

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

**PENALTY ASSESSMENT: DG-180566
PENALTY AMOUNT: \$3,500**

Daniel Allen
Escapes Construction, LLC
807 N. Granite Ave.
Granite Falls, WA 98252-8775

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 \$3,500 on the following grounds:

On August 26, 2016, Escapes Construction, LLC d/b/a Escapes Fence & Deck (Escapes Construction or Company) was excavating at 20212 28th Ave. SE in Bothell, Washington. While installing new fence posts, Escapes Construction damaged a PSE gas service line. PSE reported that Escapes Construction did not have a valid locate ticket prior to beginning work. Staff investigated and found that no utility locate request was submitted by Escapes Construction for the damage location. Staff determined that Escapes Construction failed to submit a utility locate request prior to excavating. Staff sent a technical assistance warning letter to Escapes Construction on October 19, 2016, which included detailed information about the requirements of Washington state's dig law.

On September 8, 2017, Escapes Construction was working at 2423 195th St. SE in Bothell, Washington. While excavating, Escapes Construction severed a PSE gas service line, which resulted in a blowing condition. PSE reported that Escapes Construction was working under an expired locate ticket and did not properly request new locates prior to excavating. Staff investigated and found that the only utility locate request submitted by Escapes Construction for this location was on June 23, 2017, which expired on August 7, 2017. Staff determined that Escapes Construction failed to submit a new utility locate request prior to excavating. Staff sent another technical assistance warning letter to the Company on November 21, 2017, which included detailed information about the requirements of Washington state's dig law.

On February 27, 2018, Escapes Construction was excavating at 5615 144th St. SE in Everett, Washington. While digging, Escapes Construction damaged a PSE gas line. PSE

reported that Escapes Construction did not have a valid locate ticket prior to beginning work. Staff investigated and found the only record of a utility locate request for this location was made on March 1, 2018, which is two days after the damage incident occurred. Staff determined that Escapes Construction failed to submit a utility locate request prior to excavating.

Staff recommends the Commission assess a \$3,500 penalty against Escapes Construction for three 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, as follows:

- No penalty for the violation of RCW 19.122.030(2), which occurred on August 26, 2016;
- \$1,000 penalty for the violation of RCW 19.122.030(2), which occurred on September 8, 2017; and
- \$2,500 penalty for the violation of RCW 19.122.030(2), which occurred on February 27, 2018;

Staff's research indicates that Escapes Construction has a fairly significant history of requesting utility locates and that the violation was most likely the result of Company negligence, as opposed to a lack of knowledge of the requirements of Washington state's Dig Law. After considering all of the circumstances, Staff recommends that the Commission offer to suspend a \$3,000 portion of the penalty for a period of one year subject to the conditions that: (1) Escapes Construction employees involved in excavation, including Company management, attend Dig Safe training provided through the National Utility Contractors Association (NUCA), within four months of the date of the Penalty Assessment; and (2) Escapes Construction commits no further violations of RCW 19.122 within the next 12 months.

The Commission agrees with Staff's recommendation and assesses a penalty of \$3,500 with the opportunity to suspend \$3,000 of the penalty amount subject to the following conditions: (1) Escapes Construction employees and Company management complete NUCA Dig Safe Training within four months of this Notice, and (2) Escapes Construction has no further violations of RCW 19.122 within one year of this Notice. The Commission will waive the suspended penalty amount of \$3,000 if Escapes Construction complies with both conditions. If Escapes Construction fails to comply with either of these conditions, the \$3,000 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 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 \$3,500 amount due; or
- Pay \$500 of the total penalty and notify the Commission that you accept the offer to suspend, and ultimately waive, the remaining \$3000 penalty subject to the conditions that all Escapes Construction employees, including management, attend the Dig Safe training provided through NUCA within four 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 submit it electronically through the Commission's web portal **within FIFTEEN (15) days** after you receive this notice. If you are unable to use the web portal, you may submit it via email to records@utc.wa.gov. If you are unable to submit the form electronically, you may send a paper copy to the Washington Utilities and Transportation Commission, Post Office Box 47250, Olympia, Washington 98504-7250.

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 July 6, 2018.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT DG-180566

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 \$3,500 in payment of the penalty
2. **Accept conditions.** I admit that the violation occurred and enclose \$500 toward the payment of the penalty. I also accept the Commission's offer to suspend, and ultimately waive, the remaining \$3,000 penalty amount subject to the conditions that all Escapes Construction employees, including management, attend the Dig Safe training provided through NUCA within four 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.
3. **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.
4. **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

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.”