

Service Date: September 10, 2024

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: DG-240671
PENALTY AMOUNT: \$2,000
Investigation # 8935

EMAIL SERVICE

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YOU MUST RESPOND WITHIN 15 DAYS OF THIS NOTICE

The Washington Utilities and Transportation Commission (Commission) believes that New Image LLC (New Image 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 New Image 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. **First Alleged Violation:**

On April 15, 2024, New Image was excavating at 4720 45th Ave SW, Seattle, Washington. While excavating, New Image workers struck and damaged an underground Puget Sound Energy (PSE) natural gas facility. The Damage Information Reporting Tool (DIRT) report submitted by PSE on May 27, 2024, indicated that New Image was excavating without a valid request to locate underground utilities.

First Violation 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. On

April 15, 2024, PSE responded to an after-hours gas leak. The Gas First Response (GFR) report provided by PSE states that at the time of its response to the leak, it found construction equipment with a different construction company logo on it. It did not find a homeowner or any construction personnel. The ELM report states that the company or person responsible for the damage was unknown. On August 6, 2024, Staff emailed PSE seeking further clarification as to how it determined New Image was the Excavator that caused the damage. PSE explained that the next day, April 16, 2024, there was additional damage at the same location and the main contractor identified was New Image. PSE reported that New Image refused to provide the name of the contractor who exposed the gas service. PSE explained that it filed its claim against New Image because, as the general contractor, it is ultimately responsible for the unsafe conditions.

2. **Second Alleged Violation:**

On April 16, 2024, New Image was excavating at 4712 45th Ave SW, Seattle, Washington. While excavating, New Image workers struck and damaged an underground Puget Sound Energy (PSE) natural gas facility. The Damage Information Reporting Tool (DIRT) report submitted by PSE on May 27, 2024, indicated that New Image was excavating without a valid request to locate underground utilities.

Second Violation 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. On April 16, 2024, PSE responded to an odor investigation, which was at the same location as the incident it responded to on April 15, 2024. The GFR from PSE explains that when it arrived on site, it found a 5/8" gas service line broken and blowing. The PSE investigation identified New Image as the builder/contractor responsible for building the four new homes. The report states that all four 6'-10' service lines had been exposed and were partially above grade. The GFR and the ELM report state there was no valid locate ticket for New Image at this location.

Staff reviewed the One Call Center ticket database and did not find a locate request for New Image at any address on 45th Ave SW, Seattle, Washington. Staff sent emails to New Image on August 7, 2024, and August 28, 2024, and did not receive a response. Staff attempted telephone contact and left a voicemail for New Image on August 28, 2024, and it has not responded.

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

1. **How serious or harmful the violations are to the public.**

These incidents could have been significantly more harmful to New Image workers, utility technicians, nearby homeowners, and the public, and could have resulted in severe injury and/or loss of property.

2. **Whether the violations are intentional.**

The violations appear to be due to negligence rather than a lack of knowledge of Washington State's Dig Law. Over the past 12 months, New Image has submitted 9

requests to the One Call Center for locates. This demonstrates New Image's knowledge of requirements and its responsibility to contact the one-number locate service before beginning excavation.

3. **Whether the company self-reported the violations.**
New Image did not self-report the violations. The Commission became aware of the violations 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 Letter.**
On September 27, 2023, the Commission mailed an Alleged Violation of Washington Dig Law letter to New Image. The letter 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 letter after receiving a report of damage caused by New Image on June 19, 2023, that occurred because the Company failed to submit a request to locate underground utilities before excavating.

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

First Violation: \$1,000 penalty for one violation of RCW 19.122.055(1)(a) that occurred on April 15, 2024.

Second Violation: \$1,000 penalty for one violation of RCW 19.122.055(1)(a) that occurred on April 16, 2024.

The total penalty amount is \$2,000 for the two violations of RCW 19.122.055(1)(a) with an offer to suspend a \$1,800 portion of the penalty for one year, and then waive it, subject to the conditions that:

- 1) Company 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) The Company 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 violations did not occur, you may deny committing the violations and contest the penalty through evidence presented at a hearing or in writing. Or, if there is a reason for the violations 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 violations 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 violations 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 \$200 and notify the Commission that you accept the offer to suspend an \$1,800 portion of the penalty amount subject to the following conditions:
 - New Image 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
 - New Image 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 violations; 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 September 10, 2024.

/s/ James E. Brown II
JAMES E. BROWN II
Acting 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 violations occurred:
[] 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 violations occurred and enclose \$200 toward the payment of the penalty. I also accept the Commission's offer to suspend, and ultimately waive, the remaining \$1,800 penalty amount subject to the following conditions:
- o Company 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 The Company must not commit any further violations of RCW 19.122 within twelve (12) months of the date of this Notice.
- [] 3. **Contest the violations.** I believe that the alleged violations 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 violations, 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.