

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment
Against

DRG CONSTRUCTION, INC.,

in the amount of \$5,000

DOCKET DG-210208

ORDER 01

ORDER DENYING REQUEST FOR
HEARING; DENYING CONTEST OF
VIOLATION

BACKGROUND

- 1 On May 19, 2021, the Washington Utilities and Transportation Commission (Commission) issued a Penalty Assessment against DRG Construction, Inc., (DRG or Company) in the amount of \$5,000, alleging one violation of RCW 19.122.055(1)(a) for failing to notify a one-number locator service prior to performing an excavation and subsequently causing damage to an underground gas facility. The Penalty Assessment offered the Company the option to suspend half of the penalty amount for one year, at which point the Commission would waive it, subject to conditions. The Company was required to respond to the Penalty Assessment by June 8, 2021.
- 2 On September 9, 2021, the Senior Assistant Attorney General for the Commission sent a letter to DRG explaining that the Commission may forward the outstanding debt of \$5,000 to a collection agency for collection.
- 3 On October 21, 2021, DRG responded to the Penalty Assessment, contesting the violation and requesting a hearing to present evidence on the information it provided. DRG included the following explanation with its request: “We were not digging, we were back blading for topsoil, line was less then [sic] two inches deep and on the wrong side of the property line.”
- 4 On November 11, 2021, Commission staff (Staff) filed a response recommending the Commission deny the Company’s contest of the violation. In its response, Staff notes that DRG has not introduced any new relevant information. Staff states that the Penalty Assessment was issued for failure to obtain a utility locate before excavation, and that for the purposes of RCW 19.122.020(5), the definition of excavation includes “any operation . . . in which earth, rock, or other material on or below ground is moved or otherwise displaced by any means,” which would include “back blading.” Staff further states that the depth and location of the line are irrelevant given the fact that DRG had not obtained a locate for the area in which it was excavating.

5 Staff further explained that DRG has previously received two warning letters from the Commission, which included information about the requirements of RCW 19.122, as well as a prior \$2,000 penalty related to violations for excavating without first obtaining utility locates.

DISCUSSION AND DECISION

6 RCW 19.122.030(1)(a) requires excavators to “mark the boundary of the excavation area with white paint applied on the ground of the 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.”¹ Excavators who violate these provisions are subject to penalties of up to \$10,000 per violation.²

7 The Commission denies the Company’s request for hearing. In its response, the Company raised two issues: (1) that it was “back blading” rather than “digging,” and (2) that the gas line was on the “wrong side of the property line” and only two inches deep. Neither of these issues is relevant to the violation incurred. As stated above, the statutory definition of excavating includes grading via back blading, and the location and depth of the gas line are not relevant to the fact that the Company failed to obtain a valid locate ticket before they began excavating.

8 The Commission also denies the Company’s contest of the violations. The Company has provided no new information to dispute the fact that it was excavating without having a valid locate ticket. The Company admits that it was “back blading for topsoil” and photos submitted by Puget Sound Energy show that large amounts of earth were being moved around on the property. Further, the depth and location of the line is irrelevant in determining fault under RCW 19.122.

9 We will, however, construe the Company’s submission as a request for mitigation. The Commission considers several factors when entertaining a request for mitigation, including whether the company introduces new information that may not have been considered in setting the assessed penalty amount, or explains other circumstances that convince the Commission that a lesser penalty will be equally or more effective in ensuring the company’s compliance.³

¹ RCW 19.122.030(5).

² RCW 19.122.055(1)(a).

³ Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission (January 7, 2013) at ¶19.

- 10 Here, the Company did not introduce any new information that would warrant mitigation of the penalty. Companies that dig without first obtaining an underground utility locate or dig outside the boundaries covered by a locate ticket, put their employees, the public, and the facility operator's employees at risk. The damage incident at issue could have resulted in a fire or an explosion. It is the Company's responsibility to secure a utility locate prior to performing an excavation, and it may not extrapolate from an existing ticket to surrounding areas not covered by the locate. Accordingly, we find that the Commission properly penalized DRG for damaging a gas pipeline and conclude that the Company's request for mitigation should be denied.
- 11 We will, however, allow the Company the opportunity that was offered in the Penalty Assessment. We will suspend \$2,500 of the penalty amount for one year, and then waive it, subject to the following conditions: (1) DRG supervisors and applicable field staff must attend National Utility Contractors Association (NUCA) Dig Safe Online Training within 90 days of this Order, (2) the Company must not commit any further violations of RCW 19.122 within 12 months of the date of this Order, and (3) the Company must pay the \$2,500 portion of the penalty within 10 days of the effective date of this Order.

ORDER

THE COMMISSION ORDERS THAT:

- 12 (1) DRG Construction, Inc.'s request for hearing is DENIED.
- 13 (2) DRG Construction, Inc.'s contest of the violation is DENIED.
- 14 (3) The Commission assesses a \$5,000 penalty and suspends \$2,500 of the penalty for 12 months, subject to the conditions listed in paragraph 11. Should the Company fail to meet the conditions, the \$2,500 suspended portion of the penalty will become immediately due and payable without further order.
- 15 (4) DRG Construction, Inc. must pay the \$2,500 portion of the penalty that is not suspended within 10 days of the effective date of this Order.

DATED at Olympia, Washington, and effective November 22, 2021.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

AMANDA MAXWELL
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.