

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: D-200172
PENALTY AMOUNT: \$1,000
Investigation # 8158

Mike Bach
Mike Bach Drilling Company
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The Washington Utilities and Transportation Commission (Commission) believes that Mike Bach Drilling Company (Bach Drilling or Company) has violated Revised Code of Washington (RCW) 19.122 by failing to provide proper notification not less than two days prior to excavating and excavating before all utilities were marked by facility operators. RCW 19.122.070(1) states, in part, that violations of any provision of the chapter are subject to a civil penalty of not more than \$1,000 for an initial violation and not more than \$5,000 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 \$1,000 against Bach Drilling on the following grounds:

On February 18, 2020, the Safety Committee heard the complaints for cases 19-039, 19-041, and 19-042 against Bach Drilling regarding alleged violations of the Washington state dig law, RCW 19.122, all of which occurred on April 25, 2019, at 1003 Big Creek Rd., Cle Elum, Washington. The complainant in this case was Puget Sound Energy (PSE). The Safety Committee determined that the Company committed the following violations:

- One violation of RCW 19.122.030(1)(a) for failing to submit an underground utility locate request through a one-number call service prior to excavating on the above date.
- One violation of RCW 19.122.030(2) for failing to submit an underground utility locate request through a one-number call service not less than two business days prior to excavating on the above date.
- One violation of RCW 19.122.030(5) for failing to wait until all known facility operators marked their utilities prior to excavating on the above date.

The Safety Committee recommends that the Commission assess a \$7,000 penalty against Bach Drilling :

- \$1,000 penalty for one violation of RCW 19.122.030(1); and

- \$1,000 penalty for one violation of RCW 19.122.030(2); and
- \$5,000 penalty for one violation of RCW 19.122.030(5).

The Safety Committee further recommends the Commission should offer to suspend a \$6,500 portion of the penalty amount if the owner and field staff of Bach Drilling complete National Utility Contractor Association (NUCA) Dig Safe Training within 6 months of the date of this Notice, and the Company incurs no additional dig law violations within 12 months of the date of this Notice.

Commission regulatory staff (Staff) reviewed the Safety Committee's recommendation and agrees with its conclusions. Staff found that Bach Drilling violated RCW 19.122 on three occasions. Staff based this decision on the following information provided by the Safety Committee:

First Violation

On April 25, 2019, a PSE contract locator observed that the Company was excavating in an area at 1003 Big Creek Rd., Cle Elum, Washington, without first submitting a utility locate request. Photographs submitted to the Safety Committee support the allegations, and Staff's subsequent investigation concluded that Bach Drilling excavated in an area that was not within the boundaries of its locate request, which violates RCW 19.122.030(1)(a).

Second Violation

On April 25, 2019, a PSE contract locator observed the Company excavating at 1003 Big Creek Rd., Cle Elum, Washington, in an area for which it had submitted a utility locate request. The utility locate request, #19158068, was not valid until April 26, 2019. Photographs submitted to the Safety Committee support the allegations, and Staff's subsequent investigation concluded that Bach Drilling excavated in the area of the utility locate request less than two business days after it was submitted, which violates RCW 19.122.030(2).

Third Violation

On April 25, 2019, a PSE contract locator observed the Company excavating at 1003 Big Creek Rd., Cle Elum, Washington, prior to the marking of underground utilities by all known utility operators. The locator arrived on-site to mark utilities for PSE per utility locate request #19158068, and observed excavation had begun prior to all known facility operators marking their utilities. Photographs submitted to the Safety Committee support the allegations, and Staff's subsequent investigation concluded that Bach Drilling excavated before utilities from all known facility operators were marked, which violates RCW 19.122.030(5).

While Staff's investigation reached the same conclusion regarding the violations, the violations cited by the Committee arose from the same incident. Because the violations were part of the same event, Staff recommends a single penalty for one violation of RCW 19.122.030(2), as follows:

- \$1,000 penalty for the violation of RCW 19.122.030(2) that occurred on April 25, 2019; and
- No additional penalty for the violation of RCW 19.122.030(1)(a) that occurred on April 25, 2019; and
- No additional penalty for the violation of RCW 19.122.030(5) that occurred on April 25, 2019.

Staff's investigation and research suggests that the Company is aware of Washington's dig law, but may benefit from dig safe training to better understand its requirements. After considering all of the circumstances, Staff concurs with the Safety Committee's recommendation that the Commission should offer to suspend a portion of the penalty amount, and recommends that the Commission suspend \$800 of the total penalty for a period of one year subject to the following conditions: (1) Jeremy Bach of Bach Drilling must attend Dig Safe training provided through the National Utility Contractors Association (NUCA) within 12 months of the date of this Notice; and (2) the Company incurs no further violations of RCW 19.122 within 12 months from the date of this Notice.

The Commission agrees with Staff's recommendation and assesses a penalty of \$1,000 with an offer to suspend \$800 of the total penalty amount subject to the conditions listed above. The Commission will waive the suspended penalty amount of \$800 if the Company complies with both conditions. If the Company fails to comply with either of these conditions, the \$800 suspended penalty amount will become immediately due and payable, in addition to any new penalties that the Commission may assess for additional violations.

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 that any or all of the violations did not occur, you may deny committing the violation(s) and contest the penalty through evidence presented at a hearing or in writing. Alternatively, if there is a reason for any or all of the violations 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 violations 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 violations 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 amount due;

- Pay \$200 of the total penalty amount and notify the Commission that you accept the offer to suspend, and ultimately waive, the remaining \$800 of the penalty amount subject to the following conditions:
 - Jeremy Bach of Bach Drilling attends Dig Safe training provided through NUCA within twelve (12) months of this Notice; and
 - **Submit documentation of that attendance to the Commission within five (5) days of attending the training; and**
 - Bach Drilling incurs no additional violations of RCW 19.122 within twelve (12) months of the date of this Notice; or
- Request a hearing to contest the violation(s); 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 Lacey, Washington, and effective July 28, 2020.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PENALTY ASSESSMENT D-200172, Investigation # 8158

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 enclose \$200 toward the payment of the penalty. I also accept the Commission's offer to suspend, and ultimately waive, the remaining \$800 penalty amount subject to the following conditions:
- Jeremy Bach attends Dig Safe training provided through NUCA within twelve (12) months of the date of this Notice; and
 - Submit documentation of that attendance to the Commission within five (5) days of attending the training;** and
 - Bach Drilling incurs no additional violations of RCW 19.122 within twelve (12) months of the date of this Notice.
3. **Contest the violation.** I believe that the alleged violation(s) did not occur for the reasons I describe 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. **Request mitigation.** I admit the violations, 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.

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.”