

# WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: D-170117  
PENALTY AMOUNT: \$6,000

Charles Richmond  
Earthscapes NW, Inc.  
PO Box 406  
Conway, WA 98292

The Washington Utilities and Transportation Commission (Commission) believes you have violated Revised Code of Washington (RCW) 19.122.030(2) by failing to provide notice to a one-number locating service for an excavation area. RCW 19.122.070(1) states, in part, that violation of any provision of the chapter is subject to a civil penalty of not more than one thousand dollars for an initial violation and not more than five thousand dollars 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 in the amount of \$6,000 on the following grounds:

On Nov. 15, 2016, the Safety Committee received nine complaints against Earthscapes NW, Inc. (Earthscapes) regarding potential violations of the Washington State Dig Law, RCW 19.122, for work performed in 2016. The complainant in these cases is Puget Sound Energy (PSE). The Safety Committee reviewed these complaints on Jan. 17, 2017. During the review, PSE withdrew seven of the original complaints and the Safety Committee only heard the remaining two cases.

The Safety Committee found that Earthscapes committed two violations of RCW 19.122.030(2) by failing to provide notice to a one-number locating service for an excavation area. The Safety Committee recommended a \$1,000 penalty for the first violation and \$5,000 for the second, for a total penalty of \$6,000. They also recommended mandatory National Utility Contractor's Association (NUCA) Dig Safe training for Earthscapes ownership, management, and residential side employees.

Pursuant to RCW 19.122.150(3), the Commission has considered the Safety Committee's determination and adopts its recommendation. The Commission assesses a penalty of \$6,000 for two violations of RCW 19.122.030(2), and mandatory NUCA Dig Safe training for ownership, management, and residential side employees. Earthscapes must submit documentation of attendance to the Commission within five (5) days of attending the required training.

This information the Safety Committee provided to the Commission, if proved at a hearing and not rebutted or explained, is sufficient to support the penalty assessment.

Your penalty is due and payable now. If you believe any or all of the violations did not occur, you may deny committing the violation(s) and contest the penalty assessment 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 concerning the violation(s) require consideration of evidence and resolution in a hearing. Any contest of the penalty assessment must include a written statement of the reasons supporting that contest. Failure to provide such a statement will result in denial of the contest.

If you admit any or all of the violations but believe there is a reason for the violation(s) that should excuse you from the penalty, you may ask for mitigation (reduction) of this 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 for mitigation must include a written statement of the reasons supporting that request. Failure to provide such a statement will result in denial of the request.

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(s) 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 \$6,000 amount due;
- Request a hearing to contest the occurrence of any or all of 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 Olympia, Washington, and effective April 17, 2017.

GREGORY J. KOPTA  
Director, Administrative Law Division

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**  
**PENALTY ASSESSMENT D-170117**

**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 \$6,000 in payment of the penalty. I also agree to the requirement of NUCA Dig Safe training for ownership, management, and residential side employees. Earthscapes will submit documentation of attendance to the Commission within five (5) days of attending this required training.

2. **Contest the violations.** I believe that the alleged violations 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.

3. **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.”