

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

**PENALTY ASSESSMENT: DG-180136
PENALTY AMOUNT: \$2,000**

JR Hayes & Sons, Inc.
22430 SE 231st St.
Maple Valley, WA 98038

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 an underground gas facility 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 Puget Sound Energy (PSE), 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 \$2,000 on the following grounds:

On Nov. 14, 2016, JR Hayes & Sons, Inc. (JR Hayes) was grading for a new road at 3726 223rd Ave. SE in Sammamish, Washington. While excavating, JR Hayes damaged a PSE gas line. PSE reported that JR Hayes did not have a valid locate ticket prior to beginning work. Staff investigated and found that there were two locate requests submitted by JR Hayes for this location. One was submitted on Sept. 26, 2016, which expired after 45 days on Nov. 10, 2016. The other request was submitted on Nov. 14, 2016, which was the same day the damage incident occurred. JR Hayes thus failed to request a utility locate prior to performing an excavation which resulted in damage to an underground gas facility. Staff sent a technical assistance warning letter to JR Hayes on Jan. 19, 2017, which included detailed information about the requirements of Washington state's dig law.

On April 4, 2017, JR Hayes was performing an excavation at 10600 189th St. E in Puyallup, Washington. While excavating, JR Hayes damaged a PSE gas line that was not in service yet. PSE reported that JR Hayes did not have a valid locate ticket prior to beginning work. Staff found that JR Hayes did not submit a utility locate request for this location. Staff sent another technical assistance warning letter to JR Hayes on June 17, 2017, which included detailed information about the requirements of Washington state's dig law

These incidents represent two violations of RCW 19.122.030(2) by JR Hayes for failing to provide the required notice to a one-number locator service not less than two business days before excavating . Staff recommends a \$2,000 penalty be assessed for these two violations as follows:

- \$1,000 penalty for the first violation of RCW 19.122.030(2), which occurred on Nov. 14, 2016; and
- \$1,000 for the second violation of RCW 19.122.030(2), which occurred on April 4, 2017.

Staff further recommends that the Commission offer to suspend \$1,000 of that penalty on the conditions that (1) JR Hayes field crew 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; and (2) JR Hayes commits no further violations of RCW 19.122 within the next 12 months.

The Commission agrees with Staff's recommendations and assesses a penalty of \$2,000 and offers to suspend \$1,000 of the penalty on the conditions that (1) JR Hayes management and all crews complete NUCA Dig Safe Training within 12 months of this Notice, and (2) JR Hayes has no further violations of RCW 19.122 within one year of this Notice. The Commission will waive the suspended portion of the penalty if JR Hayes complies with both conditions. If JR Hayes fails to comply with either of these conditions, the \$1,000 suspended penalty will become immediately due and payable, in addition to new penalties that the Commission might assess for any 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 one or both 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 one or both 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 \$2,000 amount due;
- Pay \$1,000 of the total penalty and notify the Commission that you accept the offer to suspend, and ultimately waive, the remaining \$1,000 penalty amount due on the conditions that all JR Hayes employees, including management, attend the Dig Safe training provided through NUCA within 12-months of this Notice; submit documentation of that attendance to the Commission within five (5) days of attending the training; and commit no further violations of RCW 19.122 within the next year; or
- Request a hearing to contest the occurrence of either or both of the violation(s); 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 February 22, 2018.

/s/ Gregory J. Kopta
GREGORY J. KOPTA
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT DG – 180136

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 \$2,000 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 \$1,000 penalty amount on the conditions that all JR Hayes employees, including management, attend the Dig Safe training provided through NUCA within 12-months of this penalty assessment; submit documentation of that attendance to the Commission within five (5) days of attending the training; and commit no further violations of RCW 19.122 within the next year.
2. **Contest the violations.** I believe one or both of 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 one or both of the violations, but I believe 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

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.”