

Service Date: August 9, 2024

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

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

PENALTY ASSESSMENT: D-240483  
PENALTY AMOUNT: \$6,000  
Investigation # 8912

SERVICE VIA EMAIL

UBI: 601-762-624

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**YOU MUST RESPOND WITHIN 15 DAYS OF THIS NOTICE**

The Washington Utilities and Transportation Commission (Commission) believes that Stenerson & Stenerson Construction Inc. d/b/a US Construction Inc. (US Construction or Company) violated Revised Code of Washington (RCW) 19.122.030(2) by failing to provide notice to a one-number locator service not less than two business days 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 June 13, 2024, the Safety Committee heard cases 24-016 and 24-040 filed by Northwest Natural Gas (NWN or Complainant) against US Construction and determined US Construction violated RCW 19.122.030(2) by failing to provide notice to a one-number locator service not less than two business day before beginning excavation on 3 occasions. The Safety Committee recommended that the Commission impose the following:

First violation:	\$1,000 penalty (case 24-016)
Second violation	\$5,000 penalty (case 24-040)
Third violation:	\$5,000 penalty (case 24-040)

The Safety Committee penalty recommendation is for an \$11,000 penalty with an offer to suspend an \$8,000 portion of the penalty based on conditions.

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

reviewed the Safety Committee's recommended penalty using the Commission's established penalty matrix. Staff did not identify any significant mitigating or aggravating factors. It therefore recommends a \$1,000 penalty for the first violation and a \$2,500 penalty for the second and third violations for a total of \$6,000.

1. **First Alleged Violation:**

The Complainant states that on March 13, 2024, US Construction was excavating at 835 SE 35<sup>th</sup> St, Battle Ground, WA and did not have a valid locate request.

**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 beginning excavation. The complainant reported that on March 13, 2024, it observed US Construction installing concrete form stakes in the ground over NWN's underground natural gas service and main lines. NWN reported that the Company had not submitted a locate request to the One Call Center. NWN reported that it spoke with US Construction and provided education about the Dig Law requirements, but the Company did not acknowledge it would comply.

2. **Second Alleged Violation:**

The Complainant states that on April 30, 2024, US Construction was excavating at 17601 (lot 65) NW 7<sup>th</sup> Ave., Ridgefield, WA and did not have a valid locate request.

**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 beginning excavation. NWN reported that on April 30, 2024, it observed US Construction installing concrete form stakes in the ground over NWN's underground natural gas service and main lines. NWN reported that the Company had not submitted a locate request to the One Call Center. NWN reported that it spoke with US Construction and provided education about the Dig Law requirements, but the Company did not acknowledge it would comply.

3. **Third Alleged Violation:**

The Complainant states that on April 30, 2024, US Construction was excavating at 17539 (lot 64) NW 7<sup>th</sup> Ave., Ridgefield, WA and did not have a valid locate request.

**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 beginning excavation. NWN reported that on April 30, 2024, it observed US Construction installing concrete form stakes in the ground over NWN's underground natural gas service and main lines. NWN reported that the Company had not submitted a locate request to the One Call Center. NWN reported that it spoke with US Construction and provided education about the Dig Law requirements, but the Company did not acknowledge it would comply.

During the review, US Construction acknowledged that it had not been complying with the Dig Law requirements or education provided to them by NWN. The Company stated that after NWN filed the complaint, the Company made changes to its process and is now submitting requests for locates to the One Call Center before beginning excavations.

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.**  
This incidents could have been significantly more harmful to US Construction 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 and lack of knowledge of Washington state's dig law. Over the past 12 months, US Construction had not called in any requests to the One Call Center for locates until April 30, 2024. Since that date, US Construction has submitted 22 locate requests to the One Call Center.
3. **The likelihood of recurrence.**  
The likelihood of recurrence depends on US Construction's actions going forward and its willingness to notify the one-number locate service every time before beginning excavation.
4. **The Company's previous violations and penalties.**  
US Construction has no history of previous violations or penalties.

The Commission has considered these factors and agrees with the Safety Committee's findings of probable violations and Staff's penalty recommendations as follows:

- **First Violation:** \$1,000 penalty for one violation of RCW 19.122.030(2) that occurred on March 13, 2024.
- **Second Violation:** \$2,500 penalty for one violation of RCW 19.122.030(2) that occurred on April 30, 2024, at lot 64.
- **Third Violation:** \$2,500 penalty for one violation of RCW 19.122.030(2) that occurred on April 30, 2024, at lot 65.

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 \$1,200 and notify the Commission that you accept the offer to suspend an \$4,800 portion of the penalty amount subject to the following conditions:
  - US Construction 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
  - US Construction 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](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, P.O. Box 47250, Olympia, Washington 98504-7250.

If you wish to make your payment online, please use this link: [Make a Payment Now \(wa.gov\)](#).<sup>1</sup>

**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 August 9, 2024.

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

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

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**  
PENALTY ASSESSMENT D-240483 Investigation #8912

**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 \$1,200 toward the payment of the penalty. I also accept the Commission's offer to suspend, and ultimately waive, the remaining \$4,800 penalty amount subject to the following conditions:
- 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
  - The Company must submit documentation of that attendance to the Commission; and
  - 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.