

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

**PENALTY ASSESSMENT: D-170852
PENALTY AMOUNT: \$1,000**

Omni Contracting Solutions, LLC
3726 Broadway, Suite 301
Everett, WA 98201

The Washington Utilities and Transportation Commission (Commission) believes you have violated Revised Code of Washington (RCW) 19.122.030(2) by failing to provide the required notice to a one-number locator service not less than two business days before excavating. RCW 19.122.070(1) states, in part, that violations 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:

The Safety Committee received a complaint against Omni Contracting Solutions, LLC (Omni) regarding potential violations of the Washington State Dig Law, RCW 19.122, for work performed in 2016. The complainant in these cases is Puget Sound Energy (PSE).

On July 19, 2017, the Safety Committee Review Board heard the complaint for case 17-006. The Safety Committee determined that Omni committed the following violations:

- One violation 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; and
- One violation of RCW 19.122.030(5) for commencing excavation prior to all known facility operators marking their underground facilities.

The Safety Committee recommended that the following penalties be assessed against Omni:

- \$1,000 for one violation of RCW 19.122.030(2);
- \$2,000 for one violation of RCW 19.122.030(5); and
- Deferring \$2,000 of the total penalty if Omni owners, business leaders and field supervisors complete National Utility Contractor Association (NUCA) Dig Safe Training.

Commission regulatory staff (Staff) reviewed the Safety Committee's determination and partially agrees with their decision. Staff found that Omni committed one violation of RCW 19.122.030(2), but disagrees that they violated RCW 19.122.030(5). Staff believes that the second violation should not be enforced because the company is already being cited for failing to request locates, and adding an additional penalty for excavating before locates were complete would be excessive and unjust. Staff based this decision on the following information provided by PSE:

Case 17-006

PSE alleges that on Dec. 15, 2016, an Omni excavation crew was working at 21608 56th Place W, in Mountlake Terrace, Washington. An Omni employee named Armando was contacted by PSE Damage Prevention Field Representative Roger Arrington and informed that they were in violation of the dig law for excavating without a valid locate ticket. Mr. Arrington contacted Omni manager Chris Smelly, and informed him of the dig law requirements to obtain locates prior to excavating. Mr. Smelly stated he usually calls for locates the first couple of times they excavate on a job site, but once they know where the utilities are located they don't call anymore. Mr. Arrington advised Mr. Smelly that locates are only valid for 45 days and must be refreshed if expired.

Staff determined that Omni did commit one violation of RCW 19.122.030(2), for failing to request locates prior to excavating. Accordingly, Staff recommends NUCA Dig Safe Training within 12 months of the date of this order, for all Omni field supervisors, business leaders, and business owners, and a penalty of \$1,000 for the following violation:

- One violation of RCW 19.122.030(2).

Staff's research indicates that Omni has a significant history of requesting utility locates and that the violation was the result of company negligence, not a lack of knowledge of the requirements of Washington State's Dig Law.

Pursuant to RCW 19.122.150(3), the Commission has considered the Safety Committee's determination and Staff's review and adopts the Safety Committee's recommendation as Staff has modified it. The Commission assesses a penalty of \$1,000 with the requirement that Omni field supervisors, business leaders, and business owners complete NUCA Dig Safe Training within 12-months of this Notice. The Commission, however, determines that insufficient grounds exist to support a finding that Omni violated RCW 19.122.030(5) and thus does not assess the additional \$2,000 penalty the Safety Committee recommends.

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 any or all of the violations did not occur, you may deny committing the violation(s) 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(s) 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 any or all of the violations but believe there is a reason for the violation(s) 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(s) 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 \$1,000 amount due;
- Request a hearing to contest the occurrence of any or all of 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 Olympia, Washington, and effective September 11, 2017.

GREGORY J. KOPTA
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT D-170852

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 \$1,000 in payment of the penalty
2. **Contest the violations.** I believe that the alleged violations did not occur for the reasons I describe below (**if you do not include reasons supporting your contest here, your request will be denied**):
- 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. **Request mitigation.** I admit the violations, but I believe that the penalty should be reduced for the reasons set out below (**if you do not include reasons supporting your application here, your request will be denied**):
- 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
RCW 9A.72.020:

Signature of Applicant

“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.”