

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: D-190597
PENALTY AMOUNT: \$4,000
Investigation # 7986

Kerrie Drennen
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The Washington Utilities and Transportation Commission (Commission) believes that you have violated Revised Code of Washington (RCW) 19.122.030(2) by failing to request a dig ticket prior to excavating. RCW 19.122.070(1) states, in part, that violations of any provision of the chapter are subject to a civil penalty of not more than \$1,000 for an initial violation and not more than \$5,000 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 of \$4,000 against you on the following grounds:

On July 9, 2019, the Safety Committee heard the complaints for cases 19-023, 19-024, 19-025, and 19-026 against DL Concrete, LLC, (DL Concrete or Company) regarding four alleged violations of the Washington state dig law, RCW 19.122, that occurred on November 17, 2017, December 20, 2017, and January 31, 2019. The complainant in this case was Puget Sound Energy (PSE). The Safety Committee determined that the Company committed the following violations:

- Four violations of RCW 19.122.030(2) for failing to submit an underground utility locate request through a one-number call service prior to excavating on the above dates, including two violations that occurred on January 31, 2019.

The Safety Committee recommends that the Commission assess the following \$4,000 penalty against DL Concrete:

- \$4,000 penalty for four violations of RCW 19.122.030(2); and
- The opportunity to suspend \$3,800 of the penalty amount if Kevin Laborde of DL Concrete completes National Utility Contractor Association (NUCA) Dig Safe Training within 6 months of the date of this Notice, and the Company incurs no additional dig law violations within 12 months of the date of this Notice.

Commission regulatory staff (Staff) reviewed the Safety Committee's determination and agrees with its conclusions. Staff found that DL Concrete violated RCW 19.122.030(2) on four occasions. Staff based this decision on the following information provided by the Safety Committee:

First Violation

On November 17, 2017, a PSE damage prevention representative observed that the Company installed concrete forms with stakes while pouring a driveway located at 5529 S 354th St., Auburn, Washington. Due to the absence of utility locate marks on the ground, the representative performed a dig ticket search and determined that no utility locate request had been made. Photographs submitted to the Safety Committee support the allegations, and Staff's subsequent investigation concluded that the Company did not submit a request to locate underground utilities prior to excavating.

Second Violation

On December 20, 2017, a PSE damage prevention representative observed that the Company installed concrete forms with stakes while pouring a driveway located at 35613 57th Ave. S., Auburn, Washington. Due to the absence of utility locate marks on the ground, the representative performed a dig ticket search and determined that no utility locate request had been made. Photographs submitted to the Safety Committee support the allegations, and Staff's subsequent investigation concluded that the Company did not submit a request to locate underground utilities prior to excavating.

Third Violation

On January 31, 2019, a PSE damage prevention representative observed that the Company installed concrete forms with stakes while pouring a driveway located at 24111 SE 260th Pl., Maple Valley, Washington. Due to the absence of utility locate marks on the ground, the representative performed a dig ticket search and determined that no utility locate request had been made. Photographs submitted to the Safety Committee support the allegations, and Staff's subsequent investigation concluded that the Company did not submit a request to locate underground utilities prior to excavating.

Fourth Violation

On January 31, 2019, a PSE damage prevention representative observed that the Company installed concrete forms with stakes while pouring a driveway located at 25844 241st Ave. SE, Maple Valley, Washington. Due to the absence of utility locate marks on the ground, the representative performed a dig ticket search and determined that no utility locate request had been made. Photographs submitted to the Safety Committee support the allegations, and Staff's subsequent investigation

concluded that the Company did not submit a request to locate underground utilities prior to excavating.

Staff recommends the Commission accept the Safety Committee's recommendation and assess a \$4,000 penalty against the Company for four violations of RCW 19.122.030(2), for failing to provide the required notice to a one-number locator service not less than two business days before excavating, as follows:

- \$1,000 penalty for the violation of RCW 19.122.030(2) that occurred on November 11, 2017; and
- \$1,000 penalty for the violation of RCW 19.122.030(2) that occurred on December 20, 2017; and
- \$1,000 penalty for the first violation of RCW 19.122.030(2) that occurred on January 31, 2019; and
- \$1,000 penalty for the second violation of RCW 19.122.030(2) that occurred on January 31, 2019.

Staff concurs with the Safety Committee's recommendation that the Commission should offer to suspend \$3,800 of the total penalty amount for a period of one year subject to the following conditions: (1) Kevin Laborde of DL Concrete attend Dig Safe training provided through the National Utility Contractors Association (NUCA) within 12 months of the date of this Notice; and (2) the Company commits no further violations of RCW 19.122 within 12 months from the date of this Notice. Staff recommends the Commission allow 12 months for the Company to complete Dig Safe training rather than the recommended 6 months.

The Commission agrees with Staff's recommendation and assesses a penalty of \$4,000 with an offer to suspend \$3,800 of the total penalty amount subject to the conditions listed above. The Commission will waive the suspended penalty amount of \$3,800 if the Company complies with both conditions. If the Company fails to comply with either of these conditions, the \$3,800 suspended penalty amount 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 that any or all of the violations did not occur, you may deny committing the violation(s) and contest the penalty through evidence presented at a hearing or in writing. Alternatively, if there is a reason for any or all of the violations 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 violations 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 violations 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 \$4,000 amount due;
- Pay \$200 of the total penalty amount and notify the Commission that you accept the offer to suspend, and ultimately waive, the remaining \$3,800 of the penalty amount subject to the following conditions:
 - DL Concrete representative Kevin Laborde attend Dig Safe training provided through NUCA within twelve (12) months of this Notice; and
 - **submit documentation of that attendance to the Commission within five (5) days of attending the training; and**
 - DL Concrete commits no further violations of RCW 19.122 within twelve (12) months of the date of this Notice; or
- Request a hearing to contest the violation(s); 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 Lacey, Washington, and effective August 12, 2019.

RAYNE PEARSON
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PENALTY ASSESSMENT D-190597, Investigation # 7986

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 violations occurred and enclose \$4,000 in payment of the penalty.
2. **Accept conditions.** I admit that the violations occurred and enclose \$200 toward the payment of the penalty. I also accept the Commission's offer to suspend, and ultimately waive, the remaining \$3,800 penalty amount subject to the following conditions:
- DL Concrete representative Kevin Laborde attend Dig Safe training provided through NUCA within twelve (12) months of the date of this Notice; and
 - 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 twelve (12) months of the date of this Notice.
3. **Contest the violation.** I believe that the alleged violation(s) 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 violations, 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.”