

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: DG-190064
PENALTY AMOUNT: \$1,000
Investigation #7936

Javier Serratos
Tropical Dew LLC
131 S. Hugo Ave
Pasco, WA 99301

UBI: 603-520-006
Phone: 509-374-6138

The Washington Utilities and Transportation Commission (Commission) believes that you have violated Revised Code of Washington (RCW) 19.122.030(2) by failing to request a dig ticket prior to performing an excavation. RCW 19.122.055 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 \$10,000 for each violation.

Commission staff (Staff) conducted an investigation that included reviewing damage reports submitted by Cascade Natural Gas Corporation (CNGC) that identified a natural gas damage event involving Tropical Dew Landscaping (Tropical Dew or Company). Accordingly, the Commission hereby notifies you that it is assessing a penalty against you for \$1,000 on the following grounds:

On September 24, 2016, Tropical Dew allegedly struck and damaged a CNGC natural gas line while installing irrigation at 2925 Tuscanna Dr., Richland, Washington. The Company did not request a dig ticket from a one-number locator service to locate underground utilities before excavating. The Commission mailed an Alleged Violation of Washington Dig Law letter to the Company on November 16, 2016, which included detailed information about the requirements of Washington state's underground utility damage prevention act, and the possibility of penalties for each violation.

On September 6, 2018, Tropical Dew struck and damaged CNGC's underground natural gas line while trenching for irrigation at 8209 Babine Dr., Pasco, Washington. On January 3, 2019, CNGC submitted a Damage Incident Reporting Tool report identifying Tropical Dew as the party responsible for damaging the gas line on September 6. Staff was unable to find a valid dig ticket for the Company at this location on this date.

Staff recommends the Commission assess a \$1,000 penalty against Tropical Dew for one violation 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:

- No penalty for the violation of RCW 19.122.030(2) that occurred on September 24, 2016; and
- \$1,000 penalty for the violation of RCW 19.122.030(2) that occurred on September 6, 2018.

Staff's research indicates that Tropical Dew has submitted eight requests to locate underground utilities since April 2016, and the violation appears to be the result of the Company's negligence rather than a lack of knowledge of the requirements of Washington's dig law. Staff spoke with a representative of the Company as part of the investigation, who stated that the Company is familiar with the dig law, but also agreed to accept additional information. The Company representative stated that Tropical Dew has learned from its error and will submit utility locate requests for each job that requires excavation.

After considering all of the circumstances, Staff recommends that the Commission offer to suspend the \$1,000 penalty amount for a period of one year, subject to the condition that the Company incurs no 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 \$1,000, subject to the condition above. The Commission will ultimately waive the \$1,000 suspended penalty if the Company complies with the condition. If the Company fails to comply with the condition, the suspended penalty amount will become immediately due and payable, in addition to any new penalties that the Commission may assess for 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 either or both of 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 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 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 \$1,000 penalty amount due; or
- Notify the Commission that you accept the offer to suspend, and ultimately waive, the entire \$1,000 penalty subject to the condition that Tropical Dew incur no further violations of RCW 19.122 within 12 months of the date of this Notice; or
- Request a hearing to contest the occurrence of either or both of the violations; 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, P.O. 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 Olympia, Washington, and effective March 21, 2019.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT DG-190064, Investigation # 7936

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 \$1,000 in payment of the penalty.
2. **Accept conditions.** I admit that the violations occurred and accept the Commission's offer to suspend, and ultimately waive, the entire \$1,000 penalty amount subject to the condition that Tropical Dew incurs no further violations of RCW 19.122 within 12 months of the date of this Notice.
3. **Contest the violation.** I believe that the alleged violation(s) 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 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.”