

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: D-191007  
PENALTY AMOUNT: \$1,000  
Investigation # 8120

Jerry Watts  
J Watts & Son LLC  
d/b/a Watts and Son Cedar Fence Specialists  
5900 64th St NW #31  
Marysville, WA 98270

UBI: 604 479 869  
Phone: (425) 212-8501

The Washington Utilities and Transportation Commission (Commission) believes that you have violated Revised Code of Washington (RCW) 19.122.030(2) by failing to request a dig ticket prior to 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 \$1,000 for an initial violation and not more than \$5,000 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 of \$1,000 against you on the following grounds:

On December 3, 2019, the Safety Committee heard the complaints for case 19-088 against J Watts & Son LLC, d/b/a Watts and Son Cedar Fence Specialists, (Watts and Son or Company) regarding alleged violations of the Washington state dig law, RCW 19.122, that occurred on October 1, 2019. The complainant in this case was Chad Brown (Mr. Brown). The Safety Committee determined that the Company committed the following violations:

- One violation of RCW 19.122 for failing to submit an underground utility locate request through a one-number call service prior to excavating on October 1, 2019.

The Safety Committee recommends that the Commission assess the following penalty against Watts and Son:

- \$1,000 penalty for one violation of RCW 19.122.030(2); and
- The opportunity to suspend the entire \$1,000 penalty amount if Jerry Watts of Watts and Son completes National Utility Contractor Association (NUCA) Dig Safe Training within six months of the date of this Notice, and the Company incurs no additional dig law violations within 12 months of the date of this Notice.

Commission regulatory staff (Staff) reviewed the Safety Committee's determination and agrees with its conclusions. Staff found that Watts and Son violated RCW 19.122.030(2) on one occasion. Staff based this decision on the following information provided by the Safety Committee:

In October 2018, Mr. Brown hired Watts and Son to install a fence on the perimeter of his property. Watts and Son arrived and installed the fence on October 1, 2019, which included 20-30 posts installed into the ground. After the fence was installed, Mr. Brown discovered that Watts and Son had not submitted a utility locate request prior to excavation. Recognizing the danger this posed to himself, his property, and the neighborhood, Mr. Brown filed a complaint with the Safety Committee to encourage Watts and Son to request utility locates for future fencing jobs it does in and around the neighborhood.

Staff considered documents and information provided by the Safety Committee for this investigation and reviewed the Company's submitted one-call ticket database requests. Photographs taken by Mr. Brown demonstrate that when the fence was installed on October 1, 2019, and that excavation to a depth of approximately 14 inches was performed by the Company to install the fence posts. Staff was unable to find a valid dig ticket in the one-call database for the Company for the installation of the fence posts.

Staff recommends the Commission accept the Safety Committee's recommendation with a revision to the conditions, and assess a \$1,000 penalty against the Company for one violation of RCW 19.122 for failing to provide the required notice to a one-number locator service not less than two business days before excavating, as follows:

- \$1,000 penalty for the violation of RCW 19.122.030(2) that occurred on October 1, 2019; and
- The opportunity to suspend the entire \$1,000 penalty amount if Jerry Watts of Watts and Son complete National Utility Contractor Association (NUCA) Dig Safe Training within 12 months of the date of this Notice, and the Company incurs no additional dig law violations within 12 months of the date of this Notice.

The Commission agrees with Staff's recommendation and assesses a penalty of \$1,000 with an offer to suspend the entire \$1,000 penalty amount subject to the conditions listed above. The Commission will waive the suspended penalty amount of \$1,000 if the Company complies with both conditions. If the Company fails to comply with either of these conditions, the \$1,000 suspended penalty amount 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 that the violation did not occur, you may deny committing the violation and contest the penalty through evidence presented at a hearing or in

writing. Alternatively, 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 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 violations 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, the entire \$1,000 penalty amount subject to the following conditions:
  - Jerry Watts of Watts and Son complete Dig Safe training provided through NUCA within twelve (12) months of this Notice; and
  - **Submit documentation of that attendance to the Commission within five (5) days of attending the training; and**
  - Watts and Son incurs no additional violations of RCW 19.122 within twelve (12) months of the date of this Notice; or
- Request a hearing to contest 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 Lacey, Washington, and effective February 14, 2020.

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

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

PENALTY ASSESSMENT D-191007, Investigation # 8120

**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.

2. **Accept conditions.** I admit that the violation occurred. I also accept the Commission's offer to suspend, and ultimately waive, the entire \$1,000 penalty amount subject to the following conditions:

- Jerry Watts of Watts and Son complete Dig Safe training provided through NUCA within twelve (12) months of the date of this Notice; and
- Submit documentation of that attendance to the Commission within five (5) days of attending the training;** and
- Watts and Son incurs no additional 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 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 violation, 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.”