

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

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

PENALTY ASSESSMENT: D-180716  
PENALTY AMOUNT: \$21,000  
Investigation #7771

Kevin Van Hoof  
Van Hoof Construction, LLC  
40604 228<sup>th</sup> Way SE  
Enumclaw, WA 98022

UBI: 603 053 044  
Phone: (253) 261-5054

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 \$21,000 on the following grounds:

On Aug. 22, 2018, the Safety Committee heard the complaints for cases 18-049, 18-050, 18-051, 18-052, and 18-053 against Van Hoof Construction, LLC (Van Hoof or Company) regarding five potential violations of the Washington state dig law, RCW 19.122, that occurred in 2017 and 2018. The complainant in this case was Puget Sound Energy (PSE). The Safety Committee determined that Van Hoof committed the following violations:

- Five violations of RCW 19.122.030(2) for failing to submit a locate request not less than two full business days prior to excavating.

The Safety Committee recommended that the following \$21,000 penalty be assessed against Van Hoof:

- Case 18-049, \$1,000 penalty for one violation of RCW 19.122.030(2);
- Case 18-050, \$5,000 penalty for one violation of RCW 19.122.030(2);
- Case 18-051, \$5,000 penalty for one violation of RCW 19.122.030(2);
- Case 18-052, \$5,000 penalty for one violation of RCW 19.122.030(2);
- Case 18-053, \$5,000 penalty for one violation of RCW 19.122.030(2); and
- The opportunity to suspend \$15,000 of the penalty if: (1) Van Hoof's owners and field supervisors complete National Utility Contractor Association (NUCA) Dig Safe Training within six months of the date of this Notice, and (2) Van Hoof incurs no further violations of RCW 19.122 within 12 months from the date of this Notice.

Commission regulatory staff (Staff) reviewed the Safety Committee's determinations, agrees with its conclusions, and accepts its recommendation. Staff found that Van Hoof committed five violations of RCW 19.122.030(2). Staff based this decision on the following information provided by the Safety Committee:

#### **Case 18-049**

PSE alleged that on June 2, 2017, Van Hoof failed to request a dig ticket from a one-number locator service to have underground utilities located prior to excavating at 24101 SE 258<sup>th</sup> Way, Maple Valley, Washington. PSE Damage Prevention Field Representative Bob Douglas observed a Van Hoof crew excavating to install utilities at the above address on June 2, 2017. Mr. Douglas checked with the one-call ticket management database and determined that Van Hoof had not requested a utility locate for this address. Mr. Douglas spoke with a foreman on site as well as Van Hoof owner Kevin Van Hoof and advised them that they did not have a valid dig ticket for this address and were not in compliance with RCW 19.122. Mr. Douglas requested work stop until a valid dig ticket was obtained, and proceeded to take pictures of the job site, which were ultimately submitted to the Safety Committee for review. Van Hoof agreed to stop work until the Company obtained valid dig ticket.

Staff investigated this referral from the Safety Committee and evidence presented by PSE and Van Hoof, and found that Van Hoof had not submitted a utility locate request for this location prior to excavating. One-call database ticket #17197487 showed that Van Hoof submitted a utility locate request on June 2, 2017, at 12:52 p.m., after PSE had contacted the Company and advised it to obtain a valid dig ticket. Photos taken by Mr. Douglas show construction equipment and Van Hoof vehicles on-site, and excavation work in progress. Staff determined that Van Hoof committed one violation of RCW 19.122.030(2) by failing to give notice to a one-call number locator no less than two full business days prior to excavating.

