

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

**PENALTY ASSESSMENT: DG-171154
PENALTY AMOUNT: \$2,500**

Mike Mahlman
Absolute Excavating, Inc.
319 118th Dr. NE
Lake Stevens, WA 98258

The Washington Utilities and Transportation Commission (Commission) believes you have violated Revised Code of Washington (RCW) 19.122.030(2) by failing to provide the required notice to a one-number locator service not less than two business days before excavating. 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 underground gas utility is subject to a civil penalty of not more than ten thousand dollars for each violation.

Commission pipeline safety staff (Staff) reviewed damage reports submitted by Puget Sound Energy (PSE), and information obtained from the One Call 811 database, and hereby notifies you that it is assessing a penalty against you in the amount of \$2,500 on the following grounds:

On Nov. 18, 2016, Absolute Excavating, Inc. (Absolute Excavating) was installing sewer and storm lines at 123 NW 185th St. in Seattle, Washington. While excavating, Absolute Excavating damaged a PSE 1 1/8" polyethylene gas line. The Damage Information Reporting Tool (DIRT) report submitted by PSE on Jan. 18, 2017, indicated that a one-number locator service was not notified prior to excavation. Staff found that Absolute Excavating did submit a utility locate request on Nov. 21, 2016, which was three days after the damage incident occurred. Staff sent a technical assistance warning letter to Absolute Excavating on Jan. 19, 2017, which included detailed information about the requirements of Washington state's dig law.

On June 21, 2017, Absolute Excavating was performing an excavation for a new house at 17854 Wallingford Ave. in Shoreline, Washington. While excavating, Absolute Excavating damaged a PSE gas line. The DIRT report submitted by PSE on July 21, 2017, indicated that a one-number locator service was not notified prior to excavation. Staff found that Absolute Excavating did submit a utility locate request on June 20, 2017, which provided for an excavation start date of June 23, 2017. Absolute Excavating failed to wait the appropriate two business days prior to performing an excavation.

Accordingly, Staff Recommends a \$2,500 penalty be assessed against Absolute Excavating for two 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. The breakdown of the recommended penalty is as follows:

- \$1,000 for the first violation of RCW 19.122.030(2), which occurred on Nov. 18, 2016; and
- \$1,500 for the second violation of RCW 19.122.030(2), which occurred on June 21, 2017.

Staff's research indicates that Absolute Excavating has a significant history of requesting utility locates and that the violations were the result of company negligence, not lack of knowledge of the requirements of Washington State's dig law. Staff believes that enforcing the entire \$2,500 penalty against Absolute Excavating will be financially burdensome and recommends that the Commission suspend \$1,500 of the penalty on the conditions that the company commit no further violations of RCW 19.122 over the next 12-months, and that all company personnel attend National Utility Contractor Association (NUCA) Dig Safe training within the same time frame.

The Commission agrees with Staff's recommendation and assesses a penalty of \$2,500 with an offer to suspend \$1,500 of the penalty on the conditions that (1) Absolute Excavating owners and all crews complete NUCA Dig Safe Training within 12 months of this Notice, and (2) Absolute Excavating has no further violations of RCW 19.122 within one year of this Notice. The Commission will waive the suspended penalty amount of \$1,500 if Absolute Excavating complies with both conditions. If Absolute Excavating fails to comply with either of these conditions, the \$1,500 deferred penalty will become immediately due and payable, in addition to any new penalties that the Commission might 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 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 \$2,500 amount due;
- Pay \$1,000 of the total penalty and notify the Commission that you accept the offer to suspend, and ultimately waive, \$1,500 of the penalty amount due on condition that all Absolute Excavating employees, including ownership and management attend the “Dig Safe” training provided through NUCA within 12-months of this Notice; 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 the next year; or
- 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 December 7, 2017.

GREGORY J. KOPTA
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT DG – 171154

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 \$2,500 in payment of the penalty
2. **Accept conditions.** I admit that the violations occurred and enclose \$1,000 toward payment of the penalty. I accept the Commission’s offer to suspend, and ultimately waive, \$1,500 of the penalty on the conditions that all Absolute Excavating employees, including ownership and management, attend the “Dig Safe” training provided through NUCA within 12-months of this penalty assessment; 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 the next year.
2. **Contest the violations.** I believe that the alleged violations 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.
3. **Request mitigation.** I admit the violations, 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]

Name of Respondent (company) – please print
RCW 9A.72.020:

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.”