

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: DG-180828

PENALTY AMOUNT: \$1,000

Investigation # 7776

Rodarte Construction, Inc.
17 East Valley Hwy E
Auburn, WA 98092

UBI: 600-264-803
Phone: (253) 939-0532

The Washington Utilities and Transportation Commission (Commission) believes that you have violated Revised Code of Washington (RCW) 19.122.030 by failing to request a dig ticket prior to performing an excavation. RCW 19.122.055 states, in part, that any excavator who fails to notify a one-number locator service and causes damage to a hazardous liquid or gas facility is subject to a civil penalty of not more than \$10,000 for each violation.

Commission staff (Staff) conducted an investigation that included reviewing damage reports submitted by Puget Sound Energy (PSE), which identified a natural gas damage event involving Rodarte Construction, Inc. (Rodarte or Company). Accordingly, the Commission hereby notifies you that it is assessing a penalty against you in the amount of \$1,000 on the following grounds:

On October 19, 2016, the Commission issued an Alleged Violation of Washington Dig Law letter to Rodarte, informing the Company of its obligation to have underground utilities located prior to excavation, as outlined in RCW 19.122.030. This letter was issued following damage incidents on August 1, 2016, and August 15, 2016, in Milton, Washington, that occurred because Rodarte failed to obtain valid dig tickets prior to excavation. The letter emphasized the importance of becoming familiar with the law, and the possibility of penalties for each violation.

On June 4, 2018, Rodarte performed an excavation while doing electrical work at 1814 E 30th St., Tacoma, Washington. Prior to beginning excavation, Rodarte did not submit a request to a one-number locator service to locate underground utilities. A 5/8" underground PSE gas line was struck and damaged by equipment used by Rodarte employees.

On July 12, 2018, PSE submitted a Damage Incident Reporting Tool report identifying Rodarte as the party responsible for damaging the natural gas service line on June 4, 2018. Staff was unable to find a valid dig ticket for Rodarte at the work site on this date, but found a dig ticket that expired on April 16, 2018. Rodarte submitted a new request for utility locate for this site the same day the damage occurred.

Staff recommends the commission assess a \$1,000 penalty against Rodarte for one violation of RCW 19.122.030(2) for failing to provide the required notice to a one-number locator service not less than two business days before excavating, as follows:

- No penalty for the violation of RCW 19.122.030(2) that occurred on August 1, 2016; and
- No penalty for the violation of RCW 19.122.030(2) that occurred on August 15, 2016; and
- \$1,000 penalty for the violation of RCW 19.122.030(2) that occurred on June 4, 2018.

Staff's research indicates that Rodarte has a significant history of requesting and updating utility locates, and the violation appears to be the result of the Company's negligence rather than a lack of knowledge of the requirements of Washington's dig law. After considering all of the circumstances, Staff recommends that the Commission offer to suspend \$800 of the penalty for a period of one year subject to the conditions that: (1) the Company's field crews involved in excavation, including management, attend Dig Safe training provided through the National Utility Contractors Association (NUCA) within six months of the date of this Notice; and (2) the Company commits no further violations of RCW 19.122 within 12 months of the date of this Notice. Additionally, the Commission would like to remind Rodarte of its obligation to report damages of underground facilities to the Commission, facility operators, and the one-number locator service, as required by RCW 19.122.053.

The Commission agrees with Staff's recommendation and assesses a penalty of \$1,000, with an offer to suspend \$800 of the penalty subject to the conditions listed above. The Commission will waive the \$800 suspended penalty if Rodarte complies with both conditions. If Rodarte fails to comply with either of these conditions, the \$800 suspended 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 through evidence presented at a hearing or in writing. Or, if there is a reason for the violation(s) 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 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 \$1,000 penalty amount due; or
- Notify the Commission that you accept the offer to suspend, and ultimately waive, \$800 of the \$1,000 penalty subject to the following conditions:
 - Rodarte employees, including management and crew foremen involved in excavations, attend Dig Safe training provided through NUCA within six (6) months of the date of this Notice; and
 - Submit documentation of attendance to the commission within five (5) days of attending the training; and
 - Commit no further violations of RCW 19.122 within twelve (12) months of the date of this Notice; 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 send it to the Washington Utilities and Transportation Commission, P.O. 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 Olympia, Washington, and effective October 30, 2018.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT DG-180828, Investigation # 7776

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 \$1,000 in payment of the penalty.
2. **Accept conditions.** I admit that the violations occurred and have enclosed \$200 of the penalty amount. I also accept the Commission's offer to suspend, and ultimately waive, the remaining \$800 of the penalty amount subject to the following conditions:
- Rodarte employees, including management and crew foremen involved in excavations, attend Dig Safe training provided through NUCA within six (6) months of this Notice; and
 - Submit documentation of attendance to the Commission within five (5) days of attending the training; and
 - Commit no further 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: _____ [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.”