

Service Date: February 24, 2025

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: D-250060
PENALTY AMOUNT: \$5,000
Investigation # 9077

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 G2KYNE, LLC d/b/a Gro Outdoor Living (Gro Outdoor 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.

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 January 23, 2025, the Safety Committee heard case 24-110 filed by NW Natural Gas Company (NWN or Complainant) against Gro Outdoor and determined Gro Outdoor 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. The Safety Committee recommended that the Commission impose a \$5,000 penalty.

Commission staff (Staff) reviewed 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 \$5,000 penalty (Penalty Assessment) against you on the following grounds:

1. **Alleged Violation:**

The Complainant states that on December 6, 2024, Gro Outdoor failed to provide notice to a one-number locator service not less than two business days before the scheduled excavation date at 16713 Northeast 93rd Way, Vancouver, WA.

2. **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 complaint submitted by NWN states that Gro Outdoor was excavating with hand tools to install sprinkler systems and a new lawn at 16713 Northeast 93rd Way, Vancouver, WA, without requesting locates before beginning work. The complaint stated that Gro Outdoor used pickaxes and shovels over gas mains and services lines. The complaint stated that NWN personnel have engaged with Outdoor Gro previously regarding Washington dig laws at multiple sites and sent letters to notify the company of their non-compliance. Still, Gro Outdoor continues to excavate without requesting locates. During the Safety Committee peer review on January 23, 2025, the Complainant presented photographs showing Gro Outdoor employees near the excavation area with a pickax and in the proximity of the gas service line. NW Natural spoke with Gro Outdoor employees, who admitted not requesting locates. NWN attempted to contact a Gro Outdoor supervisor but did not receive a response.

During the Peer Review, Gro Outdoor stated that the initial job was to fill up a sinkhole in front of the residence. Gro Outdoor had to remove some sod, and during the project, there was a change of scope in the work to include a drip system to the plants and to relocate some of the sprinkler heads. The company supervisor was not on the scene at the time of the scope change, but he approved the change, thinking that it would be minimal digging around the valve box. Gro Outdoor stated that once he spoke with the crew, he realized how much work had been completed, and that they should have called and requested a locate. Gro Outdoor regrets not going to the work site to see what the change of scope would involve. Gro Outdoor explained that it has implemented a checklist that emphasizes calling in locates, which will be placed in every vehicle. In addition, all project managers will utilize the training provided by NWN, they will have weekly meetings with their crews, and it will incorporate some Dig Safe training in the monthly meetings.

Staff searched the Washington One Call System database and did not find a locate request by Gro Outdoors for 16713 Northeast 93rd Way, Vancouver, WA.

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 Gro Outdoor 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 does not appear to be intentional, but rather due to negligence by Gro Outdoor. Over the past 12 months (January 31, 2024 – January 31, 2025), Gro Outdoor has been penalized by the Commission on one occasion for a violation of RCW 19.122.030(2)(a). Gro Outdoor is aware of the requirements to comply with the dig law but continues to have violations involving failing to request locates.

The likelihood of recurrence.

Gro Outdoor is currently under compliance status for a previous penalty assessment that was issued on July 18, 2024, in Docket D-240381. One of the compliance requirements is to not have any further violations of the Dig Law for 12 months. This current damage incident is a new Dig Law violation that will result in the Commission imposing the suspended penalty for the previous case. The likelihood of recurrence depends on the Company's actions going forward and the degree of diligence it employs to ensure that it has notified the one-number locate service every time before beginning excavation.

4. The Company's previous violations and penalties.**• Warning Letters**

- On June 10, 2014, and January 16, 2019, the Commission mailed Alleged Violation of Washington Dig Law letters to Gro Outdoor. The letters included detailed information about Washington state's underground utility damage prevention act, requirements for submitting utility locate requests before excavating, and the possibility of penalties for each violation.

• Penalty Assessment

On July 18, 2024, the Commission issued Gro Outdoor a Penalty Assessment of \$6,000 for two violations of RCW 19.122.030(2)(a) in docket D-240381.

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

- \$5,000 penalty for one violation of RCW 19.122.030(2).

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 \$5,000 penalty amount due.
- 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 February 24, 2025.

/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-250060 Investigation # 9077

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 \$5,000 in payment of the penalty.
- OR Attest that I have paid the penalty in full through the Commission's payment portal.
2. **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.
3. **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.