

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

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

PENALTY ASSESSMENT: D-200171  
PENALTY AMOUNT: \$5,000  
Investigation # 8157

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The Washington Utilities and Transportation Commission (Commission) believes that Absolute Excavating, Inc., (Absolute Excavating or Company) has 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 \$5,000 penalty against you on the following grounds:

On February 18, 2020, the Safety Committee heard the complaints for cases 19-046 and 19-047 against Absolute Excavating regarding alleged violations of the Washington state dig law, RCW 19.122, that occurred on February 22, 2018, and April 24, 2019. The complainant in these cases was Puget Sound Energy (PSE). The Safety Committee determined that the Company committed two violations of RCW 19.122.030(2) by failing to submit an underground utility locate request through a one-number call service prior to excavating.

The Safety Committee recommends that the Commission assess the following \$10,000 penalty against Absolute Excavating:

- \$5,000 penalty for one violation of RCW 19.122.030(2) that occurred on February 22, 2018; and
- \$5,000 penalty for one violation of RCW 19.122.030(2) that occurred on April 24, 2019.

Commission regulatory staff (Staff) reviewed the Safety Committee's determination and agrees with its conclusions. Staff found that Absolute Excavating violated RCW 19.122.030(2) on two occasions. Staff based this decision on the following

information provided by the Safety Committee:

### **First Violation**

On February 22, 2018, while excavating at 114 101 Ave. SE, Lake Stevens, Washington, Absolute Excavating was approached by a PSE damage prevention employee who informed the Company that it is required to submit a utility locate request prior to excavating. The PSE employee was unable to find a valid utility locate request in the 811 dig ticket database. While at the site, the PSE employee took photos of Company employees on site, as well as a track hoe and a shovel stuck in the ground in an excavated area. Staff's subsequent search did not find any utility locate requests submitted by Absolute Excavating for the excavation site between August 2017 and the date of the violation. Following the interaction with the PSE employee, the Company called and requested a dig ticket approximately 5.5 hours later.

Staff's investigation determined that the evidence is sufficient to demonstrate that Absolute Excavating violated RCW 19.122.030(2) by not providing notice two days before beginning excavation.

### **Second Violation**

On April 24, 2019, while excavating at 1716 NE 130th Pl., Seattle, Washington, the Company was approached by a Puget Sound Energy (PSE) damage prevention employee who informed the Company that it is required to submit a utility locate request prior to excavating. The PSE employee was unable to find a valid utility locate request in the 811 dig ticket database. While at the site, the PSE employee took photos of Company employees on site operating an excavator continuing to dig and move dirt in a homeowner's yard after the interaction with the PSE employee. The photos also depict a lack of utility locate marks on the ground. Staff's subsequent efforts to find a valid utility locate request for the Company's excavation at the site were unsuccessful.

Staff's investigation determined that PSE's photos and statements are sufficient to conclude that Absolute Excavating violated RCW 19.122.030(2) by not providing notice two days before beginning excavation.

Because the first violation occurred more than two years ago, Staff does not recommend a penalty for the first violation. Staff does, however, recommend the Commission assess the maximum penalty for the second violation, as follows:

- No penalty for the violation of RCW 19.122.030(2) that occurred on February 22, 2018; and
- \$5,000 penalty for the violation of RCW 19.122.030(2) that occurred on April 24, 2019.

The Commission agrees with Staff's recommendation and assesses a penalty of \$5,000.

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 the violation did not occur, you may deny committing the violation and contest the penalty through evidence presented at a hearing or in writing. Alternatively, if there is a reason for the violation 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 violation 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 notice** to do one of the following:

- Pay the \$5,000 amount due;
- Request a hearing to contest the violation; 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 September 2, 2020.

*/s/ Rayne Pearson*  
RAYNE PEARSON  
Director, Administrative Law Division

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**  
PENALTY ASSESSMENT D-200171, Investigation # 8157

**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 \$5,000 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. **Request 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.

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.”