

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

Tonya Reiss
City of Spokane Water Department
2900 S. Geiger Blvd
Spokane, WA 99224
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Phone: (509) 625-7851

914 E NORTH FOOTHILLS DR
SPOKANE WA 99207

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:
- 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
 - The City of Spokane must submit documentation of that attendance to the Commission **within five (5) days** of attending the training; and
 - 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: 5-26-23 [Month/Day/Year], at Spokane WA [City, State]

Tonya Reiss

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.



March 3, 2023

Tonya Reiss
City of Spokane Water Department

An evaluation and Continuing Education Unit (CEU) assignment of the following training has been completed:

Course Title: Utility 811 Utility Locating
Course Sponsor: City of Spokane Water & Hydro Services
Course Start Date: 3/15/2023
CEU Assigned: .6
Repeat of: n/a

The identification number for this course evaluation is A3246. Please refer to this identification number on the Washington Certification Services [Professional Growth Training Roster](#) that should be **submitted within 30 days** after completion of the training, and on any other correspondence or inquiries regarding this CEU assignment.

Once the training roster is submitted to Washington Certification Services, CEU will be recorded on the permanent transcripts of certified waterworks operators that have a certification number listed and have not yet met the professional growth requirement for the current reporting period. **Participants must complete the entire course and no partial CEU may be awarded.**

CEU assignments are valid for three (3) years from the date of this CEU evaluation unless the criteria for awarding CEU is revised by Department of Health. At the end of the three-year time period, or should the course title, length, sponsor, or content change during the three-year time period, you will be required to submit a new [Request for Course Evaluation and CEU Assignment](#) package. This evaluation is valid only for training held in Washington or conducted remotely (webinar) following additional [remote training criteria](#). This course may not be transferred to a different training sponsor.

Your training has been posted on our [Approved Classroom Training](#) page and can be viewed the day following the date of this letter.

In order to advertise your course to Washington Operators, you may wish to include your training on a 3rd parties' training calendar made known to Washington operators- <http://wateroperator.org/calendar> (then sort by state). If you would like to request your training be added to the calendar, please email info@wateroperator.org. Please note this service isn't affiliated with WCS or DOH in anyway.

If you have any questions about this CEU assignment or the professional growth requirement, please feel free to call (253-288-3357) or visit Washington Certification Services online at www.wacertservices.org. Thank you for your assistance in the continuing education of certified waterworks operators.

Jon Cornelius

1734 Indigo Ln NE
Poulsbo, WA 98370

Jonc.wa811@gmail.com

425.217.1011

Method of instruction – PowerPoint

Jon has been active in damage prevention since 2004. He was selected to represent US WEST on one of three one call boards in the state of Washington. He progressed to become vice chair and then chairman of WA 811 from 2008 through 2017.

After retiring from a 30-year career with Pacific Northwest Bell/US WEST/Qwest, Jon became a maintenance superintendent with Northwest Region of WSDOT in Seattle and remained there until retiring again, this time after 13 years in 2017.

Jon became the Program Coordinator for the Washington State Dig Law Safety Committee in 2017 and remains in that position today. In his role as program coordinator, Jon is responsible for working with complainants and respondents alike, educating them on the dig law and the safety committee processes. He regularly delivers dig law-based tailgate sessions to facility operators and excavators. He is an active member of the stakeholder group that works on suggesting dig law changes.

Jon has been teaching Dig Safe classes for NUCA of Washington for the past 5 years, educating several thousand excavators and facility operators about their roles and responsibilities found in RCW 19.122, also known as the “Dig Laws”.

Abstract

The training will present the law to the attendees and their responsibilities as a utility locator and excavator. Provide knowledge and understanding of the process and responsibilities that protects utilities. There will be discussion on the liability, the safety concerns, and the monetary damages that can occur when due diligence is not performed.

Learning Outcomes

The attendees will understand the importance of the law, what their responsibilities are, clear communication, recognize the safety concerns/issues when utilities are compromised, and how it prevents damage to the water infrastructure, in turn protecting the water system from unnecessary breaks that can compromise public health and safety.

