

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

**PENALTY ASSESSMENT: D-180474
PENALTY AMOUNT: \$16,000**

Jeremy Kauffman
Builder's Supply, Inc.
22013 West Bostian Rd.
Woodinville, WA 98072

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 \$16,000 on the following grounds:

On May 23, 2018, the Safety Committee heard the complaints for cases 18-021, 18-022, 18-023, and 18-024 against Builder's Supply (Builder's Supply or Company) regarding four 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 Builder's Supply committed the following violations:

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

The Safety Committee recommended that the following \$16,000 penalty be assessed against Builder's Supply:

- Case 18-021, \$1,000 penalty for one violation of RCW 19.122.030(2);
- Case 18-022, \$5,000 penalty for one violation of RCW 19.122.030(2);
- Case 18-023, \$5,000 penalty for one violation of RCW 19.122.030(2);
- Case 18-024, \$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 Builder's Supply 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 Builder's Supply committed four violations of RCW 19.122.030(2). Staff based this decision on the following information provided by the Safety Committee:

Case 18-021

PSE alleges that on January 6, 2017, Builder's Supply failed to request utility locates prior to excavating at 16442 165th Ct. NE in Redmond, WA. PSE Damage Prevention Field Representative Roger Arrington observed a Builder's Supply crew excavating at the above address. Mr. Arrington checked with the one-call ticket management database and determined that Builder's Supply had not requested a utility locate for this address. Mr. Arrington spoke with a Company foreman and advised him that the Company did not have a valid locate ticket for this address and were not in compliance with RCW 19.122. Mr. Arrington proceeded 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 Builder's Supply for this location prior to excavating. Staff found that a utility locate request was submitted by Builder's Supply on Jan. 6, 2017, but this occurred after PSE had contacted the company and advised them to obtain locates. Staff determined that Builder's Supply committed one violation of RCW 19.122.030(2) by failing to request locates prior to excavating.

Case 18-022

PSE alleges that on January 26, 2017, Builder's Supply failed to request utility locates prior to excavating at 18114 3rd Dr. SE in Bothell, WA. PSE Damage Prevention Field Representative Roger Arrington observed a Builder's Supply crew excavating to dig up gas stub ends at the above address. Mr. Arrington checked with the one-call ticket management database and determined that Builder's Supply had not requested a utility locate for this address. Mr. Arrington spoke with a Company foreman and advised him that the Company did not have a valid locate ticket for this address and was not in compliance with RCW 19.122. Mr. Arrington proceeded 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 Builder's Supply for this location prior to excavating. Staff found that a utility locate request was submitted by Builder's Supply on Jan. 26, 2017, but this occurred after PSE had contacted the company and advised them to obtain locates. Staff determined that Builder's Supply committed one violation of RCW 19.122.030(2) by failing to request locates prior to excavating.

Case 18-023

PSE alleges that on March 13, 2018, Builder's Supply failed to request utility locates prior to excavating at 10 214th Ave. NE in Sammamish, WA. PSE Damage Prevention Field Representative Roger Arrington observed a Builder's Supply crew excavating at the above address. Mr. Arrington checked with the one-call ticket management database and

determined that Builder's Supply had not requested a utility locate for this address. Mr. Arrington spoke with Company owner Kevin Hagar and project manager Dave Martinson and advised them that the Company did not have a valid locate ticket for this address and was not in compliance with RCW 19.122. Mr. Arrington proceeded 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 Builder's Supply for this location prior to excavating. Staff found that a utility locate request was submitted by Builder's Supply on March 13, 2018, but this occurred after PSE had contacted the company and advised it to obtain locates. Staff determined that Builder's Supply committed one violation of RCW 19.122.030(2) by failing to request locates prior to excavating.

