

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: DG-220163

PENALTY AMOUNT: \$1,000

Investigation #8493

UBI: 600-184-764

SERVICE VIA EMAIL

Eller Corporation  
7902 North Starr Rd.  
Newman Lake, WA 99025  
[michael@ellercorporation.com](mailto:michael@ellercorporation.com)

YOU MUST RESPOND WITHIN 15 DAYS OF THIS NOTICE – see page 4

The Washington Utilities and Transportation Commission (Commission) believes that Eller Corporation (Eller or Company) has violated the Revised Code of Washington (RCW) 19.122.055(1)(a) by failing to contact the One-Call locate center two business days before beginning excavation. 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.

The Commission reviewed findings and recommendations made by Commission staff (Staff) and hereby notifies you that it is assessing a \$1,000 penalty (Penalty Assessment) against you on the following grounds:

On January 18, 2022, Eller was excavating at East Rich Ave., Spokane, Washington. While excavating, Eller struck and damaged an underground natural gas facility operated by Avista Corporation d/b/a Avista Utilities (Avista). The Damage Information Reporting Tool report submitted by Avista on February 8, 2022, indicated that the Company was excavating without a valid locate ticket.

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 Eller damaging a natural gas facility while excavating without a valid locate ticket. Previously, Eller was issued a \$3,000 penalty assessment on October 7, 2019, for two violations that occurred on April 4, 2019.

Staff recommends the Commission assess a \$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 not commit any further violations of RCW 19.122 within 12 months of the

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date of this Penalty Assessment; and (3) the Company timely pay the \$200 portion of the penalty that is not suspended.

The Commission agrees with Staff's recommendation and assesses a \$1,000 penalty with an offer to suspend an \$800 portion of the penalty subject to the conditions described above.

These facts, if not contested or if proved 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 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 of the penalty amount and notify the Commission that you accept the offer to suspend an \$800 portion of the penalty amount subject to the following conditions:
  - Eller 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 within 5 days of attending training;** and
  - Eller 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 [records@utc.wa.gov](mailto:records@utc.wa.gov) **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 do not act within 15 days**, the Commission may refer this matter to the Office of the Attorney General for collection. The Commission may then sue you to collect the penalty.

DATED at Lacey, Washington, and effective May 6, 2022.

*/s/Michael Howard*  
*on behalf of*  
RAYNE PEARSON  
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION  
PENALTY ASSESSMENT DG-220163 Investigation #8493

**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 and enclose \$1,000 in payment of the penalty.
2. **Accept the Conditions.** I admit that the violation occurred. I enclose \$200 in partial payment of the penalty and I accept the Commission's offer to suspend and ultimately waive the \$800 portion of the penalty amount subject to the following conditions:
- o Eller supervisors and applicable field staff must attend dig safe training provided through NUCA within 90 days of the date of this Penalty Assessment; and
  - o **Eller must submit documentation of that attendance to the Commission within 5 days of attending the training;** and
  - o Eller must not incur any additional violations of RCW 19.122 within 12 months of the date of this Penalty Assessment.

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 provided 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 provided 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: 6/10/2022 [Month/Day/Year], at Newman Lube, WA [City, State]

Mark Fielding (Eller Corporation)  
Name of Respondent (Company) – please print

Mark Fielding  
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 makes a materially false statement which he 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 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.”