

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: D-143952
PENALTY AMOUNT: \$1,000

Faber Construction
313 E. Grover Street
Lynden, WA 98264

The Washington Utilities and Transportation Commission (Commission) believes that you have violated Revised Code of Washington (RCW) 19.122.030(1)(a) by working outside of the area identified on its locate ticket. RCW 19.122.070(1) states, in part, that violation of any provision of the chapter is subject to a civil penalty of not more than one thousand dollars for an initial violation and not more than five thousand dollars for each subsequent violation within a three-year period.

The Commission reviewed findings and recommendations made by the Washington State Dig Law Safety Committee (Safety Committee) and hereby notifies you that it is assessing a penalty against you in the amount of \$1,000 on the following grounds:

On April 7, 2014, Faber Construction (Faber) submitted a utility locate request to the National Ticket Management System Washington One Call (One Call). Faber submitted the request in accordance with RCW 19.122.030(2) prior to excavation to replace a water line.

Six utility providers, including Cascade Natural Gas Corporation (Cascade), received notification from One Call with instructions to locate utility services in the area identified on Dig Ticket 14082615 within two business days. Cascade located the utility's services; however, according to Faber, Cascade's marking of its underground facilities were incorrect.

On May 6, 2014, Faber began excavation and damaged an underground gas line owned by Cascade. According to Faber, Cascade's locate markings were more than 34 inches away from where the underground gas line was located.

On May 8, 2014, Faber submitted an emergency utility locate request to One Call. This locate request was submitted following the May 6, 2014, incident so that Cascade could locate all gas lines in the excavation area as soon as possible.

On July 22, 2014, Faber filed a complaint with the Safety Committee. The complainant alleged that Cascade incorrectly marked its underground facilities on the April 7, 2014, utility locate request.

The Safety Committee found that Faber violated RCW 19.122.030(1)(a) by working outside of the area identified on locate ticket 14082615. The Safety Committee recommended that the Commission assess a \$1,000 penalty for this violation, with a stipulation that the \$1,000 be deferred if Faber agrees to send the field crew involved in the excavation, including the construction superintendent, to "Dig Safe" Training within six months of the Commission's review and confirmation of this decision. If Faber staff either fail to attend the training, or commit further violations of RCW 19.122.030 within a 12-month period from the Commission's confirmation date, then the \$1,000 will be due and payable at that time.

Pursuant to RCW 19.122.150(3), the Commission has considered the Safety Committee's determination and adopts its recommendation. The Commission assesses a penalty of \$1,000 but will suspend that penalty on the conditions that (1) Faber's field crew involved in the excavation, including the construction superintendent, attend "Dig Safe" training, provided through the National Utility Contractor's Association (NUCA), within six months of the date of this Penalty Assessment; and (2) Faber commits no further violations of RCW 19.122.030 within the next 12 months. The Commission will waive the penalty in its entirety if Faber complies with both conditions.

This information the Safety Committee provided to the Commission, if proved at a hearing and not rebutted or explained, is sufficient to support the penalty assessment.

Your penalty is due and payable now. If you believe the violations did not occur, you may request a hearing to contest the penalty assessment. The Commission will grant that request only if material issues of law or fact require consideration of evidence and resolution in a hearing. A request for a hearing 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 there is a reason for the violation that you think should excuse you from the penalty, you may ask for mitigation (reduction) of this penalty through evidence presented at a hearing or in writing. A 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 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 amount due;
- Notify the Commission that you accept the offer to suspend the penalty on condition that Faber attend the “Dig Safe” training provided through NUCA and commit no further violations of RCW 19.122.030 within the next 12 months and that the Commission waive the penalty if Faber complies with these conditions;
- Request a hearing to contest the occurrence of the violation; or
- Request mitigation to contest the amount of the penalty.

Please indicate your selection on the enclosed form and send it to the Washington Utilities and Transportation Commission, Post Office 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 February 10, 2015.

GREGORY J. KOPTA
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT D-143952

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. **Request for a hearing.** I believe that the alleged violation did not occur for the reasons I describe below, and I request a hearing based on those reasons for a decision by an administrative law judge:

3. **Application for mitigation.** I admit the violation, but I believe that the penalty should be reduced for the reasons set out below:

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. **Attend training.** I admit that the violation occurred and accept the Commission’s offer to suspend, and ultimately waive, the penalty on condition that Faber attend the “Dig Safe” training provided through NUCA within six 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 19.122.030 within the next 12 months.

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.”