

Service Date: September 19, 2019

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: DG-190717

PENALTY AMOUNT: \$1,000

Investigation # 7997

RECEIVED

OCT 21 2019

WASH. UT. & TP. COMM

UBI: 602 993 730

Phone: (360) 896-8910

EM3, Inc.
12404 NE 153rd St.
Brush Prairie, WA 98606

The Washington Utilities and Transportation Commission (Commission) believes that you have violated Revised Code of Washington (RCW) 19.122.030(2) by failing to provide the required notice to facility operators through a one-number locator service before excavating. RCW 19.122.055 states, in part, that any excavator who fails to notify a one-number locator service and causes damage to an underground hazardous liquid or gas facility is subject to a civil penalty of not more than \$10,000 for each violation.

Commission staff (Staff) conducted an investigation that included reviewing damage reports submitted by NW Natural (NWN) that identified a natural gas damage event involving EM3, Inc. (EM3 or Company). Accordingly, the Commission hereby notifies you that it is assessing a penalty of \$1,000 against you on the following grounds:

On April 30, 2015, the Commission mailed an Alleged Violation of Washington Dig Law letter to EM3. The letter included detailed information about Washington state's underground utility damage prevention act, requirements for submitting utility locate requests before excavating, and the possibility of penalties for each violation. The Commission mailed the letter after receiving a report of damage caused by EM3 on February 24, 2015, that occurred because the Company failed to submit a request to locate underground utilities before excavating.

On March 13, 2019, EM3 was excavating at 300 SE 184th Ave., Vancouver, Washington. While inserting concrete stakes into the ground, EM3 workers struck and damaged an underground NWN gas facility. The Damage Information Reporting Tool report submitted by NWN on May 20, 2019, indicated that EM3 was excavating without a valid request to locate underground utilities.

Staff recommends the Commission assess a \$1,000 penalty against EM3 for one violation of RCW 19.122.030(2) for failing to provide the required notice to a one-number locator service before excavating, as follows:

- No penalty for the violation of RCW 19.122.030(2) that occurred on February 24, 2015; and

- \$1,000 penalty for the violation of RCW 19.122.030(2) that occurred on March 13, 2019.

Staff's research indicates that EM3 has not submitted any requests to locate underground utilities since January 1, 2015. The Commission is aware of two underground utility damage incidents caused by EM3, both of which occurred because EM3 failed to submit a utility locate request before excavating. After considering all of the circumstances, Staff recommends that the Commission offer to suspend the entire \$1,000 penalty amount for a period of one year, subject to the conditions that: (1) the Company incurs no further violations of RCW 19.122 within 12 months of the date of this Notice; and (2) Company management and field crew responsible for excavation complete Dig Safe Training provided through the National Utility Contractors Association (NUCA) within 12 months of the date of this Notice.

The Commission agrees with Staff's recommendation and assesses a penalty of \$1,000, with an offer to suspend, and ultimately waive, the entire \$1,000 penalty amount subject to the conditions listed above. If the Company fails to comply with the conditions, the \$1,000 suspended penalty 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 the violation did not occur, you may deny committing the violation and contest the penalty through evidence presented at a hearing or in writing. Or, if there is a reason for the violation 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 violation 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 violation 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 \$1,000 penalty amount due; or
- Notify the Commission that you accept the offer to suspend, and ultimately waive, the entire \$1,000 penalty amount subject to the following conditions:
 - Company field crew responsible for excavation, including management, attend Dig Safe training provided through NUCA within twelve (12) months of the date of this Notice; and

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PENALTY ASSESSMENT DG-190717, Investigation # 7997

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 violation occurred and enclose \$1,000 in payment of the penalty. *Even though we do not do excavating*

2. **Accept conditions.** I admit that the violation occurred and accept the Commission's offer to suspend, and ultimately waive, the entire \$1,000 penalty amount subject to the following conditions:

- Company employees, including ownership and field crew involved in excavations, 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
- Commit no further 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 (**if you do not include reasons supporting your contest here, your request will be denied**):

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 violation, but I believe that the penalty should be reduced for the reasons set out below (**if you do not include reasons supporting your application here, your request will be denied**):

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]

- **Submit documentation of attendance to the Commission within five (5) days of attending the training;** and
- Commit no further violations of RCW 19.122 within 12 months of the date of this Notice; or
- Request a hearing to contest the occurrence of the violation; 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, P.O. 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 September 19, 2019.

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