

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: D-200170  
PENALTY AMOUNT: \$6,000  
Investigation # 8160

Vasiliy Polivoda  
Vasiliys Construction Plus LLC  
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The Washington Utilities and Transportation Commission (Commission) believes that Vasiliys Construction Plus LLC (Vasiliys or Company) has violated Revised Code of Washington (RCW) 19.122.030(2) by failing to request a dig ticket prior to excavating. RCW 19.122.070(1) states, in part, that violations of any provision of the chapter not amounting to a violation of RCW 19.122.055 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 \$6,000 penalty against Vasiliys on the following grounds:

On February 18, 2019, the Safety Committee heard the complaints for cases 19-051, 19-052, 19-053, and 19-054 against Vasiliys regarding alleged violations of the Washington state dig law, RCW 19.122, that occurred on April 12, April 15, May 2, and May 3, 2019. The complainant in these cases was Puget Sound Energy (PSE). The Safety Committee determined that the Company committed the following violations:

- One violation of RCW 19.122.030(2) in case 19-051 that occurred on April 12, 2019 at 12530 7<sup>th</sup> Ave. NW, Seattle; and
- One violation of RCW 19.122.030(2) in case 19-052 that occurred on April 15, 2019 at 12530 7<sup>th</sup> Ave. NW, Seattle; and
- One violation of RCW 19.122.030(5) in case 19-054 that occurred on May 3, 2019 at 18820 116<sup>th</sup> Ave. SE, Renton, Washington.

The Safety Committee determined that there was insufficient evidence to find that a violation occurred in case 19-053.

The Safety Committee recommends that the Commission assess the following \$11,000 penalty against Vasiliys:

- \$1,000 penalty for the violation of RCW 19.122.030(2) on April 12, 2019, in case 19-051;
- \$5,000 penalty for the violation of RCW 19.122.030(2) on April 15, 2019, in case 19-052;
- \$5,000 penalty for the violation of RCW 19.122.030(5) on May 3, 2019, in case 19-054.

The Safety Committee further recommends the Commission offer to suspend \$5,000 of the \$11,000 penalty amount if the owners of Vasiliys complete National Utility Contractor Association (NUCA) Dig Safe Training within 6 months of the date of this Notice, and 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 concerning cases 19-052 and 19-054. Staff found that Vasiliys violated RCW 19.122.030(2) on two occasions, but concluded that there is insufficient evidence to support a finding that the violation alleged in case 19-051 occurred. Staff based this decision on the following information provided by the Safety Committee:

#### **Case 19-051**

On April 9, 2019, while responding to a nearby utility damage incident, a PSE damage prevention representative observed that some excavation, including building demolition, had occurred at 12530 7<sup>th</sup> Ave. NW, Seattle. The representative performed a search of the one-call dig ticket database and was unable to find a utility locate request for the address. Concerned that potentially dangerous excavation could be occurring, the representative returned to the site on April 12, 2019. No excavation was occurring and no Vasiliys workers were on-site at the time of the second visit, but the representative noticed that additional demolition and excavation had occurred since noticing the site on April 9, 2019. The representative still could not find a valid locate request in the one-call database, and photographed the excavation, machinery, and Company trucks. The representative taped an excavation safety booklet to the cab of the backhoe and left the worksite.

The Safety Committee concluded that Vasiliys violated RCW 19.122.030(2) by excavating without a valid dig ticket between April 9, 2019, and April 12, 2019. Staff's investigation determined that the evidence provided by PSE does not conclusively show that excavation occurred during this time by Vasiliys due to a lack of photographic evidence of active excavation by the Company between these dates, or photos showing that Vasiliys performed any excavation prior to April 12, 2019. Although all equipment photographed on April 12, 2019, appears to belong to Vasiliys, PSE failed to demonstrate that any excavation that occurred at the site on or prior to April 12, 2019, was performed by Vasiliys. Therefore, Staff does not recommend a penalty for the alleged violation.

**Case 19-052 (First Violation)**

On April 15, 2019, a PSE damage prevention representative returned to 12530 7<sup>th</sup> Ave. NW, Seattle, Washington, concerned that unsafe excavation may have continued at the site. The damage prevention representative observed and photographed Vasiliys workers actively excavating despite not having a valid dig ticket. The workers were using the excavation machinery to which the damage prevention representative had taped an excavation safety booklet on April 12, 2019.

