

Service Date: December 5, 2024

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: D-240867
PENALTY AMOUNT: \$2,000
Investigation # 8977

SERVICE VIA EMAIL

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YOU MUST RESPOND WITHIN 15 DAYS OF THIS NOTICE

The Washington Utilities and Transportation Commission (Commission) believes that Hildebrand Concrete Construction Co., Inc. (Hildebrand Concrete or Company) violated Revised Code of Washington (RCW) 19.122.030(2) one time by failing to provide notice to a one-number locator service not less than two business days before the scheduled excavation date and RCW 19.122.030(5) one time for making a locate request and then not waiting for all known facility operators to mark their underground facilities.

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 November 5, 2024, the Safety Committee heard case 24-082 filed by NW Natural Gas (NWN or Complainant) against Hildebrand Concrete and determined Hildebrand Concrete violated RCW 19.122.030(2) one time by failing to provide notice to a one-number locator service not less than two business days before the scheduled excavation date and RCW 19.122.030(5) one time for making a locate request and then not waiting for all known facility operators to mark their underground facilities. The Safety Committee recommended that the Commission impose a \$2,000 penalty.

Commission staff (Staff) reviewed the documents, reports, and communications with the Safety Committee and agreed with the Safety Committee's findings and recommendations.

The Commission hereby notifies you that it is assessing a \$2,000 penalty (Penalty Assessment) against you on the following grounds:

1. **Alleged Violation 1:**

The complaint submitted by NWN states that on September 9, 2024, Hildebrand Concrete was found installing concrete forms and stakes for new sidewalks and ADA ramps at S Royal Road between South 10th Way and South Wells Drive, Vancouver, WA without providing notice to a one-number locator service not less than two business days before the scheduled excavation date.

Analysis:

The alleged violation concerns RCW 19.122.030(2), which states, in part, that an excavator must provide notice to a one-number locator service not less than two business days before the scheduled excavation date. The complaint submitted by NWN states that on September 9, 2024, Hildebrand Concrete was found installing concrete forms and stakes for new sidewalks and ADA ramps without a locate ticket at S Royal Road between South 10th Way and South Wells Drive, Vancouver, WA. The complaint states that NWN personnel spoke to the crew and educated them of the dig law violation and advised them to stop work until a locate ticket was requested. The following day on September 10, 2024, NWN personnel discovered that Hildebrand Concrete was continuing to excavate without a locate request.

Peer Review:

During the Safety Committee review on November 5, 2024, NWN reviewed the photographs, stating the photographs show Hildebrand Concrete working at S Royal Road between South 10th Way and South Wells Drive, Vancouver, WA. NWN noted that after they spoke with the Hildebrand Concrete crew, everyone was on the same page to halt working until the locates were completed. However, the next day, September 10, 2024, NWN found Hildebrand Concrete continuing to work without locates.

After the initial contact, Hildebrand Concrete learned of NWN's contact with its crew. Hildebrand Concrete had previously hit a gas line in May 2024, and the Company wanted to ensure the locates were completed for their jobs. Hildebrand Concrete was shocked that the individual assigned to request the locates was doing it improperly. Hildebrand Concrete learned the employee would request the locate but not hit the submit button, so the request would not go through. Hildebrand Concrete spent the following days after NWN had contacted the Company regarding the lack of locates trying to submit requests and catch up. Hildebrand Concrete stated that the Company will take responsibility for the work that continued after NWN personnel contacted its crew. Hildebrand Concrete has since put a system in place to keep track of the jobs and locates.

Staff conducted a search of the Washington One Call Center database and did not find any locate requests by Hildebrand Concrete for S Royal Road between South 10th Way and South Wells Drive, Vancouver, WA.

2. **Alleged Violation(2):**

The complaint submitted by NWN states that on September 11, 2024, Hildebrand Concrete was found installing concrete forms and stakes for new sidewalks and ADA ramps at 4905 Northeast 122nd Avenue, Vancouver, WA after submitting a locate request, and then not waiting for all known facility operators to mark their underground facilities.

