

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: D-200038
PENALTY AMOUNT: \$1,000
Investigation # 8140

Randy Spies
Neighborhood Fence, Inc.
16119 E Cooper Rd
Mead, WA 99021

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The Washington Utilities and Transportation Commission (Commission) believes that Neighborhood Fence, Inc., (Neighborhood Fence or Company) has violated Revised Code of Washington (RCW) 19.122.030(1)(a) 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 \$1,000 against the Company on the following grounds:

On January 9, 2020, the Safety Committee heard the complaints for case 19-077 against Neighborhood Fence regarding alleged violations of the Washington state dig law, RCW 19.122, that occurred on July 31, 2019. The complainant in this case was Avista Corporation (Avista). The Safety Committee determined that the Company committed the following violations:

- One violation of RCW 19.122.030(5) for excavating prior to all known facility operators marking or providing information regarding underground facilities on July 31, 2019.

The Safety Committee recommends that the Commission assess the following \$1,000 penalty against Neighborhood Fence:

- \$1,000 penalty for one violation of RCW 19.122; and
- The opportunity to suspend \$800 of the total penalty amount if the owner and field staff of Neighborhood Fence 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.

Commission regulatory staff (Staff) reviewed the Safety Committee's recommendation and agrees with its conclusion that a violation occurred. Staff's investigation determined that Neighborhood Fence violated RCW 19.122.030(1)(a) on one occasion by failing to submit a utility locate request prior to excavating. Staff based this decision on the following information provided by the Safety Committee:

Staff's investigation included documents and photographs provided by Avista, as well as a telephone interview with Neighborhood Fence. The investigation determined that a violation of RCW 19.122.030(1)(a) occurred between June 24, 2019, and July 31, 2019, as evidenced by the installation of fence posts by Neighborhood Fence during this time period in an area in which it did not have a valid dig ticket. Specifically, the area where the installation occurred fell outside the area described in the dig ticket.

Staff recommends the Commission accept the Safety Committee's recommendation and assess a \$1,000 penalty against the Company for one violation of RCW 19.122.030(1)(a) for failing to provide the required notice to a one-number locator service before excavating, as follows:

- \$1,000 penalty for the violation of RCW 19.122.030(1)(a) that occurred between June 24, 2019, and July 31, 2019.

Staff's research indicates that the Company has a positive history of submitting utility locate requests, and Staff's investigation determined the violations were the result of the Company's struggles with delays in work and coordination with other contractors working in the same area rather than a lack of knowledge of the requirements of Washington's dig law. After considering all of the circumstances, Staff concurs with the Safety Committee's recommendation that the Commission offer to suspend \$800 of the total penalty amount for a period of one year subject to the following conditions: (1) owners and field staff of Neighborhood Fence attend NUCA Dig Safe training within 12 months of the date of this Notice; and (2) the Company incurs no further violations of RCW 19.122 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 \$800 of the total penalty amount subject to the conditions listed above. The Commission will waive the suspended penalty amount of \$800 if the Company complies with both conditions. If the Company fails to comply with either of these conditions, the \$800 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 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 amount and notify the Commission that you accept the offer to suspend, and ultimately waive, the remaining \$800 of the penalty amount subject to the following conditions:
 - Neighborhood Fence owners and field staff attend 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**
 - Neighborhood Fence 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; 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-200038, Investigation # 8140

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:

- Neighborhood Fence owner and field staff attend 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
- Neighborhood Fence 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.”