

Service Date: September 29, 2025

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: D-250686
PENALTY AMOUNT: \$2,000
Investigation # 9144

SERVICE VIA EMAIL

Chris Miller, Fred Miller, Kesti Miller
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YOU MUST RESPOND WITHIN 15 DAYS OF THIS NOTICE

The Washington Utilities and Transportation Commission (Commission) believes that Miller Brothers Landscaping Inc. (Miller Brothers or Company) violated Revised Code of Washington (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.

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 (Complainant) against Miller Brothers 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.

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 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. **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. **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.

4. **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.

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

1. **How serious or harmful the violation(s) is/are to the public.**

This incident could have been significantly more harmful to Miller Brothers workers, utility technicians, nearby homeowners, and the public, and it could have resulted in severe injury and/or loss of property.

2. **Whether the violation(s) is/are 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.

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

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

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(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 (**see attachment**) and;

Further violation of RCW 19.122 will result in progressive penalty assessment up to maximum allowable by law.

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 violation(s) did not occur, you may deny committing the violation(s) and contest the penalty through evidence presented at a hearing or in writing. Or, if there is a reason for the violation(s) 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 violation(s) 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 violation(s) 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 for 90 days, and then waive it, subject to the following conditions:
 - Company management and field crew responsible for excavation at the time of the incident, 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 training completion (Certificate) to the Commission. (See attached **NUCA Dig Safe Training Verification Record**). or
- Contest the occurrence of the violation(s); or
- Admit the violation(s) but request mitigation of the penalty amount.

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

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

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 September 29, 2025.

/s/Connor Thompson
CONNOR THOMPSON
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT D-250686 Investigation # 9144

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 violation(s) 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 violation(s) occurred and enclose \$400 toward the payment of the penalty. I also accept the Commission's offer to suspend for 90 days, and ultimately waive, the remaining \$1,600 penalty amount subject to the following conditions:
- Company management and field crew responsible for excavation at the time of the incident (**indicate names below**), 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 training completion (Certificate) to the Commission. (See attached **NUCA Dig Safe Training Verification Record**).
3. **Contest the violation(s).** I believe that the alleged violation(s) 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 violation(s), 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.