



Rob McKenna

ATTORNEY GENERAL OF WASHINGTON

Utilities and Transportation Division

1400 S Evergreen Park Drive SW • PO Box 40128 • Olympia WA 98504-0128 • (360) 664-1183

November 14, 2007

Joseph A. Yazbeck, Jr.
1300 SW 5th Ave., Suite 2750
Portland, OR 97201-5617

Re: *State of Washington v. L.L. Lindberg Co., L.L.C.*
Clark County Superior Court No. 07-2-05013-6

Dear Mr. Yazbeck:

Enclosed are fully executed original copies of the Motion for Entry of Consent Decree, and Consent Decree, which were filed on November 7, 2007.

The Commission is in receipt of a check from L.L. Lindberg in the amount of \$15,000 to satisfy the judgment in this matter, which has been held pending filing, and will be deposited accordingly.

Thank you for your kind attention. Please contact me should you have any questions.

Sincerely,

MICHAEL A. FASSIO
Assistant Attorney General

MAF/emd
Enclosures



**COPY
ORIGINAL FILED**

NOV 07 2007

Sherry W. Parker, Clerk, Clark Co.

SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

STATE OF WASHINGTON,

Plaintiff,

v.

L.L. LINDBERG CO., L.L.C.

Defendant.

NO. 07-2-05013-6

**MOTION FOR ENTRY OF
CONSENT DECREE**

Plaintiff, State of Washington, and Defendant, L.L. Lindberg Co., L.L.C, respectfully move this Court to approve, sign, and enter as final judgment the attached Consent Decree presented jointly by the Plaintiff and the Defendant. The Consent Decree resolves the action brought by Plaintiff against Defendant in this proceeding. The Consent Decree enjoins and restrains the Defendant from activities that would violate the Underground Utilities Act, Chapter 19.122 RCW.

The Consent Decree requires the Defendant to pay \$15,000 of the \$45,000 penalty assessed for alleged violations of the Underground Utilities Act. The remaining \$30,000 will be deferred and due upon violation of the Consent Decree.

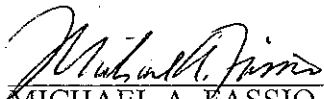
The Consent Decree also requires the Defendant to obtain training regarding the Underground Utilities Act and use of the one-call locator service through the Utilities


1 Underground Location Center. The Defendant is required to provide documentation of the
2 training received to the Washington Utilities and Transportation Commission upon request.

3 Plaintiff and Defendant believe that the Consent Decree is a fair, just, adequate, and
4 equitable resolution of the issues in this case. Accordingly, Plaintiff and Defendant jointly
5 request that the Court sign and enter the attached Consent Decree.
6

7 Dated this 29 day of **OCTOBER, 2007**.

8 ROBERT M. MCKENNA
9 Attorney General

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11 MICHAEL A. FASSIO, WSBA # 37139
12 Assistant Attorney General
13 Attorney for Plaintiff
14 State of Washington

15 
16 JOSEPH A. YAZBECK, JR., WSBA # 32700
17 Yazbeck, Cloyan & Hanson, LLC
18 Attorney for Defendant
19 L. L. Lindberg, Co., L.L.C.

20 SO ORDERED this 7 day of **OCTOBER, 2007**.
21 Nov.

22 **/s/ ROBERT A. LEWIS**
23 JUDGE/COURT COMMISSIONER

**COPY
ORIGINAL FILED**

NOV 07 2007

Sherry W. Parker, Clerk, Clark Co.

SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

STATE OF WASHINGTON,

Plaintiff,

v.

L.L. LINDBERG CO., L.L.C.

Defendant.

NO. 07-2-05013-6

CONSENT DECREE

I. JUDGMENT SUMMARY

- 1.1 Judgment Creditor: State of Washington
- 1.2 Judgment Debtor: L.L. Lindberg Co., L.L.C.
- 1.3 Attorneys Fees and Costs: Each party to bear own fees and costs
- 1.4 Total Judgment: \$45,000 (\$15,000.00 due upon entry;
\$30,000.00 due upon failure to comply with
consent decree requirements)
- 1.5 Post-judgment Interest Rate: 12.0% per annum
- 1.6 Attorney for Judgment Creditor: Michael A. Fassio
Assistant Attorney General
1400 S. Evergreen Park Drive SW
Olympia, WA 98504-0128
(360) 664-1192
- 1.7 Representative for Judgment Debtor: Joseph A. Yazbeck, Jr.
Yazbeck, Cloran & Hanson, LLC
1300 SW 5th Av.
Portland, OR 97201-5617
503-635-5367

1 1.8 Plaintiff, State of Washington, having commenced this action on September 6,
2 2007, pursuant to Chapter 19.122 RCW, the Underground Utilities Act; and defendant
3 having been personally served with copies of the Summons and Complaint on March 7, 2007
4 and September 10, 2007; and

5
6 1.9 Plaintiff having appeared by and through its attorneys, Robert M. McKenna,
7 Attorney General, and Michael A. Fassio, Assistant Attorney General; and defendant having
8 appeared by and through its Lawyer, Joseph A. Yazbeck, Jr.; and

9 1.10 Plaintiff and defendant having agreed on a basis for the settlement of the
10 matters alleged in the Complaint, and to the entry of this Consent Decree against defendant
11 without the need for trial or adjudication of any issue of law or fact; and

12
13 1.11 Plaintiff and defendant having agreed that this Consent Decree does not
14 constitute evidence or an admission regarding the existence or non-existence of any issue,
15 fact, or violation of any law alleged by plaintiff; and

16 1.12 Defendant recognizes and states that this Consent Decree is entered into
17 voluntarily and that no promises or threats have been made by the Attorney General's Office
18 or any member, officer, agent, or representative thereof to induce defendant to enter into this
19 Consent Decree, except as provided herein; and

20
21 1.13 Defendant waives any right it may have to appeal from this Consent Decree;
22 and

23 1.14 Defendant further agrees that it will not oppose the entry of this Consent
24 Decree on the grounds that it fails to comply with Rule 65(d) of the rules of Civil Procedure,
25 and hereby waives any objections based thereon; and
26

1 a. Failing to provide notice of any excavation to all owners of
2 underground facilities through the one-number locator service as required by RCW
3 19.122.030(1).

