

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

**PENALTY ASSESSMENT: D-171084
PENALTY AMOUNT: \$1,000**

Full Bore, Inc.
1546 NW 56th St.
Seattle, WA 98107

The Washington Utilities and Transportation Commission (Commission) believes you have violated Revised Code of Washington (RCW) 19.122.040(2)(a) by failing to use reasonable care to avoid damaging underground utilities by not determining the precise location of the facilities which had been marked. RCW 19.122.070(1) states, in part, that violations 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:

The Safety Committee received a complaint against Full Bore, Inc. (Full Bore) regarding a potential violation of the Washington State Dig Law, RCW 19.122, for work performed in 2017. The complainant in this case was Silver Lake Water & Sewer District (Silver Lake)

On Oct. 25, 2017, the Safety Committee heard the complaint against Full Bore in Case 17-026. The Safety Committee determined that Full Bore committed the following violation:

- One violation of RCW 19.122.040(2)(a) for failing to use reasonable care to avoid damaging underground utilities by not determining the precise location of the facilities which had been marked.

The Safety Committee recommended that the following penalties be assessed against Full Bore:

- \$1,000 for one violation of RCW 19.122.040(2)(a); and
- The opportunity to defer the full \$1,000 penalty if all Full Bore owners and field supervisors complete National Utility Contractor Association (NUCA) Dig Safe Training within 90 days of issuance of a penalty assessment by the commission.

Commission regulatory staff (Staff) reviewed the Safety Committee's determination and agrees with their decision. Staff found that Full Bore committed one violation of RCW 19.122.040(2). Staff based this decision on the following information provided by the Safety Committee:

Case 17-026

Silver Lake alleges that on or about Feb. 7, 2017, a Full Bore excavation crew was installing cable service at 11009 30th Drive SE, in Everett, WA, when they damaged their 8" concrete sewer main. Full Bore is a sub-contractor for Comcast and submitted a proper utility locate request on Feb. 2, 2017, which was assigned Ticket No. 17028477. Silver Lake properly located their sewer main and side laterals, as well as their water mains and services, located in the 30th Drive SE area.

Silver Lake was unaware that Full Bore had damaged their sewer main until a customer reported that sewage was surfacing in the homeowner's yard on April 15, 2017. While Silver Lake employees were on site investigating the cause of the sewage leak, a homeowner advised them that Full Bore had bored across 30th Drive SE in February 2017, in the area of the sewage, and had experienced considerable difficulty with the bore job, taking approximately 12 hours to complete the work.

On April 17, 2017, Silver Lake used a video camera to inspect the sewer main and discovered a section of the pipe had collapsed. Silver Lake began excavating to repair the damage when they discovered an unmarked 2" PVC pipe installed at a depth of 8" under the asphalt. When Silver Lake was finally able to expose the broken sewer main it was discovered that it had a bore hole running through it, which was in perfect alignment with the 2" PVC pipe installed directly above it. Silver Lake concluded that Full Bore damaged their sewer main while performing their boring activities in February 2017. The photographic evidence shows that Full Bore drilled through Silver Lake's sewer main, and when they experienced difficulties installing their cable line, they drilled another hole at a shallower depth and installed the 2" PVC pipe, directly above where they damaged the sewer line.

Staff determined that Full Bore did commit one violation of RCW 19.122.040(2)(a), for failing to use reasonable care to avoid damaging underground utilities by not determining the precise location of the facilities which have been mark. Staff found that Silver Lake properly located and marked their underground utilities, and Full Bore failed to properly determine the location of the marked utilities while excavating.

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 against Full Bore for the single violation of RCW 19.122.040(2)(a), for failing to use reasonable care to avoid damaging underground utilities by not determining the precise location of the facilities which had been marked. Staff also recommends providing the opportunity to defer the full \$1,000 penalty on the conditions that (1) Full Bore owners and field supervisors attend "Dig Safe" training provided through the NUCA, within 12-months of the issuance of the Penalty Assessment; and (2) Full Bore commits no further violations of RCW 19.122 within the next 12 months. The commission will waive the suspended penalty amount of \$1,000 if Full Bore complies with both conditions

The 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 violation did not occur, you may deny committing the violation and contest the penalty assessment 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 concerning the violation require consideration of evidence and resolution in a hearing. Any contest of the penalty assessment must include a written statement of the reasons supporting that contest. Failure to provide such a statement will result in denial of the contest.

If you admit the violation but believe there is a reason for the violation that should excuse you from the penalty, you may ask for mitigation (reduction) of this 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 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 \$1,000 amount due;
- Notify the Commission that you accept the offer to suspend, and ultimately waive, the \$1,000 penalty based on the conditions that Full Bore owners and field supervisors attend NUCA Dig Safe training within 12-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 within the next 12-months; 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, 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 January 10, 2018.

GREGORY J. KOPTA
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT D-171084

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 violations occurred and enclose \$1,000 in payment of the penalty
2. **Accept conditions.** I admit that the violations occurred and I accept the Commission's offer to suspend, and ultimately waive, \$1,000 of the penalty on the conditions that Full Bore owners and field supervisors attend NUCA Dig Safe training within 12-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 within the next 12-months; or
3. **Contest the violations.** I believe that the alleged violations 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.
4. **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.”