

Service Date: October 11, 2024

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

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

PENALTY ASSESSMENT: DG-240687

PENALTY AMOUNT: \$5,000

Investigation # 8933

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**YOU MUST RESPOND WITHIN 15 DAYS OF THIS NOTICE**

The Washington Utilities and Transportation Commission (Commission) believes that RP Development (RP Development 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 RP Development 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 1:**

On April 15, 2024, RP Development was excavating at West 29<sup>th</sup> Court and South Roosevelt Street, Kennewick, Washington. While excavating, RP Development workers struck and damaged an underground Cascade Natural Gas Corporation (CNGC) natural gas facility. The Damage Information Reporting Tool (DIRT) report submitted by CNGC on

May 14, 2024, indicated that RP Development was excavating without a valid request to locate underground utilities.

**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. Staff communicated with CNGC, and in an email on July 24, 2024, CNGC stated that RP Development was not working as a subcontractor at the time of the damage, and it was not treble charged. Also, CNGC claimed there was some confusion about when locates were required during site development and the misunderstanding had been cleared up with RP Development's management. CNGC provided the CNG 293 Leak Investigation Record (CNG 293) and photographs of the damage to the gas service line. The CNG 293 noted that a 2" gas main line was damaged on April 15, 2024, at West 29<sup>th</sup> Court and South Roosevelt Street, Kennewick, Washington, while digging was occurring for an irrigation box install. The CNG 293 also stated the 2" gas line was repaired, and the contractor did not have locates. The pictures provided by CNGC appeared to show the damaged gas line. In an email on September 11, 2024, CNGC stated that RP Development called and reported both damages, and its employees, Dustin Hersch and Jordan Angeles, were onsite when CNGC arrived. CNGC explained that when it arrived on the scene, RP Development employees provided billing information for the Company, and RP Development has paid one of the bills.

Staff communicated with RP Development, who initially denied damaging the gas line in an email on August 21, 2024. RP Development stated that another subcontractor, Sierra Electric, caused the damage. However, Staff communicated with RP Development via email on September 18, 2024, and provided the names of the RP Development employees who were contacted in the field by CNGC. When Staff provided the employees' names, RP Development confirmed one of them was a former employee, and the other was a current employee. RP Development stated they received the billing from CNGC and sent it to Sierra Electric because Sierra Electric hit a gas line around the same time. RP Development claimed it did not know it had hit and damaged a gas line. Staff responded to RP Development's email on September 18, 2024, requesting additional information; however, there was no response.

Staff emailed Sierra Electric on September 19, 2024, to determine if it was excavating in the area where the damage occurred, but there was no response. Staff reviewed the One Call Center database for Sierra Electric and only found one ticket called in on April 23, 2024 (#24158983), which was after the damage had occurred. In an email from CNGC on September 11, 2024, CNGC stated that Sierra Electric was on site, but they were not working in the area where the damage occurred.

Staff reviewed the One Call Center database and found three locate requests from RP Development for the area under development, which were called in on November 2, 2023 (#23442850), January 24, 2024 (#24024065), and April 8, 2024 (#24131809). However, none of these locate requests cover the area where the damage to the gas line occurred.

**2. Alleged Violation 2:**

On April 15, 2024, RP Development was excavating at W 28<sup>th</sup> Avenue and Osborne, Kennewick, Washington. While excavating, RP Development workers struck and damaged an underground CNGC natural gas facility. The DIRT report submitted by CNGC on May 14, 2024, indicated that RP Development was excavating without a valid request to locate underground utilities.

