

NOV 10 2016

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

NOTICE OF PENALTIES INCURRED AND DUE
FOR VIOLATIONS OF LAWS AND RULESPENALTY ASSESSMENT: D-161117
PENALTY AMOUNT: \$16,000

Westward Hoe Construction, Inc.
45407 244th Ave. SE
Enumclaw, WA 98022

The Washington Utilities and Transportation Commission (Commission) believes you have violated Revised Code of Washington (RCW) 19.122.030(1) by failing to provide notice to a one-number locating service for an excavation area. In addition, the Commission also believes you have violated RCW 19.122.030(2) for failing to wait the required two business days after requesting locates from a one-number locator service. RCW 19.122.070(1) states, in part, that violation of any provision of the chapter is 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:

The Safety Committee received four complaints against Westward Hoe Construction, Inc. (Westward Hoe) regarding potential violations of the Washington State Dig Law, RCW 19.122, for work performed in 2015 and 2016. The complainant in these cases is the City of Lacey. The Safety Committee reviewed these complaints on Sept. 21, 2016.

The Safety Committee found that Westward Hoe committed two violations of RCW 19.122.030(1) by failing to provide notice to a one-number locating service for an excavation area, and two violations of RCW 19.122.030(2) by failing to wait the required two business days after requesting locates from a one-number locator service. The Safety Committee recommended a \$1,000 penalty for the first violation of RCW 19.122.030(1), and \$5,000 for the subsequent violation. They also recommended a \$5,000 penalty for each of the two violations of RCW 19.122.030(2).

The Safety Committee further recommended that \$15,000 of the total \$16,000 penalty amount should be deferred and ultimately waived on the conditions that (1) Westward Hoe owners and all crews complete National Utility Contractor Association (NUCA) Dig Safe Training within 90 days of the Commission's Notice

of Penalty Assessment (Notice) and; (2) Westward Hoe has no further violations of RCW 19.122.030 within 12 months of that Notice. If Westward Hoe fails to comply with either of these conditions, the \$15,000 deferred penalty would become immediately due and payable.

Pursuant to RCW 19.122.150(3), the Commission has considered the Safety Committee's determination and partially adopts its recommendation. The Commission agrees with the Safety Committee's determination that four violations occurred, but finds that a more stringent penalty amount would provide a more appropriate incentive for future compliance with the statute. Staff's research indicates that Westward Hoe has a significant history of requesting utility locates and that the violations were the result of company negligence, not lack of knowledge of the requirements of Washington State's Dig Law.

Therefore, the Commission assesses a penalty of \$16,000, but will suspend \$10,000 of that penalty on the conditions that (1) Westward Hoe owners and all crews complete NUCA Dig Safe Training within six months of this Notice and; (2) Westward Hoe has no further violations of RCW 19.122.030 within 12 months of this Notice. The Commission will waive the suspended penalty amount of \$10,000 if Westward Hoe complies with both conditions. If Westward Hoe fails to comply with either of these conditions, the \$10,000 deferred penalty will become immediately due and payable, in addition to any new penalties that the Commission might assess for additional violations.

This 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 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;
- Pay \$6,000 of the total penalty and notify the Commission that you accept the offer to suspend, and ultimately waive, \$10,000 of the penalty amount due on condition that Westward Hoe's employees attend the "Dig Safe" training provided through NUCA within six months of this Notice, submit documentation of that attendance to the Commission within five (5) days of attending the training, and commit no further violations of RCW 19.122.030 within the next 12 months.
- Request a hearing to contest the occurrence of any or all of the violations; 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 Olympia, Washington, and effective November 9, 2016.



GREGORY J. KOPTA
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT D-161117

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. **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.

3. **Request mitigation.** I admit the violations, but I believe that the penalty should be reduced for the reasons set out below:

a) *We are requesting a hearing to provide facts about situation.*
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. **Accept conditions.** I admit that the violations occurred and enclose \$6,000 in payment towards the penalty. I accept the Commission's offer to suspend, and ultimately waive, \$10,000 of the penalty on the condition that Westward Hoe's employees attend the "Dig Safe" training provided through NUCA within six months 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 19.122.030 within the next 12 months.

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: 11/18/16 [Month/Day/Year], at Enumclaw, Wa [City, State]

PAT DAMERY
Name of Respondent (company) – please print
RCW 9A.72.020:

Pat Damery
Signature of Applicant

“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.”