

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

**PENALTY ASSESSMENT: DG-180203
PENALTY AMOUNT: \$3,500**

Ryan Qualls
Pro Grade Enterprises, Inc.
P.O. Box 1182
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 a underground gas utility 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 \$3,500 on the following grounds:

On May 17, 2016, Pro Grade Enterprises, Inc. (Pro Grade Enterprises or Company) was clearing a lot at 2400 244th Ave. SE in Sammamish, Washington. While excavating, Pro Grade Enterprises damaged a PSE gas line. PSE reported that Pro Grade Enterprises did not have a valid locate ticket prior to beginning work. Staff investigated and found no record of a utility locate request for this location by Pro Grade Enterprises.

Because this was the Company's first violation for excavating without a utility locate, Staff sent a technical assistance warning letter to Pro Grade Enterprises on July 27, 2016, which included detailed information about the requirements of Washington state's dig law.

On Oct. 16, 2016, Pro Grade Enterprises was installing a water line at 29810 66th Ave. SE in Auburn, Washington. While excavating, Pro Grade Enterprises damaged a PSE 2" gas line. Staff investigated and found no record of a utility locate request for this location by Pro Grade Enterprises.

On Aug. 1, 2017, Pro Grade Enterprises was grading a road at 29225 64th Ave. SE in Auburn, Washington. While excavating, Pro Grade Enterprises severed a PSE 5/8" gas stub. Staff found that a utility locate request was submitted for this location on March 27, 2017, by Pro Grade Enterprises. This locate ticket expired 45 days from the date it was requested, or May 11, 2017. Pro Grade Enterprises failed to request new locates prior to performing an excavation, which resulted in damage to an underground gas utility.

Staff found that Pro Grade Enterprises committed three violations of RCW 19.122.030(2) by failing to request utility locates on three occasions. Staff recommends a \$3,500 penalty be assessed for these three violations with the breakdown of the recommended penalty as follows:

- No Penalty for the first violation of RCW 19.122.030(2), which occurred on May 17, 2016;
- \$1,000 penalty for the second violation of RCW 19.122.030(2), which occurred on Oct. 6, 2016; and
- \$2,500 for the third violation of RCW 19.122.030(2), which occurred on Aug. 1, 2017.

Staff's research indicates that Pro Grade Enterprises has a significant history of requesting utility locates and that the violations were the result of Company negligence, not lack of knowledge of the requirements of Washington state Dig Law. Even under these circumstances, Staff believes that enforcing the entire \$3,500 penalty against Pro Grade Enterprises will be financially burdensome and recommends that the Commission should offer to suspend \$2,500 of the penalty subject to the conditions that (1) Pro Grade Enterprises 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) Pro Grade Enterprises commits no further violations of RCW 19.122 within the next 12 months.

The Commission agrees with Staff's recommendation and assesses a penalty of \$3,500. The Commission further offers to suspend a \$2,500 portion of the penalty for a period of one year subject to the conditions that (1) Pro Grade Enterprises management and all crews complete NUCA Dig Safe Training within 12 months of this Notice, (2) Pro Grade Enterprises has no further violations of RCW 19.122 within one year of this Notice, and (3) Pro Grade Enterprises pays the \$1,000 portion of the penalty that is not suspended within 15 days of receipt of this Penalty Assessment. The Commission will waive the suspended penalty amount of \$2,500 if Pro Grade Enterprises complies with each of these conditions. If Pro Grade Enterprises fails to comply with any of these conditions, the \$2,500 suspended portion of the penalty 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 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 \$3,500 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 \$2,500 penalty amount due subject to the conditions that all Pro Grade Enterprises 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 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 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 March 16, 2018.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT DG – 180203

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 \$3,500 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 \$2,500 penalty amount on the conditions that all Pro Grade Enterprises 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 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

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.”