**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. Staff communicated with CNGC, and in an email on July 24, 2024, CNGC stated that RP Development was not working as a subcontractor at the time of the damage, and it was not treble charged. Also, CNGC claimed there was some confusion about when locates were required during site development, and the misunderstanding had been cleared up with RP Development's management. CNGC provided the CNG 293 Leak Investigation Record (CNG 293) and photographs of the damage to the gas service line. The CNG 293 noted that RP Development damaged a 1" gas line on April 15, 2024, at W 28th Avenue and Osborne Street, Kennewick, Washington. The CNG 293 also stated the 1" gas line was repaired. The pictures provided by CNGC appeared to show the damaged gas line. In an email on September 11, 2024, CNGC stated that RP Development called and reported both damages, and its employees, Dustin Hersch and Nick Fortin, were onsite when CNGC arrived. When CNGC arrived on the scene, the RP Development employees provided billing information for the Company, and RP Development has paid one of the bills.

Staff communicated with RP Development, who initially denied damaging the gas line in an email on August 21, 2024. RP Development stated that another subcontractor, Sierra Electric, caused the damage. However, Staff communicated with the Company via email on September 18, 2024, and provided the names of the RP Development employees contacted in the field by CNGC. When Staff provided the employees' names, RP Development confirmed one was a former employee, and the other was a current employee. RP Development stated they received the billing from CNGC and sent it to Sierra Electric because Sierra Electric hit a gas line around the same time. RP Development claimed it did not know the Company had hit and damaged a gas line. Staff responded to RP Development's email on September 18, 2024, requesting additional information; however, there was no response.

Staff emailed Sierra Electric on September 19, 2024, to determine if it was excavating in the area where the damage occurred, but there was no response. However, in reviewing the One Call Center database for Sierra Electric there was only one ticket called in on April 23, 2024 (#24158983), which was after the damage had occurred.

Staff reviewed the One Call Center database and found three locate requests from RP Development for the area under development, which were called in on November 2, 2023 (#23442850), January 24, 2024 (#24024065), and April 8, 2024 (#24131809). However, none of these locate requests cover the area where the damage to the gas line occurred.

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 RP Development workers, utility technicians, nearby homeowners, and the public, and the incidents 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, RP Development has submitted eight requests to the One Call Center for locates. This demonstrates RP Development'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.**  
RP Development did not self-report the violations. The Commission became aware of the violations when CNGC filed DIRT reports.
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 Letter**  
On October 29, 2019, the Commission mailed an Alleged Violation of Washington Dig Law letter to RP Development. 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 RP Development on May 16, 2019, that occurred because the Company failed to submit a request to locate underground utilities before excavating.
  - **Penalty Assessments**  
On April 29, 2021, the Commission issued RP Development a Penalty Assessment of \$1,000 for one violation of RCW 19.122.055(1)(a) in Docket DG-210203.

The Commission has considered these factors and determined that it should penalize RP Development, Inc. as follows:

- **First Violation:** \$2,500 penalty for one violation of RCW 19.122.055(1)(a) that occurred on April 15, 2024, at West 29<sup>th</sup> Court, Kennewick, Washington, when the company damaged a 2" gas main line.
- **Second Violation:** \$2,500 penalty for one violation of RCW 19.155(1)(a) that occurred on April 15, 2024, at West 28th Avenue and Osborne Street, Kennewick, Washington, when it damaged a 1" gas line.

The total penalty amount is \$5,000 with an offer to suspend a \$4,000 portion of the penalty for one year, and then waive it, subject to the conditions that:

- 1) RP Development 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) RP Development 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 \$5,000 penalty amount due; or
- Pay \$1,000 and notify the Commission that you accept the offer to suspend a \$4,000 portion of the penalty amount subject to the following conditions:
  - RP Development 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
  - RP Development 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](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 15 days**, the Commission may refer this matter to the Office of the Attorney General for collection.

DATED at Lacey, Washington, and effective October 11, 2024.

*/s/ James E. Brown II*  
JAMES E. BROWN II  
Acting Director, Administrative Law Division

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

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**  
PENALTY ASSESSMENT DG-240687 Investigation # 8933

**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 \$5,000 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 \$1,000 toward the payment of the penalty. I also accept the Commission's offer to suspend, and ultimately waive, the remaining \$4,000 penalty amount subject to the following conditions:
- o RP Development 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 RP Development 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.