

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: DG-180901
PENALTY AMOUNT: \$8,000
Investigation # 7866

UBI: 601 605 667
Phone: (253) 826-7644

Evergreen Concrete Cutting, Inc.
767 Valentine Ave SE
Pacific, WA 98047

The Washington Utilities and Transportation Commission (Commission) believes that you have violated Revised Code of Washington (RCW) 19.122.030(2) by failing to obtain a valid dig ticket prior to performing an excavation. RCW 19.122.055 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 \$10,000 for each violation.

Commission staff (Staff) conducted an investigation that included reviewing damage reports submitted by Puget Sound Energy (PSE), which identified four natural gas damage events caused by Evergreen Concrete Cutting, Inc. (Evergreen Concrete or Company). Accordingly, the Commission hereby notifies you that it is assessing a penalty against you for \$8,000 on the following grounds:

(First Violation)

On May 17, 2017, the Commission mailed an Alleged Violation of Washington Dig Law letter to Evergreen Concrete, informing the Company of its obligation to have underground utilities located prior to excavation, as outlined in RCW 19.122.030. The Commission sent the letter following a damage incident on March 29, 2017, at 17425 Hwy 99, Lynnwood, Washington, that occurred because Evergreen Concrete failed to obtain a valid dig ticket prior to excavation. The letter emphasized the importance of becoming familiar with the law, and the possibility of penalties for each violation.

(Second Violation)

On June 14, 2018, Evergreen Concrete was saw cutting for storm work and cut a 5/8" natural gas line at 23438 28th Ave S in Des Moines, Washington. On July 18, 2018, PSE submitted a Damage Incident Reporting Tool (DIRT) report identifying Evergreen Concrete as the party responsible for failing to provide notice to a one-number locator service at least two days before beginning excavation and damaging the natural gas service line. The report stated that the gas line was approximately 4" below grade, and had recently been accurately located for another contractor less than a week before the damage occurred.

Staff found a request to have underground utilities located, submitted on June 8, 2018, by the other contracting company, but did not find a similar request from Evergreen Concrete.

(Third Violation)

On June 22, 2018, eight days after damaging the gas line at 23438 28th Ave S, PSE observed and repaired damage at 23436 28th Ave S, Des Moines, Washington. PSE confirmed that Evergreen Concrete caused this additional damage, which was initially undetected when PSE repaired the damage caused by Evergreen Concrete on June 14. The DIRT report submitted by PSE identified Evergreen Concrete as the party responsible for damaging the natural gas service line without providing notice to a one-number locator service at least two days before excavating. The report stated that the 5/8" gas line was approximately 4" below grade, and had recently been accurately located for another contractor.

Staff did not find a request from Evergreen Concrete to have underground utilities located at this location.

(Fourth Violation)

On July 6, 2018, Evergreen Concrete cut through a 3/4" steel gas service that was measured to be 9" below surface level while cutting concrete approximately 6" thick at 4821 38th Ave SW, Seattle, Washington. On August 19, 2018, PSE submitted a DIRT report identifying Evergreen Concrete as the party responsible for damaging the underground natural gas service line.

The One Call ticket database did not have record of Evergreen Concrete submitting a request to have underground utilities located prior to beginning its excavation.

Staff recommends the Commission assess an \$8,000 penalty against Evergreen Concrete for four 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:

- \$1,000 penalty for the violation of RCW 19.122.030(2), which occurred on March 29, 2017.
- \$1,000 penalty for the violation of RCW 19.122.030(2), which occurred on June 14, 2018.
- \$2,000 penalty for the violation of RCW 19.122.030(2), which occurred on June 22, 2018.
- \$4,000 penalty for the violation of RCW 19.122.030(2), which occurred on July 6, 2018.

Staff's research indicates that Evergreen Concrete has submitted 17 requests to locate underground utilities since receiving the technical assistance warning letter in May of 2017. As part of the investigation, Staff spoke with the owner of Evergreen Concrete and discussed the damages and dig law. The owner stressed that safety is important to Evergreen Concrete, and that the Company submits a request to have underground utilities located for all jobs that require digging. He stated that

Evergreen Concrete arrives on short notice for many jobs that have already recently been located, it usually has little information ahead of time about the site, and that making utility locate requests for the cutting jobs is impracticable. He also stated that while saw cutting, the Company takes care to avoid making contact with the ground beneath the concrete or asphalt because it damages the saw blades of the machinery. After considering all of the circumstances, Staff recommends that the Commission offer to suspend \$6,000 of the \$8,000 total penalty for a period of one year subject to the condition that Evergreen Concrete 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 \$8,000 with an offer to suspend \$6,000 of the penalty amount subject to the condition that Evergreen Concrete has no further violations of RCW 19.122 within one year of the date of this Notice. The Commission will waive the \$6,000 suspended penalty if Evergreen Concrete complies with this condition. If Evergreen Concrete fails to comply with the condition, the \$6,000 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 through evidence presented at a hearing or in writing. Or, if there is a reason for the violations 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 violations 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(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 by doing one of the following:

- Pay the \$8,000 penalty amount due; or

Notify the Commission that you accept the offer to suspend, and ultimately waive, \$6,000 of the total penalty subject to the conditions that Evergreen Concrete commits no further violations of RCW 19.122 within twelve (12)

months of the date of this order; 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, P.O. 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 12, 2018.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT DG-180901, Investigation # 7866

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 \$8,000 in payment of the penalty.

2. **Accept conditions.** I admit that the violations occurred and have enclosed \$2,000 of the penalty amount. I also accept the Commission's offer to suspend, and ultimately waive, the remaining \$6,000 of the penalty amount subject to the condition described herein.

3. **Contest the violation.** I believe that the alleged violation(s) 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 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.”