

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

Investigation #: 7626
PENALTY ASSESSMENT: DG-180715
PENALTY AMOUNT: \$3,500

Leigh Tapani
Tapani, Inc.
1904 SE 6th Pl
Battle Ground, WA 98604

UBI: 600-642-677
Phone: 360-687-1148

The Washington Utilities and Transportation Commission (Commission) believes you have violated Revised Code of Washington (RCW) 19.122.030(2) by failing to provide the required notice to a one-number locator service not less than two business days before excavating. 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 underground gas utility is subject to a civil penalty of not more than ten thousand dollars for each violation.

Commission pipeline safety staff (Staff) reviewed damage reports submitted by Puget Sound Energy (PSE), and information obtained from the One Call 811 database, and hereby notifies you that it is assessing a penalty against you in the amount of \$3,500 on the following grounds:

On April 19, 2017, Tapani, Inc. (Tapani or Company) was excavating at 12514 120th Ave. in Kirkland, Washington. While installing a sewer line, Tapani damaged a PSE gas line. PSE reported that Tapani did have a valid locate ticket, but that the area where the damage occurred was outside of the scope of ticket. Staff investigated and found that a utility locate request was submitted by Tapani on March 7, 2017, and assigned number 17060213. Staff found that the original locates requested by Tapani were for Totem Lake Blvd. and 120th Ave, but did not include Totem Lake Way, which is where the damage incident occurred. Staff determined that Tapani was excavating outside the scope of ticket 17080213 and did not have a valid locate ticket in effect for the area where the damage incident occurred. Staff sent a technical assistance warning letter to the Company on June 16, 2017, which included detailed information about the requirements of Washington state's dig law.

On May 23, 2018, Tapani was excavating at 19021 Grannis Rd. in Bothell, Washington. While digging, Tapani damaged a PSE gas line, which resulted in a blowing gas condition. PSE reported that Tapani was working without a valid locate ticket. Staff investigated and found that a utility locate request was submitted by Tapani for this location on the same day as the incident, May 23, 2018. This ticket was assigned number 18214458 and had a

work to begin date of May 26, 2018. Staff determined that Tapani failed to submit a utility locate request prior to excavating.

Staff recommends the Commission assess a \$3,500 penalty against Tapani for two violations of RCW 19.122.030(2) for failing to provide the required notice to a one-number locator service not less than two business days before excavating, as follows:

- \$1,000 penalty for the violation of RCW 19.122.030(2) that occurred on April 19, 2017; and
- \$2,500 penalty for the violation of RCW 19.122.030(2) that occurred on May 23, 2018;

Staff's research indicates that Tapani has a significant history of requesting utility locates and that the violation was most likely the result of Company negligence, rather than a lack of knowledge of the requirements of Washington state's Dig Law.

The Commission agrees with Staff's recommendation and assesses a penalty of \$3,500.

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 either or both of the violations did not occur, you may deny committing the violation(s) and contest the penalty through evidence presented at a hearing or in writing. Or, if there is a reason for either or both of 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 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 violation(s) 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 \$3,500 amount due; or
- Request a hearing to contest the occurrence of either or both of the violation(s); 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 **within FIFTEEN (15) days** after you receive this notice. 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, Post Office Box 47250, Olympia, Washington 98504-7250.

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 Olympia, Washington, and effective September 7, 2018.

/s/ Rayne Pearson

RAYNE PEARSON

Director, Administrative Law Division

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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, 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 \$3,500 in payment of the penalty
2. **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.
3. **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 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.”