

[Service Date March 4, 2014]

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: PL-140180

PENALTY AMOUNT: \$5,000

Mr. Randy Buchanan
35032 West Hwy 12
Burbank, WA 99323

The Washington Utilities and Transportation Commission (Commission) believes that you have committed one or more violations of the Revised Code of Washington (RCW) 19.122.030, failure to call for a dig ticket prior to excavation. RCW 19.122.090 states, in part, that an excavator who digs without a valid dig ticket within thirty-five feet of a transmission pipeline is guilty of a misdemeanor. RCW 19.122.055(1)(b) allows for a civil penalty of not more than ten-thousand dollars for violations of 19.122.090.

Commission staff reviewed the findings and recommendations made by the Review Committee of the Washington Dig Law Safety Committee (Review Committee) in the complaint submitted by Tesoro Logistics Northwest Pipeline, LLC (Tesoro), which alleges that Mr. Randy Buchanan violated Washington Law, RCW 19.122.030 on two separate occasions. As a result, the Commission hereby notifies you that it has assessed penalties against you in the amount of \$5,000 based on the following findings:

The complaint alleges that the respondent, Mr. Randy Buchanan, who owns farm lands in Burbank, Washington, violated RCW 19.122.030, by excavating on his property on October 21, 2013, without a valid dig ticket or without notifying the pipeline company.

A Commission staff investigation determined that Mr. Buchanan violated RCW 19.122.030 by excavating over Tesoro's pipeline sometime before October 19, 2013. Mr. Buchanan admits using a trencher to install a 2-inch PVC water line that crossed over Tesoro's pipeline, but he would not say when the excavation occurred. He provided the Commission with a receipt from Hertz Equipment Rental company showing the trencher was returned on October 19, 2013. Tesoro's aerial pipeline patrol discovered the excavation on October 21, 2013, at about 9:45 a.m.

According to Mr. Buchanan the reason he did not call for a dig ticket was because he did not want to "hand dig" his water line over Tesoro's pipeline. He believed that excavating by hand interfered with the "use and enjoyment of his property" clause contained in his pipeline easement agreement.

The complaint also alleged that the respondent, Randy Buchanan, violated RCW 19.121.030 a second time, after being notified by Tesoro of his requirements under the dig law to not excavate without a proper dig ticket. Mr. Buchanan continued to excavate, including exposing the pipeline, sometime between October 21 and

October 22, 2013. Tesoro's report, dated October 24, 2013, does not identify any pipe or coating damage to the company's pipeline.

Commission staff interviewed Mr. Buchanan with respect to this incident. He said the day before he excavated for the second time, he received a phone message from Tesoro notifying him that they would need to inspect the pipeline for possible damage from the trenching activity. Mr. Buchanan thought that Tesoro was asking him to excavate near the pipeline to aid in their inspection. Mr. Buchanan did not request utility locates before excavating near the Tesoro pipeline.

On January 16, 2014, the Review Committee conducted an informal hearing with the complainant, Tesoro, in attendance. The respondent, Mr. Randy Buchanan, did not attend the hearing. The Review Committee found that Randy Buchanan violated RCW 19.122.030(2) on two occasions by not calling for a dig ticket and notification of the pipeline company prior to excavating within the required two-business days.

The Review Committee recommended the Commission issue a first offense penalty assessment of \$1,000 against Mr. Randy Buchanan and a second violation penalty of \$4,000 for continuing to excavate after being notified by the pipeline company of his responsibilities when excavating near a pipeline. In addition, the Review Committee has requested the Commission pursue a misdemeanor charge in accordance with RCW 19.122.090.

In consideration of the Review Committee's recommendation, the Commission assesses a penalty against Mr. Randy Buchanan of \$1,000 for the initial violation and \$4,000 for the subsequent violation. The Commission will suspend the second penalty of \$4,000 on the condition that Mr. Buchanan incur no further violations of RCW 19.122 within the next three years.

The Commission will not pursue the misdemeanor charge.

This information, 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 violations did not occur, you may request a hearing to contest the penalty assessment. If there is a reason for the violations that you think should excuse you from the penalty, you may ask for mitigation (reduction) of this penalty. *See* RCW 19.122.150.

You have the right to present your request for review or mitigation at a hearing, but you are not required to do so. If you do, the Commission will review the evidence supporting your request in an informal hearing, called a Brief Adjudicative Proceeding, before an administrative law judge. The administrative law judge will consider your plea and 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 amount due.
- Request a hearing to contest the occurrence of the violations.
- Request mitigation to contest 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 March 4, 2014.

GREGORY J. KOPTA
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT PL-140180

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 \$5,000.00 in payment of the penalty.
2. **Request for a hearing.** I believe that the alleged violation did not occur, based on the following information, and request a hearing, which is a process that allows an affected person to present argument to an administrative law judge for a decision by an administrative law judge:
3. **Application for mitigation.** I admit the violation, but I believe that the penalty should be reduced for the reason(s) set out below:
- a) I request the penalty be reduced to \$1,000 on the condition that I, Mr. Randy Buchanan, incur no further violations of RCW 19.122 within the next three years.
- b) I ask for a hearing for a decision by an administrative law judge based on the information presented above.
- c) I waive a hearing and ask for an administrative decision on the information I present directly 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.”