

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: DG-180903

PENALTY AMOUNT: \$5,000

Investigation #7871

UBI: 600 642 677

Phone: (360) 687-1148

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

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 NW Natural Gas (NWN) that identified a natural gas damage event involving Tapani, Inc. (Tapani or Company). Accordingly, the Commission hereby notifies you that it is assessing a penalty against you in the amount of \$5,000 on the following grounds:

On April 19, 2017, Tapani struck and damaged a natural gas line belonging to Puget Sound Energy (PSE) while digging to install a sewer line in Kirkland, Washington. Tapani did not request a dig ticket from a one-number locator service to locate underground utilities prior to excavating. 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 underground utility damage prevention act. On September 10, 2018, Tapani was assessed a penalty of \$1,000 for this violation in addition to a penalty of \$2,500 for a subsequent damage event on May 23, 2018, in Bothell, Washington, which occurred because Tapani failed to obtain a valid dig ticket.

On July 26, 2018, Tapani performed an excavation while grading at 4601 SE 192nd Ave in Camas, Washington. Prior to beginning excavation, Tapani failed to request a dig ticket from a one-number locator service to locate underground utilities. An underground NWN gas line was struck and damaged by Tapani's equipment.

On August 27, 2018, NWN submitted a Damage Incident Reporting Tool report identifying Tapani as the party responsible for damaging the natural gas service line on July 26, 2018. Staff was unable to find a valid dig ticket for Tapani at this location on this date.

Staff recommends the Commission assess a \$5,000 penalty against Tapani 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:

- \$5,000 penalty for the violation of RCW 19.122.030(2), which occurred on July 26, 2018.

Staff's research indicates that Tapani has a significant history of requesting utility locates, 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. When contacted, Tapani's representative stated that the Company has been growing recently, and that its policies and practices regarding how dig tickets were being managed around the time of the damage were being updated to make field supervisors responsible for tracking and updating their own tickets. He believed that with the policy changes, obtaining a valid ticket for this location may have been overlooked. The representative also stated that the Company has a good relationship with NWN, who often comes on-site to discuss safety with the field crews. He stated that the Company regularly holds and has workers attend safety trainings, including Dig Safe training, and stressed the importance of empowering supervisors and foremen to be strong safety leaders.

After considering all of the circumstances, Staff recommends that the Commission offer to suspend \$4,000 of the penalty for a period of one year subject to the condition that the Company commits no further violations of RCW 19.122 within 12 months from the date of this Notice.

The Commission agrees with Staff's recommendation and assesses a penalty of \$5,000 with an offer to suspend \$4,000 of the penalty amount subject to the condition that Tapani commits no further violations of RCW 19.122 within one year of the date of this Notice. The Commission will waive the suspended penalty amount of \$4,000 if Tapani complies with the condition. If Tapani fails to comply with the condition, the \$4,000 suspended penalty 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 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 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 his or her decision.

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

- Pay the \$5,000 penalty amount due; or
- Notify the Commission that you accept the offer to suspend, and ultimately waive, \$4,000 of the penalty subject to the following conditions:
 - Commit no further violations of RCW 19.122 within twelve (12) months of the date of this order; or
- 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 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 November 29, 2018.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT DG-180903, Investigation # 7871

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 \$5,000 in payment of the penalty.

2. **Accept conditions.** I admit that the violation occurred.
I also accept the Commission's offer to suspend, and ultimately waive, \$4,000 of the penalty amount subject to the following conditions:

- Commit no further violations of RCW 19.122 within twelve (12) months of the date of this order.

3. **Contest the violation.** I believe that the alleged violation did not occur for the reasons I describe 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.

4. **Request 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.”