



STATE OF WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250

(360) 664-1160 • [www.utc.wa.gov](http://www.utc.wa.gov)

January 28, 2016

Steven V. King, Executive Director and Secretary  
Utilities and Transportation Commission  
1300 S. Evergreen Park Dr. SW  
P.O. Box 47250  
Olympia, WA 98504-7250

Dear Mr. King:

RE: ***Washington Utilities and Transportation Commission v. A and H Landscaping.***  
**Commission Staff's Response to Application for Mitigation of Penalties**  
**Docket DG-152252**

On December 14, 2015, the Utilities and Transportation Commission (commission) issued a \$1,000 Penalty Assessment in Docket DG-152252, against Armando Huizar, d/b/a A and H Landscaping (A and H Landscaping) for one violation of RCW 19.122.030(1)(a), for failing to request a dig ticket prior to performing an excavation on one occasion. RCW 19.122.055(1)(a) states, in part, that any excavator who fails to notify a one-number locator service and causes damage to a hazardous liquid or gas facility is subject to a civil penalty of not more than ten thousand dollars for each violation.

On December 29, 2015, A and H Landscaping wrote the commission requesting mitigation of the penalty. In its request, A and H Landscaping stated the violation should be mitigated for the following reasons:

1. Our first accident in many year of business.
2. Slow season (winter) not getting much work.
3. Many bills and need to keep employees busy.

**Violation:** On April 27, 2015, A and H Landscaping performed an excavation with a track-hoe when installing fencing at 6636 Saddlebred Loop, Pasco, Washington. Prior to beginning excavation, A and H Landscaping failed to request a dig ticket from a one-number locator service to have the underground utilities located.

Commission staff supports mitigation of the penalty from \$1,000 to \$500 based on consideration of the following factors:

1. **How serious or harmful the violation is to the public.** The violations are serious and potentially harmful to the public. Companies that dig without first obtaining an underground utility locate are putting their employees, the public and the facility operator's employees at risk. The damage incident could have resulted in fire or an explosion.
2. **Whether the violation is intentional.** Considerations include:
  - Whether the Company ignored Staff's previous technical assistance; and
  - Whether there is clear evidence through documentation or other means that show the Company knew of and failed to request underground utility locates.

In response to the damage incident, the commission mailed A and H Landscaping a technical assistance letter with important information about Washington's dig law. The letter emphasized becoming familiar with the law, the importance of following it closely, and the possibility of penalties being assessed. In addition, A and H Landscaping has received technical assistance through the investigation and penalty assessment process.

3. **Whether the Company self-reported the violation.** A and H Landscaping did not self-report the violation.
4. **Whether the Company was cooperative and responsive.** Staff spoke to the owner of A and H Landscaping who was cooperative and responsive.
5. **Whether the Company promptly corrected the violations and remedied the impacts.** The owner of A and H Landscaping told staff that moving forward locates will be requested.
6. **The number of violations.** There is one violation.
7. **The number of customers affected.** Fifteen (15) customers were affected and two homes were evacuated because of the damaged natural gas service.
8. **The likelihood of recurrence.** As a result of technical assistance provided by the commission, staff believes the likelihood of recurrence is low. As of the last damage incident, the company has placed 26 underground utility locate requests.
9. **The Company's past performance regarding compliance, violations, and penalties.** The company has no previous history with the commission.
10. **The Company's existing compliance program.** The commission is not aware of a compliance program in place, however, the company owner told staff that their policy for calling for locates had been changed.

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11. **The size of the Company.** According to the Department of Labor and Industries database, A and H Landscaping reportedly employees between 4 - 6 workers, and has no safety violations.

If you have any questions regarding this recommendation, please contact Scott Anderson at (360) 664-1297, or [sanderso@utc.wa.gov](mailto:sanderso@utc.wa.gov).

Sincerely,



Alan E. Rathbun  
Pipeline Safety Director