

Date of Service: April 16, 2019

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: D-190113

PENALTY AMOUNT: \$1,000

Investigation # 7959

Andrew Damerau
Andrew's LandShapers
19123 SR 525
Freeland, WA 98249

UBI: 601 634 671
Phone: (360) 331-4020

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 performing an excavation. 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 a penalty against you for \$1,000 on the following grounds:

On February 20, 2019, the Safety Committee heard the complaint for case 18-092 against Andrew's LandShapers (Company) regarding a potential violation of the Washington State dig law, RCW 19.122, that occurred on November 13, 2018. The complainant in this case was Bayview Meadows Community Association (BMCA). The Safety Committee determined that the Company committed the following violation:

- One violation of RCW 19.122.030(2) for failing to submit a request to have underground utilities located through a one-number call service prior to excavating.

The Safety Committee recommended that the Commission assess the following \$1,000 penalty against Andrew's LandShapers:

- \$1,000 penalty for one violation of RCW 19.122.030(2); and
- The opportunity to suspend \$800 of the penalty if the owner completes National Utility Contractor Association (NUCA) Dig Safe Training within 12 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 conclusion. Staff found that Andrew's LandShapers violated

RCW 19.122.030(2) one time. Staff based this decision on the following information provided by the Safety Committee:

BMCA alleges that on November 13, 2018, Andrew's LandShapers was digging a trench for a drain and encountered a thrust block, which was protecting a joint in BMCA's six-inch water main. Andrew's LandShapers' excavation damaged the joint in the water main and created a leak. Prior to excavating, Andrew's LandShapers did not notify a one-call service to request marking of the underground facilities at the excavation site.

Photographs and documentation submitted to the Safety Committee by BMCA were examined and considered by Staff. The photographs, taken at the time of the damage incident and subsequent repair, show the damaged water main, surrounding area, and the repaired main. A search of the one-call ticket database by Staff indicates that Andrew's LandShapers did not submit a request to locate underground facilities for the site before excavating. Staff determined that Andrew's LandShapers violated RCW 19.122.030(2) one time on November 13, 2018, by failing to submit a request to locate underground utilities before excavating.

Staff recommends the Commission assess a \$1,000 penalty against the Company for one violation 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), which occurred on November 13, 2018.

Staff's research indicates that the Company has a history of submitting utility locate requests, and that the violation appears to be the result of the Company's negligence 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 \$800 of the total penalty for a period of one year subject to the conditions that (1) Andrew's LandShapers' owner attends Dig Safe training provided through the National Utility Contractors Association (NUCA) within 12 months of the date of this Notice; and (2) Andrew's LandShapers commits 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 \$1,000 with an offer to suspend \$800 of the penalty amount subject to the following conditions: (1) Andrew's LandShapers' owner completes NUCA Dig Safe Training within 12 months of the date of this Notice, and (2) Andrew's LandShapers has no further violations of RCW 19.122 within 12 months of the date of this Notice. The Commission will waive the suspended penalty amount of \$800 if the Company complies with both conditions. If the Company fails to comply with either of these conditions, the \$800 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. Alternatively, 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 amount due;
- Pay \$200 of the total penalty amount and notify the Commission that you accept the offer to suspend, and ultimately waive, the remaining \$800 of the penalty amount subject to the following conditions:
 - Andrew's LandShapers' owner attends 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
 - commit no further violations of RCW 19.122 within twelve (12) months of the date of this order; or
- Request a hearing to contest 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, 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 Olympia, Washington, and effective April 16, 2019.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT D-190113, Investigation # 7959

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.

2. **Accept conditions.** I admit that the violation occurred and enclose \$200 toward the payment of the penalty. I also accept the Commission's offer to suspend, and ultimately waive, the remaining \$800 penalty amount subject to the following conditions:

- Andrew's LandShapers' owner attends 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
- 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 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 violation, 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: 5/16/19 [Month/Day/Year], at FREELAND [City, State]

ANDREW DAMERAN
Name of Respondent (company) – please print

[Signature]
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.”

