

Service Date: July 17, 2024

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: D-240384
PENALTY AMOUNT: \$1,000
Investigation # 8902

SERVICE VIA EMAIL

Tho Luong
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YOU MUST RESPOND WITHIN 15 DAYS OF THIS NOTICE

The Washington Utilities and Transportation Commission (Commission) believes that Luong's Landscaping Inc. (Luong's or Company) violated Revised Code of Washington (RCW) 19.122.030(2) by failing to provide notice to a one-number locator service not less than two business days before beginning excavation.

RCW 19.122.070(1) states, in part, that violations of any provision of the chapter are subject to a civil penalty of not more than \$1,000 for an initial violation and not more than \$5,000 for each subsequent violation within a three-year period.

On May 16, 2024, the Safety Committee heard case 24-024 filed by Northwest Natural Gas (NWN or Complainant) against Luong's and determined Luong's violated RCW 19.122.030(2) by failing to provide notice to a one-number locator service not less than two business days before beginning excavation. The Safety Committee recommended that the Commission impose a \$1,000 penalty.

Commission staff (Staff) reviewed the documents, reports, and communications with the Safety Committee and agreed with the Safety Committee's findings and recommendations.

The Commission hereby notifies you that it is assessing a \$1,000 penalty (Penalty Assessment) against you on the following grounds:

1. **Alleged Violation(s):**

The Complainant states that on April 12, 2024, Luong's was excavating at 3170 W 2nd St., Camas, Washington, and did not provide notice to the one-number locator service before beginning excavation.

2. **Analysis:**

The alleged violation concerns RCW 19.122.030(2) which states, in part, that an excavator must provide notice to the one-number locator service not less than two business days before beginning excavation. On April 12, 2024, the Complainant reported that it observed Luong's operating a backhoe and mini skid steer directly over the Complainant's underground natural gas facilities. The Complainant reported that Luong's did not provide notice to the One Call Center, and the Company continued to excavate on the property without having any locate markings. During the review process, the Complainant reported that it had previously communicated with Luong's regarding the requirements of the Dig Law, but the Company continued to excavate without calling for locates. The Complainant then filed a Complaint with the Safety Committee. During the peer review, Luong's expressed frustration regarding language barriers and reported that it had done some Dig Safe training.

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 Luong's 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, Luong's has submitted 45 requests to the One Call Center for locates. This demonstrates Luong'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.**

Luong's did not self-report the violation. The Commission became aware of the violation after the Complainant filed a complaint with the Safety Committee.
4. **The likelihood of recurrence.**

The likelihood of recurrence depends on Luong's actions going forward, and its willingness to notify the one-number locate service every time before beginning excavation. Of note, forty-three out of the forty-five locate requests made by Luong's were submitted beginning January 2024. This indicates that the Complainant's persistent actions to intervene and prevent damage to its underground facilities has influenced and changed Luong's behavior.

The Commission has considered these factors and agrees with the Safety Committee's findings of probable violation and penalty recommendation, as follows:

- \$1,000 penalty for one violation of RCW 19.122.030(2) 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 **in-person** 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:
 - Luong's management and field crew responsible for excavation must complete NUCA Dig Safe Training in person (<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
 - Luong's 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, P.O. 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 17, 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 and:
- 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:
- Company management and field crew responsible for excavation must attend Dig Safe training provided through NUCA in person within 90 days of service of this Penalty Assessment; and
 - The Company must submit documentation of that attendance to the Commission; and
 - 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 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.