

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of a Penalty Assessment  
Against  
  
DREW LANDSCAPING, INC.  
  
in the amount of \$10,000

DOCKET D-240859  
  
ORDER 01  
  
DENYING MITIGATION

**BACKGROUND**

1 On December 12, 2024, the Washington State Dig Law Safety Committee (Committee) submitted a referral letter to the Washington Utilities and Transportation Commission (Commission) recommending the Commission issue Drew Excavating, Inc. (Drew Excavating) a Penalty Assessment of \$10,000 for violations of RCW 19.122. On December 30, 2024, the Commission issued a penalty against Drew Excavating in the amount of \$10,000 for four violations of RCW 19.122 as follows:

- First Violation: \$2,500 penalty for one violation of RCW 19.122.030(2) that occurred on August 16, 2024, for failing to provide notice to the one-number locate service not less than two business days before the scheduled excavation date.
- Second Violation: \$2,500 penalty for one violation of RCW 19.122.040(2)(a) that occurred on July 15, 2024, for not using reasonable care to avoid damaging underground facilities by failing to determine the precise location of underground facilities which have been marked.
- Third Violation: \$2,500 penalty for one violation of RCW 19.122.040(2)(a) that occurred on September 24, 2024, for not using reasonable care to avoid damaging underground facilities by failing to determine the precise location of underground facilities which have been marked.
- Fourth Violation: \$2,500 penalty for one violation of RCW 19.122.050(1) that occurred sometime around early June 2024, for failing to report damage to an underground facility operator or a one-number locator service as required.

2 On January 22, 2025, Drew Excavating filed an application for mitigation, admitting the violations and requesting mitigation because all the violations occurred during the same time frame, and because after the violations occurred, the Company terminated the employee who was making mistakes. Additionally, the Company explained that since that time it has been working with Northwest Natural (NWN) to improve its locate request process and has received office and field training regarding the Dig Law. The Company further explained that it is a small business and already owes NWN damage expenses, and that the penalty amount assessed will harm the Company, its employees, and their families.

3 On January 28, 2025, Commission staff (Staff) filed a response recommending the Commission deny the Company's request for mitigation. Staff explained that RCW 19.122 is clear in its requirements regarding the Dig Law and authorizes the Commission to assess a penalty up to \$5,000 for each violation. Staff also notes that Drew Excavating has been previously penalized by the Commission. On these grounds, Staff recommends that the request for mitigation should be denied. However, Staff does recommend offering the Company a deferral option to pay \$2,000 and have the remaining \$8,000 of the penalty amount suspended subject to the conditions that:

1. Drew Excavating pay the \$2,000 unsuspended portion of the penalty amount within 14 days of this Order;
2. Drew Excavating management and field crew responsible for excavation complete National Utility Contractors Association (NUCA) Dig Safe Training within 90 days of the date of this Order;
3. Drew Excavating submit documentation of completion of Dig Safe training; and
4. Drew Excavating not commit any additional violations of RCW 19.122 within 12 months of the date of this Order.

### **DISCUSSION AND DECISION**

4 RCW 19.122 is clear in its requirements regarding the Dig Law and authorizes the Commission to assess a penalty up to \$5,000 for each violation. Here, the Commission has assessed a reduced penalty of \$2,500 for each violation.

5 The Commission considers several factors when entertaining a request for mitigation, including whether the company introduces new information that may not have been considered in setting the assessed penalty amount, or explains other circumstances that

convince the Commission that a lesser penalty will be equally or more effective in ensuring the company's compliance.<sup>1</sup>

- 6 We agree with Staff that mitigation is not appropriate in the circumstances presented here. When companies fail to provide notice to the one-number locate service not less than two business days before the scheduled excavation date, do not use reasonable care to avoid damaging underground facilities by failing to determine the precise location of underground facilities which have been marked, and fail to report damage to an underground facility operator or a one-number locator service as required, it poses serious safety concerns and puts their employees, the public, and the facility operator's employees at risk. Of additional concern is the fact that this is not the first time the Company has been penalized. Finally, The Commission already provided a reduced penalty amount of \$2,500 for each of the four violations when it could have assessed a \$5,000 penalty for each violation. For these reasons, we find that the Commission appropriately penalized Drew Excavating for its violations and conclude that the Company's request for mitigation should be denied. However, we also agree with Staff's recommendation regarding a deferral option to allow the Company to pay \$2,000 and have the remaining \$8,000 of the penalty amount suspended with conditions.

### ORDER

#### THE COMMISSION ORDERS:

- 7 (1) Drew Excavating, Inc.'s request for mitigation is DENIED.
- 8 (2) Drew Excavating, Inc. must either pay the \$10,000 penalty or accept the deferral option described in paragraph 3, above, within 14 days of the effective date of this Order. Also see the form on the last page of this order titled Response to Order 01.
- 9 The Secretary has been delegated authority to enter this order on behalf of the Commissioners under WAC 480-07-904(1)(h).

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<sup>1</sup> Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission (January 7, 2013) at ¶19.

DATED at Lacey, Washington, and effective January 30, 2025.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

JEFF KILLIP  
Executive Director and Secretary

**NOTICE TO PARTIES: This is an order delegated to the Executive Secretary for decision. As authorized in WAC 480-07-904(3), you must file any request for Commission review of this order no later than 14 days after the date the decision is posted on the Commission's website.**

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RESPONSE TO ORDER 01  
D-240859 Investigation # 8976

**PLEASE NOTE: You must complete and sign this document and send it to the Commission within 14 days after you receive Order 01.**

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 occurred:  
[ ] 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 violation occurred and enclose \$2,000 toward the payment of the penalty. I also accept the Commission's offer to suspend, and ultimately waive, the remaining \$8,000 penalty amount subject to the following conditions:
- o Company management and field crew responsible for excavation must complete Dig Safe training provided through NUCA within 90 days of service of Order 01; and
  - o The Company must submit documentation of training completion 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 Order 01.

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 FOURTEEN (14) days** after you receive Order 01. 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, PO 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 14 days**, the Commission may refer this matter to the Office of the Attorney General for collection.

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

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

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.