

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

**PENALTY ASSESSMENT: D-150720
PENALTY AMOUNT: \$1,000**

Lakeshore Excavation
1675 Winesap Rd.
Manson, WA 98831

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 utility locate from a one-number locator service prior to performing an excavation. 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. 5, 2014, the Lake Chelan Reclamation District filed a complaint with the Safety Committee alleging that a parcel of land in Manson, WA, had been excavated by Lakeshore Excavation without requesting a utility locate from a one-number locator service. The alleged operator was a Lakeshore Excavation employee. There is no record of a utility locate request by Lakeshore Excavation for the parcel of land in question.

RCW 19.122.030(1)(a) requires that before commencing any excavation, an excavator must mark the boundary of the excavation area with white paint, then provide notice of the scheduled commencement of excavation to all facility operators through a one-number locator service.

On April 17, 2015, the Safety Committee reviewed the complaint and the Lakeshore Excavation operator admitted he did not properly submit a utility locate request to a one-number locator service.

The Safety Committee found that Lakeshore Excavation violated RCW 19.122.030(1)(a) by failing to request a utility locate prior to performing an excavation. The Safety Committee recommended that the Commission assess a \$1,000 penalty for this violation, with a stipulation that the \$1,000 be deferred if Lakeshore Excavation completes "Dig Safe" training through the National Utility

Contractor's Association (NUCA) within 90 days of the Commission's review and confirmation of this decision. If Lakeshore Excavation either fails to attend the training, or commits further violations of RCW 19.122. within a 12-month period from the Commission's confirmation date, then the \$1,000 will be due and payable at that time.

Pursuant to RCW 19.122.150(3), the Commission has considered the Safety Committee's determination and 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 but will suspend that penalty on the conditions that (1) Lakeshore Excavation attends "Dig Safe" training, provided through NUCA, within 90 days of the date of this Penalty Assessment; and (2) Lakeshore Excavation commits no further violations of RCW 19.122 within the next 12 months. The Commission will waive the penalty in its entirety if Lakeshore Excavation complies with both conditions.

This 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 Lakeshore Excavation's staff 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 29, 2015.

GREGORY J. KOPTA
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT D-150720

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 Lakeshore Excavation’s employees 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

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.”