



STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

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MEMORANDUM

Date: September 25, 2025

To: Connor Thompson, Director
Administrative Law Division

From: Joice Hagen, Damage Prevention Investigator
Pipeline Safety Program

Subject: Docket D-250686 Investigation # 9144, Penalty Assessment recommendation of \$2,000 against Miller Brothers Landscaping Inc. for one violation of RCW 19.122.030(5) and one violation of RCW 19.122.040(2)(a).

I. Background

RCW 19.122.030(5) states, in part, that an excavator must not excavate until all known facility operators have marked their underground facilities.

RCW 19.122.040(2)(a) states, in part, that an excavator shall use reasonable care to avoid damaging underground facilities and determine the precise location of underground facilities that have been marked.

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 September 4, 2025, the Safety Committee heard case 25-063 filed by Puget Sound Energy (PSE or Complainant) against Miller Brothers Landscaping, Inc. (Miller Brothers or Company) and determined Miller Brothers violated RCW 19.122.030(5) by not waiting for all known facility operators to mark their underground facilities, and RCW 19.122.040(2)(a) by failing to determine the precise location of underground facilities that have been marked. The Safety Committee recommended that the Commission impose a \$2,000 penalty.¹ (Attachment 1)

¹ Attachment 1- Safety Committee Recommendation Letter

Commission staff (Staff) conducted an investigation that included reviewing the documents and reports provided by the Safety Committee.

II. Alleged Violation 1:

The Complainant states that on August 29, 2024, Miller Brothers was excavating at 13002 NE 102nd PL., Kirkland and failed to wait two business days and began excavation before the locates had been completed.² (Attachment 2)

Analysis

The alleged violation concerns RCW 19.122.030(5), which states, in part, that an excavator must not excavate until all known facility operators have marked or provided information regarding underground facilities. The Complainant reports that PSE contacted Miller Brothers on August 29, 2024, at this address and observed that excavation had already begun. PSE notified the Company that the work to begin date was August 31, 2024. In the supporting documentation PSE provided to the Safety Committee was a copy of an email sent to Miller Brothers explaining the Dig Law violations and requested the Company stop excavation until locates were completed. PSE also included photos of the excavation already taking place on August 29, 2024, and a copy of the locate request ticket #24364036 with a work to begin date of August 31, 2024.³ (Attachment 3)

Alleged Violation 2:

The Complainant States that on September 12, 2024, Miller Brothers was excavating at 13002 NE 102nd PL., Kirkland and failed to use reasonable care by not determining the precise location of underground facilities that had been marked and caused damage to its underground facility.

Analysis

The alleged violation concerns RCW 19.122.040(2)(a), which states, in part, an excavator shall use reasonable care to avoid damaging underground facilities. An excavator must: “determine the precise location of underground facilities which have been marked”. The Complainant reports that on September 12, 2024, it returned to the address 13002 NE 102nd PL., Kirkland, because it had not received a response to the earlier email it sent to Miller Brothers. When PSE arrived at the address it observed damage to a PSE ¾” gas service line. PSE stated that the line had been bent, the wrap was damaged and then reburied. PSE provided photos showing where the line was damaged and then reburied. PSE reported that Miller Brothers never notified them of the damage. PSE alleges that Miller Brothers failed to pothole as necessary in order to determine the precise location of the underground facility and then damaged the line during excavation. PSE submitted a photo demonstrating where the utility marks were, where the damage occurred, and how it had been reburied.

² Attachment 2 - Complaint

³ Attachment 3 – Locate ticket

IV. Discussion

Staff also took into consideration the following factors in determining the appropriate penalty amount:

1. **How serious or harmful the violation is to the public.**
This incident could have been harmful to Miller Brothers workers, utility technicians, nearby homeowners, and the public, and could have resulted in serious injury and loss of property.
2. **Whether the violation is intentional.**
This violation appears to be due to negligence by Miller Brothers rather than a lack of knowledge regarding Washington State's dig law. Between September 18, 2023, and September 18, 2024, Miller Brothers submitted 277 requests to locate underground facilities in Washington. This indicates Miller Brothers is aware of the requirements of the Washington Dig Law.
3. **The likelihood of recurrence.**
The likelihood of recurrence depends on the Company's actions going forward and its willingness to notify the one-call location service every time prior to excavation, wait the two business days before beginning excavation, and comply with all requirements of excavators as required per RCW 19.122.
5. **The Company's previous Warning Letters.**
On August 22, 2017, and January 3, 2022, the Commission mailed Alleged Violation of Washington Dig Law letters to Miller Brothers. 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 mailed the letters after receiving reports of damage caused by Millers Brothers that occurred because the Company failed to submit a request to locate underground utilities before excavating.

IV. Safety Committee Recommendation

The Safety Committee recommended the penalty assessment as follows:

First Violation: \$1,000 penalty for one violation of RCW 19.122.030(5) that occurred on August 29, 2024, at 13002 NE 102nd Place, Kirkland, WA.

Second Violation: \$1,000 penalty for one violation of RCW 19.122.040(2) that occurred on September 12, 2024, at 13002 NE 102nd Place, Kirkland, WA.

- \$2,000 penalty for two violations of RCW 19.122 with an offer to suspend a \$1,600 portion of the penalty for one year, and then waive it, subject to the conditions that:
 - 1) Company 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

- 2) The Company must submit documentation of training completion to the Commission's web portal at <https://efiling.utc.wa.gov/Form>; and
- 3) The Company must not commit any further violations of RCW 19.122 within 12 months of the date of this Penalty Assessment.

V. Staff Recommendation

Staff have considered these factors and recommend that the Commission should penalize Miller Brothers Landscaping, Inc. as follows:

First Violation: \$1,000 penalty for one violation of RCW 19.122.030(5) that occurred on August 29, 2024, at 13002 NE 102nd Place, Kirkland, WA.

Second Violation: \$1,000 penalty for one violation of RCW 19.122.040(2) that occurred on September 12, 2024, at 13002 NE 102nd Place, Kirkland, WA.

- \$2,000 penalty for two violations of RCW 19.122 with an offer to suspend a \$1,600 portion of the penalty for one year, and then waive it, subject to the conditions that:
 - 1) Company 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
 - 2) The Company must submit documentation of training completion to the Commission's web portal at <https://efiling.utc.wa.gov/Form>.

V. Alleged Violator Contact Information

Contact Name:	Chris Miller, Fred Miller, Kesti Miller
Business Name:	Miller Brothers Landscaping, Inc.
Address:	8020 180 th St SE, Snohomish WA 98296
Email:	Shock.fred@yahoo.com
Phone:	(360) 668-3829
UBI:	602-263-053