

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: D-200620
PENALTY AMOUNT: \$2,500
Investigation # 8206

UBI: 602 907 662
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Neighborhood Fence, Inc.
16119 E. Cooper Rd.
Mead, WA 99021
raylspies@gmail.com

The Washington Utilities and Transportation Commission (Commission) believes that Neighborhood Fence, Inc., (Neighborhood Fence or Company) has violated Revised Code of Washington (RCW) 19.122.030(5) by excavating before all utility operators marked or provided information about underground utilities. 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 \$2,500 penalty against you on the following grounds:

On February 28, 2020, the Commission penalized Neighborhood Fence \$1,000 in Docket D-200038 for excavating without first providing the required notice to facility operators. The Company accepted the Commission's offer to suspend, and ultimately waive, \$800 of the penalty amount if the Company attended NUCA dig safe training and incurred no additional violations of RCW 19.122 within 12 months of the penalty assessment. Due to the subsequent violation described below, the Commission imposed the \$800 suspended penalty amount on September 23, 2020.

On June 30, 2020, the Safety Committee heard the complaints for case 20-018 against Neighborhood Fence regarding an alleged violation of the Washington state dig law, RCW 19.122 that occurred on April 24, 2020. The complainant in this case was Avista Corporation (Avista). The Safety Committee determined that the Company committed one violation of RCW 19.122.030(5) by failing to wait to excavate until all known utility operators provided information about their underground utilities.

The Safety Committee recommends that the Commission assess a \$2,500 penalty for this repeat violation, with an opportunity to suspend \$1,500 of the penalty

amount if the owners of Neighborhood Fence 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 Neighborhood Fence violated RCW 19.122.030(5) on one occasion. Staff based this decision on the following information provided by the Safety Committee:

On April 23, 2020, Neighborhood Fence submitted utility locate request #20148862 for 4015 S. Crestline, Spokane, Washington. The request was assigned a work to begin date of April 28, 2020, which is two full business days after the request date. On April 24, 2020, Neighborhood Fence notified Avista that it had caused excavation damage to an underground Avista natural gas utility while digging to install fence posts. The damage did not create an emergency or blowing gas situation but did require repairs by Avista responders.

Avista provided photos that showed the damaged natural gas facility, and Staff's subsequent investigation found no other utility locate requests made by Neighborhood Fence for the jobsite that were valid at the time of the damage event. The status history for the utility locate request revealed that Avista locators had not gone to the site to mark utilities in response to the Company's locate request before the damage event occurred. By failing to wait the required two full business days to allow all affected utility operators to mark or otherwise provide information regarding their underground utilities in the work area, Neighborhood Fence violated RCW 19.122.030(5).

Staff recommends the Commission accept the Safety Committee's recommendation and assess a \$2,500 penalty against the Company for one violation of RCW 19.122.030(5) for excavating before utility operators marked or provided information about their underground utilities on April 24, 2020.

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. Between January 1, 2020, and the date of the violation, the Company submitted 96 utility locate requests.

After considering all of the circumstances, Staff concurs with the Safety Committee's recommendation that the Commission should offer to suspend \$1,500 of the total penalty amount for a period of one year subject to the following conditions: (1) Owners of Neighborhood Fence 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 \$2,500 with an offer to suspend \$1,500 of the total penalty amount subject to the conditions listed above. The Commission will waive the suspended penalty amount of \$1,500 if the Company complies with both conditions. If the Company fails to comply with either of these conditions, the \$1,500 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 \$2,500 amount due;
- Pay \$1,000 of the total penalty amount and notify the Commission that you accept the offer to suspend, and ultimately waive, the remaining \$1,500 of the penalty amount subject to the following conditions:
 - Neighborhood Fence owners must attend Dig Safe training provided through NUCA within twelve (12) months of this Notice; and
 - **The Company must submit documentation of that attendance to the Commission within five (5) days of attending the training; and**
 - Neighborhood Fence 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 October 2, 2020.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PENALTY ASSESSMENT D-200620, Investigation # 8206

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 \$2,500 in payment of the penalty.
2. **Accept conditions.** I admit that the violation 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 \$1,500 penalty amount subject to the following conditions:
- Neighborhood Fence owners must attend dig safe training provided through NUCA within twelve (12) months of the date of this Notice; and
 - The Company must submit documentation of that attendance to the Commission within five (5) days of attending the training;** and
 - Neighborhood Fence 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.”