

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

**PENALTY ASSESSMENT: D-150572
PENALTY AMOUNT: \$1,000**

Steve Ruhnke Construction, Inc.
17066 Beaton Rd. SE, Ste. 190B
Monroe, WA 98272-1002

The Washington Utilities and Transportation Commission (Commission) believes that you have violated Revised Code of Washington (RCW) 19.122.030(1)(a) by failing to request a dig ticket prior to performing an excavation and by not marking the boundary of the excavation area in white paint. The Commission also believes that you have violated RCW 19.122.050 by failing to report damage that occurred to a City of Lacey sanitary sewer force main as a result of the excavation.

RCW 19.122.070(1) states, in part, that violation of any provision of the chapter is 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 Jan. 9, 2015, Steve Ruhnke Construction, Inc., (Ruhnke Construction) performed an excavation as part of a utility installation. Prior to beginning work, Ruhnke Construction failed to request a dig ticket from a one-number locator service. During the excavation, Ruhnke Construction struck and damaged a City of Lacey sanitary sewer force main and failed to report the damage to the National Ticket Management System Washington One Call (One Call) Center or to the City of Lacey, as required under RCW 19.122.053.

On Jan. 9, 2015, the City of Lacey received information from a customer regarding a sewer leak and the City of Lacey immediately responded to the leak report. City of Lacey then filed a complaint with the Safety Committee on Jan. 9, 2015. The complainant alleged that Ruhnke Construction failed to request a dig ticket and caused an emergency condition of a sewer leak when a City of Lacey sanitary sewer force main was damaged.

The Safety Committee found that Ruhnke Construction violated RCW 19.122.030(1)(a) by failing to request a dig ticket prior to performing excavation and by not marking the boundary of the excavation area in white paint. The Safety Committee also found that Ruhnke Construction violated RCW 19.122.050 by failing to report the damage to the sanitary sewer force main to the One Call Center or the City of Lacey. The Safety Committee recommended that the Commission assess a \$1,000 penalty for this violation, with a stipulation that \$800 be deferred if Ruhnke Construction agrees to National Utility Contractor's Association (NUCA) "Dig Safe" Training for the company's five superintendents/field representatives, two locate staff members, and a representative of the company's ownership within 90 days of this decision. The Safety Committee further recommended that the \$800 deferred portion of the penalty become due and payable if Ruhnke Construction either fails to attend the training or commits a further violation of RCW 19.122 within a 12-month period from the date 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 believes these are serious offenses and warrant the maximum penalty, as the Safety Committee recommends. Therefore, the Commission assesses a penalty of \$1,000 for the violations. The Commission's ultimate objective, however, is to ensure compliance with the regulations it enforces, and thus the Commission will waive the penalty in its entirety for these violations on the conditions that (1) Ruhnke Construction's five superintendents/field representatives, two locate staff, and a representative of company ownership attend "Dig Safe" training, provided through the NUCA, within 90 days of the date of this Penalty Assessment; and (2) Ruhnke Construction commits no further violations of RCW 19.122 within the next 12 months.

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 violations 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 there is a reason for the violation that you think 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 amount due;
- Contest the occurrence of the violation;
- Request mitigation to contest the amount of the penalty; or
- Notify the Commission that you accept the offer to suspend the penalty on the conditions that Old Town's specified employees attend the "Dig Safe" training provided through NUCA within 90 days of this penalty assessment, submit documentation of that attendance within five days of attendance, and commit no further violations of RCW 19.122 within the next 12 months.

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 June 22, 2015.

GREGORY J. KOPTA
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT D-150572

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. **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. **Application for 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.

4. **Attend training.** I admit that the violation occurred and accept the Commission's offer to waive the penalty on the conditions that Ruhnke Construction's specified staff attend the "Dig Safe" training provided through NUCA within 90 days of this penalty assessment, 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 the next 12 months.

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.”