

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

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

PENALTY ASSESSMENT: DG-180991  
PENALTY AMOUNT: \$1,000  
Investigation #7876

Barry Becker  
Ace Construction & Landscaping, Inc.  
4446 S. 131st Pl.  
Tukwila, WA 98168

UBI: 601-011-608  
Phone: 206-246-4883

The Washington Utilities and Transportation Commission (Commission) believes that you have violated Revised Code of Washington (RCW) 19.122.030(2) by failing to request a 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 a natural gas damage event caused by Ace Construction & Landscaping, Inc. (Ace Construction or Company). Accordingly, the Commission hereby notifies you that it is assessing a penalty against you for \$1,000 on the following grounds:

On December 2, 2015, the Commission mailed an Alleged Violation of Washington Dig Law letter to Ace Construction, informing the Company of its obligation to have underground utilities located before excavating, as outlined in RCW 19.122.030. The Commission sent the letter following a damage incident in September 2015 that occurred because Ace Construction failed to obtain a valid dig ticket before excavating. The letter emphasized the importance of becoming familiar with the law and the possibility of penalties for each violation.

On August 29, 2018, Ace Construction performed an excavation while doing site improvement at 15931 72<sup>nd</sup> Ave W, Edmonds, Washington. Before beginning excavation, Ace Construction failed to submit a request with a one-number locator service to locate underground facilities. Ace Construction employees struck and damaged an underground PSE gas line.

On October 10, 2018, PSE submitted a Damage Incident Reporting Tool report identifying Ace Construction as the party responsible for damaging the natural gas service line on August 29. Staff was unable to find a valid dig ticket for Ace Construction at this location on this date.

Staff recommends the Commission assess a \$1,000 penalty against Ace Construction for one violation 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 in September 2015; and
- \$1,000 penalty for the violation of RCW 19.122.030(2), which occurred on August 29, 2018.

Staff's research indicates that Ace Construction has a relatively significant history of submitting locate requests, and the violation appears to be the result of the Company's negligence rather than a lack of knowledge of the requirements of Washington's dig law. After considering all of the circumstances, Staff recommends that the Commission offer to suspend the \$1,000 penalty for a period of one year subject to the condition that the Company 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 \$1,000, with an offer to suspend the \$1,000 penalty amount subject to the condition that Ace Construction commits no further violations of RCW 19.122 within one year of the date of this Notice.

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 the violation did not occur, you may deny committing the violation and contest the penalty through evidence presented at a hearing or in writing. Alternatively, if there is a reason for the violation 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 violation 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 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 \$1,000 penalty amount due; or
- Notify the Commission that you accept the offer to suspend, and ultimately waive, the \$1,000 penalty subject to the condition that Ace Construction commits no further violations of RCW 19.122 within twelve (12) months of the date of this Notice; or
- Request a hearing to contest the occurrence of the violation; 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 January 14, 2019.

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

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**  
PENALTY ASSESSMENT DG-180991, Investigation # 7876

**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 \$1,000 in payment of the penalty.

2. **Accept conditions.** I admit that the violation occurred.  
I also accept the Commission's offer to suspend, and ultimately waive, the \$1,000 penalty amount subject to the condition that Ace Construction commits no additional dig law violations within 12 months of the date of this Notice.

3. **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.

4. **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

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.”