

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

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

**PENALTY ASSESSMENT: D-180342  
PENALTY AMOUNT: \$1,000**

Richard Shanebrook  
All American Fencing  
P.O. Box 812  
Auburn, WA 98071

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 April 18, 2018, the Safety Committee heard the complaint for case 18-011 against All American Fence regarding potential violations of RCW 19.122 that occurred in 2017. The complainant in this case was Puget Sound Energy (PSE). The Safety Committee determined that All American Fencing committed the following violation:

- One violation of RCW 19.122.030(2) for failing to request locates prior to excavating.

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

- \$1,000 penalty for one violation of RCW 19.122.030(2); and
- The opportunity to defer \$800 of the penalty if the owner and employees of All American Fencing 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 conclusion. Staff found that All American Fencing committed one violation of RCW 19.122.030(2). Staff based this decision on the following information provided by the Safety Committee:

**Case 18-011**

The complainant, PSE, alleges that on Dec. 22, 2017, All American Fencing failed to request utility locates prior to excavating to install a new fence at 27805 153<sup>rd</sup> PI SE in Covington, WA. PSE Damage Prevention Field Representative Bob Douglas observed recent fence construction at the above address. Mr. Douglas proceeded to contact the company owner, Richard Shanebrook, to advise him of the potential violation for digging without locates. A check was done with the one-call ticket management database and it was determined that All American Fencing had not requested a utility locate for this address. Mr. Douglas 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 All American Fencing for this location. Staff determined that All American Fencing committed one violation of RCW 19.122.030(2) by failing to request locates prior to excavating.

Staff relied on the information provided by PSE to the Safety Committee for this investigation. All American Fencing failed to appear or otherwise contact the Safety Committee on the day the case was reviewed. The documents for this case included multiple photographs of the newly installed fence posts. Staff's research also indicates that All American Fencing has a positive history of requesting utility locates. Since Jan. 1, 2017, All American Fencing has requested a total of 158 utility locates in the state of Washington.

Staff's investigation concurred with the Safety Committee's determination in regards to the violation, but staff ultimately disagrees with the recommendation to suspend \$800 of the penalty amount with conditions. Staff based this decision on two factors: 1) The Company failed to appear for the review hearing and did not notify the Safety Committee that it would not be present; and 2) The Company was contacted multiple times by PSE prior to the violation being reported, which in turn provided the Company with ample opportunities to change its excavating practices prior to being penalized.

Accordingly, Staff recommends the commission assess a \$1,000 penalty against All American Fencing 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. The breakdown of the recommended penalty is as follows:

- \$1,000 penalty for one violation of RCW 19.122.030(2), which occurred on Dec. 22, 2017.

Staff also recommends that All American Fencing's owner and employees attend NUCA Dig Safe Training within six months of this penalty assessment.

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 the Safety Committee's determination that the violation occurred, but disagrees with its recommendation to suspend a portion of the penalty subject to conditions.

Therefore, the Commission assesses a penalty of \$1,000 against All American Fencing for the single violation of RCW 19.122.030(2). The Commission also recommends that All American Fencing's owner and employees attend NUCA Dig Safe Training within six months of the date of this Penalty Assessment.

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; or
- Request a hearing to contest the occurrence of any or all 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](mailto: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 May 7, 2018.

RAYNE PEARSON  
Director, Administrative Law Division

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**  
**PENALTY ASSESSMENT D-180342**

**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. **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.

3. **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.”