

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment  
Against

NORTHWEST FENCE COMPANY INC.,

in the amount of \$1,000

DOCKET D-220630

ORDER 01

DENYING MITIGATION

**BACKGROUND**

- 1 On July 27, 2022, the Washington State Dig Law Safety Committee (Safety Committee) referred its Case 22-023 to the Washington Utilities and Transportation Commission (Commission). During its review of Case 22-023, the Safety Committee determined that Northwest Fence Company Inc. (NW Fence or Company) had violated Revised Code of Washington (RCW) 19.122.030(1)(a) one time by failing to mark the boundary of an excavation area with white paint. The Safety Committee recommended that the Commission impose a \$1,000 penalty, with the opportunity to suspend \$800 of the penalty on the condition that Company field crew and supervisors successfully complete National Utility Contractors Association (NUCA) Dig Safe training within 90 days, and the Company incur no additional dig law violations within 12 months.
- 2 On October 6, 2022, the Commission issued a Penalty Assessment (Penalty Assessment) against NW Fence in the amount of \$1,000, alleging one violation RCW 19.122.030(1)(a) for failing to mark the boundary of an excavation area with white paint. The Penalty Assessment provided the opportunity to suspend and ultimately waive an \$800 portion of the penalty subject to the conditions that: (a) the Company timely pay the \$200 portion of the penalty that was not suspended, (b) the Company successfully complete NUCA Dig Safe training within 45 days, and (c) the Company incurs no additional dig law violations within 12 months.
- 3 On November 10, 2022, NW Fence filed an application for mitigation, admitting the violation and requesting a decision based on the written information provided. In its request, the Company stated that it routinely calls in for utility locates and provides robust dig safety education for its employees, and detailed the Company's locate request protocol. The Company stated that it could not say for certain whether the boundary of

the excavation area at issue was marked with white paint, but that the Company believes it provided sufficient information to communicate the locate request area.

- 4 On November 23, 2022, Commission staff (Staff) filed a response recommending the Commission deny the Company's request for mitigation, but reiterated the Company's option to suspend and ultimately waive \$800 of the penalty subject to conditions. Staff states that the Company failed to provide any new information that was not considered prior to issuance of the Penalty Assessment, and that both Staff and the Safety Committee considered the Company's compliance history when it recommended the option to pay a reduced penalty subject to conditions.

### **DISCUSSION AND DECISION**

- 5 RCW 19.122.170 provides, in part, that any person who violates any provision of RCW 19.122 is subject to a civil penalty of not more than \$1,000 for an initial violation. RCW 19.122.150 (2) provides, in part, that the Commission may impose penalties and require training, or any combination thereof. RCW 19.122.150(3) requires that the Commission must consider any recommendation by the Safety Committee regarding enforcement and remedial actions. Here, the Commission, consistent with the Safety Committee's recommendation, has provided the Company with an opportunity to pay a reduced penalty of \$200 and waive the remaining \$800 of the penalty subject to the conditions that the Company attend training and not incur any further violations within 12 months.
- 6 The Commission considers several factors when entertaining a request for mitigation, including whether the company introduces new information that may not have been considered in setting the assessed penalty amount, or explains other circumstances that convince the Commission that a lesser penalty will be equally or more effective in ensuring the company's compliance.<sup>1</sup>
- 7 Staff recommends the Commission deny mitigation but reiterate the offer to suspend an \$800 portion of the penalty subject to the conditions listed in the Penalty Assessment. We agree with Staff's recommendation. The Company did not introduce any new information that would warrant further mitigation of the penalty. Companies that fail to mark the boundary of excavation areas risk inaccurate locates, which could put their employees, the public, and the facility operator's employees at risk. It is the Company's responsibility to mark the boundary of any proposed excavation area with white paint prior to obtaining a locate. Accordingly, we find that the Commission properly penalized NW Fence for failing to mark the boundary of the excavation area with white paint and

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<sup>1</sup> Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission (January 7, 2013) at ¶19.

conclude that the Company's request for further mitigation be denied. NW Fence must take one of the following actions within 10 days of the effective date of this Order:

- Pay the \$1,000 penalty.
- Pay \$200 of the penalty amount and notify the Commission that the Company accepts the Commission's offer to suspend and ultimately waive, the remaining \$800 portion of the penalty subject to the conditions that (1) NW Fence supervisors and field crew attend NUCA Dig Safe Training within 45 days of the effective date of this order and submit documentation of attendance within five days of completion, and (2) NW Fence incurs no additional violations of RCW 19.122 within 12 months of the effective date of this Order.

### ORDER

#### THE COMMISSION ORDERS:

- 8 (1) Northwest Fence Company Inc.'s request for mitigation is DENIED.
- 9 (2) Northwest Fence Company Inc. must either pay the \$1,000 penalty or take the alternative action described in paragraph 7, above, within 10 days of the effective date of this Order.
- 10 The Secretary has been delegated authority to enter this order on behalf of the Commissioners under WAC 480-07-904(1)(h).

DATED at Lacey, Washington, and effective January 6, 2023.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

AMANDA MAXWELL  
Executive Director and Secretary

**NOTICE TO PARTIES: This is an order delegated to the Executive Secretary for decision. As authorized in WAC 480-07-904(3), you must file any request for Commission review of this order no later than 14 days after the date the decision is posted on the Commission's website.**