

Service Date: September 13, 2021

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: DG-210548

PENALTY AMOUNT: \$1,000

Investigation #8375

UBI: 602-346-720

SERVICE VIA EMAIL

Big D's Excavation, LLC, d/b/a Big D's Construction of Tri-Cities
3902 N Swallow Ave
Pasco, WA 99301
Brett@BigDsconstruction.net
Office@Big-DS.com

RECEIVED
RECORDS MANAGEMENT

SEP 21 2021

STATE OF WASH.
UTIL. & TRANSP. COMMISSION

The Washington Utilities and Transportation Commission (Commission) believes that Big D's Excavation, LLC, d/b/a Big D's Construction, (Big D's or Company) has violated the 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 April 2, 2021, Big D's was excavating at Sherry Court, Pasco, Washington when it struck a 1-inch Cascade Natural Gas (CNG) gas line. The Damage Information Reporting Tool report submitted by CNG on May 5, 2021, indicates 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 attempted to contact Big D's 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 Big D's damaging a natural gas line while excavating without a valid locate ticket. Because Big D's failed to respond, Staff was unable to determine whether these violations were intentional, or if additional mitigating factors existed. The Company has been penalized by the Commission before and has been advised to take advantage of the free NUCA Dig Safe training. NUCA Dig Safe training was not available in 2020, which may have contributed to Big D's inability to complete it to date. 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, and ultimately waive, \$800 of the penalty subject to the conditions that: (1) the Company complete Dig Safe Training provided through 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, \$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 the \$800 penalty amount subject to the following conditions:
 - Big D's 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
 - Big D's 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 September 13, 2021.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT DG-210548, Investigation #8375

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:
- o Big D's supervisors and applicable field staff must attend dig safe training provided through NUCA within 90 days of the date of this Notice; and
 - o Big D's **must submit documentation of that attendance to the Commission within five (5) days of attending the training;** and
 - o Big D's 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):
- See attached locate ticket that covers area in question.
 - Old abandoned line

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: 9/13/21 [Month/Day/Year], at Pasco, WA [City, State]

Brett Hisle
Name of Respondent (Company) – please print

Brett Hisle
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.”

Washington One Call

Ticket number 21087015 **Type/header** 2 FULL BUSINESS DAYS WEB
Original call date 03/05/21 10:02 am
Work to begin date 03/10/21 12:00 am
Expiration date 04/19/21 10:15 am

Excavator information

Company name BIG D'S CONSTRUCTION **Type of excavator**
Contact name BRETT HISLE **Phone** 509-438-0847
Alt. contact LARRY MCGILL **Phone** 509-440-0564
Address 3902 N SWALLOW AVE **Fax phone** 509-542-8362
PASCO, WA 99301
Email address brett@bigdsconstruction.net

Excavation information

Type of work UTILITY EXCAVATION
Work being done for JEFF KELLY
Directional drilling
Type(s) of excavation equipment

Location information

State WA **County** FRANKLIN
Place PASCO **Address**
Street ROAD 52
Intersecting street W SYLVESTER ST
Location of work ROW TO ROW ALONG ROAD 52 FROM THE SOUTHERN INTERSECTION OF SYLVESTER AND ROAD 52 TO THE INTERSECTION OF ROAD 52 AND WHITETAIL CT.
Remarks AREA MARKED IN WHITE
NW Lat 46.2404659 **Lon** -119.1598549 **SE Lat** 46.2341214 **Lon** -119.1588945

Members notified

District	Company name	Marking concerns	Customer service	Repair	Status
CHTWA06	CHARTER COMMUNICATIONS	800-778-9140	855-248-7822	855-248-7822	Marked, Complete
CNG18	CASCADE NATURAL GAS-KENNEWICK	509-783-7361	888-522-1130	888-522-1130	Does not report
FRAIRR01	FRANKLIN COUNTY IRRIG#1	509-547-4912	509-547-3831	509-547-3831	Not yet responded
FRAPUD01	FRANKLIN COUNTY PUD	509-546-5975	509-547-5591	509-547-5591	Not yet responded
PASCO01	CITY OF PASCO	509-545-3463	509-545-3463	509-545-3463	Does not report
QLNWA16	CTLQL-CENTURYLINK	800-778-9140	800-283-4237	800-573-1311	Marked, Complete