

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

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

**PENALTY ASSESSMENT: D-180717  
PENALTY AMOUNT: \$1,000  
Investigation # 7773**

Freddy Rios  
Rios Brick Pavers GC LLC  
22824 NE Union Hill Rd.  
Redmond, WA 98053

UBI: 604 138 780  
Phone: (206) 271-3447

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 performing an excavation. 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 against you in the amount of \$1,000 on the following grounds:

On August 22, 2018, the Safety Committee heard the complaint for case 18-035 against Rios Brick Pavers GC LLC (Rios or Company) regarding a potential violation of the Washington State dig law, RCW 19.122, that occurred on November 13, 2017. The complainant in this case was Puget Sound Energy (PSE). The Safety Committee determined that Rios committed the following violation:

- One violation 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 \$1,000 penalty be assessed against Rios:

- \$1,000 penalty for one violation of RCW 19.122.030(2); and
- the opportunity to suspend \$800 of the penalty if the owner and field supervisors of Rios complete National Utility Contractor Association (NUCA) Dig Safe Training within six months of the date of a penalty assessment issued by the Commission, and the Company incurs no additional dig law violations within 12 months.

Commission regulatory staff (Staff) reviewed the Safety Committee's determination and agrees with its conclusion. Staff found that Rios committed one violation of RCW 19.122.030(2). Staff based this decision on the following information provided by the Safety Committee:

PSE alleged that on November 13, 2017, Rios was installing an outdoor stair and walkway system at 3409 167<sup>th</sup> Ave SE, Bellevue, Washington, and performed an excavation without first providing notice to a one-number locator service. A PSE representative arrived at the worksite and observed excavation activities by a Rios employee. The representative, using the one-call ticket management database, determined that Rios had not submitted a request to have utilities located at that address. The representative spoke with the crew foreman and Rios owner, advised them that Rios did not have a valid dig ticket, and requested work be halted until a valid dig ticket was obtained. The representative took photographs of the job site, which were submitted to the Safety Committee for review.

Staff examined and considered photographs and documentation submitted by PSE. The photographs, taken on November 13, 2017, show that Rios was on site and performing excavation work prior to placing the stones for the walkway and stairs.

Staff investigated this referral from the Safety Committee and found that Rios had not submitted a request to locate utilities at the work site prior to excavating. Staff found that Rios submitted a utility locate request on November 13, 2017, after the Company had begun excavation. Staff determined that Rios committed one violation of RCW 19.122.030(2) by failing to notify a one-number locator service at least two business days prior to excavating.

For this investigation Staff relied upon the documents and information provided by PSE and the Safety Committee, the one-call ticket database, and a review of Rios's prior correspondence with the Commission. The Commission previously issued two technical assistance warning letters addressing incidents when Rios damages underground utilities as a result of performing excavations without obtaining locates in August 2016 and April 2017. Rios did not appear at the Safety Committee hearing to provide any additional information, and Staff's attempts to gather information from Rios were unsuccessful.

Staff recommends the Commission assess a \$1,000 penalty against Rios 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, as follows:

- \$1,000 penalty for the violation of RCW 19.122.030(2), which occurred on November 13, 2017.

Staff's research indicates that Rios has a relatively significant history of requesting utility locates, and the violation appears to be the result of the Company's negligence rather than a lack of knowledge of the requirements of Washington's dig law. After considering all of the circumstances, Staff recommends that the Commission offer to suspend \$800 of the total penalty for a period of one year subject to the conditions that: (1) Rios field crews involved in excavation, including Company management, attend Dig Safe training provided through the National Utility Contractors Association (NUCA) within six months

of the date of this Notice; and (2) Rios commits no further violations of RCW 19.122 within 12 months from the date of this Notice.

The Commission agrees with Staff's recommendation and assesses a penalty of \$1,000 with an offer to suspend \$800 of the penalty amount subject to the conditions listed above. The Commission will waive the suspended penalty amount of \$800 if Rios complies with both conditions. If Rios fails to comply with either of these conditions, the \$800 suspended penalty 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 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 violation 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 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;
- Pay \$200 of the total penalty and notify the Commission that you accept the offer to suspend, and ultimately waive, the remaining \$800 of the penalty subject to the following conditions:
  - all Rios field supervisors, including management, attend the Dig Safe training provided through NUCA within six (6) 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
  - commit no further violations of RCW 19.122 within twelve (12) months of the date of this Notice; or
- Request a hearing to contest the occurrence the violation; 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 October 16, 2018.

*/s/ Rayne Pearson*

RAYNE PEARSON

Director, Administrative Law Division

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

PENALTY ASSESSMENT D-180717, Investigation # 7773

**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 and enclose \$200 toward the payment of the penalty. I also accept the Commission's offer to suspend, and ultimately waive, the remaining \$800 penalty amount subject to the following conditions:

- Rios 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 order.

2. **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.

3. **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.”