

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: DG-210696

PENALTY AMOUNT: \$1,000

Investigation #8392

UBI: 602-185-976

SERVICE VIA EMAIL

Hattenburg Excavating, Inc.
PO Box 248
Mead, WA 99021
Hattexc@comcast.net

The Washington Utilities and Transportation Commission (Commission) believes that Hattenburg Excavating, Inc (Hattenburg 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 June 21, 2021, Hattenburg Excavating, Inc., (Hattenburg or Company) was excavating at 2336 W 1st Ave., Spokane, Washington. While excavating the Company struck an underground natural gas facility operated by Avista Corporation (Avista). The Damage Information Reporting Tool report submitted by Avista on July 7, 2021, indicated that the Company was excavating without a valid locate ticket.

Staff conducted an investigation that included reviewing damage reports, investigation reports, and the One-Call Ticket database. Staff contacted Hattenburg seeking further information or documentation and received a statement explaining that the operator had been working out of the scope of the valid locate ticket when this incident occurred. The documents reviewed identified a natural gas event that involved Hattenburg damaging a natural gas line while excavating without a valid locate ticket. The Company has not been penalized previously and the Commission's primary goal is to promote education and prevent damage to underground utilities. Based on these factors Staff recommends the Commission assess a \$1,000 penalty for one violation of RCW 9.122.055(1)(a) with the option to suspend an \$800 portion of the penalty for one year, and then waive it, subject to the conditions that: (1) the Company pays the \$200 portion of the penalty that is not suspended within fifteen (15) days of this Notice, (2) the Company completes Dig Safe Training provided through the National Utility Contractors Association (NUCA) within 90 days of this Notice, and (3) 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, \$800 of 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
- Pay \$200 and notify the Commission that you accept the offer to suspend \$800 of the penalty amount subject to the following conditions:
 - Hattenburg management and field crew responsible for excavation must 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
 - Hattenburg must not commit any additional violations of RCW 19.122 within twelve (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 October 11, 2021.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT DG-210696, Investigation #8392

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, enclose \$200 in partial payment of the penalty, and I accept the Commission's offer to suspend, and ultimately waive, \$800 of the penalty amount subject to the following conditions:
- Hattensburg supervisors and applicable field staff must attend dig safe training provided through NUCA within 90 days of the date of this Notice; and
 - Hattensburg **must submit documentation of that attendance to the Commission within five (5) days of attending the training;** and
 - Hattensburg 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 provided 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 provided 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.”