

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

PENALTY ASSESSMENT: D-220622

PENALTY AMOUNT: \$2,000

Investigation # 8554

SERVICE VIA EMAIL

Hero Greens Inc.
4204 E Beauty Ln.
Colbert, WA 99005
Info@herogreens.com

YOU MUST RESPOND WITHIN 15 DAYS OF THIS NOTICE – see page 4

The Washington Utilities and Transportation Commission (Commission) believes that Hero Greens Inc. (Hero Greens or Company) has violated the Revised Code of Washington (RCW) 19.122.030(2) by failing to notify the One-Call locate center before beginning excavation on two occasions. 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.

The Commission reviewed findings and recommendations made by the Washington State Dig Law Safety Committee (Safety Committee) and hereby notifies you that it is assessing a \$2,000 penalty (Penalty Assessment) against you on the following grounds:

On June 8, 2022, the Safety Committee heard case 22-014 against Hero Greens and determined the Company violated RCW 19.122.030(2) by failing to provide notice to the One-Call center before beginning excavation. The Safety Committee recommended that the Commission impose a \$1,000 penalty for each violation.

Commission staff (Staff) conducted an investigation that included reviewing documents, reports submitted by the Safety Committee, and a review of the One-Call center database. During the review, Hero Greens explained they did not believe they needed to call for locates again as all the lines had previously been located and the Company was maintaining the marks. Hero Greens has no history of dig law violations with the Commission.

Staff agrees with the Safety Committee's findings of probable violation and recommends the Commission assesses penalties as follows:

- \$1,000 penalty for the violation of RCW 19.122.030(2) failing to notify the One-Call center before beginning excavation on April 11, 2022.
- \$1,000 penalty for the violation of RCW 19.122.030(2) failing to notify the One-Call center before beginning excavation on April 15, 2022.

Staff further recommends the Commission offer to suspend an \$1,800 portion of the \$2,000 penalty amount for one year, and then waive it, subject to the conditions that: (1) Hero Greens' owner and employees complete Dig Safe Training provided through the National Utility Contractors Association (NUCA) within 45 days of this Penalty Assessment; (2) Hero Greens must not commit any further violations of RCW 19.122 within 12 months of the date of this Penalty Assessment; and (3) the Company must pay the \$200 portion of the penalty that is not suspended within 15 days of the Penalty Assessment.

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The Commission agrees with Staff's recommendation as described above.

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 either or both of 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 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(s) 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 their decision.

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

- Pay the \$2,000 penalty amount due; or
- Pay \$200 and notify the Commission that you accept the offer to suspend an \$1,800 portion of the penalty amount subject to the following conditions:
 - Hero Greens successfully completes NUCA Dig Safe Training (<https://utc-9183.quickbase.com/db/bpkt6vndh>) within 45 days of service of this Penalty Assessment; and
 - Hero Greens must not commit any additional violations of RCW 19.122 within 12 months of the date of this Notice.
- 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](#) **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, PO 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 Lacey, Washington, and effective September 27, 2022.

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PENALTY ASSESSMENT D-220622 Investigation # 8554

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. **Accept the Conditions.** I admit that the violation occurred. I enclose \$200 in partial payment of the penalty, and I accept the Commission's offer to suspend, and ultimately waive, the \$1,800 penalty amount subject to the following conditions:
- Hero Greens successfully complies with the conditions of Penalty Notice D-220622 and completes NUCA Dig Safe Training (<https://utc-9183.quickbase.com/db/bpkt6vndh>) within 45 days of the date of this Penalty Assessment ; and
 - Hero Greens must not commit any additional violations of RCW 19.122 within 12 months of the date of this Penalty Assessment;
3. **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 provided 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 provided 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.