

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: DG-190244
PENALTY AMOUNT: \$3,000
Investigation #7946

Brian Rush
Terra Underground, LLC
1235 W Buckles Rd
Hayden, ID 83835

UBI: 603-194-840
Phone: 208-659-5894

The Washington Utilities and Transportation Commission (Commission) believes that you have violated Revised Code of Washington (RCW) 19.122.030(2) by failing to request a dig ticket prior to excavation and damaging an underground natural gas facility. RCW 19.122.055 states, in part, that any excavator who fails to notify a one-number locator service and subsequently causes damage to a hazardous liquid or gas facility is subject to a civil penalty of not more than \$10,000 for each violation.

Commission staff (Staff) conducted an investigation that included reviewing damage reports submitted by Avista Corporation (Avista), which identified a natural gas damage event caused by Terra Underground, LLC (Terra Underground or Company). Accordingly, the Commission hereby notifies you that it is assessing a penalty against you for \$3,000 on the following grounds:

On August 29, 2018, the Commission assessed a \$1,000 penalty against Terra Underground for one violation of RCW 19.122.030(2) for failing to provide notice to a one-number locator service at least two days before excavating and damaging underground natural gas facilities on March 29, 2018.

On October 15, 2018, Terra Underground was working at 707 S Carnahan Rd., Spokane Valley, Washington. While excavating, workers for Terra Underground damaged an underground Avista gas facility. The Damage Information Reporting Tool report submitted by Avista on November 9, 2018, indicated that the Company was excavating without a valid dig ticket when it caused the damage to the underground utility.

Staff recommends the Commission assess a \$3,000 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:

- \$3,000 penalty for the violation of RCW 19.122.030(2) that occurred on October 15, 2018.

Staff's research indicates that Terra Underground has submitted 47 utility locate requests since the Commission assessed a penalty against the Company on April 18, 2016, and that the violation appears to be the result of the Company's negligence rather than a lack of knowledge of the requirements of Washington state's dig law. The investigation found that while Terra Underground made efforts to expose and avoid damage to the gas facility, it acted negligently by not submitting its own request to locate underground utilities before excavating. Staff spoke with a Company representative, who stressed the Company's commitment to safety, evidenced by its relatively low number of damage incidents in relation to the number of locate requests it submits. He also mentioned that the Company recently sent many of its employees to an excavation safety class in an effort to avoid future damage incidents.

The Commission agrees with Staff's recommendation and assesses a penalty of \$3,000.

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 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 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 his or her decision.

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

- Pay the \$3,000 penalty amount due; or
- Request a hearing to contest the occurrence of the violation; 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, P.O. 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 May 13, 2019.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT DG-190244, Investigation # 7946

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 violation occurred and enclose \$3,000 in payment of the penalty.
2. **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 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**):
- 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.”