

Service Date: August 29, 2017

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

**PENALTY ASSESSMENT: D-170853
PENALTY AMOUNT: \$20,000**

Reed Watterson
Watterson Excavation, Inc.
718 Griffin Ave. #90
Enumclaw, WA 98022

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, and RCW 19.122.050(1) for failing to notify a utility operator of damage to an underground facility. 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 \$20,000 on the following grounds:

The Safety Committee received four complaints against Watterson Excavation, Inc. (Watterson) regarding potential violations of the Washington State Dig Law, RCW 19.122, for work performed in 2016 and 2017. The complainant in these cases is Puget Sound Energy (PSE).

On July 19, 2017, the Safety Committee Review Board heard the complaints for cases 16-022, 17-022, 17-023, and 17-027. The Safety Committee determined that Watterson committed the following violations:

- Case 16-022 – One violation of RCW 19.122.050(1) for damaging, attempting to repair, and then burying a gas pipeline;
- Case 17-022 – One violation of RCW 19.122.030(2) for failing to request locates. Previous locates were 65 days old and expired;
- Case 17-023 – One violation of RCW 19.122.030(2) for commencing excavation before the required two business days; and
- Case 17-027 – One violation of RCW 19.122.030(2) for failing to request locates.

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

- \$5,000 for one violation of RCW 19.122.050(1) in Case 16-022;
- \$5,000 for one violation of RCW 19.122.030(2) in Case 17-022;
- \$5,000 for one violation of RCW 19.122.030(2) in Case 17-023;
- \$5,000 for one violation of RCW 19.122.030(2) in Case 17-027; and
- National Utility Contractor Association (NUCA) Dig Safe Training for all field supervisors, business leaders, and business owners.

Commission regulatory staff (Staff) reviewed the Safety Committee's determination and agrees that Watterson committed one violation of RCW 19.122.050(1) and three violations of RCW 19.122.030(2) in the following cases:

Case 16-022

PSE alleges that on June 29, 2016, a Watterson excavation crew damaged a gas facility at 3525 223rd Ave. SE, in Sammamish, WA. On July 1, 2016, a PSE employee responded to a report of a damaged gas line. When the employee arrived the damaged gas line had been buried and not properly repaired. The damaged line was found to be leaking gas.

Staff determined that Watterson did commit one violation of RCW 19.122.050(1), for failing to notify a facility operator and one-number locator service of damage to an underground facility and for burying the line prior to it being properly repaired.

Case 17-022

PSE alleges that on Feb. 10, 2017, Watterson was performing excavation work to install sewer and water facilities at 6520 SE 7th Place, Renton, WA. A Watterson employee named Alfredo was contacted by PSE Damage Prevention Field Representative, Roger Arrington, and informed that they were in violation of the dig law for excavating without a valid locate ticket. Staff found that there was a utility locate request submitted for this location, ticket No. 16385561, by Watterson on Dec. 5, 2016, with a work to begin date of Dec. 8, 2016. This ticket expired on Jan. 19, 2017. A new utility locate request was submitted on Feb. 10, 2017, after Mr. Arrington's site visit, with a work to begin date of Feb. 15, 2017.

Staff determined that Watterson committed one violation 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.

Case 17-023

PSE alleges that on March 22, 2017, Watterson was performing excavation work to install foundations at 13525 NE 129th St. and 13529 NE 129th St. in Kirkland, WA. A Watterson employee named Cory was contacted by Mr. Arrington from PSE and informed that they

were in violation of the dig law for excavating without a valid locate ticket. Staff found that there were locate requests submitted for these locations on March 21, 2017, by Watterson with a work to begin date of March 24, 2017. The ticket numbers were 17077708 and 17077708.

Staff determined that Watterson did commit one subsequent violation of RCW 19.122.030(2), for failing to wait the required two business days before excavating.

Case 17-027

PSE alleges that on July 13, 2016, Watterson was performing excavation work at 995 NW Pickering St., in Issaquah, WA. A Watterson employee named Leo was contacted by Mr. Arrington from PSE and informed that they were in violation of the dig law for excavating without a valid locate ticket. Staff found that there was a utility locate request submitted for this location by Watterson on March 11, 2016, with a work to begin date of March 16, 2016. Locate ticket #16065742 expired on April 25, 2016. After the company was contacted regarding the expired locate marks, a new locate request was submitted by Watterson on July 13, 2017, at 9:53 a.m. Mr. Arrington took his photos of the job site at 9:30 a.m. on the same day.

Staff determined that Watterson did commit one subsequent violation 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.

Accordingly, Staff recommends NUCA Dig Safe Training within 12 months of the date of this order, for all Watterson field supervisors, business leaders, and business owners, and a penalty of \$20,000 for the following violations:

- \$5,000 for each of the three violations of RCW 19.122.030(2) for a total of \$15,000; and
- \$5,000 for one violation of RCW 19.122.050(1).

Staff's research indicates that Watterson has a significant history of requesting utility locates and that the violations were the result of company negligence, not a lack of knowledge of the requirements of Washington State's Dig Law. The company has also had two prior penalty assessments, for similar violations, issued against them by the Commission since 2015. On Feb. 25, 2015, in Docket DG-144092, Watterson was penalized \$4,000 for three violations of RCW 19.122.030(1)(a). On May 9, 2016, in Docket DG-160164, Watterson was penalized \$10,000 for one repeat violation of the same law.

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 \$20,000 with the requirement that Watterson field supervisors, business leaders, and business owners complete NUCA Dig Safe Training within 12-months of this Notice.

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 any or all of the violations did not occur, you may deny committing the 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 \$20,000 amount due;
- Request a hearing to contest the occurrence of any or all of 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 Olympia, Washington, and effective August 29, 2017.

GREGORY J. KOPTA
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT D-170853

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 \$20,000 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**):
- 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
RCW 9A.72.020:

Signature of Applicant

“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.”