

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: D-190538

PENALTY AMOUNT: \$1,000

Investigation # 7984

Cliff Owens
Next Day Posts, LLC
PMB 864
13716 Canyon Rd E Ste B
Federal Way, WA 98023

UBI: 602 638 817

Phone: (253) 445-5175

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 outline a proposed excavation area in white paint prior to providing notice to the state one-call request service. 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 penalty against you for \$1,000 on the following grounds:

On June 11, 2019, the Safety Committee heard complaints for cases 18-084 and 18-087 against Next Day Posts (Next Day or Company) regarding two alleged violations of the Washington State dig law, RCW 19.122 that occurred on October 8, 2018, and October 18, 2018, respectively. The complainant in these cases was McChord Pipeline Company (McChord). The Safety Committee determined that the Company committed the following violations:

- One violation of RCW 19.122.030(1)(a) on October 8, 2018, for failing to outline the proposed excavation area in white paint prior to submitting a utility locate request.
- One violation of RCW 19.122.030(1)(a) on October 18, 2018, for failing to outline the proposed excavation area in white paint prior to submitting a utility locate request.

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

- \$1,000 penalty for two violations of RCW 19.122.030(1)(a); and
- The opportunity to suspend the entire \$1,000 penalty amount if 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 conclusions. Staff found that the Company violated RCW 19.122.030(1)(a) on October 8, 2018, and again on October 18, 2018. Staff based this decision on the following information provided by the Safety Committee:

(First Violation)

McChord alleged in complaint 18-084 that on October 8, 2018, Next Day Posts did not mark its proposed excavation area with white paint prior to notifying 811 via dig ticket 18442665 of its intent to excavate. After reviewing statements and evidence presented by McChord and Next Day, the Safety Committee determined that the Company violated the notification requirements of the dig law by not properly identifying the excavation area prior to notifying 811 as required by RCW 19.122.030(1)(a).

(Second Violation)

The Safety Committee reviewed complaint 18-087, also submitted by McChord, and found that a second violation of RCW 19.122.030(1)(a) occurred on October 18, 2018, when Next Day notified 811 of its intent to excavate via dig ticket 18459673 without first outlining its planned excavation area in white paint. The statements and evidence provided to the Safety Committee resulted in a determination that Next Day violated the notification requirements of RCW 19.122.030(1)(a).

Staff recommends the Commission assess a \$1,000 penalty against the Company for two violations of RCW 19.122.030(1)(a) for failing to outline the proposed excavation area in white paint as required prior to submitting a utility locate request, as follows:

- \$1,000 penalty for two violations of RCW 19.122.030(1)(a) that occurred on October 8, 2018, and October 18, 2018.

Staff's research and discussion with the Company representative indicate that the Company has a positive history of submitting utility locate requests, and that the violations appear to be the result of the Company's reliance on clients to mark some of the excavation sites rather than a lack of knowledge of the requirements of Washington's dig law. The Company has since updated its practices and work request form to prevent future violations. After considering all of the circumstances, Staff concurs with the Safety Committee's recommendation that the Commission offer to suspend the entire \$1,000 penalty amount for a period of one year subject to the condition that Next Day commits no further violations of RCW 19.122 within 12 months from the date of this Notice.

The Commission agrees with Staff's recommendation and assesses a penalty of \$1,000 with an offer to suspend the entire \$1,000 penalty amount subject to the condition that Next Day commits no further violations of RCW 19.122 within 12 months of the date of this

Notice. The Commission will waive the suspended penalty amount of \$1,000 if the Company complies with both conditions. If the Company fails to comply with either of these conditions, the \$1,000 suspended penalty 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 the violations did not occur, you may deny committing the violations and contest the penalty through evidence presented at a hearing or in writing. Alternatively, if there is a reason for the violations 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 violations 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 violations 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;
- Notify the Commission that you accept the offer to suspend, and ultimately waive, the \$1,000 penalty amount subject to the following condition:
 - commit no further violations of RCW 19.122 within twelve (12) months of the date of this order; 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 July 22, 2019.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PENALTY ASSESSMENT D-190538, Investigation # 7984

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 \$1,000 in payment of the penalty.
2. **Accept conditions.** I admit that the violations occurred and accept the Commission's offer to suspend, and ultimately waive, the entire \$1,000 penalty amount subject to the following conditions:
- Commit no further violations of RCW 19.122 within twelve (12) months of the date of this Notice.
3. **Contest the violations.** I believe that the alleged violations 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 violations, 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.”