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WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

State Of WASH.
UTIL. AND TRANSP.
COMMISSION

PENALTY ASSESSMENT: D-220630

PENALTY AMOUNT: \$1,000

Investigation # 8556

SERVICE VIA EMAIL

Northwest Fence Company Inc.
14909 East Sprague Ave
Spokane WA 99216
Marie@northwestfencecompany.com
Roy Masterson, Alexis Hallett, David Anderson

YOU MUST RESPOND WITHIN 15 DAYS OF THIS NOTICE – see page 4

The Washington Utilities and Transportation Commission (Commission) believes that Northwest Fence Company Inc. (Northwest Fence or Company) has violated the Revised Code of Washington (RCW) 19.122.030(1)(a) by failing to mark the boundary of an excavation area with white paint. 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 penalty (Penalty Assessment) against you on the following grounds:

On July 27, 2022, the Safety Committee heard case 22-023 against Northwest Fence and determined the Company violated RCW 19.122.030(1)(a) by failing to mark the boundary of the excavation area in white paint. The Safety Committee recommended that the Commission impose a \$1,000 penalty.

Commission staff (Staff) conducted an investigation that included reviewing documents, reports, and emails submitted by the Safety Committee, and a review of the One-Call center database. During the review, Northwest Fence explained that it believes it is not feasible to mark every locate request with white paint. The Company admitted to only marking utilities that are not obvious. The Committee determined, and Staff agreed, that a “busy schedule” does not excuse the requirement. Northwest Fence has no history of dig law violations with the Commission.

Staff agrees with the Safety Committee’s findings of probable violation and agrees with the penalty recommendation, as follows:

- \$1,000 penalty for one violation of RCW 19.122.030(1)(a) for failing to mark the excavation area in white paint on June 1, 2022.

- The opportunity to suspend and ultimately waive an \$800 portion of the \$1,000 penalty amount for 12 months if Northwest Fence completes Dig Safe Training provided through the National Utility Contractors Association (NUCA) within 45 days of the date the Commission issues the Penalty Assessment;
- And the Company incurs no additional dig law violations within 12 months of the date of this Penalty Assessment.

The Commission agrees with Staff's recommendation as described above.

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 the violation did not occur, you may deny committing the violation and contest the penalty through evidence presented at a hearing or in writing. Or, if there is a reason for the violation 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 a hearing only if material issues of law or fact require consideration of evidence and resolution in a hearing. Any request to contest the violation 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 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 their decision.

You must act within 15 days after receiving this Penalty Assessment to do one of the following:

- Pay the \$1,000 penalty amount due; or
- Pay \$200 and notify the Commission that you accept the offer to suspend and ultimately waive the \$800 portion of the penalty amount for 12 months subject to the following conditions:
 - Northwest Fence must successfully complete NUCA Dig Safe Training (<https://utc-9183.quickbase.com/db/bpkt6vndh>) within 45 days of service; and
 - **The Company must submit documentation of that attendance to the Commission within 5 days of attending training;** and
 - Northwest Fence must not commit any additional violations of RCW 19.122 within 12 months of the date of this Penalty Assessment.
- 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 submit it electronically through the Commission's web portal **within FIFTEEN (15) days** after you receive this Penalty Assessment. 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, PO 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 Lacey, Washington, and effective October 6, 2022.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT D-220630 Investigation #8556

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 violation occurred and enclose \$1,000 in payment of the penalty.
2. **Accept the Conditions.** I admit that the violation occurred. I enclose \$200 in partial payment of the penalty, and I accept the Commission's offer to suspend and ultimately waive the remaining \$800 penalty subject to the following conditions:
- o **Northwest Fence** supervisors and field staff must attend Dig Safe training provided through NUCA within 90 days of this Penalty Assessment; and
 - o **Northwest Fence must submit documentation of that attendance to the Commission within 5 days of attending the training;** and
 - o **Northwest Fence** must not incur any additional violations of RCW 19.122 within 12 months of the date of this Penalty Assessment.

3. **Contest the violation.** I believe that the alleged violation 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 provided 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 provided 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: 1-25-2023 [Month/Day/Year], at Spokane, WA [City, State]

Alexis Hallett
Name of Respondent (Company) – please print

Alexis Hallett
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 or she makes a materially false statement which he or she 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 or her 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.