

TENNESSEE PUBLIC UTILITY COMMISSION



Underground Utility Damage Enforcement Board
502 Deaderick Street, 4th Floor
Nashville, Tennessee 37243

NOTICE OF HEARING

IN RE: **SHOW CAUSE PROCEEDING AGAINST
ROSE CREEK LANDSCAPING, LLC FOR ALLEGED
VIOLATIONS OF TENN. CODE ANN. § 65-31-101 et seq.**

DOCKET NO.: **U19-0048 (EB 18-0026)**

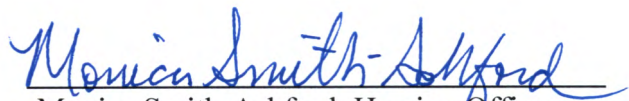
DATE: **June 10, 2019**

Pursuant to the attached *Order Requiring Rose Creek Landscaping, LLC to Appear and Show Cause Why It Should Not Be Found Liable for Violations of Tenn. Code Ann. § 65-31-101 et seq.*, a Hearing has been scheduled in the above-captioned matter for **Monday, July 15, 2019 at 9:30 a.m. (central)**. The Hearing will be held in Hearing Room G.201 located on the Ground Floor of the Andrew Jackson State Office Building, 502 Deaderick Street, Nashville, Tennessee.

The Hearing Officer will conduct this hearing in accordance with the Tennessee Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-101 *et seq.* Rose Creek Landscaping, LLC shall appear on the aforementioned date and time to show cause why it should not be liable for violations of the Tennessee Underground Utilities Prevention Act, Tenn. Code Ann. §§ 65-31-101 *et seq.* Rose Creek Landscaping, LLC is entitled to be represented by counsel at its own expense.

Participants with disabilities who require special accommodations or alternate communications formats should contact the Tennessee Public Utility Commission ADA-EEO/AA Coordinator/Officer at 502 Deaderick Street, 4th Floor, Nashville, Tennessee 37243-0505, 1-800-342-8359 or TDD (615) 741-3930, so that reasonable accommodations can be made.

FOR THE TENNESSEE UNDERGROUND DAMAGE PREVENTION ENFORCEMENT BOARD:


Monica Smith-Ashford, Hearing Officer

Original in Docket File
cc: Parties of Record

**BEFORE THE TENNESSEE UNDERGROUND UTILITY DAMAGE
ENFORCEMENT BOARD**

NASHVILLE, TENNESSEE

IN RE:)	
)	
SHOW CAUSE PROCEEDING AGAINST)	Docket No. U19-0048
ROSE CREEK LANDSCAPING, LLC FOR)	(EB18-0026)
ALLEGED VIOLATIONS OF TENN. CODE ANN.)	
§ 65-31-101 et seq.)	

**ORDER REQUIRING ROSE CREEK LANDSCAPING, LLC TO APPEAR AND
SHOW CAUSE WHY IT SHOULD NOT BE FOUND LIABLE FOR VIOLATIONS OF
TENN. CODE ANN. § 65-31-101 et seq.**

This matter is before the Hearing Officer of the Tennessee Underground Utility Damage Enforcement Board (“UUDEB”) to determine whether a Show Cause Order should be issued and sanctions imposed against Rose Creek Landscaping, LLC (“Rose Creek” or “Respondent”) for violation of the Tennessee Underground Utility Damage Prevention Act (“Underground Act”), Tenn. Code Ann. § 65-31-101 et seq. For this reason, the UUDEB Investigative Staff (“Party Staff”) has presented its *Petition* and the Affidavits of Jaclyn Hammons and Stacy Balthrop, attached in support thereof, setting forth the allegations against Rose Creek. Based thereon, Party Staff requests the issuance of a show cause order requiring Rose Creek to appear before the Hearing Officer and show cause why it should not be liable for violations of the Underground Act.

JURISDICTION

The Hearing Officer is empowered to hear this matter and render an order pursuant to the authority granted in Tenn. Code Ann. § 65-31-116.

RELEVANT FACTS

1. Rose Creek is a limited liability company organized under the laws of the state of Tennessee, with a principal address of 938 Compton Road, Murfreesboro, Tennessee. Its Registered Agent, Jeremy A. Woodside, is located at the same address.

2. On or about March 9, 2018, Rose Creek performed excavation at 2521 Westerham Way, Thompson Station, Tennessee ("Excavation Site").

