

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: DG-160897
PENALTY AMOUNT: \$1,000

Doug Stone
C Stone Excavating Corporation
12921 W. Sunnyvale Dr.
Nine Mile Falls, WA 99026

The Washington Utilities and Transportation Commission (Commission) believes that you have violated Revised Code of Washington (RCW) 19.122.030(1)(a) by failing to request a dig ticket prior to performing an excavation. RCW 19.122.055(1)(a) 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 ten thousand dollars for each violation.

Commission staff (Staff) conducted an investigation in which it reviewed damage reports submitted by Avista Corporation (Avista) and identified a natural gas damage event involving C Stone Excavating Corporation (C Stone Excavating), in which buried utilities were not located prior to excavation. Accordingly, the Commission hereby notifies you that it is assessing a penalty against you in the amount of \$1,000 on the following grounds:

On Nov. 10, 2015, C Stone Excavating contract with Kalin Excavating to perform finish grading for an excavation site located at 3511 E. Trent St. in Spokane, WA. While performing that grading, C Stone Excavating damaged an Avista gas line.

On Dec. 4, 2015, Avista submitted a Damage Incident Reporting Tool (DIRT) report identifying C Stone Excavating as the party responsible for damaging the utility's natural gas service line at 3511 E. Trent. St., Spokane, Washington on Nov. 10, 2015, without first notifying a One-Call locator service prior to excavation.

C Stone Excavating previously damaged an Avista gas line on February 5, 2013, but because the incident occurred more than two years ago, staff did not include the incident as part of this investigation. Staff sent C Stone Excavating a letter on May 20, 2013, which provided information on Washington's dig law and the applicable penalties for failing to request a utility locate prior to excavating.

Based on the results of Staff's investigation, the Commission finds that C Stone Excavating violated RCW 19.122.030(1)(a), by failing to notify a One-Call locator service prior to performing an excavation, and assesses a \$1,000 penalty for this violation. Under the unique circumstances of this case, the Commission offers to suspend the entire \$1,000 penalty on the condition that C Stone Excavating commits no further violations of RCW

19.122 within 24 months of the date of this penalty assessment. If the Commission discovers any subsequent violation of RCW 19.122 within that 24 month period, the suspended penalty of \$1,000 will become immediately due and payable, and the Commission may assess additional penalties for the subsequent violation.

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 assessment 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 concerning the violation require consideration of evidence and resolution in a hearing. Any contest of the penalty assessment must include a written statement of the reasons supporting that contest. Failure to provide such a statement will result in denial of the contest.

If you admit the violation but believe there is a reason for the violation that should excuse you from the penalty, you may ask for mitigation (reduction) of this 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 for mitigation must include a written statement of the reasons supporting that request. Failure to provide such a statement will result in denial of the request.

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 amount due;
- Notify the Commission that you accept the offer to suspend, and ultimately waive, the \$1,000 penalty based on the condition that C Stone Excavating commits no further violations of RCW 19.122 within the next 24 months. If the commission discovers any subsequent violations of RCW 19.122 within the 24 month period the suspended penalty of \$1,000 will become immediately due and payable, in addition to any penalties which may be assessed for the subsequent violations.;
- 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, Post Office 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 July 28, 2016.



GREGORY J. KOPTA
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT DG-160897

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 \$1,000 in payment of the penalty.

2. **Suspend Penalty.** I admit that the violation occurred and accept the Commission's offer to suspend, and ultimately waive, the \$1,000 penalty on the condition that C Stone Excavating commits no further violations of RCW 19.122 within the next 24 months. If the commission discovers any subsequent violations of RCW 19.122 within the 24 month period the suspended penalty of \$1,000 will become immediately due and payable, in addition to any penalties which may be assessed for the subsequent violations.

3. **Contest the violation.** I believe that the alleged violation 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.

4. **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.”