

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: DG-240242

PENALTY AMOUNT: \$5,000

Investigation # 8861

EMAIL SERVICE

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YOU MUST RESPOND WITHIN 15 DAYS OF THIS NOTICE

The Washington Utilities and Transportation Commission (Commission) believes that Ryatt Construction LLC (Ryatt or Company) violated Revised Code of Washington (RCW) 19.122.055(1)(a) by failing to notify the one-number locate service and causing damage to an underground gas facility.

RCW 19.122.055(1)(a) states, in part, that excavators who fail to notify a one-number locator service and cause damage to an underground gas facility are subject to a civil penalty of not more than \$10,000 for each violation.

Commission staff (Staff) conducted an investigation that included reviewing damage reports, investigation reports, the One Call Center database, and communications with the Company. The documents reviewed identified a natural gas event that involved Ryatt damaging a natural gas facility while excavating without a valid locate ticket.

The Commission reviewed findings and recommendations made by Staff and hereby notifies you that it is assessing a \$5,000 penalty (Penalty Assessment) against you on the following grounds:

1. **Alleged Violation:**

On September 26, 2023, Ryatt was excavating at 4401 42nd Ave SW, Seattle, Washington. While excavating, Ryatt workers struck and damaged an underground Puget Sound Energy (PSE) natural gas facility. The Damage Information Reporting Tool (DIRT) report submitted by PSE on November 7, 2023, indicated that Ryatt was excavating without a valid request to locate underground utilities.

2. **Analysis:**

The alleged violation concerns RCW 19.122.055(1)(a), which states, in part, that an excavator must contact the one-number locate center before beginning excavation. The Gas

First Response (GFR) Report submitted by PSE states that on September 26, 2023, Ryatt was operating a backhoe to excavate a trench when it scraped a 6” natural gas main line. The report from ELM states that Ryatt had a locate ticket #23314283 but it expired on September 21, 2023. On September 26, 2023, the same date as the damage, the Company requested another locate ticket #23390750 but continued to excavate without waiting two business days.

Staff reviewed the One Call ticket center database and did not find a valid locate ticket for Ryatt Construction at this location for September 26, 2023. Staff sent emails on February 23, 2024, and March 26, 2024, to the Company seeking further information regarding the incident, but the Company did not respond.

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

1. **How serious or harmful the violation is to the public.**
This incident could have been significantly more harmful to Ryatt 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 is intentional.**
The violation appears to be due to negligence rather than a lack of knowledge of Washington State’s Dig Law. Over the past 12 months, Ryatt has submitted 272 requests to the One Call Center for locates. This demonstrates Ryatt’s knowledge of requirements and its responsibility to contact the one-number locate service before beginning excavation.
3. **Whether the company self-reported the violation.**
Ryatt did not self-report the violation. The Commission became aware of the violation when PSE filed a DIRT report.
4. **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.
5. **The Company’s previous violations and penalties.**
 - **Warning Letters**
 - On February 20, 2015, and October 17, 2017, the Commission mailed Alleged Violation of Washington Dig Law letters to Ryatt. 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 Ryatt that occurred because the Company failed to submit requests to locate underground utilities before excavating.

- **Penalty Assessments**

- On May 11, 2018, the Commission issued Ryatt a Penalty Assessment of \$3,500 for two violations of RCW 19.122.055(1)(a) – DG-180386.
- On November 9, 2018, the Commission issued Ryatt a Penalty Assessment of \$5,000 for one violation of RCW 19.122.055(1)(a) – DG-180829.
- On May 6, 2022, the Commission issued Ryatt a Penalty Assessment of \$1,000 for one violation of RCW 19.122.055(1)(a) – DG-220188.
- On May 30, 2023, the Commission issued Ryatt a Penalty Assessment of \$2,500 for one violation of RCW 19.122.055(1)(a) – DG-230377.

The Commission has considered these factors and determined that it should penalize Ryatt as follows:

- \$5,000 penalty for one violation of RCW 19.122.055(1)(a).

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 did not occur, you may deny committing the violation and contest the penalty through evidence presented at a hearing or in writing. Or, if there is a reason for the violation 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 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 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 \$5,000 penalty amount due; or
- Request a hearing to 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 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, PO Box 47250, Olympia, Washington 98504-7250.

If you wish to make your payment online, please use this link: [Make a Payment Now \(wa.gov\)](#).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 May 7, 2024.

/s/Michael Howard
MICHAEL HOWARD
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 DG-240242 Investigation #8861

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:
 Enclose \$5,000 in payment of the penalty.
 OR Attest that I have paid the penalty in full through the Commission's payment portal.
2. **Contest the violation.** I believe that the alleged violation 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.
3. **Request mitigation.** I admit the violation, 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.