

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

**PENALTY ASSESSMENT: DG-171213
PENALTY AMOUNT: \$3,500**

BDZ Construction, Inc.
3207 Pacific Ave.
Everett, WA 98201-4558

The Washington Utilities and Transportation Commission (Commission) believes you have violated Revised Code of Washington (RCW) 19.122.030(2) by failing to provide the required notice to a one-number locator service not less than two business days before excavating. RCW 19.122.055(1)(a) states, in part, that any excavator who fails to notify a one-number locator service and causes damage to a underground gas utility is subject to a civil penalty of not more than ten thousand dollars for each violation.

Commission pipeline safety staff (Staff) reviewed damage reports submitted by Puget Sound Energy (PSE), and information obtained from the One Call 811 database, and hereby notifies you that the Commission is assessing a penalty against you in the amount of \$3,500 on the following grounds:

On April 27, 2016, BDZ Construction, Inc. (BDZ) was grading a new lot for site development at 7301 83rd Ave. NE in Marysville, Washington. While excavating, BDZ broke a PSE service line. The Damage Information Reporting Tool (DIRT) report submitted by Puget Sound Energy (PSE) on June 24, 2016, indicated that a one-number locator service was not notified prior to excavation. Staff found that BDZ did submit a utility locate request on April 27, 2016, which was the same day the damage incident occurred. Staff sent a technical assistance warning letter to Absolute Excavating on July 14, 2016, which included detailed information about the requirements of Washington state's dig law.

On Dec. 8, 2016, BDZ was installing a storm line at 912 NE 3rd St. in North Bend, Washington. While excavating, BDZ broke a PSE 1 1/8 inch polyethylene gas stub. The DIRT report submitted by PSE on February 21, 2017, indicated that a one-number locator service was not notified prior to excavation. Staff found that BDZ did submit a utility locate request on February 7, 2017, which was approximately two months after the damage incident occurred.

BDZ has previously been penalized by the commission for two violations of RCW 19.122.030 in 2015. Both of these violations were for failing to request utility locates prior to excavating, which resulted in a \$2,000 penalty being issued on May 5, 2016, in Docket DG-160167. The company promptly paid the penalty in full on May 25, 2016.

Accordingly, Staff Recommends a \$3,500 penalty be assessed against BDZ for two violations of RCW 19.122.030(2), for failing to provide the required notice to a one-number locater service not less than two business days before excavating, as follows:

- \$1,000 for the first violation of RCW 19.122.030(2), which occurred on April 27, 2016; and
- \$2,500 for the second violation of RCW 19.122.030(2), which occurred on Dec. 8, 2016.

Staff's research indicates that BDZ has a significant history of requesting utility locates and that the violations were the result of company negligence, not lack of knowledge of the requirements of Washington State's dig law.

The Commission agrees with Staff's recommendation and assesses a penalty of \$3,500

These facts, if not contested or if proved 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 either or both of the violations did not occur, you may deny committing the violation(s) and contest the penalty assessment through evidence presented at a hearing or in writing. The Commission will grant a request for hearing only if material issues of law or fact concerning the violation(s) require consideration of evidence and resolution in a hearing. Any contest of the penalty assessment must include a written statement of the reasons supporting that contest. Failure to provide such a statement will result in denial of the contest.

If you admit either or both of the violations but believe there is a reason for the violation(s) that should excuse you from the penalty, you may ask for mitigation (reduction) of this penalty through evidence presented at a hearing or in writing. The Commission will grant a request for hearing only if material issues of law or fact require consideration of evidence and resolution in a hearing. Any request for mitigation must include a written statement of the reasons supporting that request. Failure to provide such a statement will result in denial of the request.

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(s) 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 his or her decision.

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

- Pay the \$3,500 amount due;
- Request a hearing to contest the occurrence of either or both of the violations; or
- Request mitigation to reduce the amount of the penalty.

Please indicate your selection on the enclosed form and send it to the Washington Utilities and Transportation Commission, Post Office Box 47250, Olympia, Washington 98504-7250, **within FIFTEEN (15) days** after you receive this notice.

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

DATED at Olympia, Washington, and effective January 31, 2018.

/s/ Gregory J. Kopta
GREGORY J. KOPTA
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT DG-171213

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, am 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 violations occurred and enclose \$2,500 in payment of the penalty
2. **Contest the violations.** I believe that the alleged violations did not occur for the reasons I describe below (**if you do not include reasons supporting your contest here, your request will be denied. Attach additional sheets if necessary**):
- 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 provide above.
3. **Request mitigation.** I admit the violations, 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. Attach additional sheets if necessary**):
- 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 provide 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 makes a materially false statement which he 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 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.”