4 b. Failing to provide notice of any excavation to all owners of
5 underground facilities not less than two business days and not more than ten business
6 days prior to commencement of excavation as required by RCW 19.122.030(2).

7 c. Failing to use reasonable care to avoid damaging underground
8 facilities and failing to plan the excavation to avoid damage or minimize interference
9 with underground facilities in and near the excavation area. RCW 19.122.040(2)(b).

10 d. Failing to notify the utility owning or operating an underground
11 facility and the one-number locator service upon any contact with underground
12 facilities. RCW 19.122.050.

13 e. Failing to notify the appropriate local public safety agency if any
14 contact with an underground facility causes an emergency situation and failing to take
15 all appropriate steps to ensure the public safety. RCW 19.122.050.

16 f. Engaging in any conduct which violates Chapter 19.122 RCW, the
17 Underground Utilities Act.

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21 3.3 As a condition to satisfaction of this Consent Decree, defendant agrees that its
22 employees will successfully complete a refresher training course regarding an excavator's
23 responsibility under Chapter 19.122 RCW and the use of the one-call locator service. Such
24 training must be obtained from the Utilities Underground Location Center. Defendant shall
25 contact Don Evans of the Utilities Underground Location Center at 1-877-668-4001 (ext.
26

1 3307) to arrange for the training. Refresher training must be completed within one year of
2 entry of this Consent Decree and upon employment for any employee hired after refresher
3 training is completed. Defendant must retain a record of the completed training. Defendant
4 shall provide documentation of completed training to the Washington Utilities and
5 Transportation Commission (WUTC) upon request. Failure to do so will be considered a
6 violation of this Consent Decree. The training shall include, but not be limited to, 1) all key
7 elements of the Underground Utilities Law (Chapter 19.122 RCW); 2) use of the one-call
8 number for locates; 3) use of reasonable care, including planning excavations around existing
9 underground facilities; 4) procedures for conducting post-accident/damage investigations to
10 determine how accidents/damage could have been prevented. Defendant shall revise its
11 company procedures accordingly. Defendant shall provide for an annual refresher training
12 course on the Underground Utilities Law for excavation employees, and provide
13 documentation of completed annual training to the WUTC upon request. Defendant shall
14 provide information regarding the Underground Utilities Law in a manual for employees.
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17 IV. CIVIL PENALTIES

18 4.1 Pursuant to RCW 19.122.055(1) and RCW 19.122.070, plaintiff and
19 defendant stipulate that a liquidated civil penalty of \$15,000.00 shall be assessed against
20 defendant. An additional liquidated civil penalty of \$30,000.00 shall be assessed against
21 defendant for future failure to comply with the terms of this Consent Decree during the
22 period of time of eighteen (18) months following the entry date of this Decree. Violation of
23 any of the terms of this Decree shall constitute a violation of an injunction for which civil
24 penalties pursuant to RCW 19.122.055(1) and RCW 19.122.070 may be sought.
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V. ATTORNEY'S FEES AND COSTS

5.1 Each party shall pay their own attorney's costs and fees incurred in pursuing this matter.

5.2 Defendants shall bear plaintiff's reasonable costs, including reasonable attorneys' fees, for enforcing this Consent Decree in any successful action to enforce any of its provisions.

VI. ENFORCEMENT

6.1 The violation of any of the terms of this Decree shall constitute a violation of the Underground Utilities Act, Chapter 19.122 RCW.

6.2 Jurisdiction is retained for the purpose of enabling any party to this Decree, with or without the prior consent or approval of the other party, to apply to the Court for the enforcement of compliance therewith, the punishment of violations thereof, or the modification or clarification thereof.

6.3 Nothing in this Decree shall be construed as to limit or to bar any other governmental entity or any other citizen in the pursuit of other remedies against defendant.

6.4 Pursuant to RCW 19.86.140, any violation of the terms of this Decree within eighteen (18) months from the date of its entry may form the basis for further enforcement proceedings, including, but not limited to, (1) contempt of court proceedings; and (2) forfeiture of a civil penalty of \$30,000.00 for violations committed after the date of this Decree.

6.5 Under no circumstances shall this Decree or the names of the State of Washington or the Office of the Attorney General or any of its employees or representatives

1 be used by defendant's agents or employees in connection with the promotion of any product
2 or service or an endorsement or approval of defendant's practices.

3 6.6 The Court finding no just reason for delay, hereby expressly directs entry of
4 this Judgment and Decree.


5 SO ORDERED this 7 day of ^{Nov}~~October~~, 2007.
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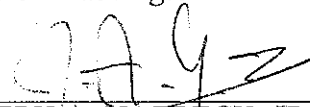
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8 **/s/ ROBERT A. LEWIS**

9 JUDGE/COURT COMMISSIONER

10 Presented by:

11 ROBERT M. MCKENNA
12 Attorney General

13 
14 MICHAEL A. FASSIO, WSBA # 37139
15 Assistant Attorney General
16 Attorney for Plaintiff
17 State of Washington

18 
19 JOSEPH A. YAZBECK, JR., WSBA # 32700
20 Counsel for Defendant
21 L.L. Lindberg, Co. L.L.C.