

Service Date: September 1, 2023

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

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

PENALTY ASSESSMENT: D-230541  
PENALTY AMOUNT: \$2,000  
Investigation # 8721

**SERVICE VIA EMAIL**

Matt Wagner  
Evergreen Concrete Cutting, Inc.  
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Sumner, WA 98390  
[Info@evergreenconcretecutting.com](mailto:Info@evergreenconcretecutting.com)

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**YOU MUST RESPOND WITHIN 15 DAYS OF THIS NOTICE**

The Washington Utilities and Transportation Commission (Commission) believes that Evergreen Concrete Cutting, Inc. (Evergreen Concrete or Company) violated Revised Code of Washington (RCW) 19.122.030(1)(a) by failing to white-line the proposed excavation site; and (RCW) 19.122.030(2) by failing to wait two business days before beginning excavation.

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.

On June 20, 2023, the Washington State Dig Law Safety Committee (Safety Committee) heard case 22-046 filed by Cascade Natural Gas Corporation (Complainant) against Evergreen Concrete and determined Evergreen Concrete violated RCW 19.122.030(1)(a) and RCW 19.122.030(2). The Safety Committee recommended that the Commission impose a \$2,000 penalty.

Commission staff (Staff) conducted an investigation that included reviewing documents, reports, and communications with the Safety Committee and all parties involved.

The Commission reviewed the findings and recommendations made by the Safety Committee and hereby notifies you that it is assessing a \$2,000 penalty (Penalty Assessment) against you on the following grounds:

1. **Alleged Violation(s)** RCW 19.122.030(1)(a):  
The Complainant states that on August 31, 2022, Evergreen Concrete failed to mark the boundary of the excavation area with white paint.

2. **Alleged Violation(s) RCW 19.122.030(2):**  
The Complainant states that on August 31, 2022, Evergreen Concrete failed to provide notice to the one call locate service not less than two business days before beginning excavation.
3. **Analysis:**  
The alleged violations concern RCW 19.122.030(1)(a) and RCW 19.122.030(2), which state, in relevant part, that an excavator must mark the boundary of the excavation area with white paint before beginning excavation and an excavator must provide notice to the one number locate service not less than two business days before beginning excavation. On August 31, 2022, the Complainant responded to perform the locates markings for ticket #22382993 which was submitted by Evergreen Concrete. The ticket was submitted on August 29, 2022, with a due date of September 1, 2022. The Complainant reported that when they arrived to complete the locates on August 31, 2022, they found no white paint on the ground marking the boundary of the excavation area, and the excavation had already been completed by Evergreen Concrete.

The Commission considered the following factors in determining the appropriate penalty amount for the violation:

1. **How serious or harmful the violation is to the public.**  
This incident could have caused harm to employees, or the public, and could have resulted in additional undue expenses and hardships.
2. **Whether the violation is intentional.**  
The violation does not appear to be intentional, but rather due to negligence by Evergreen Concrete. Over the past 12 months, Evergreen Concrete has submitted 3,214 requests for locates to the one call center.
3. **Whether the company self-reported the violation.**  
Evergreen did not self-report the violation. The Commission became aware of the violation after the Complainant filed a complaint with the Safety Committee.
4. **The likelihood of recurrence.**  
The likelihood of recurrence depends on Evergreen Concrete's actions going forward, and its willingness to comply with the requirements of the dig law.
5. **The Company's previous violations and penalties.**
  - **Warning Letters**  
On October 9, 2013, May 5, 2017, and April 22, 2019, the Commission mailed Alleged Violation of Washington Dig Law letters to Evergreen Concrete. The letters included detailed information about Washington State's underground utility damage prevention act, requirements for submitting utility locate requests before excavating, and the possibility of penalties for each violation.

- **Penalty Assessment**

On March 18, 2019, the Commission issued Evergreen Concrete a Penalty Assessment of \$6,000 for three violations of RCW 19.122.055. (DG-180901).

The Commission has considered these factors and agrees with the Safety Committee's findings of probable violation and penalty recommendation, as follows:

- \$2,000 penalty for two violations of RCW 19.122.030(1)(a) and RCW 19.122.030(2); with an offer to suspend an \$800 portion of the penalty for one year, and then waive it, subject to the conditions that:
  - 1) Company supervisors and field crew responsible for excavation complete Dig Safe Training provided through the National Utility Contractors Association (NUCA) within 90 days of this Penalty Assessment;
  - 2) The Company must submit documentation of that attendance to the Commission; and
  - 3) The Company must not commit any further violations of RCW 19.122 within 12 months of the date of this Penalty Assessment.

These facts, if proven 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 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. Or, if there is a reason for 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 a hearing only if material issues of law or fact require consideration of evidence and resolution in a hearing. Any request to contest the violation(s) 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 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 their decision.

**You must act within 15 days after receiving this Penalty Assessment** to do one of the following:

- Pay the \$2,000 penalty amount due; or
- Pay \$800 and notify the Commission that you accept the offer to suspend a \$1,200 portion of the penalty amount subject to the following conditions:
  - Evergreen Concrete management and the field crew responsible for excavation must complete NUCA Dig Safe Training (<https://utc-9183.quickbase.com/db/bpkt6vndh>) within 90 days of service of this Penalty Assessment; and

- **The Company must submit documentation of that attendance to the Commission;** and
- Evergreen Concrete must not incur any additional violations of RCW 19.122 within 12 months of the date of this Penalty Assessment; or
- Request a hearing to contest the occurrence of the violations; or
- Request mitigation to reduce the amount of the penalty.

Please indicate your selection on the enclosed form and submit it electronically through the Commission's web portal at <https://efiling.utc.wa.gov/Form> **within FIFTEEN (15) days** after you receive this Penalty Assessment. If you are unable to use the web portal, you may submit it via email to [records@utc.wa.gov](mailto:records@utc.wa.gov). If you are unable to submit the form electronically, you may send a paper copy to the Washington Utilities and Transportation Commission, P.O. Box 47250, Olympia, Washington 98504-7250.

If you wish to make your payment online, please use this link: [Make a Payment Now \(wa.gov\)](#).<sup>1</sup>

**If you do not act within 15 days**, the Commission may refer this matter to the Office of the Attorney General for collection.

DATED at Lacey, Washington, and effective September 1, 2023.

*/s/Michael Howard*  
MICHAEL HOWARD  
Acting Director, Administrative Law Division

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<sup>1</sup> <https://www.utc.wa.gov/documents-and-proceedings/online-payments/make-payment-now>.

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**  
PENALTY ASSESSMENT D-230541 Investigation # 8721

**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 \$2,000 in payment of the penalty.
- OR [ ] Attest that I have paid the penalty in full through the Commission's payment portal.
- [ ] 2. **Accept conditions.** I admit that the violation occurred and enclose \$800 toward the payment of the penalty. I also accept the Commission's offer to suspend, and ultimately waive, the remaining \$1,200 penalty amount subject to the following conditions:
- o Company management must attend Dig Safe training provided through NUCA within 90 days of service of this Penalty Assessment; and
  - o The Company must submit documentation of that attendance to the Commission; and
  - o The Company must not commit any 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 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.
- [ ] 4. **Request mitigation.** I admit the violation, 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

\_\_\_\_\_  
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 or she makes a materially false statement which he or she 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 or her 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.