

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: DG-210256

PENALTY AMOUNT: \$1,000

SERVICE VIA EMAIL

Investigation #8351

UBI: 602-812-806

T Barger Dirtworks, LLC
PO Box 1561
Buckley, WA 98321
Tim@TBarger.com

The Washington Utilities and Transportation Commission (Commission) believes that T Barger Dirtworks, LLC, (T Barger or Company) has violated Revised Code of Washington (RCW) 19.122.055(1)(a) by failing to notify one-number locator service before beginning excavation. RCW 9.122.055(1)(a) states, in part, that excavators who fail to notify a one-number locator service and cause damage to an underground gas facility are subject to a civil penalty of not more than \$10,000 for each violation.

The Commission reviewed findings and recommendations made by Commission staff (Staff) and hereby notifies you that it is assessing a \$1,000 penalty against you on the following grounds:

On January 20, 2021, T Barger was excavating at 20 Tacoma Ave. S., Tacoma, Washington. The Company was digging for a sewer when it struck a 2" PSE gas line. The Damage Information Reporting Tool report submitted by PSE on February 27, 2021, indicates the Company was digging for sewer outside the scope of the locate ticket.

Staff conducted an investigation that included reviewing damage reports, investigation reports, and the One-Call Ticket database. Staff attempted to contact T Barger seeking further information or documentation but, as of the date of this Notice, Staff has not received any additional information regarding the facts in this case. The documents reviewed identified a natural gas event that involved T Barger damaging a natural gas line while excavating without a valid locate ticket. Because T Barger failed to respond, Staff was unable to determine whether these violations were intentional, or if additional mitigating factors existed that may warrant the Commission suspending or waiving a portion of the penalty.

The Company has not been penalized by the Commission before and Dig Safe training was not available in 2020. Based on these reasons, Staff recommends the Commission assess a \$1,000 penalty for one violation of RCW 9.122.055(1)(a) with the option to suspend for one year, and then waive, the \$1,000 penalty subject to the conditions that: (1) the Company complete Dig Safe Training provided through the National Utility Contractors Association (NUCA) within 90 days and (2) the Company must not commit any further violations of RCW 19.122 within 12 months of the date of this Notice.

The Commission agrees with Staff's recommendation and assesses a penalty of \$1,000, with an offer to suspend, and ultimately waive, the penalty subject to the conditions above.

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 their decision.

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

- Pay the \$1,000 penalty amount due; or
- Notify the Commission that you accept the offer to suspend the \$1,000 penalty amount subject to the following conditions:
 - T Barger management and field crew responsible for excavation complete NUCA Dig Safe Training (<https://utc-9183.quickbase.com/db/bpkt6vndh>) within 90 days of service of this Notice; and
 - The Company must submit documentation of that attendance to the Commission within five (5) days of attending training; and
 - T Barger must not commit any additional violations of RCW 19.122 within 12 months of the date of this Notice; 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 Lacey, Washington, and effective May 5, 2021.

/s/Rayne Pearson
RAYNE PEARSON

Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT DG 210256, Investigation #8351

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 \$1,000 in payment of the penalty.
2. **Accept the Conditions.** I admit that the violation occurred, and I also accept the Commission's offer to suspend, and ultimately waive, the \$1,000 penalty amount subject to the following conditions:
- T Barger Dirtworks, LLC supervisors and applicable field staff must attend dig safe training provided through NUCA within 90 days of the date of this Notice; and
 - **T Barger Dirtworks LLC must submit documentation of that attendance to the Commission within five (5) days of attending the training;** and
 - T Barger Dirtworks LLC must not commit any additional violations of RCW 19.122 within twelve (12) months of the date of this Notice.

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 violation, 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.”