

Service Date: July 18, 2024

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: D-240381
PENALTY AMOUNT: \$6,000
Investigation # 8904

SERVICE VIA EMAIL

Chris Conley
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YOU MUST RESPOND WITHIN 15 DAYS OF THIS NOTICE

The Washington Utilities and Transportation Commission (Commission) believes that Gro d/b/a Gro Outdoor Living (Gro or Company) violated Revised Code of Washington (RCW) 19.122.030(2) by failing to provide notice to a one-number locate service 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 May 16, 2024, the Safety Committee heard cases 24-023 and 24-026 filed by Northwest Natural Gas (NWN or Complainant) against Gro and determined Gro violated RCW 19.122.030(2) by failing to provide notice to a one-number locate service before beginning excavation. The Safety Committee recommended that the Commission impose a \$6,000 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 \$6,000 penalty (Penalty Assessment) against you on the following grounds:

1. **Alleged Violation 1:**

The Complainant states that on April 15, 2024, Gro was excavating and did not call the One Call Center for locates.

Analysis: The alleged violation concerns RCW 19.122.030(2) which states, in part, that an excavator must provide notice to a one-number locate service before beginning excavation.

The Complainant reported that Gro was excavating over its gas service and main lines with mechanized trenching equipment, pick axes, and shovels, and had not called the One Call Center for locates. NWN reported that it had multiple previous conversations with Gro and sent them letters warning about the need to call for locates before beginning excavation.

2. **Alleged Violation 2:**

The Complainant states that on April 18, 2024, Gro was excavating and did not call the One Call Center for locates.

Analysis: The alleged violation concerns RCW 19.122.030(2) which states, in part, that an excavator must provide notice to a one-number locate service before beginning excavation. The Complainant reported that on April 18, 2024, it observed Gro operating mechanized trenching equipment and shovels over NWN gas service lines and mains and had not called the One Call Center for locates. NWN reported that it had multiple previous conversations with Gro and sent them letters warning them about the need to call for locates before beginning excavation.

During the peer review, Gro explained that it had a new project manager, and they were unaware it was a violation of the Washington State Dig Law to excavate using the general contractor's locate markings.

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 Gro workers, utility technicians, nearby homeowners, and the public, and the incidents 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, Gro has submitted 96 requests to the One Call Center for locates. This demonstrates Gro's knowledge of the requirements of the law.

3. **The likelihood of recurrence.**

The likelihood of recurrence depends on Gro's actions going forward, its willingness to participate in Dig Safe Training, and its ability to comply with all the requirements of RCW 19.122.

4. **The Company's previous violations and penalties.**

On June 10, 2014, and January 16, 2019, the Commission mailed Alleged Violation of Washington Dig Law letters to Gro. 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.

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) for failing to provide notice to a one-number locate service before beginning excavation on April 15, 2024.

Second Violation: \$5,000 Penalty Assessment for one violation of RCW 19.122.030(2) for failing to provide notice to a one-number locate service before beginning excavation on April 18, 2024.

The total Penalty Assessment is \$6,000 with an offer to suspend a \$5,800 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 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 \$6,000 penalty amount due; or
- Pay \$200 and notify the Commission that you accept the offer to suspend a \$5,800 portion of the penalty amount subject to the following conditions:

- Gro management and 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
- Gro 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 July 18, 2024.

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

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
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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 \$6,000 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 \$200 toward the payment of the penalty. I also accept the Commission's offer to suspend, and ultimately waive, the remaining \$5,800 penalty amount subject to the following conditions:
- o Company management and field crew responsible for excavation 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 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.