

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

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

**PENALTY ASSESSMENT: D-180475  
PENALTY AMOUNT: \$11,000**

Dan Wilson  
Concrete Services, Inc.  
6423 Pacific Highway E.  
Fife, WA 98424

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 are 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 \$11,000 on the following grounds:

On May 23, 2018, the Safety Committee heard the complaints for cases 18-026, 18-027, and 18-028 against Concrete Services, Inc. (Concrete Services or Company) regarding three potential violations of the Washington state Dig Law, RCW 19.122, which occurred in 2017 and 2018. The complainant in this case was Puget Sound Energy (PSE). The Safety Committee determined that Concrete Services committed the following violations:

- Three violations of RCW 19.122.030(2) for failing to request locates prior to excavating.

The Safety Committee recommended that the following \$11,000 penalty be assessed against Concrete Services:

- Case 18-026, \$1,000 penalty for one violation of RCW 19.122.030(2);
- Case 18-027, \$5,000 penalty for one violation of RCW 9.122.030(2);
- Case 18-028, \$5,000 penalty for one violation of RCW 19.122.030(2); and
- The opportunity to suspend \$10,000 of the penalty if the owner and field supervisors of Concrete Services complete National Utility Contractor Association (NUCA) Dig Safe Training within four months of the issuance of a penalty assessment by the Commission, and the Company incurs no additional dig law violations within 12 months.

Commission regulatory staff (Staff) reviewed the Safety Committee's determination and agrees with its conclusion. Staff found that Concrete Services committed three

violations of RCW 19.122.030(2). Staff based this decision on the following information provided by the Safety Committee:

**Case 18-026**

PSE alleges that on December 5, 2017, Concrete Services failed to request utility locates prior to excavating at 76<sup>th</sup> Ave. W and 212<sup>th</sup> St. in Edmonds, WA. PSE Damage Prevention Field Representative Bob Douglas observed a Concrete Services crew installing curbs in a public right-of-way, which required them to drive stakes into the ground for its concrete forms at the above address. Mr. Douglas checked with the one-call ticket management database and determined that Concrete Services had not requested a utility locate for this address. Mr. Douglas proceeded to contact the crew and advise them of the dig law violation. Mr. Douglas also attempted to contact the Company owner Dan Wilson but was unable to reach him directly.

Staff investigated this referral from the Safety Committee and found that no utility locate request was submitted by Concrete Services for this location prior to beginning work. Staff determined that Concrete Services committed one violation of RCW 19.122.030(2) by failing to request locates prior to excavating.

**Case 18-027**

PSE alleges that on January 12, 2018, Concrete Services failed to request utility locates prior to excavating at 99<sup>th</sup> Ave. NE in Lake Stevens, WA. PSE Damage Prevention Field Representative Roger Arrington observed a Concrete Services crew installing curbs in a public right-of-way, which required them to drive stakes into the ground for its concrete forms at the above address. Mr. Arrington checked with the one-call ticket management database and determined that Concrete Services had not requested a utility locate for this address. Mr. Arrington contacted the crew foreman and the Company via the contact number he was provided to inform them of the dig law violation. Mr. Arrington proceeded to take pictures of the job site, which were ultimately submitted to the Safety Committee for review.

Staff investigated this referral from the Safety Committee and found that no utility locate request was submitted by Concrete Services for this location. Staff determined that Concrete Services committed one violation of RCW 19.122.030(2) by failing to request locates prior to excavating.

**Case 18-028**

PSE alleges that on February 7, 2018, Concrete Services failed to request utility locates prior to excavating at 96<sup>th</sup> Ave. S in Kent, WA. PSE Damage Prevention Field Representative Bob Douglas observed a Concrete Services crew installing curbs in a public right-of-way, which required them to drive stakes into the ground for its concrete forms at the above address. Mr. Douglas checked with the one-call ticket management database and determined that Concrete Services had not requested a utility locate for this address. Mr. Douglas proceeded to contact the crew and advise them of the dig law violation. Mr. Douglas also attempted to contact the crew foreman but was unable to reach him directly. Mr. Douglas proceeded to take pictures of the job site, which were ultimately submitted to the Safety Committee for review.

Staff investigated this referral from the Safety Committee and found that no utility locate request was submitted by Concrete Services for this location. Staff determined that Concrete Services committed one violation of RCW 19.122.030(2) by failing to request locates prior to excavating.

Staff relied upon the information provided by PSE to the Safety Committee for this investigation. The documents for this case included multiple photographs of the excavation areas. Concrete Services failed to appear before the Safety Committee review panel on May 23, 2018. A Company representative sent an email to the Safety Committee several days after the review to apologize for not being present and to state that they have made internal changes to ensure future dig law violations are avoided. Staff's research indicates that Concrete Services has a relatively small history of requesting utility locates. Since Jan. 1, 2017, Concrete Services has only requested a total of three utility locates in the state of Washington.

Staff concurs with the Safety Committee's recommendation. Accordingly, Staff recommends the Commission assess an \$11,000 penalty against Concrete Services for three 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. The recommended penalty is as follows:

- \$1,000 penalty for one violation of RCW 19.122.030(2), which occurred December 5, 2017 (Case 18-026);
- \$5,000 penalty for one violation of RCW 19.122.030(2), which occurred January 12, 2018 (Case 18-027);
- \$5,000 penalty for one violation of RCW 19.122.030(2), which occurred February 7, 2018 (Case 18-028); and
- The opportunity to suspend \$10,000 of the penalty if the owner and field supervisors of Concrete Services complete NUCA Dig Safe Training within four months of the issuance of a penalty assessment by the commission, and the Company incurs no additional dig law violations within 12 months.

Pursuant to RCW 19.122.150(3), the Commission has considered the Safety Committee's determination and adopts its recommendation. The Commission assesses a penalty of \$11,000 against Concrete Services for three violations of RCW 19.122.030(2). The Commission will also provide the opportunity to suspend \$10,000 subject to the following conditions: (1) The owner and field supervisors of Concrete Services complete NUCA Dig Safe Training within four months of the issuance of this penalty assessment; and (2) Concrete Services commits no further violations of RCW 19.122 within the next 12 months. The Commission will waive the \$10,000 suspended penalty if Concrete Services complies with both conditions. If Concrete Services fails to comply with either of these conditions, the \$10,000 suspended penalty will become immediately due and payable, in addition to any new penalties that the Commission might assess for additional violations.

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 that 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 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 \$11,000 amount due; or
- Pay \$1,000 of the total penalty and notify the Commission that you accept the offer to suspend, and ultimately waive, the remaining \$10,000 penalty subject to the conditions that the owner and field supervisors of Concrete Services complete NUCA Dig Safe Training within four months of the issuance of this penalty assessment; 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 the next 12 months; or
- Request a hearing to contest the occurrence of any or all of the violation; 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 **within FIFTEEN (15) days** after you receive this notice. 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, Post Office Box 47250, Olympia, Washington 98504-7250.

**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 June 13, 2018.

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

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**  
**PENALTY ASSESSMENT D-180475**

**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 \$11,000 in payment of the penalty.
2. **Accept conditions.** I admit that the violations occurred and enclose \$1,000 toward the payment of the penalty. I also accept the Commission's offer to suspend, and ultimately waive, the remaining \$10,000 penalty amount subject to the conditions that the owner and field supervisors of Concrete Services complete NUCA Dig Safe Training within four months of the issuance of this penalty assessment; 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 the next 12-months
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 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

\_\_\_\_\_  
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.”