

Service Date: December 30, 2024

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: D-240859
PENALTY AMOUNT: \$10,000
Investigation # 8976

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 Drew Excavating, Inc. (Drew Excavating or Company) violated Revised Code of Washington (RCW):

- 19.122.030(2) on one occasion by failing to provide notice to the one-number locate service not less than two business days before the scheduled excavation date.
- 19.122.040(2)(a) on two occasions, for not using reasonable care to avoid damaging underground facilities by failing to determine the precise location of underground facilities which have been marked.
- 19.122.050(1) on one occasion for failing to report damage to an underground facility operator or a one-number locator service as required.

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 cases that were filed by Northwest Natural Gas Company (NWN) against Drew Excavating:

- **In** Case 24-088, the Safety Committee determined Drew Excavating violated RCW 19.122.040(2)(a) for not using reasonable care to avoid damaging underground facilities by failing to determine the precise location of underground facilities which have been marked.
- **In** Case 24-089, the Safety Committee determined Drew Excavating violated RCW 19.122.040(2)(a) for not using reasonable care to avoid damaging underground facilities by failing to determine the precise location of underground facilities which have been marked

and RCW 19.122.050(1) for failing to report damage to an underground facility operator or a one-number locator service as required.

- **In Case 24-090**, the Safety Committee determined Drew Excavating violated RCW 19.122.030(2) for failing to provide notice to the one-number locate service not less than two business days before the scheduled excavation date.

The Safety Committee recommended that the Commission impose a \$10,000 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 \$10,000 penalty (Penalty Assessment) against you on the following grounds:

1. **Alleged Violation 1:**

The Complainant states that on August 16, 2024, at 5156 N 91st Ave, Camas, WA, Drew Excavating failed to provide notice to a one-number locate 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 locate service not less than two business days before the scheduled excavation date. The Complainant reported that on August 16, 2024, Drew Excavating was observed operating an excavator for site development work at 5156 N 91st Ave, Camas, WA, and did not have a valid locate ticket. The Complainant reported that it requested the Company stop work until it obtained valid locates. During the review, the Complainant presented photographs of a work vehicle with Drew Excavating identifying markings on it in front of 5156 N 91st Ave, Camas, WA. The Complainant also provided photographs of the job site demonstrating active excavation being performed near gas meters with no visible utility locate markings on the ground. During the review, the Company did not deny the allegations and acknowledged that due to significant growth within the Company over the past year, there have been failures and lack of training in its office. The Company stated that due to working with NWN on these incidents and accepting NWN's help, they are making progress toward correcting their failures.

Staff reviewed the One-Call ticket Center database and did not find a valid locate ticket for 5156 N 91st Ave, Camas, WA, for the relevant date...

2. **Alleged violation 2:**

The Complainant states that on July 15, 2024, at 1351 N Kalani Loop, Ridgefield, WA, Drew Excavating did not use reasonable care by failing to determine the precise location of underground facilities which have been marked.

Analysis:

The alleged violation concerns RCW 19.122.040(2) which states, in part, that an excavator shall use reasonable care to avoid damaging underground facilities. An excavator must: (a) determine the precise location of underground facilities which have been marked; (b) plan the excavation to avoid damage to or minimize interference with underground utilities; and (c) provide such support for underground facilities in and near the construction area, for protection of the facilities. The Complainant stated on the complaint form that on July 15, 2024, Drew Excavating damaged one of NWN's underground facilities by not potholing before starting the use of mechanized equipment within the tolerance zone. During the review, NWN presented photos of damage to an underground gas line, and an excavator is seen in the background. The Company did not deny the allegation.

Staff reviewed the documents and photos provided. The photos of 1351 N. Kalani Loop, Ridgefield, WA, show what appears to be excavator bucket teeth marks where the hole was dug at the damage site. The photos provided are consistent with the allegation that the gas line was not exposed by hand-digging or other safe excavation methods. Staff reviewed Drew Excavating's training history and identified that the Company did previously complete Dig Safe training on November 17, 2022.

3. Alleged violation 3:

The Complainant states that on September 24, 2024, at 908 S 29th Place, Ridgefield, WA, Drew Excavating did not use reasonable care by failing to determine the precise location of underground facilities which have been marked.

