that applies here. Accordingly, we determine that the Commission properly assessed a \$1,000 civil penalty under RCW 19.122.055. The Commission’s Notice of Penalties should be sustained.

## ORDER

### THE COMMISSION ORDERS:

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<sup>6</sup> RCW 19.122.020(8). Emphasis added.

<sup>7</sup> In addition, the record does not show that Big D’s owns the land on which the grading violation occurred.

- 12 (1) Big D's Excavation, LLC's contest of the violation of RCW 19.122 in the Notice of Penalty is DENIED.
- 13 (2) Big D's Excavation, LLC, is assessed a penalty of \$1,000.
- 14 (3) Within 10 days of the date of this Order, Big D's Excavation, LLC, must either (1) pay the \$1,000 penalty amount due, or (2) notify the Commission that Big D's Excavation, LLC accepts the offer to suspend the penalty for one year, and then waive it, subject to the following conditions:
- Big D's Excavation, LLC's field crew responsible for excavation, including management, must attend the Dig Safe training provided through NUCA within 12 months of the date of this Order; and
  - Big D's Excavation, LLC must submit documentation of attendance of the Dig Safe training to the Commission within five days of attending the training; and
  - Big D's Excavation, LLC must commit no further violations of RCW 19.122 within 12 months of the date of this Order.

DATED at Lacey, Washington, and effective June 28, 2019.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARK L. JOHNSON  
Executive Director and Secretary

**NOTICE TO PARTIES: This is an order delegated to the Executive Secretary for decision. As authorized in WAC 480-07-904(3), you must file any request for Commission review of this Order no later than 14 days after the date the decision is posted on the Commission's website.**