811 Dig Law Training
0.6 CEU #A3246 March 15, 2023
City of Spokane Water Dept





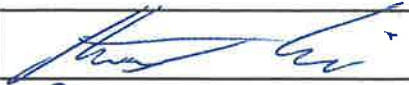




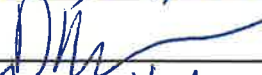






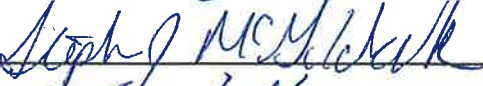


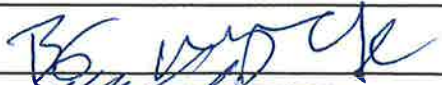

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LAST NAME	FIRST NAME	WDM CERT #	SIGNATURE
ARQUETTE	QUENTIN	15674	<i>Quentin Arquette</i>
BENSON	BRUCE	12856	<i>Bruce Benson</i>
BIERCE	CHRIS	11951	<i>Chris Bierce</i>
BROMLEY	ADAM		<i>Adam Bromley</i>
BURGESS	JARED		<i>Jared Burgess</i>
BURNETT	JESTON		<i>Jeston Burnett</i>
CLARK	DAN		<i>Dan Clark</i>
CLINTON	TIM	14100	<i>Tim Clinton</i>
COLE	ADAM		<i>Adam Cole</i>
DENISON	JIM		<i>Jim Denison</i>
FEIDER	ALLEN	14449	<i>Allen Feider</i>
FOSTER	STEPHANIE	14278	<i>Stephanie Foster</i>
HENDRIX	MAX		<i>Max Hendrix</i>
HIGGINS	NATHAN		<i>Nathan Higgins</i>
HIGGINS	JAKE		<i>Jake Higgins</i>
HOFFMAN	JOSH		<i>Josh Hoffman</i>
HOPKINS	LEON	11717	<i>Leon Hopkins</i>
Humphrey HUMPHRIES	JEFF		<i>Jeff Humphries</i>
* KEITH	JEFF	13867	<i>Jeff Keith</i>
KEVIN	TAYLOR		
KLEIN	BRIAN	-	<i>Brian Klein</i>
KNAPP	MIKE		<i>Mike Knapp</i>
MATISKA	BRETT		<i>Brett Matiska</i>
NAY	JAMES	13657	<i>James Nay</i>

811 Dig Law Training
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Print Name	Crew
Stephanie Foster	Hydrant 5
Steve Owen	Hydrants

811 Dig Law Training
0.6 CEU #A3246 March 16, 2023
City of Spokane Water Dept

LAST NAME	FIRST NAME	WDM CERT #	SIGNATURE
BABNICK	BABNICK		
BADZIONG	MARK		
BURCHETT	GREG	13503	
CHEVALIER CHEVELIER	Ronald CHEVY		
COULTER	JEREMY		
EIRLS	AARON	13425	
FLETCHER	RYAN		
FOSTER	RAYMOND	13721	
GURSKÉ	COLIN	15034	
HAMILTON	RAY	15645	
HENDRICKSON	DAVID		
HENKE	JAMES		
IMHOLT	BRETT		
JOSH MITCHELL	JOSH		
KOLLER	BRAD	13111	
KUSHNERCHUK	IVAN	14220	
MARTINEZ	JUSTIN		
MCGOLDRICK	STEVE	13609	
MCNALL	VINCE		
MEEK	MATT	14782	
MERRITT	KYLE		
MORSE	BO		
PATRICK	KELLY	15060	
POWERS	TAMARA		

811 Dig Law Training
0.6 CEU March 16, 2023
City of Spokane Water Dept

Print Name	Crew
BRAD KILLER	HYDRANT
BRETT LYNDON	Hydrant
RYAN FLETCHER	HYDRANT
BRUCE BABNICK	HYDRANT
Rex Reishus	Hydrant