

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Penalty Assessment Against	DOCKET DG-180901
EVERGREEN CONCRETE CUTTING, INC.	ORDER 01
in the amount of \$8,000	INITIAL ORDER APPROVING SETTLEMENT STIPULATION AND AGREEMENT; NOTICE CANCELLING HEARING

BACKGROUND

- 1 On December 12, 2018, the Washington Utilities and Transportation Commission (Commission) assessed an \$8,000 penalty (Penalty Assessment) against Evergreen Concrete Cutting, Inc. (Evergreen Concrete or Company) for four violations of the Revised Code of Washington (RCW) 19.122.030(2) for failing to obtain a valid dig ticket prior to performing an excavation. The violations relate to the Company's excavations on March 29, 2017, June 14, 2018 (two violations), and July 6, 2018.
- 2 On December 21, 2018, Evergreen Concrete filed a response to the Penalty Assessment, contesting the two violations that occurred on June 14, 2018, and the July 6, 2018, violation, and requesting a hearing to present evidence. The Commission scheduled a brief adjudicative proceeding for April 15, 2019.
- 3 On February 19, 2019, Commission staff (Staff)¹ filed with the Commission a settlement agreement on behalf of the parties. Staff filed a revised settlement agreement on March 14, 2019, to correct an error (Settlement Agreement).
- 4 As part of the Settlement Agreement, Evergreen Concrete admits to: the March 26, 2017, violation; the first violation that occurred on June 14, 2018; and the violation that occurred on July 6, 2018. Evergreen Concrete and Staff stipulate that Evergreen Concrete did not commit the second alleged violation that occurred on June 14, 2018. Under the Settlement Agreement, Evergreen Concrete will pay a penalty of \$6,000 for the three

¹ In formal proceedings, such as this, the Commission's regulatory staff participates like any other party, while an administrative law judge and the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

violations of RCW 19.122.030(2); Evergreen Concrete will pay \$2,000 of the \$6,000 penalty the day after the entry of this Order, and the remaining \$4,000 of the penalty will be suspended for 12 months from the date of this Order, upon the condition that Evergreen Concrete commit no violations of chapter 19.122 RCW during that period. Staff agrees that it will not pursue further enforcement against Evergreen Concrete arising out of any of the allegations set forth in the Penalty Assessment. Evergreen Concrete and Staff agree that Evergreen Concrete does not waive any current or future legal argument it may make if there is any future enforcement action brought against it by the Commission. Finally, Evergreen Concrete commits to comply with chapter 19.122 RCW going forward.

5 Joe Dallas, Assistant Attorney General, Olympia, Washington, represents Staff. Paul R. Cressman, Jr., Seattle, Washington, represents Evergreen Concrete.

DISCUSSION AND DECISION

6 WAC 480-07-750(2) states in part that “[t]he commission will approve a settlement if it is lawful, supported by an appropriate record, and consistent with the public interest in light of all the information available to the commission.” Thus, the Commission considers the individual components of the Settlement Agreement under a three-part inquiry, asking:

- whether any aspect of the proposal is contrary to law;
- whether any aspect of the proposal offends public policy; and
- whether the evidence supports the proposed elements of the Settlement Agreement as a reasonable resolution of the issue(s) at hand.

The Commission must determine one of three possible results:

- approve the proposed settlement without condition;
- approve the proposed settlement subject to conditions; or
- reject the proposed settlement.

7 We approve the Settlement Agreement without condition. The parties agree that Evergreen Concrete violated RCW 19.122.030(2) on three occasions, and Evergreen Concrete provided Staff with evidence that one of the four violations did not occur. Evergreen Concrete agrees it should be assessed a full penalty for its three violations. Suspending a portion of the penalty will deter Evergreen Concrete from violating chapter 19.122 RCW in the future, as will its commitment to comply with the law.

8 Thus, the terms of the Settlement Agreement are not contrary to law or public policy and reasonably resolve all issues in this proceeding. Given these factors, we find that the

Settlement Agreement is consistent with the public interest and should be approved as filed on March 14, 2019.

NOTICE

- 9 **THE COMMISSION GIVES NOTICE that the hearing set for April 15, 2019, at 9:30 a.m. in Docket DG-180901 is cancelled.**

ORDER

THE COMMISSION ORDERS:

- 10 (1) The Settlement Agreement is approved without condition, is attached as Exhibit A to, and incorporated into, this Order, and is adopted as the final resolution of the disputed issues in this docket.
- 11 (2) Evergreen Concrete Cutting, Inc. is assessed a penalty of \$6,000. A \$4,000 portion of the penalty is suspended for a period of 12 months from the date of this Order, and waived thereafter, provided that Evergreen Concrete Cutting, Inc. does not violate chapter 19.122 RCW during that period.
- 12 (3) The \$2,000 portion of the penalty is due and payable on March 19, 2019.
- 13 (4) The Commission retains jurisdiction to effectuate the terms of this Order.

DATED at Olympia, Washington, and effective March 18, 2019.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

NELLI DOROSHKIN
Administrative Law Judge

NOTICE TO PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order and you would like the Order to become final before the time limits expire, you may send a letter to the Commission waiving your right to petition for administrative review.

WAC 480-07-825(2)(a) provides that any party to this proceeding has 20 days after the entry of this initial order to file a petition for administrative review (Petition). Section (2)(b) of the rule identifies what you must include in any Petition as well as other requirements for a Petition. WAC 480-07-825(2)(c) states that any party may file a response to a Petition within 10 days after service of the Petition.

WAC 480-07-830 provides that before the Commission enters a final order any party may file a petition to reopen a contested proceeding to permit receipt of evidence that is essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. The Commission will give other parties in the proceeding an opportunity to respond to a motion to reopen the record, unless the Commission determines that it can rule on the motion without hearing from the other parties.

RCW 80.01.060(3) provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission does not exercise administrative review on its own motion.

Any Petition or response must be electronically filed through the Commission's web portal, as required by WAC 480-07-140(5).

Exhibit A
Settlement Agreement