

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: DG-240395

PENALTY AMOUNT: \$1,000

Investigation # 8883

EMAIL SERVICE

Clint Myers
Northwest Cascade, Inc.
PO Box 73399
Puyallup, WA 98373-0399
ClintMyers@nwcascade.com

UBI: 278-049-149

Phone: (253) 405-6891

YOU MUST RESPOND WITHIN 15 DAYS OF THIS NOTICE

The Washington Utilities and Transportation Commission (Commission) believes that Northwest Cascade, Inc. (Northwest Cascade 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 Northwest Cascade 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 \$1,000 penalty (Penalty Assessment) against you on the following grounds:

1. **Alleged Violation:**

On November 14, 2023, Northwest Cascade was excavating at 15116 Portland Avenue Southwest, Lakewood, Washington. While excavating, Northwest Cascade workers struck and damaged an underground Puget Sound Energy (PSE) natural gas facility. The Damage Information Reporting Tool (DIRT) report submitted by PSE on December 26, 2023, indicated that Northwest Cascade 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.

According to the Gas First Response Report (GFR) provided by PSE on November 14, 2023, Northwest Cascade was digging to install a sewer at 15116 Portland Ave SW, Lakewood. The Company uncovered a 1 1/4-inch gas line they thought was no longer in use and used a hacksaw to confirm the gas was turned off, but it was not. The ELM report confirmed the damage to the 1 1/4-inch gas line and reported the damage was outside the scope of the area as indicated on the locate ticket.

Staff communicated with Northwest Cascade via email. On April 4, 2024, the Company stated that PSE was relying on the virtual white lining or the “locate polygon” on the ticket and not the actual area painted in white by their staff. The Company stated it was their understanding of the RCW that the area must be painted in white, and the virtual white lining that is shown as the locate polygon on the locate ticket does not supersede the actual white lines painted in the field. In another email on April 30, 2024, the Company provided a picture identifying the location of the damage. The location showed that the damage was in a lot behind the residence and appeared to have a different address than 15116 Portland Ave SW, Lakewood, WA. Further, in another email on May 16, 2024, the Company stated that there was low-income housing being built on the lots behind the residence, and they believed that there was not an address associated with the undeveloped space. In this same email, the Company referred to another locate ticket that was called in for Boat Street SW (ticket 23494734), which may have covered the area of damage. However, it was requested on December 20, 2023, which was after the damage had occurred. Staff requested the Company submit photos or any documentation of the area it claimed to have included in the white lining, but the Company was unable to do so.

Staff reviewed three tickets found in the One Call Ticket Center database submitted by Northwest Cascade for this location. The first ticket was requested on October 23, 2023 (ticket #23428404). The locate ticket described the location of work as the “area marked in white locate area to include all row and easements entire side driveway at address and on road in *front* of address.” (emphasis added). The second locate is an emergency request that was called-in on November 14, 2023 (ticket #23457475). This ticket described the location of work as the “area marked in a lot *behind* address off 88th Ave CT SW to include all row and easements...” (emphasis added). The second locate was requested after the damage had occurred. Although the locate request shows the address of 15116 Portland Ave SW, Lakewood, WA, the map identifies a different address to be located, and the Company was unaware the lot had individual addresses. The third was ticket #23494734 which may have covered the area where the damage occurred, but it was also called in after the damage had occurred. Staff did not find a valid locate that covered the area where the damage occurred.

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 Northwest Cascade 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, Northwest Cascade has submitted 131 requests to the One Call Center for locates. This demonstrates Northwest Cascade'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.**

Northwest Cascade 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 Warning Letters.**

On January 28, 2015, and August 22, 2017, the Commission mailed Alleged Violation of Washington Dig Law letters to Northwest Cascade. 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 damages caused by Northwest Cascade on November 1, 2014, and June 19, 2017, respectively, that occurred because the Company failed to submit requests to locate underground utilities before excavating.

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

- \$1,000 penalty for one violation of RCW 19.122.055(1)(a) with an offer to suspend an \$800 portion of the penalty for one year, and then waive it, subject to the conditions that:
 - 1) Northwest Cascade supervisors 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) Northwest Cascade 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 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 \$1,000 penalty amount due; or
- Pay \$200 and notify the Commission that you accept the offer to suspend an \$800 portion of the penalty amount subject to the following conditions:
 - Northwest Cascade 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
 - Northwest Cascade 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 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 July 3, 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
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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 occurred:
[] Enclose \$1,000 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 \$200 toward the payment of the penalty. I also accept the Commission's offer to suspend, and ultimately waive, the remaining \$800 penalty amount subject to the following conditions:
- o Northwest Cascade 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
 - o The Company must submit documentation of that attendance to the Commission; and
 - o Northwest Cascade must not commit any further violations of RCW 19.122 within twelve (12) months of the date of this Notice.
- [] 3. **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.
- [] 4. **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.