

Service Date: September 6, 2024

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: D-240630

PENALTY AMOUNT: \$4,000

Investigation # 8942

SERVICE VIA EMAIL

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YOU MUST RESPOND WITHIN 15 DAYS OF THIS NOTICE

The Washington Utilities and Transportation Commission (Commission) believes that NW United Exteriors, Inc. (NW United Exteriors 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 the scheduled excavation date on four separate occasions.

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 August 22, 2024, the Washington State Dig Law Safety Committee (Safety Committee) heard case 24-070 filed by NW Natural Gas (NWN or complainant) against NW United Exteriors and determined NW United Exteriors 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 excavation date on four separate occasions. The Safety Committee recommended that the Commission impose a \$4,000 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 \$4,000 penalty (Penalty Assessment) against you on the following grounds:

1. Alleged Violation 1:

The Complainant states that on April 3, 2024, NW United Exteriors was installing metal fence posts at 10308 NE 132nd Place, Vancouver, WA without providing notice to a one-

number locator service not less than two business days before the scheduled excavation date.

Analysis:

The alleged violation concerns RCW 19.122.030(2), which states, in part, that an excavator must provide notice to a one-number locator service not less than two business days before the scheduled excavation date. The Complainant states that on April 3, 2024, NW United Exteriors was installing metal fence posts at 10308 NE 132nd Place, Vancouver, WA without providing notice to a one-number locator service. NWN stated that it sent official letters to the Company covering the dig law requirements and expectations, but the Company continued to excavate without locates.

2. **Alleged Violation 2:**

The Complainant states that on June 26, 2024, NW United Exteriors was installing metal fence posts at 10221 NE 133rd Ave, Vancouver, WA without providing notice to a one-number locator service not less than two business days before the scheduled excavation date.

Analysis:

The alleged violation concerns RCW 19.122.030(2), which states, in part, that an excavator must provide notice to a one-number locator service not less than two business days before the scheduled excavation date. The Complainant states that on June 26, 2024, NW United Exteriors was installing metal fence posts at 10221 NE 133rd Ave, Vancouver, WA without providing notice to a one-number locator service. NWN stated that it sent official letters to the Company covering the dig law requirements and expectations, but the Company continued to excavate without locates.

3. **Alleged Violation 3:**

The Complainant states that on June 26, 2024, NW United Exteriors was installing metal fence posts at 10213 NE 133rd Ave, Vancouver, WA without providing notice to a one-number locator service not less than two business days before the scheduled excavation date.

Analysis:

The alleged violation concerns RCW 19.122.030(2), which states, in part, that an excavator must provide notice to a one-number locator service not less than two business days before the scheduled excavation. The Complainant states that on June 26, 2024, NW United Exteriors was installing metal fence posts at 10213 NE 133rd Ave, Vancouver, WA without providing notice to a one-number locator service. NWN stated that it sent official letters to the Company covering the dig law requirements and expectations, but the Company continued to excavate without locates.

4. **Alleged Violation 4:**

The Complainant states that on June 26, 2024, NW United Exteriors was installing metal fence posts at 10217 NE 133rd Avenue, Vancouver, WA without providing notice to a one-number locator service not less than two business days before the scheduled excavation date.

Analysis:

The alleged violation concerns RCW 19.122.030(2), which states, in part, that an excavator must provide notice to a one-number locator service not less than two business days before the scheduled excavation date. The Complainant states that on June 26, 2024, NW United Exteriors was installing metal fence posts at 10217 NE 133rd Avenue, Vancouver, WA without providing notice to a one-number locator service. NWN stated it sent official letters to the Company covering the dig law requirements and expectations, but the Company continued to excavate without locates.

Staff reviewed the One Call Center database and did not find locate requests for NW United Exteriors for these locations.

Peer Review:

During the Safety Committee review, NWN provided photographs that show the fence posts next to the gas meters. NWN stated that it had discussed with the Company the importance of calling for locates but NW United Exteriors continued to excavate without locates. NWN stated that there were locates on the ground at 10217 NE 133rd Avenue, Vancouver, WA that were requested from a landscaping company and not from NW United Exteriors. Additional photographs showed that there were clear gas markings, but they were not requested by NW United Exteriors.

NW United Exteriors stated that it had requested a locate ticket, but it was improperly submitted and was not valid. The Company recognized there was an issue submitting the locate request online and by phone. NW United Exteriors stated that it is a small business and there isn't an office employee to handle the locate requests. Since the complaint has been filed, NW United Exteriors stated that it is now submitting a dig request for every lot, and there should not be an issue going forward.

The Commission considered the following factors in determining the appropriate penalty amount for the violations:

1. **How serious or harmful the violations are to the public.**
These incidents could have been significantly more harmful to NW United Exteriors workers, utility technicians, nearby homeowners, and the public and could have resulted in severe injury and/or loss of property.
2. **Whether the violations are intentional.**
The violations appear to be due to negligence rather than a lack of knowledge of Washington State's Dig Law. Over the past 12 months NW United Exteriors has submitted 17 requests to the One Call Center for locates. This demonstrates NW United Exteriors' knowledge of requirements and its responsibility to contact the one-number locate service before beginning excavation.
3. **The likelihood of recurrence.**
The likelihood of recurrence depends on the NW United Exteriors' actions going forward and its willingness to notify the one-number locate service every time before beginning excavation.

4. **The Company's previous violations and penalties.**

The Company has no previous violations or penalties.

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

First Violation: \$1,000 for one violation of RCW 19.122.030(2) that occurred on April 3, 2024, at 10308 NE 132 Pl, Vancouver, WA.

Second Violation: \$1,000 for one violation of RCW 19.122.030(2) that occurred on June 26, 2024, at 10221 NE 133rd Ave, Vancouver, WA.

Third Violation: \$1,000 for one violation of RCW 19.122.030(2) that occurred on June 26, 2024, at 10213 NE 133rd Ave, Vancouver, WA.

Fourth Violation: \$1,000 for one violation of RCW 19.122.030(2) that occurred on June 26, 2024, at 10217 NE 133rd Avenue, Vancouver, WA.

The total penalty amount is \$4,000 for the four violations of RCW 19.122.030(2) with an offer to suspend a \$3,000 portion of the penalty for one year, and then waive it, subject to the conditions that:

- 1) NW United Exteriors owner, lead foreman 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) NW United Exteriors 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 violations did not occur, you may deny committing the violations and contest the penalty through evidence presented at a hearing or in writing. Or, if there is a reason for the violations 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 violations 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 their decision.

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

- Pay the \$4,000 penalty amount due; or
- Pay \$1,000 and notify the Commission that you accept the offer to suspend a \$3,000 portion of the penalty amount subject to the following conditions:
 - NW United Exteriors owner, lead foreman 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;** and
 - NW United Exteriors 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, 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 September 6, 2024.

/s/ James E. Brown II
JAMES E. BROWN II
Acting Director, Administrative Law Division

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT D-240630 Investigation # 8942

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 violations occurred and:
 Enclose \$4,000 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 violations occurred and enclose \$1,000 toward the payment of the penalty. I also accept the Commission's offer to suspend, and ultimately waive, the remaining \$3,000 penalty amount subject to the following conditions:
- NW United Exteriors owner, lead foreman and field crew responsible for excavation must attend Dig Safe training provided through NUCA within 90 days of service of this Penalty Assessment; and
 - The Company must submit documentation of that attendance to the Commission; and
 - NW United Exteriors must not commit any further violations of RCW 19.122 within twelve (12) months of the date of this Notice.
3. **Contest the violations.** I believe that the alleged violations 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 violations, 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.