

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: DG-180992
PENALTY AMOUNT: \$20,000
Investigation #7877

Aero Construction
3827 Bickford Ave.
Snohomish, WA 98290

UBI: 600-088-400
Phone: (425) 334-0082

The Washington Utilities and Transportation Commission (Commission) believes that you have violated Revised Code of Washington (RCW) 19.122.030 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 natural gas damage events caused by Aero Construction (Aero or Company). Accordingly, the Commission hereby notifies you that it is assessing a penalty against you for \$20,000 on the following grounds:

(First Violation)

On April 27, 2017, workers for Aero damaged a 5/8" PSE natural gas service line while breaking through a hardpan layer with a digging bar at 10254 NE 21st Pl., Bellevue, Washington. Both the Damage Information Reporting Tool (DIRT) report submitted by PSE and the one-call ticket database indicated that Aero submitted a request to locate underground utilities on April 25, 2017, but failed to wait the required two full business days as required by RCW 19.122.030(2) before beginning excavation.

(Second Violation)

On July 26, 2017, while working on a water main at 15840 NE 15th St, Bellevue, Washington, Aero damaged a 2" PSE natural gas main. Aero submitted a request to locate underground utilities on June 1, 2017, and obtained a valid dig ticket for the work, but the ticket expired on July 16, 2017, 45 days after the initial request. Aero failed to provide additional notification of continued excavation to facility operators using the one-call notification system as required by RCW 19.122.030(6)(c), until July 27, one day after damaging the gas line.

(Third Violation)

On August 30, 2018, Aero was excavating at 1474 158th Pl NE, Bellevue, Washington, and damaged a 1-1/4" PSE natural gas stub. The DIRT report and additional damage

report information submitted by PSE alleged that Aero was excavating outside of the work area for which it had a valid dig ticket.

Staff recommends the Commission assess a \$20,000 penalty against Aero for three violations of RCW 19.122.030 for failing to provide the required notice to a one-number locator service before excavating, as follows:

- \$5,000 penalty for the violation of RCW 19.122.030(2), which occurred on April 27, 2017; and
- \$5,000 penalty for the violation of RCW 19.122.030(6)(c), which occurred on July 26, 2017; and
- \$10,000 penalty for the violation of RCW 19.122.030(2), which occurred on August 30, 2018.

Staff's research indicates that Aero has submitted 525 requests to locate underground utilities since March of 2017, when the Commission assessed a \$6,000 penalty against Aero for four violations of the dig law. Aero attributed the recent violations to breakdowns in communication throughout the Company and oversights by its staff, and stated that it is currently arranging for quarterly safety presentations through Washington 811. Aero contends it has taken measures to improve its policies, procedures, and training in an effort to ensure safety and compliance. However, its commitment to safety and compliance remains uncertain, as evidenced by the repeated violations since 2013.

The violations appear to be the result of the Company's negligence and not intentional or due to lack of knowledge regarding Washington's dig law. In addition to the March 2017 penalty assessed against Aero, the Commission mailed three Alleged Violation of Washington Dig Law Letters to Aero since 2013, informing the Company of its obligation to have underground utilities located prior to excavation and emphasizing the importance of becoming familiar with the law, and the possibility of penalties for each violation. This demonstrates that Aero is fully aware of the dig law.

The Commission agrees with Staff's recommendation and assesses a penalty of \$20,000.

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 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 any or all of 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 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 \$20,000 amount due; or
- Request a hearing to 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 January 24, 2019.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT DG-180992, Investigation # 7877

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 \$20,000 in payment of the penalty.

2. **Contest the violation.** I believe that the alleged violations 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 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.”