Analysis:

The alleged violation concern RCW 19.122.030(5), which states, in part, that an excavator making a locate request, must wait for all known facility operators to mark their underground facilities before beginning excavation. NWN noted in the complaint that on September 11, 2024, Hildebrand Concrete was found excavating at 4905 Northeast 122nd Avenue, Vancouver, WA, without a valid locate.

Peer Review:

During the Safety Committee review on November 5, 2024, NWN reviewed the photographs, stating the photographs show Hildebrand Concrete working at 4905 Northeast 122nd Avenue, Vancouver, WA. NWN provided a locate ticket called into the Washington One Call Center on September 10, 2024, for the location at 4905 Northeast 122nd Avenue, Vancouver, WA. NWN stated that Hildebrand Concrete began digging at 4905 Northeast 122nd Avenue before the locates were completed.

Hildebrand Concrete stated that the Company will take responsibility for the work that continued after NWN personnel contacted its crew. Hildebrand Concrete has since put a system in place to keep track of the jobs and locates.

Staff conducted a search of the Washington One Call Center database and found locate request #24383409 which was called in by Hildebrand Concrete on September 10, 2024, for the location at 4905 Northeast 122nd Avenue, Vancouver, WA.

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

1. **How serious or harmful the violations are to the public.**

These incidents could have been significantly more harmful to Hildebrand Concrete workers, utility technicians, nearby homeowners, and the public, and it could have resulted in severe injury and/or loss of property.

2. **Whether the violations are intentional.**

The violations appear to be due to negligence rather than a lack of knowledge of Washington State's Dig Law. Over the past 12 months (November 20, 2023, through November 20, 2024), Hildebrand Concrete has submitted 40 requests to the One Call Center for locates. This demonstrates Hildebrand Concretes' knowledge of requirements and its responsibility to contact the one-number locate service before beginning excavation.

3. **The likelihood of recurrence.**

The likelihood of recurrence depends on Hildebrand Concrete's actions going forward and its willingness to notify the one-number locate service every time before beginning excavation.

4. **The Company's previous Warning Letter.**

On July 11, 2024, the Commission mailed an Alleged Violation of Washington Dig Law letter to Hildebrand Concrete. The letter 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. The Commission mailed the letter after receiving a report of damage caused by Hildebrand Concrete on May 22, 2024, that occurred because the Company failed to submit a request to locate underground utilities before excavating.

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

- First Violation: \$1,000 penalty for one violation of RCW 19.122.030(2) that occurred on September 9, 2024, at S Royal Road between South 10th Way and South Wells Drive, Vancouver, WA.
- Second Violation: \$1,000 penalty for one violation of RCW 19.122.30(5) that occurred at 4905 Northeast 122nd Avenue, Vancouver, WA.

The total penalty amount is \$2,000 for the two violations with an offer to suspend an \$1,600 portion of the penalty for one year, and then waive it, subject to the conditions that:

- 1) Hildebrand Concrete supervisors and field crew responsible for excavation complete in-person 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) Hildebrand Concrete 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 violations 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 violations 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 violations 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 \$400 and notify the Commission that you accept the offer to suspend a \$1,600 portion of the penalty amount subject to the following conditions:
 - Hildebrand Concrete management and field crew responsible for excavation must complete in-person NUCA Dig Safe Training (<https://utc-9183.quickbase.com/db/bpkt6vndh>) within 90 days of service of this Penalty Assessment; and
 - **Hildebrand Concrete must submit documentation of that attendance to the Commission;** and
 - Hildebrand 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. 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 \(wa.gov\)](#).¹

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 December 5, 2024.

/s/ James E. Brown II
JAMES E. BROWN II
Acting Director, Administrative Law Division

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT D-240867 Investigation # 8977

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, 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 \$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 violations occurred and enclose \$400 toward the payment of the penalty. I also accept the Commission's offer to suspend, and ultimately waive, the remaining \$1,600 penalty amount subject to the following conditions:
- Hildebrand Concrete management and field crew responsible for excavation must attend in-person Dig Safe training provided through NUCA within 90 days of service of this Penalty Assessment; and
 - The Company must submit documentation of that attendance to the Commission; and
 - Hildebrand Concrete must not commit any further violations of RCW 19.122 within twelve (12) months of the date of this Notice.
3. **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.
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 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.