#### **Case 18-050**

PSE alleged that on October 12, 2017, Van Hoof failed to request a dig ticket from a one-number locator service to have underground utilities located prior to excavating near the intersection of N 40<sup>th</sup> St. and Park Ave. N in Renton, Washington. PSE Damage Prevention Field Representative Bob Douglas observed a Van Hoof crew excavating to clear a plat and install utilities at the above address on October 12, 2017. Mr. Douglas checked with the one-call ticket management database and determined that Van Hoof had not submitted a request to locate underground utilities at this address prior to beginning excavation. Mr. Douglas spoke with a foreman on site as well as Van Hoof owner Kevin Van Hoof and advised him that they did not have a valid dig ticket for this address and were not in compliance with RCW 19.122. Mr. Douglas requested work stop until a valid ticket was obtained, and proceeded to take pictures of the job site, which were later submitted to the Safety Committee for review. Van Hoof stopped work and immediately submitted a locate request.

Staff investigated this referral from the Safety Committee and found that Van Hoof had not submitted a request to have utilities located at this location prior to excavating. One-call database ticket #17408982 shows that Van Hoof submitted a locate request on October 12, 2017, and also shows that no locate requests were called in at this address by Van Hoof prior to that date. PSE's photos show that excavation had begun on the plat prior to the utility locate request, indicating that Van Hoof committed one violation of RCW 19.122.030(2) by failing to give notice to a one-call number locator no less than two full business days prior to excavating.

#### **Case 18-051**

PSE alleged that on November 2, 2017, Van Hoof failed to request a dig ticket from a one-number locator service to have underground utilities located prior to excavating at 11866 42<sup>nd</sup> Ave. S, Tukwila, Washington. PSE Damage Prevention Field Representative Bob Douglas observed a Van Hoof crew excavating at the above address. Mr. Douglas checked with the one-call ticket management database and determined that Van Hoof had not submitted a request to have utilities located at this address. Mr. Douglas spoke with Van Hoof foreman Joe Phelps, who provided him with utility locate request #17299458, which was an expired dig ticket obtained by another company for that address. Mr. Douglas pointed this out and advised them that the Company did not have a valid dig ticket for this address and was not in compliance with RCW 19.122. Mr. Douglas requested work be halted until the Company obtained a valid dig ticket, and proceeded to take pictures of the job site, which were submitted to the Safety Committee for review.

Staff investigated this referral from the Safety Committee and found that the Company had not submitted a request to have utilities located at this location prior to excavating. Photos submitted by PSE show excavation work being done at the location on November 2, 2017. Staff determined that Van Hoof committed one violation of RCW 19.122.030(2) by failing to give notice to a one-call number locator no less than two full business days prior to excavating.

#### **Case 18-052**

PSE alleged that on January 16, 2018, Van Hoof failed to request a dig ticket from a one-number locator service to have underground utilities located prior to excavating at 26610 133<sup>rd</sup> Pl. SE, Kent, Washington. PSE Damage Prevention Field Representative Bob Douglas observed that excavation work had taken place at the above address. Upon inquiring with the site superintendent, Mr. Douglas was informed that the work had been done by Van Hoof Construction. Mr. Douglas was unable to locate a valid dig ticket in the one-call database submitted by Van Hoof for this location. He spoke with Joe Phelps, Van Hoof foreman, and requested that all excavation stop until the Company obtained a valid dig ticket. Mr. Douglas photographed the jobsite as evidence for the Safety Committee.

Staff investigated this referral from the Safety Committee and evidence presented by PSE and Van Hoof and found that the Company had not submitted a request to have utilities located at location prior to excavating. Staff found that utility locate request #18018979 was submitted by Van Hoof on Jan. 17, 2018, after PSE had contacted the Company and

advised them to obtain a valid dig ticket. Photos taken by Mr. Douglas show excavation work in progress and no locator markings on the ground. Staff determined that Van Hoof committed one violation of RCW 19.122.030(2) by failing to provide notice to a one-call number locator no less than two full business days prior to excavating.

