

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: DG-200434
PENALTY AMOUNT: \$3,500
Investigation # 8175

UBI: 602-048-823
Phone: (206) 786-9820

CK Excavating Inc.
18634 SE 128th St.
Renton, WA 98059

The Washington Utilities and Transportation Commission (Commission) believes that CK Excavating Inc. (CK Excavating or Company) has violated Revised Code of Washington (RCW) 19.122.055 by failing to provide the required notice to facility operators through a one-number locator service 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) that identified natural gas damage events involving CK Excavating. Accordingly, the Commission hereby notifies you that it is assessing a \$3,500 penalty against the Company on the following grounds:

First Violation

On July 25, 2018, CK Excavating struck and damaged a PSE natural gas line while excavating at 364 Highland Dr., Seattle, Washington. On August 31, 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 CK Excavating at this location on this date. CK Excavating submitted a utility locate request for the jobsite that was valid between May 4, 2018, and June 18, 2018, and expired 37 days before the damage incident.

The Commission mailed an Alleged Violation of Washington Dig Law letter to CK Excavating 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 October 4, 2019, CK Excavating struck and damaged a PSE underground gas line while excavating at 230 Overlake Dr. E, Medina, Washington. On November 18, 2019, PSE submitted a DIRT report identifying the Company as the party responsible for damaging the natural gas service line.

Staff was unable to find a dig ticket for CK Excavating valid for the excavation that caused the damage on October 4. CK Excavating submitted utility locate requests for the jobsite on May 15, 2019, and August 16, 2019, the latter of which expired on September 27, 2019, 8 days before the damage incident.

Staff recommends the Commission assess a \$3,500 penalty against CK Excavating for two violations of RCW 19.122.055 for failing to provide the required notice to a one-number locator service before excavating and causing damage to an underground natural gas facility, as follows:

- \$1,000 penalty for the violation of RCW 19.122.055 that occurred on July 25, 2018; and
- \$2,500 penalty for the violation of RCW 19.122.055 that occurred on October 4, 2019.

Staff's research indicates that CK Excavating has submitted 138 requests to locate underground utilities since January 1, 2018. Both of these damage incidents occurred because CK Excavating failed to submit a utility locate request after the previous dig tickets had expired. After considering all of the circumstances, Staff recommends that the Commission offer to suspend \$3,000 of the \$3,500 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 \$3,500, with an offer to suspend, and ultimately waive, \$3,000 of the \$3,500 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 their decision.

You must act within 15 days after receiving this notice to do one of the following:

- Pay the \$3,500 penalty amount due; or
- Pay \$500 of the penalty amount and notify the Commission that you accept the offer to suspend, and ultimately waive, the remaining \$3000 of the penalty amount subject to the following conditions:
 - Company field crew responsible for excavation, including management, attend Dig Safe training provided through NUCA within twelve (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 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 July 6, 2020.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT DG-200434, Investigation # 8175

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 \$3,500 in payment of the penalty.

2. **Accept conditions.** I admit that the violations occurred and have enclosed \$500 of the penalty amount. I also accept the Commission's offer to suspend, and ultimately waive, the remaining \$3000 of the penalty amount subject to the following conditions:

- Company employees, including ownership and field crew involved in excavations, attend Dig Safe training provided through NUCA within twelve (12) months of this Notice; and
- 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.”