3. Rose Creek utilized mechanized equipment, namely, a backhoe, during its work at the Excavation Site.

4. Rose Creek did provide notice prior to excavation at the Excavation Site to Tennessee 811, requesting location of facilities at the Excavation Site as required by Tenn. Code Ann. § 65-31-106. One Call Ticket No. 180604764 was requested on March 1, 2018 for work to begin on March 6, 2018.

5. During its excavation, Rose Creek failed to use reasonable care in the safety zone in violation of Tenn. Code Ann. § 65-31-108(c) by failing to hand expose utility facilities in the safety zone.

6. On or about May 16, 2018, upon presentation of the Complaint Number EB 18-0026 for consideration, the Executive Committee found Rose Creek in violation of Tenn. Code Ann. § 65-31-108(c) for failing to use reasonable care in the safety zone. An excerpt of the transcript of the Committee meeting addressing the Complaint was attached to the *Petition* as Exhibit 1.

7. On or about June 8, 2018, the Committee issued a citation which was sent via U.S. Mail to Rose Creek for violation of Tenn. Code Ann. § 65-31-108 (failure to use reasonable

care intolerance/safety zone) and requiring completion of a compliance training course by Jeremy Woodside. A copy of the Citation was attached to the *Petition* as Exhibit 2.

8. As evidence of the above allegations, Party Staff submitted the Affidavit of Jaclyn Hammons which was attached to the *Petition* as Exhibit 3.

9. More than thirty (30) days have passed since the issuance of the citation to Rose Creek. Neither Jeremy A. Woodside, nor any other representative of Rose Creek, has completed the compliance training course as of the date of the filing of this Petition. As evidence of the above allegations, Party Staff submitted the Affidavit of Stacy Balthrop which was attached to the *Petition* as Exhibit 4.

ALLEGED VIOLATIONS OF STATE LAW

The following actions alleged in the *Petition* and the Affidavits of Jaclyn Hammons and Stacy Balthrop to have been performed by Rose Creek constitute violations of state law:

A. Rose Creek failed to use reasonable care in the safety zone in violation of Tenn. Code Ann. § 65-31-108.

COUNT 1:

An excavator is required to exercise reasonable care to avoid damage caused by an excavation within the safety zone pursuant to Tenn. Code Ann. § 65-31-108, which states in pertinent part as follows:

(c) An excavator shall exercise reasonable care to avoid damage caused by an excavation or demolition within the safety zone around the marked location of the underground utilities. For the purpose of this section, “safety zone” means a strip of land at least four feet (4') wide, but not wider than the width of the utility plus two feet (2') on either side of the utility.

B. Rose Creek failed to complete a course of training concerning compliance with the Underground Act in violation of Tenn. Code Ann. § 65-31-112.

COUNT 2:

Rose Creek, by and through Jeremy A. Woodside, has failed to complete a course of training concerning compliance with the Underground Act in violation of Tenn.

Code Ann. § 65-31-112(a)(1), which states, in pertinent part:

(1) For a first violation, the violator shall complete a course of training concerning compliance with this chapter as determined by the executive committee.¹

BASED UPON THE FOREGOING INFORMATION, as presented by the Party Staff and filed in the docket file, the Hearing Officer, acting pursuant to and within the scope of the Hearing Officer's authority granted under Tenn. Code Ann. § 65-31-116, hereby determines that Rose Creek Landscaping, LLC should be required to appear and show cause why it should not be found in violation of state law and the Hearing Officer should not immediately impose civil penalties and sanctions to the maximum extent allowed by law.


BE IT THEREFORE ORDERED THAT:

Rose Creek Landscaping, LLC is hereby ordered and shall appear before the Hearing Officer of the Tennessee Underground Damage Prevention Enforcement Board on **July 15, 2019 at 9:30 a.m. (CDT)** to show cause why the Hearing Officer should not proceed to take action against Rose Creek Landscaping, LLC for the unlawful actions and omissions alleged in the *Petition*.

The Show Cause Hearing in these proceedings will commence promptly, as noted above, in **Hearing Room G.201**, located on the ground floor of the **Andrew Jackson State Office Building, 500 Deaderick Street, Nashville, Tennessee**. Participants

¹ Tenn. Code Ann. § 65-31-112(a)(1) (2015).

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Monica Smith-Ashford, Hearing Officer