

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: DG-180997

PENALTY AMOUNT: \$3,000

Investigation #7882

Thomas Musselwhite
Pacific Garden Design, Inc.
1508 S. Chestnut St.
Spokane, WA 99224

UBI: 602-468-414
Phone: (509) 838-3939

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 Avista Corporation (Avista), which identified a natural gas damage event involving Pacific Garden Design, Inc. (Pacific Garden Design or Company). Accordingly, the Commission hereby notifies you that it is assessing a penalty against you for \$3,000 on the following grounds:

On November 11, 2016, Pacific Garden Design allegedly struck and damaged a natural gas line belonging to Avista while excavating. Pacific Garden Design did not request a dig ticket from a one-number locator service to have underground utilities located prior to excavating. The Commission mailed an Alleged Violation of Washington Dig Law letter to the Company on January 19, 2017, which included detailed information about the requirements of Washington state's underground utility damage prevention act and the possibility of penalties for each violation.

(First Violation)

On August 2, 2018, Pacific Garden Design performed an excavation while installing posts for a wall at 1925 S. Stevens St., Spokane, Washington. Before beginning excavation, the Company failed to request a dig ticket from a one-number locator service to have underground utilities located. Pacific Garden Design struck and damaged an underground Avista gas line.

On September 10, 2018, Avista submitted a Damage Incident Reporting Tool (DIRT) report identifying the Company as the party responsible for damaging the natural gas service line on August 2. Staff was unable to find a valid dig ticket for Pacific Garden Design at this location on this date.

(Second Violation)

On August 17, 2018, while Pacific Garden Design continued its work at 1925 S. Stevens St., Spokane, Washington, the Company struck and damaged the gas line again. After the first damage incident at the same site, the Company failed to request a dig ticket from a one-number locator service to have underground utilities located, and did not have a valid dig ticket for the site at the time of the second damage incident.

On September 10, 2018, Avista submitted a DIRT report identifying Pacific Garden Design as the party responsible for damaging the natural gas service line on August 17. Staff was unable to find a valid dig ticket for Pacific Garden Design at this location on this date.

Staff recommends the Commission assess a \$3,000 penalty against Pacific Garden Design 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, as follows:

- No penalty for the violation of RCW 19.122.030(2), which occurred on November 11, 2016; and
- \$1,000 penalty for the violation of RCW 19.122.030(2), which occurred on August 2, 2018; and
- \$2,000 penalty for the violation of RCW 19.122.030(2), which occurred on August 17, 2018.

Staff's research and communication with Company management indicates that Pacific Garden Design has a positive history of requesting utility locates, and the violation appears to be the result of the Company's negligence rather than a lack of knowledge about the requirements of Washington's dig law. Prior to both damage incidents utilities had been located by other parties; however, Pacific Garden Design failed to submit its own utility locate requests, which violated the dig law and resulted in damage occurring. Since September of 2015, Pacific Garden Design has submitted 74 requests to have underground utilities located. After considering all of the circumstances, Staff recommends that the Commission offer to suspend \$1,500 of the penalty for a period of one year subject to the conditions that: (1) the Company's field crews involved in excavation, including management, attend Dig Safe training provided through the National Utility Contractors Association (NUCA) within 12 months of the date of this Notice; and (2) the Company commits no further violations of RCW 19.122 within 12 months of the date of this Notice.

The Commission agrees with Staff's recommendation and assesses a penalty of \$3,000, with an offer to suspend \$1,500 of the penalty subject to the conditions listed above. The Commission will waive the \$1,500 suspended penalty if Pacific Garden Design complies with both conditions. If the Company fails to comply with either of these conditions, the \$1500 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 either or both of the violations did not occur, you may deny committing the violations and contest the penalty through evidence presented at a hearing or in writing. Or, if there is a reason for either or both 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 \$3,000 penalty amount due; or
- Pay \$1,500 of the penalty and notify the Commission that you accept the offer to suspend, and ultimately waive, \$1,500 of the penalty subject to the following conditions:
 - Company employees, including management and crew foremen involved in excavations, attend Dig Safe training provided through NUCA within 12 months of the date of this Notice; and
 - Submit documentation of attendance to the Commission within five (5) days of attending the training; and
 - Commit 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 either or both 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, 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 25, 2019.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT DG-180997, Investigation # 7882

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 \$3,000 in payment of the penalty.
2. **Accept conditions.** I admit that the violations occurred and have enclosed \$1,500 of the penalty amount. I also accept the Commission's offer to suspend, and ultimately waive, the remaining \$1,500 of the penalty amount subject to the following conditions:
- Company employees, including management and crew foremen involved in excavations, attend Dig Safe training provided through NUCA within 12 months of this Notice; and
 - Submit documentation of attendance to the Commission within five (5) days of attending the training; and
 - Commit no further violations of RCW 19.122 within twelve (12) months of the date of this Notice.
3. **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.
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.”