

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: DG-190055
PENALTY AMOUNT: \$2,500
Investigation #7928

Mike Mahlman
Absolute Excavating, Inc.
319 118th Dr. NE
Lake Stevens, WA 98258

UBI: 603-597-900
Phone: (425) 238-0834

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 involving Absolute Excavating, Inc. (Absolute Excavating or Company). Accordingly, the Commission hereby notifies you that it is assessing a penalty against you for \$2,500 on the following grounds:

On December 7, 2017, the Commission assessed a \$2,500 penalty against Absolute Excavating for two violations of the Washington State dig law, following an investigation of two damage incidents that occurred on November 18, 2016, and June 21, 2017. Both of those damage incidents occurred because Absolute Excavating damaged underground natural gas facilities after failing to submit requests to locate underground utilities at least two days before beginning excavation. The Commission assessed the penalty after mailing four Alleged Violation of Washington Dig Law letters to the Company on July 22, 2014, December 2, 2015, January 19, 2017, and August 22, 2017. The Commission sent the letters after receiving reports of damage to underground utilities caused by the Company after failing to obtain a valid dig ticket before excavating. The letters included information about Washington State's dig law and the possibility of penalties for each violation.

On September 1, 2018, Absolute Excavating damaged an underground PSE natural gas service line at 413 Minor Ave N, Seattle, Washington. Before beginning excavation, the Company failed to request a dig ticket from a one-number locator service to locate underground utilities.

On October 10, 2018, PSE submitted a Damage Incident Reporting Tool report identifying Absolute Excavating as the party responsible for damaging the natural gas line on September 1. Staff was unable to find a valid dig ticket for the Company at this location on this date, and a representative from the Company stated it did not have a valid ticket for

the jobsite at the time of the damage. Staff recommends the Commission assess a \$2,500 penalty against Absolute Excavating 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:

- \$2,500 penalty for the violation of RCW 19.122.030(2) that occurred on September 1, 2018.

The Commission agrees with Staff's recommendation and assesses a penalty of \$2,500.

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. Or, 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 \$2,500 penalty amount due; or
- Request a hearing to contest the occurrence of any or all 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 March 4, 2019.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PENALTY ASSESSMENT DG-190055, Investigation # 7928

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 \$2,500 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 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.”