### **Case 18-053**

PSE alleged that on March 29, 2018, Van Hoof failed to request a dig ticket from a one-number locator service to have underground utilities located prior to excavating at 3861 223<sup>rd</sup> Ave. SE, Sammamish, Washington. PSE Damage Prevention Field Representative Roger Arrington observed a Van Hoof crew excavating at the above address. Mr. Arrington checked with the one-call ticket management database and determined that Van Hoof had not submitted a request to have utilities located at this address prior to excavating. Mr. Arrington advised the crew that the Company did not have a valid dig ticket for this address and were not in compliance with RCW 19.122. He requested work be halted until a valid dig ticket was obtained, and proceeded to take pictures of the job site, which were submitted to the Safety Committee for review.

Staff investigated this referral from the Safety Committee and found that Van Hoof had not submitted a utility locate request for this location prior to excavating. Photos submitted by PSE show trenches dug and utility lines being laid at the location and on the date above. One photo shows a destroyed gas facility marker likely damaged while excavating. Staff determined that Van Hoof committed one violation of RCW 19.122.030(2) by failing give notice to a one-call number locator no less than two full business days prior to excavating.

Staff recommends the Commission accept the Safety Committee's recommendation and assess a \$21,000 penalty against Van Hoof for five violations of TCW 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, as follows::

- \$1,000 penalty for one violation of RCW 19.122.030(2), which occurred June 2, 2017 (Case 18-049);
- \$5,000 penalty for one violation of RCW 19.122.030(2), which occurred October 12, 2017 (Case 18-050);
- \$5,000 penalty for one violation of RCW 19.122.030(2), which occurred November 2, 2017 (Case 18-051);
- \$5,000 penalty for one violation of RCW 19.122.030(2), which occurred January 16, 2018 (Case 18-052); and
- \$5,000 penalty for one violation of RCW 19.122.030(2), which occurred March 29, 2018 (Case 18-053); and
- The opportunity to suspend \$15,000 of the penalty if: (1) Von Hoof's owner and field supervisors complete NUCA Dig Safe Training within six months of the date of this Notice and provide proof of attendance to the Commission within five days of completion; and (2) the Company incurs no additional dig law violations within 12 months of the date of this Notice.

Pursuant to RCW 19.122.150, the Commission has considered the Safety Committee's determination and adopts its recommendation. The Commission assesses a penalty of \$21,000 against Van Hoof for five violations of RCW 19.122.030(2). The Commission will also provide the opportunity to suspend \$15,000 subject to the conditions described above. The Commission will waive the \$15,000 suspended penalty amount if Van Hoof complies with both conditions. If Van Hoof fails to comply with either of these conditions, the \$15,000 suspended penalty will become immediately due and payable, in addition to any new penalties that the Commission may assess for additional violations.

The information the Safety Committee provided to the Commission, 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 any or all of the violations did not occur, you may deny committing the violation(s) and contest the penalty through evidence presented at a hearing or in writing. Or, if there is a reason for any or all of the violations 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 violation(s) and 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 \$21,000 penalty amount due;
- Pay \$6,000 of the total penalty and notify the Commission that you accept the offer to suspend, and ultimately waive, the remaining \$15,000 penalty subject to the following conditions:
  - Van Hoof employees, including the owner and field supervisors involved in excavations, attend the Dig Safe training provided through NUCA within six (6) months of the date of this Notice;
  - Submit documentation of attendance to the Commission within five (5) days of attending the training; and
  - Commit no further violations of RCW 19.122 within twelve (12) months of the date of this order; or
- 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, 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 October 16, 2018

*/s/ Rayne Pearson*

RAYNE PEARSON

Director, Administrative Law Division

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**  
PENALTY ASSESSMENT D-180716, Investigation #7771

**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 \$21,000 in payment of the penalty.

2. **Accept conditions.** I admit that the violations occurred and enclose \$6,000 toward the payment of the penalty. I also accept the Commission's offer to suspend, and ultimately waive, the remaining \$15,000 penalty amount subject to the following conditions:

- Van Hoof employees, including ownership and field leadership involved in excavations attend the Dig Safe training provided through NUCA within six (6) months of this Notice; and
- 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 twelve (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:

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.”