Analysis:

The alleged violation concerns RCW 19.122.040(2) which states, in part, that an excavator shall use reasonable care to avoid damaging underground facilities. An excavator must: (a) determine the precise location of underground facilities which have been marked; (b) plan the excavation to avoid damage to or minimize interference with underground utilities; and (c) provide such support for underground facilities in and near the construction area, for protection of the facilities. The Complainant stated on the complaint form that on September 24, 2024, it discovered that Drew Excavating had damaged one of NWN's underground facilities in June 2024. The Company reburied the line and did not report the damage to NWN. The Complainant reported that the damage occurred because Drew Excavating did not pothole and determine the precise location of the facility before it started to use mechanized equipment within the tolerance zone. During the review, NWN presented photos of damage to its underground gas line. Drew Excavating did not deny the allegation and did not provide any further explanation.

Staff reviewed the documents and photos provided. The photos of 908 S 29th Place, Ridgefield, WA, show scrapes and dents to a buried gas line. The photos provided are consistent with the allegation that the gas line was not exposed by hand-digging or other safe excavation methods. Staff reviewed Drew Excavating's training history and identified that the Company previously completed Dig Safe training on November 17, 2022.

4. **Alleged violation 4:**

The Complainant states that on September 24, 2024, at 908 S 29th Place, Ridgefield, WA, it discovered that Drew Excavating had in the course of excavation contacted and damaged an underground facility and did not notify the facility operator or a one-number locator service.

Analysis:

The alleged violation concerns RCW 19.122.050(1) which states, in part, that an excavator who, in the course of excavation, contacts or damages an underground facility shall notify the facility operator and a one-number locator service; No damaged underground facility may be buried until it is repaired or relocated. The Complainant documented on the complaint form that on September 24, 2024, it discovered that Drew Excavating had damaged one of NWN's underground facilities in June 2024. During the review, NWN explained that when it went to install a new gas service line at this location, it discovered the buried damaged line. NWN reported that after damaging the line, Drew Excavating reburied it and did not report the damage to NWN or to the One-Call Center. NWN presented photos of damage to its underground gas line. Drew Excavating did not deny the allegation and did not provide any further explanation.

Staff reviewed the documents and photos provided. The photos of 908 S 29th Place, Ridgefield, WA, show scrapes and dents to a buried gas line. The photos provided are consistent with the allegation that the gas line was damaged and reburied. Staff reviewed the Damage Information Reporting Tool (DIRT) data and did not find a report of damage to gas line for this location until it was discovered by NWN on September 24, 2024. Staff reviewed Drew Excavating's training history and identified that the Company previously completed Dig Safe training on November 17, 2022.

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 Drew Excavating workers, utility technicians, nearby homeowners, and the public and could have resulted in severe injury and/or loss of property.

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

The violations do not appear to be intentional, but rather due to negligence by Drew Excavating. Over the past 12 months, Drew Excavating has submitted 718 requests to the One-Call Center for locates and has previously completed Dig Safe training on November 17, 2022, following a previous Penalty Assessment. This demonstrates Drew Excavating's knowledge of requirements and its responsibility to comply with all elements of the 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-number locate service every time before beginning excavation and to fully comply with all elements of the Dig Law.

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

- **Warning Letter**

On March 5, 2020, the Commission mailed an Alleged Violation of Washington Dig Law letter to Drew Excavating. 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 Drew Excavating on July 19, 2019, that occurred because the Company failed to submit a request to locate underground utilities before excavating.

- **Penalty Assessment**

On September 29, 2022, the Commission issued Drew Excavating a Penalty Assessment of \$2,000 for two violations of RCW 19.122.055(1)(a) in docket DG-220680.

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

- First Violation: \$2,500 penalty for one violation of RCW 19.122.030(2) that occurred on August 16, 2024, at 5156 N 91st Ave, Camas, WA.
- Second Violation: \$2,500 penalty for one violation of RCW 19.122.040(2)(a) that occurred on July 15, 2024, at 1351 N Kalani Loop, Ridgefield, WA.
- Third Violation: \$2,500 penalty for one violation of RCW 19.122.040(2)(a) that occurred on September 24, 2024, at 908 S 29th Place, Ridgefield, WA.
- Fourth Violation: \$2,500 penalty for one violation of RCW 19.122.050(1) that occurred sometime around early June 2024, at 908 S 29th Place, Ridgefield, WA, and was discovered on September 24, 2024.

The total penalty amount is \$10,000 for the four violations with an offer to suspend a \$2,500 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 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 \$10,000 penalty amount due; or
- Pay \$7,500 and notify the Commission that you accept the offer to suspend a \$2,500 portion of the penalty amount subject to the following conditions:
 - Drew Excavating 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
 - Drew Excavating 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 30, 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-240859 Investigation # 8976

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 \$10,000 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 \$7,500 toward the payment of the penalty. I also accept the Commission's offer to suspend, and ultimately waive, the remaining \$2,500 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.