

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: DG-200722
PENALTY AMOUNT: \$2,500
Investigation # 8213

UBI: 602-993-730
Phone: (360) 896-8910

EM3 Concrete
SERVICE VIA EMAIL
jody@em3concrete.com

The Washington Utilities and Transportation Commission (Commission) believes that EM3 Concrete (EM3 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 and subsequently causing damage to an underground natural gas facility. 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 Northwest Natural (NWN) that identified a natural gas damage event involving EM3. Accordingly, the Commission hereby notifies you that it is assessing a penalty of \$2,500 against the Company on the following grounds:

On September 19, 2019, the Commission assessed a penalty against EM3 in Docket DG-190717 after investigating a report of damage caused by EM3 on March 13, 2019, that occurred because the Company failed to submit a request to locate underground utilities before excavating. EM3 admitted the violation and paid the penalty in full on October 21, 2019.

On February 11, 2020, EM3 was inserting concrete form stakes at SE Crown Rd. & SE McKeever Rd., Washougal, Washington. While excavating, EM3 workers struck and damaged an underground NWN gas facility. The Damage Information Reporting Tool report submitted by NWN on March 12, 2020, indicated that EM3 was excavating without a valid request to locate underground utilities. Staff's subsequent investigation determined that the Company did not have a valid dig ticket for the excavation that resulted in the damage incident.

Staff recommends the Commission assess a \$2,500 penalty against EM3 for one violation 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 for the violation that occurred on February 11, 2020.

Staff's research indicates that EM3 has submitted four requests to locate underground utilities since September 19, 2019. After considering all of the circumstances, Staff recommends that the Commission offer to suspend \$1,500 of the \$2,500 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 completes 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 \$2,500, with an offer to suspend, and ultimately waive, \$1,500 of the \$2,500 penalty amount subject to the conditions listed above. If the Company fails to comply with the conditions, the \$1,500 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 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 their 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
- Pay \$1,000 of the total penalty amount and notify the Commission that you accept the offer to suspend, and ultimately waive, the remaining \$1,500 of the penalty amount subject to the following conditions:
 - Company 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
 - The Company must not commit any 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 violation; 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 September 17, 2020.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT DG-200722, Investigation # 8213

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. **Accept conditions.** I admit that the violation occurred and enclose \$1,000 toward the payment of the penalty. I also accept the Commission's offer to suspend, and ultimately waive, the remaining \$1,500 penalty amount subject to the following conditions:
- Company management 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
 - The Company must not commit any 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 violation 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 violation, 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.”