

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: DG-190248
PENALTY AMOUNT: \$3,000
Investigation #7952

Eric Wisdom
Diamond W Excavating LLC
28205 338th Ave SE
Ravensdale, WA 98051

UBI: 604-211-799
Phone: (253) 261-4574

The Washington Utilities and Transportation Commission (Commission) believes that you have violated Revised Code of Washington (RCW) 19.122 by failing to provide the required notice to facility operators through a one-number locator service 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) that identified natural gas damage events involving Diamond W Excavating LLC (Diamond W or Company). Accordingly, the Commission hereby notifies you that it is assessing a penalty against you for \$3,000 on the following grounds:

(First Violation)

On January 18, 2018, Diamond W struck and damaged a natural gas line operated by PSE while excavating at 559 Hoquiam Ave NE, Renton, Washington. Diamond W did not have a valid dig ticket from a one-number locator service before excavating. On February 27, 2018, PSE submitted a Damage Incident Reporting Tool (DIRT) report identifying the Company as the party responsible for damaging the natural gas service line on January 18. Staff was unable to find a valid dig ticket for the Company at this location on this date.

The Commission mailed an Alleged Violation of Washington Dig Law letter to the Company on March 16, 2018, that included detailed information about the requirements of Washington State's underground utility damage prevention act and the possibility of penalties for each violation.

(Second Violation)

On November 14, 2018, Diamond W struck and damaged a PSE underground gas facility while excavating at 565 Hoquiam Ave NE, Renton, Washington. The report alleged that at the time of the damage incident, Diamond W did not have a valid dig ticket for the area in which it was excavating.

On December 24, 2018, PSE submitted a DIRT report identifying Diamond W as the party responsible for damaging the natural gas service line on November 14. Staff was unable to find a valid dig ticket for the Company at this location on this date.

Staff recommends the Commission assess a \$3,000 penalty against Diamond W for two violations of RCW 19.122.030(6), for failing to provide the required additional notice of continued excavation to a one-number locator service after the expiration of a previous locate request, as follows:

- \$1,000 penalty for the violation of RCW 19.122.030(6) that occurred on January 18, 2018; and
- \$2,000 penalty for the violation of RCW 19.122.030(6) that occurred on November 14, 2018.

Staff found that Diamond W submitted a utility locate request #18497253 for 565 Hoquiam Ave NE on November 15, 2018, one day after the damage event at that location, which was an update to expired locate request #18394451, submitted on September 10, 2018. Diamond W submitted utility locate request #17394276 for 559 Hoquiam Ave on October 15, 2017, which expired on November 21, 2017, two months before the damage event occurred at that location. Diamond W submitted requests for both damage incident locations that expired before the damage incidents occurred. At the time of both damage incidents, Diamond W did not have a valid dig tickets for the excavations it performed.

The Commission agrees with Staff's recommendation and assesses a penalty of \$3,000.

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 either or both 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 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(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 to do one of the following:

- Pay the \$3,000 penalty amount due; 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 May 29, 2019.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT DG-190248, Investigation # 7952

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. **Contest the violation(s).** I believe that the alleged violation(s) did not occur for the reasons I describe below (**if you do not include reasons supporting your contest here, your request will be denied**):
- 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 (**if you do not include reasons supporting your application here, your request will be denied**):
- 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.”