

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

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

**PENALTY ASSESSMENT: D-150721  
PENALTY AMOUNT: \$1,000**

Old Town Construction LLC  
7849 Johnson Point Rd. N.E.  
Olympia, WA 98516-9559

The Washington Utilities and Transportation Commission (Commission) believes that you have violated Revised Code of Washington (RCW) 19.122.031(1)(a) by calling in an emergency locate that did not meet the definition of an emergency under RCW 19.122.020(5). RCW 19.122.070(1) states, in part, that violation of any provision of the chapter is subject to a civil penalty of not more than one thousand dollars for an initial violation and not more than five thousand dollars for each subsequent violation within a three-year period.

The Commission reviewed findings and recommendations made by the Washington State Dig Law Safety Committee (Safety Committee) and hereby notifies you that it is assessing a penalty against you in the amount of \$1,000 on the following grounds:

On Nov. 20, 2014, Old Town Construction (Old Town) submitted an emergency utility locate request to the National Ticket Management System Washington One Call (One Call). Old Town acknowledged during the Safety Committee review hearing that the company called in an emergency locate, even though there was no emergency, in order to get the locate done within the company's desired time frame. An emergency is defined at RCW 19.122.020(5) as "any condition constituting a clear and present danger to life or property, or a customer service outage."

On Nov. 21, 2014, the City of Lacey filed a complaint with the Safety Committee. The complainant alleged that Old Town had called in an emergency locate when there was no emergency situation.

The Safety Committee found that Old Town violated RCW 19.122.031(1)(a) by requesting an emergency locate through One Call, when there was no emergency situation as defined by RCW 19.122.020(5).

The Safety Committee recommended that the Commission assess a \$1,000 penalty for this violation, with a stipulation that \$800 be deferred if Old Town agrees to National Utility Contractor's Association (NUCA) "Dig Safe" Training for the company's excavator and office staff within 90 days of this decision. The

Safety Committee further recommended that the \$800 deferred portion of the penalty become due and payable if Old Town either fails to attend the training or commits a further violation of RCW 19.122 within a 12-month period from the date of this Penalty Assessment.

Pursuant to RCW 19.122.150(3), the Commission has considered the Safety Committee's determination and partially adopts its recommendation. The Commission believes this is a serious offense and warrants the maximum penalty, as the Safety Committee recommends. Therefore, the Commission assesses a penalty of \$1,000. The Commission's ultimate objective, however, is to ensure compliance with the regulations it enforces, and thus the Commission will waive the penalty in its entirety for this first violation on the conditions that (1) Old Town's excavator and office staff attend "Dig Safe" training, provided through the NUCA, within 90 days of the date of this Penalty Assessment; and (2) Old Town commits no further violations of RCW 19.122 within the next 12 months.

The information the Safety Committee provided to the Commission, if proved at a hearing and not rebutted or explained, is sufficient to support the penalty assessment.

Your penalty is due and payable now. If you believe the violations 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 there is a reason for the violation that you think 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;
- Contest the occurrence of the violation;
- Request mitigation to contest the amount of the penalty; or
- Notify the Commission that you accept the offer to suspend the penalty on the conditions that Old Town's specified employees attend the "Dig Safe" training provided through

NUCA within 90 days of this penalty assessment, submit documentation of that attendance within five days of attendance, and commit no further violations of RCW 19.122 within the next 12 months.

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 June 22, 2015.

GREGORY J. KOPTA  
Director, Administrative Law Division

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**  
**PENALTY ASSESSMENT D-150721**

**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. **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.

3. **Application for 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.

4. **Attend training.** I admit that the violation occurred and accept the Commission's offer to waive the penalty on the condition that Old Town's specified staff attend the "Dig Safe" training provided through NUCA within 90 days of this penalty assessment, 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 the next 12 months.

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  
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\_\_\_\_\_  
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.”