Case 18-024

PSE alleges that on March 13, 2018, Builder's Supply failed to request utility locates prior to excavating at 12285 165th Ct. NE in Redmond, WA. PSE Damage Prevention Field Representative Roger Arrington observed a Builder's Supply crew excavating at the above address. Mr. Arrington checked with the one-call ticket management database and determined that Builder's Supply had not requested a utility locate for this address. Mr. Arrington spoke with project manager Dave Martinson and advised him that the Company did not have a valid locate ticket for this address and was not in compliance with RCW 19.122. Mr. Arrington proceeded 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 Builder's Supply for this location prior to excavating. Staff found that a utility locate request was submitted by Builder's Supply on March 13, 2018, but this occurred after PSE had contacted the company and advised it to obtain locates. Staff determined that Builder's Supply committed one violation of RCW 19.122.030(2) by failing to request locates prior to excavating.

Staff relied upon the information provided by PSE and Builder's Supply to the Safety Committee for this investigation. The documents for this case included multiple photographs of the excavation areas. Staff's research indicates that Builder's Supply has a positive history of requesting utility locates. Since January 1, 2017, Builder's Supply has requested a total of 1,935 utility locates in the state of Washington.

Staff also reviewed the Commission's previous enforcement action against Builder's Supply, which was issued on December 23, 2015. In Docket DG-152277, Builder's Supply was penalized \$2,000 for two violations of RCW 19.122.030 for excavating without locates and causing damage to underground natural gas facilities in 2013 and 2015. Builder's Supply paid the penalty in full on March 29, 2016.

Ultimately, Staff concurs with the Safety Committee's findings but disagrees with a portion of the penalty recommendation. Staff disagrees with the recommendation to allow Builder's Supply to suspend a \$10,000 portion of the total penalty based on specific conditions. Due to the Company's previous enforcement action from the Commission, as

well as its demonstrated knowledge of the requirement to request locates prior to excavating, Staff believes an escalated penalty is appropriate.

Staff recommends the commission assess a \$16,000 penalty against Builder's Supply for four violations of RCW 19.122.030(2), with an opportunity to suspend \$6,000 of the total penalty amount subject to conditions. The recommended penalty is as follows:

- \$1,000 penalty for one violation of RCW 19.122.030(2), which occurred January 6, 2017 (Case 18-021);
- \$5,000 penalty for one violation of RCW 19.122.030(2), which occurred January 26, 2017 (Case 18-022);
- \$5,000 penalty for one violation of RCW 19.122.030(2), which occurred March 13, 2018 (Case 18-023);
- \$5,000 penalty for one violation of RCW 19.122.030(2), which occurred March 13, 2018 (Case 18-024); and
- The opportunity to suspend \$6,000 of the penalty if the owner and field supervisors of Builder's Supply complete NUCA Dig Safe Training within four months of the date of this Penalty Assessment, 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 partially adopts its recommendation. The Commission assesses a penalty of \$16,000 against Builder's Supply for four violations of RCW 19.122.030(2). The Commission will also provide the opportunity to suspend \$6,000 subject to the following conditions: (1) the owners and field supervisors of Builder's Supply must complete NUCA Dig Safe Training within four months of the date of this Penalty Assessment; and (2) Builder's Supply commits no further violations of RCW 19.122 within the next 12 months. The Commission will waive the \$6,000 suspended penalty if Builder's Supply complies with both conditions. If Builder's Supply fails to comply with either of these conditions, the \$6,000 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 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(s) 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 \$16,000 amount due; or
- Pay \$10,000 of the total penalty and notify the Commission that you accept the offer to suspend, and ultimately waive, the remaining \$6,000 penalty subject to the conditions that the owners and field supervisors of Builder's Supply complete NUCA Dig Safe Training within four months of the date 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 violation; 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 18, 2018.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT D-180474

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 \$16,000 in payment of the penalty.
2. **Accept conditions.** I admit that the violations occurred and enclose \$10,000 toward the payment of the penalty. I also accept the Commission's offer to suspend, and ultimately waive, the remaining \$6,000 penalty amount subject to the conditions that the owner and field supervisors of Builder's Supply 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.”