

SCANNED

Service Date: October 9, 2019

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

OCT 11 2019

HALME CONSTRUCTION, INC.

PENALTY ASSESSMENT: D-190755
PENALTY AMOUNT: \$6,000
Investigation # 8014

UBI: 601 553 217
Phone: (509) 725-4200

Halme Construction Inc.
8727 W Sunset Hwy #100
Spokane, WA 98224

The Washington Utilities and Transportation Commission (Commission) believes that Halme Construction Inc. (Halme Construction or Company) has violated Revised Code of Washington (RCW) 19.122.030(6)(c) and RCW 19.122.040(2)(a) by failing to request an updated dig ticket prior to excavating, and for failing to use reasonable care to avoid damaging underground utilities by not determining their precise location prior to excavating. 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 \$6,000 penalty against you on the following grounds:

On September 4, 2019, the Safety Committee heard the complaints for case 19-045 against Halme Construction regarding alleged violations of the Washington state dig law, RCW 19.122 that occurred on May 22, 2019. The complainant in this case was Avista Corporation (Avista). The Safety Committee determined that the Company committed the following violations:

- Two violations of RCW 19.122 for (1) failing to submit an additional underground utility locate request after the previous request expired, and (2) failing to use reasonable care to avoid damaging underground facilities by determining their precise location before excavating on May 22, 2019.

The Safety Committee recommends the following:

- A \$1,000 penalty for one violation of RCW 19.122.030(6)(c);
- A \$5,000 penalty for one violation of RCW 19.122.040(2)(a); and
- The opportunity to suspend \$5,000 of the total penalty amount if the owner and field staff of Halme Construction complete National Utility Contractor Association (NUCA) Dig Safe Training within 6 months of the date of this

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U.S. DEPARTMENT OF JUSTICE

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 determination and agrees with its conclusions. Staff found that Halme Construction violated RCW 19.122.030(2) on two occasions. Staff based this decision on the following information provided by the Safety Committee and Staff's investigation:

First Violation

On May 22, 2019, Avista responded to a report of damage to an underground natural gas facility at 900 E 3rd Ave., Spokane, Washington. The representative performed a dig ticket search and determined that Halme Construction did not have a valid dig ticket for the excavation performed. Documents submitted to the Safety Committee support the allegations, and Staff's subsequent investigation concluded that Halme Construction did not submit an additional request to locate underground utilities prior to excavating after its previous request expired 19 days earlier.

Second Violation

Avista's damage prevention representative observed that the marks from the previous utility locate were still visible and accurate, but that a Halme Construction employee excavated near the marks with a track hoe without first using less invasive methods to determine the precise location of the natural gas line that was subsequently damaged. Photos and documentation submitted to the Safety Committee indicate that Halme Construction did not use reasonable care to avoid damaging the underground facility, and did not first determine its precise location before excavating near it.

Staff recommends the Commission accept the Safety Committee's recommendation and assess a \$6,000 penalty against the Company for two violations of RCW 19.122 for failing to provide the required additional notice to facility operators of excavation continuing beyond 45 days of a utility locate request, and not using reasonable care to avoid damaging underground utilities by not determining their precise location before excavating, as follows:

- \$1,000 penalty for the first violation of RCW 19.122.030(6)(c) that occurred on May 22, 2019; and
- \$5,000 penalty for the second violation of RCW 19.122.030(2) that occurred on May 22, 2019.

Staff's research indicates that the Company has a positive history of submitting utility locate requests, and that the violations appear to be the result of the Company's negligence and failure to track and update dig tickets as necessary rather than a lack of knowledge of the requirements of Washington's dig law. After considering all of the circumstances, Staff concurs with the Safety Committee's recommendation that the Commission should offer to suspend \$5,000 of the total penalty for 12 months subject to the following conditions: (1) Halme Construction field management and workers responsible for excavation attend Dig

Safe training provided through 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 of the date of this Notice.

The Commission agrees with Staff's recommendation and assesses a penalty of \$6,000 with an offer to suspend \$5,000 of the total penalty amount subject to the conditions listed above. The Commission will waive the suspended penalty amount of \$5,000 if the Company complies with both conditions. If the Company fails to comply with either of these conditions, the \$5,000 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 his or her decision.

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

- Pay the \$6,000 amount due;
- Pay \$1,000 of the total penalty amount and notify the Commission that you accept the offer to suspend, and ultimately waive, the remaining \$5,000 of the penalty amount subject to the following conditions:
 - Halme Construction representatives attend 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**
 - Halme Construction 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 October 9, 2019.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT D-190755, Investigation # 8014

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 \$6,000 in payment of the penalty.

2. **Accept conditions.** I admit that the violations occurred and enclose \$1,000 toward the payment of the penalty. I also accept the Commission's offer to suspend, and ultimately waive, the remaining \$5,000 penalty amount subject to the following conditions:

- Halme Construction representatives attend 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
- Halme Construction 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: October 21, 2019 [Month/Day/Year], at Spokane, WA [City, State]

Halme Construction, Inc
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.”

