

Service Date: March 5, 2018

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RECEIVED

MAR 12 2018

WASH. UT. & TP. COMM

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

PENALTY ASSESSMENT: DG-180169
PENALTY AMOUNT: \$8,500

STATE OF WASHINGTON
UTIL. AND TRANSPORTATION
COMMISSION

2018 MAR 12 10:07:30

RECEIVED
RECORDS MANAGEMENT

Rock Placing Co.
14115 E Trent Ave.
Spokane, WA 99216-1355

Please see pg 4

The Washington Utilities and Transportation Commission (Commission) believes you have violated Revised Code of Washington (RCW) 19.122.030(2) by failing to provide the required notice to a one-number locator service not less than two business days before excavating. RCW 19.122.055(1)(a) states, in part, that any excavator who fails to notify a one-number locator service and causes damage to a underground gas utility is subject to a civil penalty of not more than ten thousand dollars for each violation.

Commission pipeline safety staff (Staff) reviewed damage reports submitted by Avista Utilities (Avista) and information obtained from the One Call 811 database, and hereby notifies you that it is assessing a penalty against you in the amount of \$8,500 on the following grounds:

On March 23, 2017, Rock Placing Co. was performing an excavation at 422 E Little Spokane Connection in Spokane, Washington. While excavating, Rock Placing Co. damaged an Avista 3/4" gas line. The Damage Information Reporting Tool (DIRT) report submitted by Avista on April 5, 2017, indicated that a one-number locator service was not notified prior to excavation. Staff investigated and found that the only utility locate request submitted for this location was by a different contractor. Rock Placing Co. did not request its own utility locates prior to performing an excavation, which resulted in damage to an underground gas utility. On May 17, 2017, Staff sent a technical assistance warning letter to Rock Placing Co., which included detailed information about the requirements of Washington state's dig law.

On June 26, 2017, Rock Placing Co. was performing an excavation at 4913 S Bella Vista Dr. in Veradale, Washington. While excavating, Rock Placing Co. damaged an Avista 1/2" gas line. The DIRT report submitted by Avista on July 11, 2017, indicated that a one-number locator service was not notified prior to excavation. Staff found that once again the only utility locate request submitted for this location was by a different contractor. Rock Placing Co. failed to request its own utility locates prior to performing an excavation, which resulted in damage to an underground gas utility. Staff sent another technical assistance warning letter to Rock Placing Co. on Aug. 22, 2017.

On July 25, 2017, Rock Placing Co. was excavating at 18720 E 32nd Ave. in Greenacres, Washington. While excavating, Rock Placing Co. damaged an Avista gas line. The DIRT report submitted by Avista on August 9, 2017, indicated that a one-number locator service was not notified prior to excavation. Staff found that Rock Placing Co. did not submit a

utility locate request prior to excavating. This was the company's third utility damage incident without locates in approximately four months.

Staff found that Rock Placing Co. committed three violations of RCW 19.122.030(2) by failing to request utility locates on three occasions. Staff recommends an \$8,500 penalty be assessed for these three violations with the breakdown of the recommended penalty as follows:

- \$1,000 penalty for the first violation of RCW 19.122.030(2), which occurred on March 23, 2017;
- \$2,500 for the second violation of RCW 19.122.030(2), which occurred on June 16, 2017; and
- \$5,000 for the third violation of RCW 19.122.030(2), which occurred on July 25, 2017.

Staff also found a previous alleged violation of RCW 19.122.030(2), that was reported by Cascade Natural Gas, concerning an incident that occurred on June 26, 2016, in Richland, Washington. Rock Placing Co. was provided a technical assistance warning letter for this violation on August 24, 2016. Staff did not include this violation in this penalty assessment because it was the company's first alleged violation. Staff's research also indicates that Rock Placing Co. has a positive history of requesting utility locates and that the violations were the result of company negligence, not lack of knowledge of the requirements of Washington state's Dig Law.

Accordingly, Staff recommends that Rock Placing Co. be penalized \$8,500 for three violations of RCW 19.122.030(2), for failing to provide the required notice to a one-number locator service not less than two business days before excavating. Staff also recommends that Rock Placing Co. field crews involved in excavation, including company management, attend Dig Safe training provided through the National Utility Contractors Association (NUCA), within 12 months of the date of the Penalty Assessment.

The Commission agrees with Staff's recommendation and assesses a penalty of \$8,500, with the additional requirement that Rock Placing Co. management and all crews complete NUCA Dig Safe Training within 12 months of this Notice.

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 any or all of the violations did not occur, you may deny committing such violation(s) 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(s) 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 any or all of the violations but believe there is a reason for the violation(s) 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(s) 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 \$8,500 amount due;
- Request a hearing to contest the occurrence of any or all of the violations; or
- Request mitigation to reduce the amount of the penalty.

Please indicate your selection on the enclosed form and submit it electronically through the Commission's web portal **within FIFTEEN (15) days** after you receive this notice. If you are unable to use the web portal, you may submit it via email to records@utc.wa.gov. If you are unable to submit the form electronically, you may send a paper copy to the Washington Utilities and Transportation Commission, Post Office Box 47250, Olympia, Washington 98504-7250.

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 March 5, 2018.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT DG-180169

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 \$8,500 in payment of the penalty

2. **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.

3. **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):

Over the years you shall see our locate requests have gotten significantly higher. In two cases we were asked to install walls w/ in 24 hours of contact. The other job had a locate but we did not request. We have learned our lesson making forward, but we do feel \$5000 is a bit excessive w/ our previous 17 years of doing business prior to above penalties. Thanks for your consideration

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: 3-7-18 [Month/Day/Year], at Spokane, WA [City, State]

Rock Placing Co.
Name of Respondent (company) – please print

Ryan Yeoman
Signature of Applicant

Ryan Yeoman
509-342-0134

RECEIVED
RECORDS MANAGEMENT
2018 MAR 12 AM 7:30
STATE OF WASH
UTIL. AND TRAN
COMMISSION

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.”

