

# WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: DG-160248  
PENALTY AMOUNT: \$4,000

Mueller Jackhammer, Inc.  
3628 E 32<sup>nd</sup> Ave.  
Spokane, WA 99223

The Washington Utilities and Transportation Commission (Commission) believes that you have violated Revised Code of Washington (RCW) 19.122.030(1)(a) by failing to request a dig ticket prior to performing an excavation. RCW 19.122.055(1)(a) states, in part, that any excavator who fails to notify a one-number locator service and causes damage to a hazardous liquid or gas facility is subject to a civil penalty of not more than ten thousand dollars for each violation.

Commission staff (Staff) conducted an investigation in which it reviewed damage reports submitted by Avista Corporation (Avista) and identified three natural gas damage events involving Mueller Jackhammer, Inc. (Mueller Jackhammer), where buried utilities were not located prior to excavation. Accordingly, the Commission hereby notifies you that it is assessing a penalty against you in the amount of \$4,000 on the following grounds:

### **(First Violation)**

On July 26, 2013, Mueller Jackhammer performed an excavation to install a water meter box at 3105 W Prairie Breeze Ave., Spokane, Washington. Prior to beginning excavation, Mueller Jackhammer failed to request a dig ticket from a one-number locator service to have the underground utilities located.

On August 6, 2013, Avista submitted a Damage Incident Reporting Tool (DIRT) report identifying Mueller Jackhammer as the party responsible for damaging the Utility's natural gas service line at 3105 W Prairie Breeze Ave., Spokane, Washington on July 26, 2013, without first obtaining a ticket number to have utilities located prior to excavation.

On October 9, 2013, the Commission mailed an Alleged Violation of Washington Dig Law letter to Mueller Jackhammer, informing the company of its obligation to have underground utilities located prior to excavation, as outlined in RCW 19.122.030. The letter emphasized the importance of becoming familiar with the law, and the possibility of penalties for each violation of the law.

**(Second Violation)**

On May 30, 2014, Mueller Jackhammer performed an excavation to install a driveway at 912 E 5<sup>th</sup> Ave., Spokane, Washington. Prior to beginning excavation, Mueller Jackhammer failed to request a dig ticket from a one-number locator service to have the underground utilities located.

On June 9, 2014, Avista submitted a DIRT report identifying Mueller Jackhammer as the party responsible for damaging the company's natural gas service line at 912 E 5<sup>th</sup> Ave., Spokane, Washington, on May 30, 2014, without first obtaining a ticket number to have utilities located prior to excavation.

**(Third Violation)**

On July 3, 2015, Mueller Jackhammer performed an excavation to repair a 4-inch sewer line at 10506 N Juanita Rd., Spokane, Washington. Prior to beginning excavation, Mueller Jackhammer failed to request a dig ticket from a one-number locator service to have the underground utilities located.

On August 5, 2015, Avista submitted a DIRT report identifying Mueller Jackhammer as the party responsible for damaging the company's natural gas service line at 10506 N Juanita Rd., Spokane, Washington, on July 3, 2015, without first obtaining a ticket number to have utilities located prior to excavation.

On October 9, 2015, the Commission mailed an Investigation of Alleged Violation of Washington Dig Law letter to Mueller Jackhammer, informing the company of its obligation to have underground utilities located prior to excavation, as outlined in RCW 19.122.030. The letter emphasized the importance of becoming familiar with the law, and the possibility of penalties for each violation of the law.

Based on the results of Staff's investigation, the Commission finds that Mueller Jackhammer violated RCW 19.122.030(1)(a) three times, by failing to request a dig ticket prior to performing an excavation, and the Commission assesses a \$1,000 penalty for the first and second violations and \$2,000 for a third violation. These facts, if not contested or if proved 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 violation and contest the penalty assessment through evidence presented at a hearing or in writing. The Commission will grant a request for hearing only if material issues of law or fact concerning the violation require consideration of evidence and resolution in a hearing. Any contest of the penalty assessment must include a written statement of the reasons supporting that contest. Failure to provide such a statement will result in denial of the contest.

If you admit the violation but believe there is a reason for the violation that should excuse you from the penalty, you may ask for mitigation (reduction) of this penalty through evidence presented at a hearing or in writing. The Commission will grant a request for hearing only if material issues of law or fact require consideration of evidence and resolution in a hearing. Any

request for mitigation must include a written statement of the reasons supporting that request. Failure to provide such a statement will result in denial of the request.

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 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 his or her decision.

**You must act within 15 days after receiving this notice** to do one of the following:

- Pay the amount due;
- Contest the occurrence of the violation; or
- Request mitigation to reduce the amount of the penalty.

Please indicate your selection on the enclosed form and send it to the Washington Utilities and Transportation Commission, Post Office Box 47250, Olympia, Washington 98504-7250, **within FIFTEEN (15) days** after you receive this notice.

**If you do not act within 15 days**, the Commission may refer this matter to the Office of the Attorney General for collection. The Commission may then sue you to collect the penalty.

DATED at Olympia, Washington, and effective March 30, 2016.



GREGORY J. KOPTA  
Director, Administrative Law Division

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION  
PENALTY ASSESSMENT DG-160248**

**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, am 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 and enclose \$4,000 in payment of the penalty.

2. **Contest the violation.** I believe that the alleged violation did not occur for the reasons I describe below:

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.

3. **Request mitigation.** I admit the violation, but I believe that the penalty should be reduced for the reasons set out below:

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 makes a materially false statement which he 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 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.”