



STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION
621 Woodland Square Loop SE, P.O. Box 47250 • Lacey, Washington 98503
P.O. Box 47250 • Olympia, Washington 98504-7250
(360) 664-1160 • TTY (360) 586-8203

January 10, 2020

Mark L. Johnson, Executive Director and Secretary
Washington Utilities and Transportation Commission
621 Woodland Square Loop SE
Lacey, WA 98503

RE: *Washington Utilities and Transportation Commission v. Active Environmental Inc.*
Commission Staff's Response to Company's Late Response Accepting Penalty Conditions
Docket DG-190887

Dear Mr. Johnson:

On November 12, 2019, the Washington Utilities and Transportation Commission (Commission) issued a \$1,000 penalty against Active Environmental, Inc. (Active Environmental or Company) for a violation of RCW 19.122.030(2) that occurred on June 4, 2019. In the penalty assessment, the Commission offered the opportunity for the Company to suspend, and ultimately waive, the full penalty amount subject to the conditions that the Company incurs no additional dig law violations within 12 months, and employees responsible for excavation attend National Utility Contractor Association (NUCA) dig safe training within 12 months of the date of the penalty notice.

On December 27, 2019, the owner of the Company emailed the Commission and stated that due to being out of the office for the holidays, he missed the 15-day window to respond to the penalty notice, and inquired about still being able to accept the conditions to suspend and ultimately waive the penalty amount. Staff did not receive this message from the Company until January 6, 2020, when Staff returned from being out of the office for the holidays. Staff contacted the Company and informed it that given the circumstances, would recommend that the Commission honor the Company's acceptance of the conditions offered in the penalty notice. During the time between the Company's inquiry and Staff's response, the Company, desiring to not incur additional penalties for not responding to the penalty notice, mailed back the response form accepting the conditions, and made a payment of \$1,000.

Staff believes that the late response of the Company was not intentional, and subsequent communication with the Company owner suggests that the Company made a good faith attempt to satisfy the requirements of the penalty notice by making a payment before receiving an answer regarding acceptance of the conditions after the 15-day response window. Additionally, the Company has a positive history of submitting utility locate requests, and has not previously been penalized by the Commission. Staff believes that Company employees attending training could be more effective than a monetary penalty to encourage safety and compliance, and mitigate the future risk to the public and underground utility infrastructure.

Therefore, staff recommends that the Commission accept the Company's response and suspend the \$1,000 penalty amount for a period of 12 months on the conditions that Active Environmental incurs no additional dig law violations within 12 months of the date of the penalty notice, and its field employees responsible for excavation attend NUCA dig safe training within 12 months of the penalty notice. The Commission will ultimately waive the \$1,000 suspended penalty amount if the Company complies with the conditions. If the Commission discovers any subsequent violations of RCW 19.122 within the 12-month period, the \$1,000 suspended penalty amount will become immediately due and payable in addition to any penalties that may be assessed for the subsequent violation(s).

If you have any questions, please contact Steve Davidson, Compliance Investigator, Pipeline Safety and Damage Prevention, at (360) 664-1321, or by email at steve.davidson@utc.wa.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Sean C. Mayo', with a stylized flourish at the end.

Sean C. Mayo, Director
Pipeline Safety