



STATE OF WASHINGTON

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250
(360) 664-1160 • TTY (360) 586-8203

August 2, 2012

David W. Danner, Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
P. O. Box 47250
Olympia, Washington 98504-7250

RE: *Washington Utilities and Transportation Commission v. Evergreen Exchange Inc. d/b/a Lochaven Water Company*
Commission Staff's Response to Application for Mitigation of Penalties
Docket UW-120863

Dear Mr. Danner:

On July 13, 2012, the Washington Utilities and Transportation Commission issued a \$2,100 Penalty Assessment in docket UW-120863 against Evergreen Exchange Inc. d/b/a Lochaven Water, for 21 violations of Washington Administrative Code (WAC) 480-110-505, which requires water companies to furnish annual reports to the commission no later than May 1 each year.

On July 18, 2012¹, Evergreen Exchange Inc. d/b/a Lochaven Water Company wrote the commission requesting mitigation of penalties (Mitigation Request). In its Mitigation Request, Evergreen Exchange Inc. d/b/a Lochaven Water Company does not dispute that the violation occurred. The company states, "In July of 2010 Lochaven Water purchased the assets of Evergreen Exchange and began to run the water system under (Lochaven Water LLC.) Lochaven Water LLC was unaware of the UTC regulations at that time. Since Evergreen Exchange had sold in 2010 they did not file an annual report and since Lochaven water was not aware of the need to file an annual report, no report was filed. Lochaven Water LLC is willing to pay the fines assessed to Evergreen Exchange for the late filing of the annual report but given the circumstances we are respectfully requesting that the fees be reduced."

It is the company's responsibility to ensure that the regulatory fee and the annual report are filed by the May 1 deadline. On February 29, 2012, Annual Report forms and Regulatory Fee packets were mailed to all regulated water companies. On May 14, 2012, the commission mailed a letter to those companies that had not yet filed an annual report notifying them that, to date, they had incurred a penalty of \$800. The letter went on to explain that companies who filed their annual reports no later than May 25, 2012, would receive mitigated penalties of \$25 per day, with an additional \$25 per day for each instance in the previous five years that the company received a penalty for filing a late report. Evergreen Exchange Inc. d/b/a Lochaven Water had substantial

¹ See attachment for Evergreen Exchange Inc. d/b/a Lochaven Water Company Mitigation Request.



time and sufficient notice to file its annual report, if not by the May 1 deadline. Evergreen Exchange Inc. d/b/a Lochaven Water filed its 2011 annual report on July 3, 2012. Evergreen Exchange Inc. d/b/a Lochaven Water became regulated in August 2008 and has never received a penalty for filing a delinquent annual report.

Staff supports mitigating the assessed penalty from \$2,100 to \$1,050, which represents a 50 percent reduction because this is Evergreen Exchange Inc. d/b/a Lochaven Water Company's first late filing.

If you have any questions, please contact Mathew Perkinson, Compliance Investigator, at (360) 664-1105, or at Mperkinson@utc.wa.gov.

Sincerely,



Sharon Wallace, Assistant Director
Consumer Protection and Communications

SERVICE DATE

JUL 13 2012

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: UW-120863

PENALTY AMOUNT: \$2,100

EVERGREEN EXCHANGE INC.
8233 S 123RD PLACE
SEATTLE, WA 98178

According to the Commission's records, you have committed a violation of Commission rule: Washington Administrative Code (WAC) 480-110-505, which requires permitted water companies to file annual reports with the Commission by May 1 each year and pay regulatory fees annually on that date. You are classified as a water company. Commission records show that you did not file an annual report or pay annual regulatory fees by May 1, 2012.

Revised Code of Washington (RCW) 81.04.405 authorizes the Commission to assess penalties of \$100 for violations of Commission rules. Each and every such violation shall be a separate and distinct offense and, in the case of a continuing violation, every day's continuance shall be and be deemed to be a separate and distinct violation. The Commission interprets noncompliance with WAC 480-110-505 as continuing violations, giving rise to penalties of \$100 for each day a company fails to make each requisite filing after the date on which it was due.

As a result, the Commission hereby notifies you that it has assessed penalties against you in the amount \$2,100 on the following basis:

On February 29, 2012, the Commission mailed 2011 Annual Report forms and 2012 Regulatory Fee packets to all water companies registered in Washington state. A letter from the commission's Executive Secretary David W. Danner, instructed these companies to file annual reports and pay regulatory fees by May 1, 2012. The letter stated failure to file the annual report by May 1 would result in a penalty and possible cancellation of the company's permit to operate in Washington. Those companies wishing to request an extension to file the annual report were asked to do so prior to April 24, providing a reason for the requested extension. You did not request an extension.

Evergreen Exchange Inc. did not file its annual report by May 31, 2012, which is 21 business days past the deadline of May 1. The penalty is \$100 per day for a total of \$2,100.

Your penalty is due and payable now. If you believe the violation did not occur, you may request a hearing to contest the penalty assessment. If there is a reason for the violation that you think

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT UW-120863

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. I have:
- Enclosed \$2,100 in payment of the penalty
 - Submitted my payment of \$2,100 online at www.utc.wa.gov. My confirmation number is _____.
2. **Request for a hearing.** I believe that one or more of the alleged violations did not occur, based on the following information, and request a hearing, which is a process that allows an affected person to present argument to an administrative law judge for a decision by an administrative law judge:
3. **Application for mitigation.** I admit the violations, but I believe that the penalty should be reduced for the reason(s) set out below.
- Please see attached letter*
- a) I ask for a hearing for a decision by an administrative law judge based on the information presented above.
- OR b) I waive a hearing and ask for an administrative decision on the information I present directly 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: 7/18/2012 [month/day/year], at Arlington, WA [city, state]

Lockman Water
Name of Respondent (company) – please print

Chris Scott
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."

LOCHAVEN WATER LLC

P.O. Box 659
ARLINGTON, WA 98223
(425) 508-3295
LOCHAVENWATER@GMAIL.COM

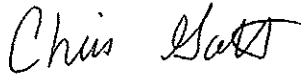
July 18, 2012

To whom it may Concern:

In July of 2010 Lochaven Water purchased the assets of Evergreen Exchange and began to run the water system under (Lochaven Water LLC.). Lochaven Water LLC was unaware of the UTC regulations at that time. Since Evergreen Exchange had sold in 2010 they did not file an annual report and since Lochaven water was not aware of the need to file an annual report, no report was filed.

Lochaven Water LLC is willing to pay the fines assessed to Evergreen Exchange for the late filing of the annual report but given the circumstances we are respectfully requesting that the fees be reduced.

Sincerely,



Chris Gott