

December 21, 2018

**VIA CERTIFIED MAIL –
RETURN RECEIPT REQUESTED AND
FIRST-CLASS MAIL, POSTAGE PREPAID**

RECEIVED
RECORDS MANAGEMENT
2018 DEC 26 AM 8:19
STAFF OF WASH.
UTIL. AND TRANSP.
COMMISSION

Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7250

**Re: WUTC Notice of Penalties Incurred and Due for Violations of Laws
and Rules; Penalty Assessment: DJ-180901; Investigation #7866**

Dear Sir or Madam:

Our firm represents Evergreen Concrete Cutting, Inc. who received the above-referenced penalty assessment on or around Monday, December 17, 2018. Enclosed with this letter is Evergreen Concrete Cutting, Inc.'s notice that it desires to contest the second, third, and fourth alleged violations against it and requests a hearing before an Administrative Law Judge. Please direct all further information with regard to the hearing before the Administrative Law Judge to the undersigned.

Sincerely,

AHLERS CRESSMAN & SLEIGHT PLLC

Paul R. Cressman, Jr.

PRC:ww
Enclosure

cc: Evergreen Concrete Cutting, Inc.
(With Enclosure)

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT DG-180901, Investigation # 7866

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 \$8,000 in payment of the penalty.
2. **Accept conditions.** I admit that the violations occurred and have enclosed \$2,000 of the penalty amount. I also accept the Commission's offer to suspend, and ultimately waive, the remaining \$6,000 of the penalty amount subject to the condition described herein.
3. **Contest the violation.** I believe that the alleged violation(s) did not occur for the reasons I describe below:

Please see the attached.

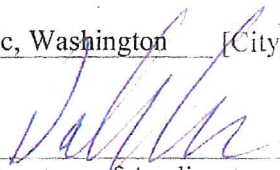
- a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision.
- OR b) I ask for a Commission decision based solely on the information I provide above.
4. **Request mitigation.** I admit the violations, but I believe that the penalty should 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: December 21, 2018 [Month/Day/Year], at Pacific, Washington [City, State]

Evergreen Concrete Cutting, Inc.
Name of Respondent (company) – please print


Signature of Applicant
Dale Taylor, Vice President

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COMMISSION

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."

RESPONSE OF EVERGREEN CONCRETE CUTTING, INC.

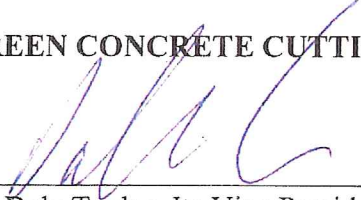
A. Evergreen Concrete Cutting, Inc. ("Evergreen") does not contest the first violation on May 17, 2017, and shall promptly remit the \$1,000 penalty.

B. Evergreen disputes the remaining violations at least on the following grounds:

1. It has not violated RCW 19.122.010, *et seq.*
2. Evergreen does not know if it damaged the gas line that was the subject of the third violation. It has no knowledge that it damaged the gas line.
3. The gas lines were either encased in pavement or right at the bottom of the pavement.
4. The utilities could be located, and were located by others, but no one knew the actual depth to which the lines were installed. They were laying either in or directly below the slab, which indicate that they were installed incorrectly (not deep enough) prior to being overlaid.
5. The only way the actual depth of the gas lines could be determined is by saw cutting, because the lines are either in or on the bottom of the slab.
6. Per PSE's February 1, 2018 "Gas meter clearances and service installation requirements," and historical common and acceptable practice, the gas lines in question should have been located 18- to 24-inches below ground.

DATED: This 21st day of December, 2018, at Pacific, Washington.

EVERGREEN CONCRETE CUTTING, INC.

By: 
Dale Taylor, Its Vice President