

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: D-190632
PENALTY AMOUNT: \$11,000
Investigation # 7989

Zeb Olson
Mark Morris Inc.
11838 SE 286th St
Auburn, WA 98092

UBI: 601 959 530
Phone: (253) 631-7033

The Washington Utilities and Transportation Commission (Commission) believes that you have violated Revised Code of Washington (RCW) 19.122.030(2) by failing to request a dig ticket prior to excavating. 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 an \$11,000 penalty against you on the following grounds:

On July 23, 2019, the Safety Committee heard the complaints for cases 19-016, 19-017, 19-018, 19-019, 19-020, and 19-021 against Mark Morris Inc. (Mark Morris or Company) regarding alleged violations of the Washington state dig law, RCW 19.122, that occurred on January 15, 2019. The complainant in this case was Puget Sound Energy (PSE). The Safety Committee determined that the Company committed the following violations:

- 6 violations of RCW 19.122.030(2) for failing to submit an underground utility locate request through a one-number call service prior to excavating on the above date.

The Safety Committee recommends that the Commission assess the following \$26,000 penalty against Mark Morris:

- \$26,000 penalty for 6 violations of RCW 19.122.030(2); and
- The opportunity to suspend \$20,000 of the penalty amount if management and field employees of Mark Morris complete National Utility Contractor Association (NUCA) Dig Safe Training within 6 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 Mark Morris violated RCW 19.122.030(2) on 6 occasions. Staff based this decision on the following information provided by the Safety Committee:

On January 15, 2019, a PSE damage prevention representative observed that the Company installed concrete forms with stakes while constructing driveways at the following locations:

- 4407 233rd Place SE, Bothell, WA
- 4402 233rd Place SE, Bothell, WA
- 4330 233rd Place SE, Bothell, WA
- 4412 233rd Place SE, Bothell, WA
- 4326 233rd Place SE, Bothell, WA
- 4411 233rd Place SE, Bothell, WA

Due to the absence of utility locate marks on the ground at each of the above locations, the representative performed dig ticket searches and determined that no utility locate request had been made at any of the addresses listed above. Photographs submitted to the Safety Committee support the allegations for each of the six violations, and Staff's subsequent investigation concluded that Mark Morris did not submit a request to locate underground utilities prior to excavating at any of the six locations listed above.

Staff recommends the Commission accept the Safety Committee's findings, but recommends that the Commission assess an \$11,000 penalty rather than the recommended \$26,000 penalty against the Company for the 6 violations of RCW 19.122.030(2) for failing to provide the required notice to a one-number locator service not less than two business days before excavating, as follows:

- \$1,000 penalty for the violation of RCW 19.122.030(2) that occurred at 4407 233rd Place SE on January 15, 2019; and
- \$2,000 penalty for the second violation of RCW 19.122.030(2) that occurred at 4402 233rd Place SE on January 15, 2019; and
- \$2,000 penalty for the third violation of RCW 19.122.030(2) that occurred at 4330 233rd Place SE on January 15, 2019; and
- \$2,000 penalty for the fourth violation of RCW 19.122.030(2) that occurred at 4412 233rd Place SE on January 15, 2019; and
- \$2,000 penalty for the fifth violation of RCW 19.122.030(2) that occurred at 4326 233rd Place SE on January 15, 2019.
- \$2,000 penalty for the sixth violation of RCW 19.122.030(2) that occurred at 4411 233rd Place SE on January 15, 2019.

Staff's research indicates that the Company has a positive history of submitting utility locate requests, and the violations appear to be the result of the Company's struggles with tracking and requesting locate requests for each of the many jobs it does daily rather than a

lack of knowledge of the requirements of Washington's dig law. After considering all of the circumstances, Staff concurs with the Safety Committee's recommendation that the Commission offer to suspend a portion of the total penalty amount, but recommends suspending a \$10,000 portion of the penalty for a period of one year subject to the following conditions: (1) Company owner and field staff attend Dig Safe training provided through the National Utility Contractors Association (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 \$11,000 with an offer to suspend \$10,000 of the total penalty amount subject to the conditions listed above. The Commission will waive the suspended penalty amount of \$10,000 if the Company complies with both conditions. If the Company fails to comply with either of these conditions, the \$10,000 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 any or all of the violations did not occur, you may deny committing the violation(s) and contest the penalty through evidence presented at a hearing or in writing. Alternatively, if there is a reason for any or all of the violations 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 violations 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 violations 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 \$11,000 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 \$10,000 of the penalty amount subject to the following conditions:
 - The owner of Mark Morris and field staff attend Dig Safe training provided through NUCA within twelve (12) months of this Notice; and
 - **Submit documentation of that attendance to the Commission within five (5) days of attending the training; and**
 - Mark Morris incurs no additional violations of RCW 19.122 within twelve (12) months of the date of this Notice; or

- Request a hearing to contest the violation(s); 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 August 30, 2019.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT D-190632, Investigation # 7989

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 \$11,000 in payment of the penalty.

2. **Accept conditions.** I admit that the violations 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 \$10,000 penalty amount subject to the following conditions:

- Mark Morris owner and field staff attend Dig Safe training provided through NUCA within twelve (12) months of the date of this Notice; and
- Submit documentation of that attendance to the Commission within five (5) days of attending the training;** and
- Mark Morris incurs no 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(s) 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 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: _____ [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.”