

## WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: DG-160168  
PENALTY AMOUNT: \$15,000

Rick Callaway  
Callaway & Sons Excavating  
12310 334th Ave Ne  
Carnation, WA 98014

The Washington Utilities and Transportation Commission (Commission) believes that you have violated Revised Code of Washington (RCW) 19.122.030(1)(a) by failing to request a dig ticket prior to performing an excavation. RCW 19.122.055(1)(a) states, in part, that any excavator who fails to notify a one-number locator service and causes damage to a hazardous liquid or gas facility is subject to a civil penalty of not more than ten thousand dollars for each violation.

According to Commission records, Callaway & Sons Excavating (Callaway) has three previous damage incidents. In each of those incidences, Commission staff (Staff) mailed an Alleged Violation of Dig Law letter to Callaway – on January 23, 2014, April 21, 2014, and June 10, 2014. The Commission investigated all three damage incidents, and finding that Callaway had no documentation that Callaway had called for utility locates, the Commission assessed a \$4,000 penalty in Docket DG-144091 on April 14, 2015.

Staff conducted a subsequent investigation in which it reviewed damage reports submitted by Puget Sound Energy (PSE) and identified two additional natural gas damage events involving Callaway in which it failed to call to locate buried utilities prior to excavation. Accordingly, the Commission hereby notifies you that it is assessing a penalty against you in the amount of \$15,000 on the following grounds:

#### **(First Violation)**

On September 8, 2015, Callaway damaged a PSE natural gas pipeline at 26509 NE Kennedy Dr., Duvall, Washington. A Callaway crew was grading for a retaining wall and hit an active 1-1/8-inch gas polyethylene service line. Prior to beginning excavation, Callaway failed to request a dig ticket from a one-number locator service to have the underground utilities located.

On November 9, 2015, PSE submitted a Damage Incident Reporting Tool (DIRT) report identifying Callaway as the party responsible for damaging the Utility's natural gas service line without first obtaining a ticket number to have utilities located prior to excavation at 26509 NE Kennedy Dr., Duvall, Washington, on September 8, 2015.

On November 23, 2015, the Commission mailed an Alleged Violation of Washington Dig Law letter to Callaway, informing the company of its obligation to have underground utilities located prior to excavation, as outlined in RCW 19.122.030. The letter emphasized the importance of becoming familiar with the law and the possibility of penalties for each violation of the law.

**(Second Violation)**

On October 29, 2015, Callaway damaged another PSE gas pipeline at 1657 105th Ave. SE, Bellevue, Washington. According to the DIRT report, a Callaway crew was digging a foundation and hit an active gas service line. The DIRT report stated that the crew claimed to have called for locates, but the PSE first responder could not find any markings in the area.

PSE submitted a DIRT report on December 22, 2015, identifying Callaway as the party responsible for damaging PSE's natural gas service line without first obtaining a ticket number to have utilities located prior to excavation at 1657 105th Ave SE, Bellevue, Washington, on October 29, 2015.

On December 29, 2015, the Commission mailed an Alleged Violation of Washington Dig Law letter to Callaway, informing the company of its obligation to have underground utilities located prior to excavation, as outlined in RCW 19.122.030. The letter referenced the past penalty assessment order in Docket DG-144091 and emphasized the importance of becoming familiar with the law and the possibility of additional penalties for each violation of the law.

Based on the results of Staff's investigation, the Commission assesses a penalty of \$5,000 against Callaway for the September 8, 2015, incident. This was Callaway's fourth violation of RCW 19.122.030(1)(a) and occurred within 12-months of the penalty assessment issued in Docket DG-144091, warranting a penalty in the middle of the statutory range. The Commission also assesses the maximum penalty of \$10,000 for the incident on October 29, 2015, which is the fifth time Callaway has damaged a natural gas services pipeline without first requesting a locate in violation of RCW 19.122.030(1)(a). Callaway's total penalty is \$15,000. 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 either or both 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 either or both 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 amount due;
- Contest the occurrence of the violations; 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 May 5, 2016.



GREGORY J. KOPTA  
Director, Administrative Law Division

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**  
**PENALTY ASSESSMENT DG-160168**

**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 \$15,000 in payment of the penalty.
2. **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.

3. **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: \_\_\_\_\_ [Month/Day/Year], at \_\_\_\_\_ [City, State]

\_\_\_\_\_  
Name of Respondent (company) – please print

\_\_\_\_\_  
Signature of Applicant

**“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.”**