

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: DG-190890
PENALTY AMOUNT: \$4,000
Investigation # 8104

UBI: 602-644-945
Phone: (360) 705-0226

Johnson Brothers Landscaping
PO Box 492
Tenino, WA 98589

The Washington Utilities and Transportation Commission (Commission) believes that Johnson Brothers Landscaping (Johnson Brothers or Company) has violated Revised Code of Washington (RCW) 19.122.030(2) by failing to provide the required notice to facility operators through a one-number locator service at least two full business days before excavating. RCW 19.122.055 states, in part, that any excavator who fails to notify a one-number locator service and causes damage to an underground 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) and the City of Enumclaw that identified natural gas damage events involving Johnson Brothers. Accordingly, the Commission hereby notifies you that it is assessing a \$4,000 penalty against the Company on the following grounds:

First Violation

On July 2, 2018, Johnson Brothers struck and damaged a natural gas line operated by PSE while excavating at 6000 16th Ave. SE, Seattle, Washington. Johnson Brothers did not request a dig ticket from a one-number locator service to locate underground utilities before excavating. On August 14, 2018, PSE submitted a Damage Incident Reporting Tool (DIRT) report identifying the Company as the party responsible for damaging the natural gas service line. Staff was unable to find a valid dig ticket for Johnson Brothers at this location for the date the damage occurred.

The Commission mailed an Alleged Violation of Washington Dig Law letter to the Company on October 15, 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 June 14, 2019, Johnson Brothers struck and damaged the City of Enumclaw's underground gas line while excavating at 226 Semanski St. S, Enumclaw, Washington.

Johnson Brothers failed to request a dig ticket from a one-number locator service to locate underground utilities at least two days before beginning excavation.

On May 1, 2019, tCity of Enumclaw submitted a DIRT report identifying the Company as the party responsible for damaging the natural gas service line. Staff was unable to find a valid dig ticket for the Company at this location on the date the damage occurred.

Staff recommends the Commission assess a \$4,000 penalty against Johnson Brothers for two violations of RCW 19.122 for failing to provide the required notice to a one-number locator service before excavating, as follows:

- \$2,000 penalty for the violation of RCW 19.122.030(2) that occurred on July 2, 2018; and
- \$2,000 penalty for the violation of RCW 19.122.030(2) that occurred on June 14, 2019.

Staff's research indicates that Johnson Brothers has submitted 121 requests to locate underground utilities since January 1, 2018. Staff spoke with a Johnson Brothers representative as part of its investigation and learned that the Company has had difficulties with managing and tracking utility locate requests, but believes that additional policies and practices it has implemented since the damage incidents will mitigate the risk of future violations. After considering all of the circumstances, Staff recommends that the Commission offer to suspend \$3,000 of the \$4,000 penalty amount for a period of one year, subject to the conditions that: (1) the Company incurs no further violations of RCW 19.122 within 12 months of the date of this Notice; and (2) Company management and field crew responsible for excavation complete Dig Safe Training provided through the National Utility Contractors Association (NUCA) within 12 months of the date of this Notice.

The Commission agrees with Staff's recommendation and assesses a penalty of \$4,000, with an offer to suspend, and ultimately waive, \$3,000 of the \$4,000 penalty amount subject to the conditions listed above. If the Company fails to comply with the conditions, the \$3,000 suspended penalty amount 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 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 violations 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 \$4,000 penalty amount due; or
- Pay \$1,000 toward the penalty amount and notify the Commission that you accept the offer to suspend, and ultimately waive, the remaining \$3,000 penalty amount subject to the following conditions:
 - Company field crew responsible for excavation, including management, must attend Dig Safe training provided through NUCA within twelve (12) months of the date of this Notice; and
 - **The Company must 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 12 months of the date of this Notice; 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, 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 Lacey, Washington, and effective November 22, 2019.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT DG-190890, Investigation # 8104

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 \$4,000 in payment of the penalty.
2. **Accept conditions.** I admit that the violations occurred, and have enclosed \$1,000 in payment towards the penalty amount. I also accept the Commission's offer to suspend, and ultimately waive, the remaining \$3,000 penalty amount subject to the following conditions:
- Company employees, including ownership and field crew involved in excavations, must attend Dig Safe training provided through NUCA within twelve (12) months of this Notice; and
 - The Company must submit documentation of that 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(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.
4. **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.”