

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: DG-190249
PENALTY AMOUNT: \$2,000
Investigation #7953

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

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

The Washington Utilities and Transportation Commission (Commission) believes that you have violated Revised Code of Washington (RCW) 19.122.030(6) by failing to request an updated dig ticket prior to continuing excavation and subsequently damaging an underground natural gas facility. RCW 19.122.055 states, in part, that any excavator who fails to notify a one-number locator service and subsequently 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 for \$2,000 on the following grounds:

On October 30, 2018, the Commission assessed a \$1,000 penalty against Rodarte for one violation of RCW 19.122.030 for failing to provide notice to a one-number locator service at least two days before excavating and subsequently damaging an underground natural gas facility on June 4, 2018.

On November 14, 2018, Rodarte was excavating at 250 SW 176th St, Normandy Park, Washington. While excavating, Rodarte's workers damaged an underground PSE gas facility. The Damage Information Reporting Tool report submitted by PSE on December 24, 2018, indicated that the Company was excavating without a valid request to locate underground utilities when it caused the damage. Staff's investigation found that Rodarte submitted a request to locate underground utilities for this site on September 27, 2018, which expired on November 11, 2018, three days before the damage incident. Staff was unable to find an updated utility locate request that was valid for the excavation site on the date the damage occurred.

Staff recommends the Commission assess a \$2,000 penalty against Rodarte for one violation of RCW 19.122.030(6) for failing to provide the required additional notice to a one-number locator service not less than two business days before excavating, as follows:

- \$2,000 penalty for the violation of RCW 19.122.030(6) that occurred on November 14, 2018.

Staff's research indicates that Rodarte has a positive history of dig ticket submissions, 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. As part of the investigation, Staff spoke with a Company representative who stated that since the previous damage incident the Company has invested in training for its employees and equipment to make excavating around underground facilities safer for the utilities, Company workers, and the public.

After considering all of the circumstances, Staff recommends that the Commission offer to suspend the entire \$2,000 penalty amount for a period of one year, subject to the condition that 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 \$2,000, with an offer to suspend, and ultimately waive the \$2,000 penalty amount subject to the condition described above. If the Company fails to comply with the condition, the 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 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 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 his or her decision.

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

- Pay the \$2,000 penalty amount due; or
- Notify the Commission that you accept the offer to suspend, and ultimately waive, the entire \$2,000 penalty subject to the condition that Rodarte incur no further violations of RCW 19.122 within 12 months of the date of this Notice; or
- 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 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 May 16, 2019.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT DG-190249, Investigation #7953

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 \$2,000 in payment of the penalty.
2. **Accept conditions.** I admit that the violation occurred and accept the Commission's offer to suspend, and ultimately waive, the entire \$2,000 penalty amount subject to the condition that Rodarte incurs no further violations of RCW 19.122 within 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 (**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.
4. **Request mitigation.** I admit the violation, 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.”