The Safety Committee determined that Vasiliys violated RCW 19.122.030(2) by excavating without providing the required notice two days before excavating. Staff's investigation also concluded that the violation occurred.

**Case 19-054 (Second Violation)**

On May 3, 2019, a PSE damage prevention representative went to 18820 116<sup>th</sup> Ave. SE, Renton, Washington, after being told by the PSE locator that when the locator arrived to mark utilities for utility request #19174816 the Company was already excavating. The locate request was submitted by Vasiliys on May 1, 2019, and was not valid until May 4, 2019, to allow two full business days after the request was made for utility operators to respond and mark their utilities. The representative took photos that depict Company workers actively engaged in excavation on May 3, 2019, prior to its submitted utility locate request being valid, and prior to the deadline for utility operators to respond to the request.

Staff's investigation determined that the photos taken by the PSE damage prevention representative demonstrate that a violation of RCW 19.122.030(2) occurred, which requires that excavators wait two full business days to begin digging after submitting a utility locate request. The ticket status history, which is updated by utility operators that utilize positive response systems, indicates that a PSE locator marked the PSE utilities on May 2, 2019. Staff's investigation determined that a violation of RCW 19.122.030(2) occurred rather than a violation of RCW 19.122.030(5), as cited by the Safety Committee, because the photos show that the Company excavated before two full business days had transpired.

Staff recommends the Commission accept the Safety Committee's recommendation and assess a \$6,000 penalty against the Company for two violations of RCW 19.122.030(2) in cases 19-052 and 19-054 for failing to provide the required notice to a one-number locator service not less than two business days before excavating, as follows:

- No penalty for the violation alleged in Case 19-051 that occurred on April 12, 2019; and
- \$1,000 penalty for the violation of RCW 19.122.030(2) that occurred on April 15, 2019; and
- \$5,000 penalty for the violation of RCW 19.122.030(2) that occurred on May 3, 2019.

Staff concurs with the Safety Committee's recommendation to suspend a portion of the penalty amount, and recommends that the Commission offer to suspend \$2,000 of the

\$6,000 penalty amount for a period of one year subject to the following conditions: (1) Owners of Vasiliys attend Dig Safe training provided through NUCA within 12 months of the date of this Notice; and (2) the Company incurs 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 \$6,000 with an offer to suspend \$2,000 of the total penalty amount subject to the conditions listed above. The Commission will waive the suspended penalty amount of \$2,000 if the Company complies with both conditions. If the Company fails to comply with either of these conditions, the \$2,000 suspended penalty amount 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 that any or all of the violations did not occur, you may deny committing the violation(s) and contest the penalty through evidence presented at a hearing or in writing. Alternatively, if there is a reason for any or all of 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 their decision.

**You must act within 15 days after receiving this notice** to do one of the following:

- Pay the \$6,000 amount due;
- Pay \$4,000 of the total penalty amount and notify the Commission that you accept the offer to suspend, and ultimately waive, the remaining \$2,000 of the penalty amount subject to the following conditions:
  - Vasiliys owners attend Dig Safe training provided through NUCA within twelve (12) months of this Notice; and
  - **Submit documentation of that attendance to the Commission within five (5) days of attending the training; and**
  - Vasiliys incurs no additional violations of RCW 19.122 within twelve (12) months of the date of this Notice; or
- Request a hearing to contest the violation(s); 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 28, 2020.

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

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**  
PENALTY ASSESSMENT D-200170, Investigation # 8160

**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 \$6,000 in payment of the penalty.
2. **Accept conditions.** I admit that the violations occurred and enclose \$4,000 toward the payment of the penalty. I also accept the Commission's offer to suspend, and ultimately waive, the remaining \$2,000 penalty amount subject to the following conditions:
- Vasiliys owners attend Dig Safe training provided through NUCA within twelve (12) months of the date of this Notice; and
  - Submit documentation of that attendance to the Commission within five (5) days of attending the training;** and
  - Vasiliys incurs no additional violations of RCW 19.122 within twelve (12) months of the date of this Notice.

3. **Contest the violation.** I believe that the alleged violation(s) 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.”