

Service Date: September 13, 2023

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

NOTICE OF PENALTIES INCURRED AND DUE
FOR VIOLATIONS OF LAWS AND RULESReceived
Records Management
Sep 20, 2023

PENALTY ASSESSMENT: DG-230687

PENALTY AMOUNT: \$1,000

Investigation # 8726

EMAIL SERVICE

Erik Wickman
Wickman Construction, LLC
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Kirkland, WA 98033
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Phone: (206) 786-6359**YOU MUST RESPOND WITHIN 15 DAYS OF THIS NOTICE**

The Washington Utilities and Transportation Commission (Commission) believes that Wickman Construction, LLC (Wickman Construction or Company) violated Revised Code of Washington (RCW) 19.122.055(1)(a) by failing to notify the one-number locate service and caused 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, a review of the One Call Center database, and communications with the Company. The documents reviewed identified a natural gas event that involved Wickman Construction damaging a natural gas facility while excavating without a valid locate ticket.

The Commission reviewed findings and recommendations made by Commission 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 April 11, 2023, Wickman Construction was excavating at 11605 NE 155th St., Kirkland, Washington. While excavating, Wickman Construction 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 21, 2023, indicated that Wickman Construction 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 not less than two business days before beginning excavation. On April 11, 2023, Wickman Construction was excavating for concrete work when it damaged a PSE natural gas line. The Gas First Response report from PSE reports that Wickman Construction was digging on an expired locate ticket. The report from ELM states there were locate marks on the ground, but not where the excavation occurred. ELM summarized it believed the gas service line was installed after the ticket expired and would have been marked if Wickman Construction had called for a refresh on its expired ticket. Staff received an email response from Wickman Construction stating it had called for locates previously and that the gas line it hit was too shallow. Staff reviewed the One Call Center database and found Wickman Construction had a ticket #22328801 for this location but was only valid in 2022. Staff found another ticket for Wickman Construction at this location #23132021, but it was called in on the day the damage occurred. Wickman did not have a valid locate ticket on the day it was excavating and caused the damage.

7-25-22

4-11-23

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.**

These incidents could have been significantly more harmful to Company workers, utility technicians, nearby homeowners, and the public, and 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, Wickman Construction has submitted 143 requests to the One Call Center for locates. This demonstrates the Company's knowledge of its requirements and responsibility to contact the one-number locate service before beginning excavation.

3. **Whether the company self-reported the violation.**

Wickman Construction did not self-report the violation. The Commission became aware of the violation when PSE filed a DIRT report.

4. **The likelihood of recurrence.**

Wickman Construction's 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.**

On March 21, 2019 and March 10, 2020, the Commission mailed Alleged Violation of Washington Dig Law letters to Wickman Construction. 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 a report of damage caused by Wickman Construction on November 12, 2018, and September 23, 2019, and found the Company failed to submit requests to locate underground utilities before excavating.

The Commission has considered these factors and determined that it should penalize Wickman Construction 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) 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 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:
 - Wickman Construction management and the 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**

- Wickman Construction 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 13, 2023.

/s/Michael Howard
MICHAEL HOWARD
Acting Director, Administrative Law Division

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

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: 9-20-23 [Month/Day/Year], at Kirkland, WA [City, State]

Wickman Construction, LLC
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.

To Whom it May Concern,

Wickman Construction, LLC has a great track record for keeping our locate tickets updated. We would hope that we could get a reduced fine due to this. We have paid for all the damages. We responded to the incident immediately, to help reduce any loss. We had initially excavated all the trenches for these utilities and were performing final grade work when the incident occurred. Please understand that since 2006 we have only had 2 other occurrences, which were due to incorrect marks and that in no way to we want to have, or to be involved in, any such situations.

Thank you for understanding.