

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: D-200618
PENALTY AMOUNT: \$1,000
Investigation # 8205

UBI: 604 015 447
Phone: (360) 264-4409

S & J Fencing, LLC
P.O. Box 110
Tenino, WA 98589
jakeminton25@gmail.com

The Washington Utilities and Transportation Commission (Commission) believes that S & J Fencing, LLC, (S & J Fencing 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 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 \$1,000 penalty against you on the following grounds:

On June 30, 2020, the Safety Committee heard the complaints for case 20-016 against S & J Fencing regarding an alleged violation of the Washington state dig law, RCW 19.122 that occurred on April 8, 2020. The complainant in this case was Corey Owens (Complainant). The Safety Committee determined that the Company committed the following violations:

- One violation of RCW 19.122.030(2) for failing to submit an underground utility locate request through a one-number call service not less than two full business days prior to excavating on the above dates.

The Safety Committee recommends that the Commission assess a \$1,000 penalty against S & J Fencing for one violation of RCW 19.122.030(2). The Safety Committee further recommends the Commission offer to suspend an \$800 portion of the \$1,000 penalty amount if Jake Minton of S & J Fencing complete National Utility Contractor Association (NUCA) Dig Safe Training within 12 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 determination and agrees with its conclusions. Staff found that S & J Fencing violated RCW 19.122.030(2) on one occasion. Staff based this decision on the following information provided by the Safety Committee:

First Violation

On April 8, 2020, S & J Fencing failed to provide the required notice to facility operators prior to augering a hole for a fence post. The complainant, a nearby homeowner, became concerned after witnessing excavation occurring without any visible utility locate marks on the ground in the excavation area. The complainant notified the one-call notification service, which issued an emergency safety locate for the excavation area. The excavation did not result in damage to an underground utility.

Staff was present during the Safety Committee's review to hear the accounts and evidence provided by both parties. Staff was unable to find a valid utility locate request made by the Company for the excavation on April 8, 2020, and therefore determined that the Company violated RCW 19.122.030(2) by not providing the required notice to facility operators at least two business days in advance of beginning excavation.

Staff recommends the Commission accept the Safety Committee's recommendation and assess a \$1,000 penalty against the Company for one violation 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.

Staff's research indicates that the Company has a positive history of submitting utility locate requests, and the violation appears to be the result of the Company's negligence rather than a lack of knowledge of the requirements of Washington's dig law. After considering all of the circumstances, Staff concurs with the Safety Committee's recommendation that the Commission should offer to suspend \$800 of the total penalty amount for a period of one year subject to the following conditions: (1) Jake Minton of S & J Fencing must attend Dig Safe training provided 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 \$1,000 with an offer to suspend \$800 of the total penalty amount subject to the conditions listed above. The Commission will waive the suspended penalty amount of \$800 if the Company complies with both conditions. If the Company fails to comply with either of these conditions, the \$800 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 the violation did not occur, you may deny committing the violation and contest the penalty through evidence presented at a hearing or in writing. Alternatively, if there is a reason for the violation 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 violation 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 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 their decision.

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

- Pay the \$1,000 amount due; or
- Pay \$200 of the total penalty amount and notify the Commission that you accept the offer to suspend, and ultimately waive, the remaining \$800 of the penalty amount subject to the following conditions:
 - Jake Minton of S & J Fencing must attend Dig Safe training provided through NUCA within twelve (12) months of this Notice; and
 - **S&J Fencing must submit documentation of that attendance to the Commission within five (5) days of attending the training; and**
 - S & J Fencing must not commit any additional violations of RCW 19.122 within twelve (12) months of the date of this Notice; 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 September 2, 2020.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT D-200618, Investigation # 8205

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. **Accept conditions.** I admit that the violation occurred and enclose \$200 toward the payment of the penalty. I also accept the Commission's offer to suspend, and ultimately waive, the remaining \$800 penalty amount subject to the following conditions:

- Jake Minton of S & J Fencing must attend dig safe training provided through NUCA within twelve (12) months of the date of this Notice; and
- S&J Fencing must submit documentation of that attendance to the Commission within five (5) days of attending the training;** and
- S & J Fencing must not commit any 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 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 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.

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.”