

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

**PENALTY ASSESSMENT: D-180473
PENALTY AMOUNT: \$11,000**

Nicholas Wallin
Wallin Excavating, LLC
1543 Sorenson Ave.
Enumclaw, WA 98022

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 \$11,000 on the following grounds:

On May 23, 2018, the Safety Committee heard the complaints for cases 18-018, 18-019, and 18-020 against Wallin Excavating, LLC (Wallin Excavating or Company) regarding three 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 Wallin Excavating committed the following violations:

- Three violations of RCW 19.122.030(2) for failing to request locates prior to excavating.

The Safety Committee recommended that the following \$11,000 penalty be assessed against Wallin Excavating:

- Case 18-018, \$1,000 penalty for one violation of RCW 19.122.030(2);
- Case 18-019, \$5,000 penalty for one violation of RCW 9.122.030(2);
- Case 18-020, \$5,000 penalty for one violation of RCW 19.122.030(2); and
- The opportunity to suspend \$10,000 of the penalty if the owner and field supervisors of Wallin Excavating complete National Utility Contractor Association (NUCA) Dig Safe Training within four months of the issuance of a penalty assessment 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 Wallin Excavating committed three violations of RCW 19.122.030(2). Staff based this decision on the following information provided by the Safety Committee:

Case 18-018

PSE alleges that on Aug., 31, 2017, Wallin Excavating failed to request utility locates prior to excavating at 14919 41st Ave. SE in Bothell, WA. PSE Damage Prevention Field Representative Bob Douglas observed a Wallin Excavating crew working at the above address. Mr. Douglas proceeded to contact PSE Damage Prevention Representative Roger Arrington and advise him of his observations. Mr. Arrington went to the job site and confirmed with the crew that the Company did not have valid locates. Mr. Arrington also checked with the one-call ticket management database and determined that Wallin Excavating had not requested a utility locate for this address. Mr. Douglas returned later to take pictures of the job site, which were ultimately submitted to the Safety Committee for review.

Staff investigated this referral from the Safety Committee and found that no utility locate request was submitted by Wallin Excavating for this location prior to beginning work. Staff found that a utility locate request was submitted by Wallin Excavating on Aug. 31, 2017, after PSE contacted the Company and advised it to obtain locates. Staff determined that Wallin Excavating committed one violation of RCW 19.122.030(2) by failing to request locates prior to excavating.

Case 18-019

PSE alleges that on March 6, 2018, Wallin Excavating failed to request utility locates prior to excavating at 1670 Spaulding Circle in Buckley, WA. PSE Damage Prevention Field Representative Joan Burlingame observed a Wallin Excavating crew excavating at the above address. A check was done with the one-call ticket management database and it was determined that Wallin Excavating had not requested a utility locate for this address. When Ms. Burlingame contacted Mr. Wallin at the job site he became argumentative with her and stated that he knew where all of the utilities were located at and that he did not (and would not) request locates. Ms. Burlingame proceeded to take pictures of the job site, which ultimately led to Mr. Wallin deciding to request utility locates.

Staff investigated this referral from the Safety Committee and found that no utility locate request was submitted by Wallin Excavating for this location. Staff found that a utility locate request was submitted by Wallin Excavating on March 6, 2018, but this occurred after PSE had contacted the Company and advised them to obtain locates. Staff determined that Wallin Excavating committed one violation of RCW 19.122.030(2) by failing to request locates prior to excavating.

Case 18-020

PSE alleges that on March 7, 2018, Wallin Excavating failed to wait the required two business days prior to excavating at 1670 Spaulding Circle in Buckley, WA. This is the same address as the previous case, 18-019. While Ms. Burlingame was contacting Mr. Wallin on March 6, 2018, she proceeded to take pictures of the job site in order to obtain evidence of the dig law violations. Upon seeing this, Mr. Wallin decided to outline the proposed excavation area in white paint and then submit a utility locate request. Immediately after doing this, Mr. Wallin proceeded to get back on his excavator equipment and continue working. Ms. Burlingame did not stay at the job site to watch Mr. Wallin finish working, she instead returned the next day on March 7, 2018, to document the

additional excavating that Mr. Wallin performed prior to waiting the required two business days.

