



DEPARTMENT OF JUSTICE  
GENERAL COUNSEL DIVISION

May 14, 2009

Gary Krause, dba  
Gary Krause Landscaping  
PO Box 1108  
Jacksonville OR 97530-1108

Re: Violation of Oregon Utility Notification Center Rules  
DOJ File No.: 860-100-GP0047-09 / Docket No.: NC 265

**PLEASE READ ALL DOCUMENTS CAREFULLY –  
DIRECT ALL CORRESPONDENCE TO THE PUBLIC UTILITY COMMISSION OF OREGON**

On May 6, 2009, a representative from your company met with the Oregon Utility Notification Center (OUNC) Enforcement Committee to discuss an alleged rule violation. At that meeting, an agreement was reached regarding penalties for the violation.

Enclosed are two sets of documents that formalize the allegation and the agreement. One set is made up of original documents. The other set is a set of copies for your files.

Please refer to the originals. The complaint simply serves as a formal notice to you of the violation you were charged with and requires that you submit an Answer to the **Public Utility Commission** responding to the allegation. You must serve your Answer on the Commission by mailing it to the Public Utility Commission of Oregon, Administrative Hearings Division, PO Box 2148, Salem, OR 97308-2148. Filing an answer would be your opportunity to admit or deny the allegation and, if denied, to ask for a formal hearing. Because you already reached an agreement with the OUNC Committee, you do not need to submit an answer. Instead, you need only sign and return the enclosed Stipulation in order to answer the Complaint.

The Stipulation sets forth the terms and conditions of the agreement you reached with the committee. **You must sign and return the Stipulation within 20 days of the date of this letter in order for it to be approved by the Public Utility Commission as a resolution to the pending Complaint. You need not make payment until the Commission has issued a final order in this matter.**

If for some reason you no longer agree to the terms of the Stipulation, you **MUST FILE AN ANSWER TO THE COMPLAINT**, admitting or denying the allegation.

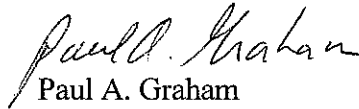
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Page 2

If there is a discrepancy between the formal Stipulation and the agreement reached at the meeting that causes you concern, please contact Michael Thompson at (503) 378-6760.

Otherwise, please return the signed Stipulation to the Public Utility Commission of Oregon at the following address so this matter can be resolved:

Public Utility Commission of Oregon  
Administrative Hearings Division  
550 Capitol St NE – Suite 215  
PO Box 2148  
Salem OR 97308-2148

Sincerely,



Paul A. Graham  
Attorney-in-Charge  
Regulated Utility & Business Section

Enclosures  
PAG/nal/#1399563



1 5.  
2 OUNC adopted OAR 952-001-0050 which was in effect at all times herein relevant. The  
3 rule provides in relevant part:

4 (1) \* \* \* [A]t least two (2) business days, but not more than ten (10)  
5 business days before commencing an excavation, the excavator shall notify the  
6 Oregon Utility Notification Center of the date and location of the proposed  
excavation, and the type of work to be performed.

7 (2) The notice requirement of section (1) of this rule shall not apply if the  
8 excavation is in response to an emergency \* \* \*.

9 6.  
10 OAR 952-001-0060 prescribes when an "emergency locate" may be requested. It  
11 provides, in part:

12 An excavator may provide less than two (2) business days (48) hours prior  
13 notice if:

14 (1) The excavator is responding to an emergency, so long as the excavator  
15 notifies the Oregon Utility Notification Center immediately and so long as the  
16 excavator takes reasonable care to protect underground facilities;

17 7.  
18 On or about March 12, 2009, defendant violated OAR 952-001-0050 and OAR 952-001-  
19 0060 in that the defendant represented that its notification and locate request to OUNC was for  
20 the purpose of responding to an emergency, when it was not. Utility operators responding to the  
21 locate request were entitled to two business days (48 hours) to locate and mark their facilities,  
but responded on an expedited basis because of the defendant's misrepresentation.

22 8.  
23 ORS 757.993 provides, in relevant part, that:

24 "\* \* \* every person who violates or who procures, aids or abets in the violation of  
25 any rule of the Oregon Utility Notification Center shall incur a penalty of not  
26 more than \$1,000 for the first violation and not more than \$5,000 for each  
subsequent violation."

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9.

Defendant has not violated OUNC rules in the past.

10.

WHEREFORE, the Commission directs the defendant to file a verified answer to this complaint within twenty (20) days from the date this complaint is mailed to the defendant. If no verified answer or other written appearance raising a question of fact or law is filed with the Commission at its office in Salem, Oregon, within the 20-day period, the allegations of the complaint shall be deemed admitted, and a penalty shall be imposed in the amount of \$1,000 for each violation alleged, for a total of \$1,000.

DATED this 14<sup>th</sup> day of May, 2009.

Respectfully submitted,

JOHN R. KROGER  
Attorney General



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Paul A. Graham, OSB #77190  
Assistant Attorney General  
Of Attorneys for the Public Utility Commission  
of Oregon



1 conditions:

2 A. Defendant shall sign and return this stipulation within 20 days of the date it was served  
3 upon (mailed to) defendant.

4 B. \$200 shall become due and payable on or before the 30th day following the  
5 Commission's entry of a final order in this case.

6 C. Payment shall be by money order or company check made out to the **Public Utility**  
7 **Commission of Oregon**, and the memo line of the money order or company check shall  
8 state the "NC" docket number in the caption of this stipulation.

9 D. Payment of the balance of the penalties (\$800) shall be permanently suspended and no  
10 further penalties shall be imposed for the violation alleged in the Complaint unless  
11 defendant fails to comply with all of the rules adopted by the Oregon Utility Notification  
12 Center (OUNC) under ORS 757.552 for a one year period following date of the  
13 Commission's entry of a final order.

14 E. Defendant shall contact the OUNC Speakers Bureau online at [www.digsafelyoregon.com](http://www.digsafelyoregon.com)  
15 or by calling (503) 232-1987 to arrange for and attend a training session on Oregon  
16 excavation laws within 45 days following the entry of a final order.

17 F. In the event that complainant contends that the defendant has not complied with all  
18 OUNC rules for that one year period, complainant may reopen this proceeding and  
19 petition for imposition of all or a portion of the suspended penalties. In such case  
20 defendant shall be entitled to a hearing and to be notified of the basis upon which  
21 complainant contends that compliance has not occurred.

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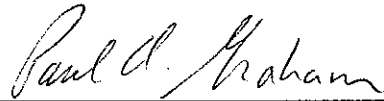
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5.

This stipulation is conditioned upon final approval of its terms by the Commission. If the stipulation is not accepted in its entirety, it shall be deemed withdrawn.

DATED this 14<sup>th</sup> day of May, 2009.

  
\_\_\_\_\_  
Paul A. Graham, OSB #77190  
Assistant Attorney General  
Of Attorneys for the Public Utility Commission  
of Oregon

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Representative for Defendant (signature)  
  
\_\_\_\_\_  
(Print name)