

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

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

**PENALTY ASSESSMENT: DG-180247  
PENALTY AMOUNT: \$3,500**

Greg Bacon  
Bacon Concrete, Inc.  
16510 N. Brannon Lane  
Spokane, WA 99208

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 Avista Utilities (Avista) and information obtained from the One Call 811 database, and hereby notifies you that it is assessing a penalty against you in the amount of \$3,500 on the following grounds:

On September 7, 2017, Bacon Concrete, Inc. (Bacon Concrete or Company) was working at 9001 N Stevens St. in Spokane, Washington. While excavating, Bacon Concrete hit and damaged a newly installed 2" Avista natural gas line. Avista reported that Bacon Concrete did not have a valid locate ticket prior to beginning work. Staff investigated and found no record of a utility locate request for this location by Bacon Concrete. Staff sent a technical assistance warning letter to Bacon Concrete on November 21, 2017, which included detailed information about the requirements of Washington state's dig law.

On October 2, 2017, Bacon Concrete was working at 512 West Maxine St. in Spokane, Washington. While excavating, Bacon Concrete hit and damaged a 2" Avista natural gas line. Staff investigated and found no record of a utility locate request for this location by Bacon Concrete. Staff sent another technical assistance warning letter to Bacon Concrete on December 19, 2017, which included detailed information about the requirements of Washington state's dig law.

On November 13, 2017, Bacon Concrete was working at 8227 N Regal St. in Spokane, Washington. While excavating to install a new curb, Bacon Concrete severed a 3/4" Avista natural gas line. Staff investigated and found no record of a utility locate request for this location by Bacon Concrete. Staff found that Bacon Concrete failed to notify a one-number locator service prior to excavating and causing damage to an underground gas facility.

Staff found that Bacon Concrete committed three violations of RCW 19.122.030(2) by failing to request utility locates on three occasions. Staff recommends the Commission assess a \$3,500 penalty for these three violations, as follows:

- No Penalty for the first violation of RCW 19.122.030(2), which occurred on September 7, 2017;
- \$1,000 penalty for the second violation of RCW 19.122.030(2), which occurred on October 2, 2017; and
- \$2,500 for the third violation of RCW 19.122.030(2), which occurred on November 13, 2017.

For a first time offense, staff typically provides a technical assistance letter to excavators who allegedly cause damage to underground utilities without first requesting utility locates. This letter provides information about Washington state's dig law and when utility locates are required. In this instance, due to the damage incidents occurring so close together, staff was unable to provide the company with this information prior to the second and third damage incidents. Therefore, staff is offering to treat the first violation as a warning and only recommend a penalty for the second and third subsequent violations.

Staff's research indicates that Bacon Concrete 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. Even under these circumstances, Staff believes that enforcing the entire \$3,500 penalty against Bacon Concrete will be financially burdensome and recommends that the Commission suspend a \$2,500 portion of the penalty for a period of one year subject to the conditions that: (1) Bacon Concrete field crew involved in excavation, including Company management, attend Dig Safe training provided through the National Utility Contractors Association (NUCA) within 12 months of the date of the Penalty Assessment; and (2) Bacon Concrete commits no further violations of RCW 19.122 within the next 12 months.

The Commission agrees with Staff's recommendation and assesses a penalty of \$3,500 with an offer to suspend \$2,500 of penalty amount subject to the conditions that: (1) Bacon Concrete management and all crews involved in excavation complete NUCA Dig Safe Training within 12 months of this Notice, and (2) Bacon Concrete commits no further violations of RCW 19.122 within one year of this Notice. The Commission will waive the suspended penalty amount of \$2,500 if Bacon Concrete complies with both conditions. If Bacon Concrete fails to comply with either of these conditions, the \$2,500 suspended penalty will become immediately due and payable, in addition to any new penalties that the Commission may assess for additional violations.

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 any or all 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 the violations but believe there is a reason for any or all of 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;
- Pay \$1,000 of the total penalty and notify the Commission that you accept the offer to suspend, and ultimately waive, the remaining \$2,500 penalty subject to the conditions that all Bacon Concrete employees involved in excavation, including management, attend the Dig Safe training provided through NUCA within 12-months of this Notice; submit documentation of that attendance to the Commission within five (5) days of attending the training; and commit no further violations of RCW 19.122 within the next year; or
- Request a hearing to contest the occurrence of any or all of the violation(s); 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 **within FIFTEEN (15) days** after you receive this notice. If you are unable to use the web portal, you may submit it via email to [records@utc.wa.gov](mailto: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, Post Office Box 47250, Olympia, Washington 98504-7250.

**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 March 27, 2018.

*/s/ Rayne Pearson*  
RAYNE PEARSON  
Director, Administrative Law Division

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**  
**PENALTY ASSESSMENT DG-180247**

**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 \$3,500 in payment of the penalty
2. **Accept conditions.** I admit that the violations occurred and enclose \$1,000 toward the payment of the penalty. I also accept the Commission's offer to suspend, and ultimately waive, the remaining \$2,500 penalty amount on the conditions that all Bacon Concrete employees involved in excavation, including management, attend the Dig Safe training provided through NUCA within 12-months of this penalty assessment; submit documentation of that attendance to the Commission within five (5) days of attending the training; and commit no further violations of RCW 19.122 within the next year.
3. **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**):
- 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.
4. **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**):
- 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.”