Staff investigated this referral from the Safety Committee and found that a utility locate request was submitted by Wallin Excavating on March 6, 2018, after PSE contacted the Company and advised it to obtain locates. Wallin Excavating then proceeded to continue excavating after it requested utility locates, but prior to the required two business days. Staff determined that Wallin Excavating committed one violation of RCW 19.122.030(2) by failing to wait the required two business days prior to excavating.

Staff relied upon the information provided by PSE to the Safety Committee for this investigation. The documents for this case included multiple photographs of the excavation areas. Wallin Excavating failed to appear before the Safety Committee review panel on May 23, 2018, and therefore did not provide any information for review. Staff's research indicates that Wallin Excavating has a relatively small history of requesting utility locates. Since Jan. 1, 2017, Wallin Excavating has only requested a total of 14 utility locates in the state of Washington.

Staff's investigation concurred with the Safety Committee's recommendation. Accordingly, Staff recommends the Commission assess an \$11,000 penalty against Wallin Excavating for three violations 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. The recommended penalty is as follows:

- \$1,000 penalty for one violation of RCW 19.122.030(2), which occurred Aug. 31, 2017 (Case 18-018);
- \$5,000 penalty for one violation of RCW 19.122.030(2), which occurred March 6, 2018 (Case 18-019);
- \$5,000 penalty for one violation of RCW 19.122.030(2), which occurred March 7, 2018 (Case 18-020); and
- The opportunity to suspend \$10,000 of the penalty if the owner and field supervisors of Wallin Excavating complete NUCA Dig Safe Training within four months of the issuance of a penalty assessment by the commission, and the Company incurs no additional dig law violations within 12 months.

Pursuant to RCW 19.122.150(3), the Commission has considered the Safety Committee's determination and adopts its recommendation. The Commission assesses a penalty of \$11,000 against Wallin Excavating for three violations of RCW 19.122.030(2). The Commission will also provide the opportunity to suspend \$10,000 subject to the following conditions: (1) Wallin Excavating's owner and field supervisors must complete NUCA Dig Safe Training within four months of the issuance of this penalty assessment; and (2) Wallin Excavating commits no further violations of RCW 19.122 within the next 12 months. The Commission will waive the suspended penalty amount of \$10,000 if Wallin Excavating complies with both conditions. If Wallin Excavating fails to comply with either of these conditions, the \$10,000 suspended penalty will become immediately due and payable, in addition to any new penalties that the Commission might assess for additional violations.

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 that any or all of the violations did not occur, you may deny committing the violation(s) 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(s) 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 you admit to any or all of the violations but believe there is a reason for the violation(s) that 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 \$11,000 amount due; or
- Pay \$1,000 of the total penalty and notify the Commission that you accept the offer to suspend, and ultimately waive, the remaining \$10,000 penalty subject to the conditions that the owner and field supervisors of Wallin Excavating complete NUCA Dig Safe Training within four months of the issuance 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; or
- Request a hearing to contest the occurrence of any or all of the violations; or
- Request mitigation to reduce the amount of the penalty.

Please indicate your selection on the enclosed form and submit it electronically through the Commission's web portal **within FIFTEEN (15) days** after you receive this notice. If you are unable to use the web portal, you may submit it via email to records@utc.wa.gov. If you are unable to submit the form electronically, you may send a paper copy to the Washington Utilities and Transportation Commission, Post Office Box 47250, Olympia, Washington 98504-7250.

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 13, 2018.

/s/ Rayne Pearson
RAYNE PEARSON
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT D-180473

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 \$11,000 in payment of the penalty.
2. **Accept conditions.** I admit that the violations occurred and enclose \$1,000 toward the payment of the penalty. I also accept the Commission's offer to suspend, and ultimately waive, the remaining \$10,000 penalty amount subject to the conditions that the owner and field supervisors of Wallin Excavating complete NUCA Dig Safe Training within four months of the issuance 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.
3. **Contest the violation.** I believe that the alleged violation did not occur for the reasons I describe below (**if you do not include reasons supporting your contest here, your request will be denied**):
- 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 (**if you do not include reasons supporting your application here, your request will be denied**):
- 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.”