

# WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: D-170116  
PENALTY AMOUNT: \$46,000

Ben Tanielian  
TT & E, LLC  
26910 92<sup>nd</sup> Ave. NW  
Stanwood, WA 98292

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, and RCW 19.122.050(1) for failing to notify a utility operator of damage to an underground facility. RCW 19.122.070(1) states, in part, that violation of any provision of the chapter is subject to a civil penalty of not more than one thousand dollars for an initial violation and not more than five thousand dollars 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 penalty against you in the amount of \$46,000 on the following grounds:

The Safety Committee received 11 complaints against TT&E, LLC (TT&E) regarding potential violations of the Washington State Dig Law, RCW 19.122, for work performed in 2016. The complainant in these cases is Puget Sound Energy (PSE).

On Jan. 25, 2017, the Safety Committee heard the complaints. During the review hearing, PSE withdrew two of their original complaints. For the nine remaining complaints, the Safety Committee found that TT&E committed the following 12 violations:

- Nine violations 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;
- One violation of RCW 19.122.030(1)(a) for failing to mark a proposed excavation site with white paint;
- One violation of RCW 19.122.030(5) for performing an excavation before all known facility operators have marked or provided information about their utilities; and
- One violation of RCW 19.122.050(1) for failing to notify a utility operator and a one-call center of damage to an underground facility.

The Safety Committee recommended that the following \$56,000 in penalties be assessed against TT & E:

- \$1,000 for one violation of RCW 19.122.030(2);
- \$5,000 for each of the eight subsequent violations of RCW 19.122.030(2), for a total of \$40,000;
- \$5,000 for one violation of RCW 19.122.030(1)(a);
- \$5,000 for one violation of RCW 19.122.030(5);
- \$5,000 for one violation of RCW 19.122.050(1); and
- National Utility Contractor Association (NUCA) Dig Safe Training for all employees, including ownership and management.

Commission regulatory staff (Staff) reviewed the Safety Committee's determination and agrees that TT&E committed nine violations of RCW 19.122.030(2) and one violation of RCW 19.122.050(1). However, Staff disagrees that the company violated RCW 19.122.030(1)(a) and RCW 19.122.030(5). Staff contends that the company's use of orange rather than white paint does not warrant a penalty for violation of RCW 19.122.030(a) and that the company should not be penalized twice for the same conduct in connection with RCW 19.22.030(5).

Accordingly, Staff recommends National Utility Contractor Association (NUCA) Dig Safe Training for all TT&E employees, including ownership and management, and a penalty of \$46,000 for the following violations:

- \$1,000 for one violation of RCW 19.122.030(2);
- \$5,000 for each of the eight subsequent violations of RCW 19.122.030(2), for a total of \$40,000;
- \$5,000 for one violation of RCW 19.122.050(1).

Staff's research indicates that TT&E 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's Dig Law. Even under these circumstances, staff believes that enforcing the entire \$46,000 penalty against TT&E will be financially burdensome and recommends that the Commission suspend \$25,000 of that penalty on condition that the company commit no further violations of RCW 19.122 and that all company personnel attend NUCA training.

Pursuant to RCW 19.122.150(3), the Commission has considered the Safety Committee's determination and partially adopts its recommendation. The Commission agrees with Staff's modifications to the Safety Committee recommendation and assesses a penalty of \$46,000 with an offer to suspend \$25,000 of the penalty on the conditions that (1) TT&E owners and all crews complete NUCA Dig Safe Training within 12-months of this Notice, and (2) TT&E has no further violations of RCW 19.122 within two-years of this Notice. The Commission will waive the suspended penalty amount of \$25,000 if TT&E complies with both conditions. If TT&E fails to comply with either of these conditions, the \$25,000 deferred penalty will become immediately due and payable, in addition to any new penalties that the Commission might assess for additional violations.

The information the Safety Committee provided to the Commission, if proved at a hearing and not rebutted or explained, is 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 \$46,000 amount due;
- Pay \$21,000 of the total penalty and notify the Commission that you accept the offer to suspend, and ultimately waive, \$25,000 of the penalty amount due on condition that all TT&E employees, including ownership and 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 two years.
- 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, 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 Olympia, Washington, and effective April 21, 2017.

GREGORY J. KOPTA  
Director, Administrative Law Division

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**  
**PENALTY ASSESSMENT D-170116**

**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 \$46,000 in payment of the penalty
2. **Accept conditions.** I admit that the violations occurred and enclose \$21,000 toward payment of the penalty. I accept the Commission’s offer to suspend, and ultimately waive, \$25,000 of the penalty on the conditions that all TT&E employees, including ownership and 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 two years.
3. **Contest the violations.** I believe that the alleged violations 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.”