

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: DG-144099

PENALTY AMOUNT: \$2,000

Randy McEnespy
Terra Landscaping
1012 Goldfinch Rd
Post Falls, ID 83854

The Washington Utilities and Transportation Commission (Commission) believes that you have violated Revised Code of Washington (RCW) 19.122.030(1)(a) by failing to request a dig ticket prior to performing an excavation. RCW 19.122.055(1) 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 ten thousand dollars for each violation.

Commission staff (Staff) conducted an investigation in which it reviewed damage reports submitted by Avista Utilities Corporation (Avista) and identified two natural gas damage events involving Randy McEnespy, d/b/a Terra Landscaping (Terra Landscaping), where buried utilities were not located prior to excavation. Accordingly, the Commission hereby notifies you that it is assessing a penalty against you in the amount of \$2,000 on the following grounds:

(First Violation)

On August 21, 2013, Terra Landscaping performed an excavation to install front yard landscaping at 550 N Stimson Lane, Liberty Lake, Washington. Prior to beginning excavation, Terra Landscaping failed to request a dig ticket from a one-number locator service to have the underground utilities located.

On October 9, 2013, Avista submitted a Damage Incident Reporting Tool (DIRT) report identifying Terra Landscaping as the party responsible for damaging the Avista's natural gas service line at 550 N Stimson Lane, Liberty Lake, Washington, on August 21, 2013, without first obtaining a ticket number to have utilities located prior to excavation.

On August 11, 2014, the Commission mailed an Alleged Violation of Washington Dig Law letter to Terra Landscaping, informing the company of its obligation to have underground utilities located prior to excavation, as outlined in RCW 19.122.030. The letter emphasized the importance of becoming familiar with the law, and the possibility of penalties for each violation of the law.

(Second Violation)

On April 25, 2014, Terra Landscaping performed an excavation installing front yard landscaping at 13323 San Juan, Spokane Valley, Washington. Prior to beginning excavation, Terra Landscaping failed to request a dig ticket from a one-number locator service to have the underground utilities located.

On July 2, 2014, Avista submitted a Damage Incident Reporting Tool (DIRT) report identifying Terra Landscaping as the party responsible for damaging the company's natural gas service line at 13323 San Juan, Spokane Valley, Washington, on April 25, 2014, without first obtaining a ticket number to have utilities located prior to excavation.

On August 11, 2014, the Commission mailed an Alleged Violation of Washington Dig Law letter to Terra Landscaping, informing the company of its obligation to have underground utilities located prior to excavation, as outlined in RCW 19.122.030. The letter emphasized the importance of becoming familiar with the law, and the possibility of penalties for each violation of the law.

Based on the results of Staff's investigation, the Commission finds that Randy McEnespy, d/b/a Terra Landscaping violated RCW 19.122.030(1)(a) twice, by failing to request a utility locate tickets prior to performing an excavation, and the Commission assesses a \$1,000 penalty for each violation. 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 violations did not occur, you may request a hearing to contest the penalty assessment. The Commission will grant that request only if material issues of law or fact require consideration of evidence and resolution in a hearing. A request for a hearing must include a written statement of the reasons supporting that request. Failure to provide such a statement will result in denial of the request.

If you admit the violation but believe there is a reason for the violation that should excuse you from the penalty, you may ask for mitigation (reduction) of this penalty through evidence presented at a hearing or through a written statement. 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. A request for mitigation, either in a hearing or through a written statement, must include a written explanation of the reasons supporting that request. Failure to provide such an explanation will result in denial of the request.

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 amount due;
- Request a hearing to contest the occurrence of the violation; or
- Request mitigation to contest 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 Olympia, Washington, and effective March 11, 2015.



GREGORY J. KOPTA
Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT DG-144099

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 violation occurred and enclose \$2,000 in payment of the penalty.

- 2. **Request for a hearing.** I believe that the alleged violation did not occur for the reasons I describe below, and I request a hearing based on those reasons for a decision by an administrative law judge:

- 3. **Application for mitigation.** I admit the violation, 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

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.”