

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

**PENALTY ASSESSMENT: DG-180699
PENALTY AMOUNT: \$1,000**

Brian Rush
Terra Underground, LLC
1235 Buckles Ave.
Hayden, ID 83835

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. Based on Staff's review, the Commission hereby notifies you that it is assessing a penalty against you in the amount of \$1,000 on the following grounds:

On May 27, 2016, Terra Underground, LLC (Terra Underground or Company), while excavating on 10th St. in Deer Park, Washington, damaged an Avista gas line. Avista reported that Terra Underground did not request utility locates prior to excavating and subsequently damaging its underground gas utility. Staff sent a technical assistance warning letter to the Company on July 27, 2016, which included detailed information about the requirements of Washington state's dig law.

On March 29, 2018, Terra Underground was working at 21900 Country Vista Blvd. in Liberty Lake, Washington. While digging, Terra Underground damaged an Avista gas line. Avista reported that Terra Underground was digging without valid locates. Staff investigated and found that Terra Underground failed to submit a utility locate request for the damage location prior to excavating.

Staff recommends the Commission assess a \$1,000 penalty against Terra Underground for one violation of RCW 19.122.030(2) for failing to provide the required notice to a one-number locator service not less than two business days before excavating, as follows:

- No penalty for the violation of RCW 19.122.030(2), which occurred on May 27, 2016; and
- \$1,000 penalty for the violation of RCW 19.122.030(2), which occurred on March 29, 2018;

Staff's research indicates that Terra Underground has a relatively significant history of requesting utility locates and that the violation appears to be the result of the negligence by the Company as opposed to a lack of knowledge of the requirements of Washington state's Dig Law. After considering all the circumstances, Staff recommends that the Commission offer to suspend the \$1,000 penalty for a period of one year subject to the conditions that (1) Terra Underground field crews involved in excavation, including Company management, attend Dig Safe training provided through the National Utility Contractors Association (NUCA) within six months of the date of the Penalty Assessment; and (2) Terra Underground 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 \$1,000 with an offer to suspend \$1,000 of the penalty amount subject to the conditions that: (1) Terra Underground employees and Company management complete NUCA Dig Safe Training within six months of the date of this Notice, and (2) Terra Underground has no further violations of RCW 19.122 within one year of the date of this Notice. The Commission will waive the suspended penalty amount of \$1,000 if Terra Underground complies with both conditions. If Terra Underground fails to comply with either of these conditions, the \$1,000 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 either or both of the violations did not occur, you may deny committing the violation(s) and contest the penalty through evidence presented at a hearing or in writing. Or, if there is a reason for either or both of the violations 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 hearing only if material issues of law or fact require consideration of evidence and resolution in a hearing. Any request to contest the violations 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(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 \$1,000 amount due; or
- Notify the Commission that you accept the offer to suspend, and ultimately waive, the \$1,000 penalty subject to the conditions that all Terra Underground employees, including management, attend the Dig Safe training provided through NUCA within six months of the date 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 one year of the date of this Notice; or

- Request a hearing to contest the occurrence of either or both 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. If you are unable to submit the form electronically, you may send a paper copy to the Washington Utilities and Transportation Commission, PO 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 August 29, 2018.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT DG-180699

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 \$1,000 in payment of the penalty
2. **Accept conditions.** I admit that the violations occurred. I also accept the Commission's offer to suspend, and ultimately waive, the \$1,000 penalty amount subject to the conditions that all Terra Underground employees, including management, attend the Dig Safe training provided through NUCA within six months of the date 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 one year of the date of this Notice.
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.”