

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: D-210067
PENALTY AMOUNT: \$3,000
Investigation # 8334

SERVICE VIA EMAIL

Kyle Mathison Orchards
4597 Stemilt Hill Rd.
Wenatchee, WA 98801
Kyle.mathison@stemilt.com
Ben.Alworth@stemilt.com

UBI: 601-223-078
Phone: (509)662-3613

The Washington Utilities and Transportation Commission (Commission) believes that Kyle Mathison Orchards (KMO or Company) has violated Revised Code of Washington (RCW) 19.122.030(2) by failing to notify the one-number locator service prior to 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.

The Commission reviewed findings and recommendations made by the Washington State Dig Law Safety Committee (Safety Committee) and hereby notifies you that it is assessing a penalty of \$3,000 against you on the following grounds:

On January 26, 2021, the Safety Committee heard case 19-091 against KMO and determined the Company violated RCW 19.122.030(2) by failing to provide notice to a one-number locator service not less than two business days before the scheduled date for commencement of excavation on three occasions. The Safety Committee recommended that the Commission impose an \$11,000 penalty. The Safety Committee further recommended the Commission suspend, and ultimately waive, \$5,000 of the penalty subject to the condition that KMO incurs no additional violations of RCW 19.122 within 12 months.

Commission staff (Staff) agrees with the Safety Committee's findings of probable violation but disagrees with the penalty recommendation. Staff based this decision on the following information and investigation.

On August 26, and 27, and November 19, 2020, Malaga Water observed KMO digging holes near the Malaga Water pump station. Malaga contacted the one-call center and found that no locate request tickets for KMO were on file.

Staff conducted an investigation that included reviewing emails, one-call ticket requests, and photos submitted by Malaga Water, KMO, and the Safety Committee.

These documents identified that excavation occurred but did not identify the appropriate locate marks for underground utilities.

Staff recommends that the Commission assess a \$3,000 penalty against KMO for three violations of RCW 19.122.030(2) for failing to provide notice to a one-number locate service. Staff recommends the \$3,000 penalty be suspended on the conditions: (1) KMO supervisors and applicable field staff attend NUCA Dig Safe Online Training within 90 days of receiving this Notice and; (2) the Company must not commit any further violations of RCW 19.122 within 12 months of the date of this Notice.

The Commission agrees with Staff's recommendation and assesses a penalty of \$3,000 with an offer to suspend, and ultimately waive, the entire \$3,000 penalty amount subject to the conditions listed above. If the Company fails to comply with the conditions, the \$3,000 suspended penalty will become immediately due and payable, in addition to any new penalties that the Commission may assess for new additional violations.

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 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 his or her decision.

You must act within 15 days after receiving this notice to do one of the following:

- Pay the \$3,000 penalty amount due; or
- Notify the Commission that you accept the offer to suspend, and ultimately waive the \$3,000 penalty amount subject to the following conditions:
 - KMO supervisors and applicable field staff must attend [online Dig Safe training](#) within ninety (90) days of this Notice; and
 - **The Company must submit documentation of that attendance to the Commission within five (5) days of attending training; and**
 - KMO must not commit any additional violations of RCW19.122 within twelve (12) months of the date of this Notice; or
- Request a hearing to contest the occurrence of the violation(s); or
- Request mitigation to reduce the amount of the penalty.

Please indicate your selection on the enclosed form and send it to the Washington Utilities and Transportation Commission, Post Office Box 47250, Olympia, Washington 98504-7250, **within FIFTEEN (15) days** after you receive this notice.

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 April 6, 2021.

/s/ Rayne Pearson
RAYNE PEARSON
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PENALTY ASSESSMENT D-210067, Investigation # 8334

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 violations occurred and enclose \$3,000 in payment of the penalty.
2. **Accept condition.** I accept the Commission's offer to suspend, and ultimately waive, the penalty amount subject to the condition that Kyle Mathison Orchards must not commit any additional violations of RCW19.122 within twelve (12) months of the date of this Notice and agree to provide UTC with proof of [online Dig Safe training](#) within 10 days of completion.
3. **Contest the violation.** I believe that the alleged violation(s) did not occur for the reasons I describe below:
- 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:
- 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

“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.”