

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

**PENALTY ASSESSMENT: D-180204
PENALTY AMOUNT: \$1,000**

Estate Fence, LLC
25406 176th Ave. SE
Covington, WA 98042

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 19.122.070(1) states, in part, that violations of any provision of the chapter are 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 \$1,000 on the following grounds:

On Feb. 28, 2018, the Safety Committee heard complaints for cases 18-003 and 18-004 against Estate Fence LLC (Estate Fence or Company) regarding potential violations of the Washington State Dig Law, RCW 19.122, that occurred in 2017. The complainant in both cases was Puget Sound Energy (PSE). The Safety Committee determined that Estate Fence committed the following violations:

- Two violations of RCW 19.122.030(2) for failing to request locates prior to excavating for both cases, 18-003 and 18-004.

The Safety Committee recommended that the following penalty be assessed against Estate Fence:

- Case 18-003, the Safety Committee will issue a warning letter for this case; and
- Case 18-004, a \$1,000 for one violation of RCW 19.122.030(2); and
- The opportunity to defer the entire \$1,000 penalty if the owner and field supervisors of Estate Fence all complete National Utility Contractor Association (NUCA) Dig Safe Training within six months of the issuance of a penalty assessment by the Commission, and incur no additional dig law violations within 12 months.

Commission regulatory staff (Staff) reviewed the Safety Committee's determination and agrees with their decision. Staff found that Estate Fence committed two violations of RCW

19.122.030(2). Staff based this decision on the following information provided by the Safety Committee:

Case 18-003

PSE alleges that on October 25, 2017, Estate Fence failed to request utility locates prior to excavating to install a new fence at 6968 31st Ave. SW, in Seattle, WA. A Damage Prevention Field Rep for PSE was working in the West Seattle area and observed recent fence construction at the above address. After speaking to the site superintendent from Polygon Homes, he was informed that Estate Fence was the contractor who was installing the fences. A check was done with the one-call ticket management database and it was determined that Estate Fence had not requested a utility locate for this address within the previous 60 days. The Damage Prevention Rep proceeded to take pictures of the job site, which were ultimately submitted to the Safety Committee for review.

Staff investigated this referral from the Safety Committee and found that no utility locate request was submitted by Estate Fence for this location. Staff determined that Estate Fence committed one violation of RCW 19.122.030(2) by failing to request locates prior to excavating.

Case 18-004

PSE alleges that on January 10, 2018, Estate Fence failed to request utility locates prior to excavating to install a new fence at 410 6th Lane NE, in Issaquah, WA. A Damage Prevention Field Rep for PSE was working in the Issaquah area and observed recent fence construction at the above address. After speaking to an Estate Fence employee on site it was determined that the fence had been installed the previous day. A check was done with the one-call ticket management database and it was determined that Estate Fence had not requested a utility locate for this address. The Damage Prevention Rep proceeded to take pictures of the job site, which were ultimately submitted to the Safety Committee for review.

Staff investigated this referral from the Safety Committee and found that no utility locate request was submitted by Estate Fence for this location. Staff determined that Estate Fence committed one violation of RCW 19.122.030(2) by failing to request locates prior to excavating.

Accordingly, Staff recommends a \$1,000 penalty for the violation in case 18-004, with an offer to suspend the entire \$1,000 amount on the conditions that Estate Fence's owner and field supervisors attend NUCA Dig Safe Training within six months of this penalty assessment, and that the Company commit no further violations of RCW 19.122 within the next 12 months. Staff also recommends that a warning letter from the Safety Committee be sent to Estate Fence for the violation in case 18-003.

Staff's research indicates that Estate Fence has a significant history of requesting utility locates and that the violation was the result of company negligence, not a lack of knowledge of the requirements of Washington state Dig Law.

Pursuant to RCW 19.122.150(3), the Commission has considered the Safety Committee's determination and adopts its recommendation. The Commission assesses a penalty of \$1,000 against Estate Fence for the second violation of RCW 19.122.030(2). The Commission will also suspend the entire \$1,000 penalty subject to the conditions that (1) Estate Fence's owner and field supervisors all complete NUCA Dig Safe Training within six months of the issuance of this penalty assessment; and (2) Estate Fence commits no further violations of RCW 19.122 within the next 12-months. The Commission will waive the suspended penalty amount of \$1,000 if Estate Fence complies with both conditions.

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 the violation did not occur, you may deny committing the violation 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 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 the violation but believe there is a reason for the violation 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 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 amount due;
- Notify the Commission that you accept the offer to suspend, and ultimately waive, \$1,000 of the penalty amount due on the conditions that Estate Fence's owner and field supervisors all complete NUCA Dig Safe Training within six months of the issuance 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 12-months; 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 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 21, 2018.

/s/ Rayne Pearson

RAYNE PEARSON

Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT D-180204

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 \$1,000 in payment of the penalty; or

2. **Accept conditions.** I admit that the violation occurred. I also accept the Commission's offer to suspend, and ultimately waive, the \$1,000 penalty subject to the conditions that Estate Fence's owner and field supervisors all complete NUCA Dig Safe Training within six months of the issuance 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 12-months; or

3. **Contest the violation.** I believe that the alleged violation 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 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.”