

JOHN R. KROGER
Attorney General



MARY H. WILLIAMS
Deputy Attorney General

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

January 7, 2010

Andy J. Seiber
Navigational Construction, Inc.
PO Box 1245
Redmond OR 97756

Kimberlie Hollinger, Registered Agent
Navigational Construction, Inc.
PO Box 1245
Redmond OR 97756

Re: Violation of Oregon Utility Notification Center Rules
DOJ File No.: 860-100 GP0124-09 / Docket No.: NC 280

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

On November 17, 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.**

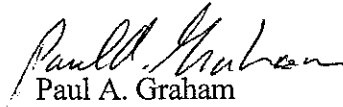
If for some reason you no longer agree to the terms of the Stipulation, you **MUST FILE AN ANSWER TO THE COMPLAINT**, admitting or denying the allegation.

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/#1784723

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**

3 NC 280

4 PUBLIC UTILITY COMMISSION OF
5 OREGON,

6 Complainant,

7 v.

8 NAVIGATIONAL CONSTRUCTION INC.,
9 (an Oregon corporation),

10 Defendant.

COMPLAINT

11 1.

12 This proceeding is initiated by the Public Utility Commission of Oregon (hereinafter
13 "Commission") to determine whether civil monetary penalties should be assessed as provided in
14 ORS 757.993. The Commission maintains its office at:

15 550 Capitol Street, NE – Suite 215, PO Box 2148, Salem, OR 97308-2148.

16 2.

17 At all times herein relevant, the defendant was doing business in this state.

18 3.

19 Under ORS 757.993, the Commission has discretion to seek penalties for violations of
20 rules adopted by the Oregon Utility Notification Center (OUNC).

21 4.

22 Under ORS 757.552, OUNC has adopted rules that prescribe requirements for
23 notification to OUNC of excavation activity and marking of underground facilities for the
24 purpose of preventing damage to such facilities.

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26 ///

1 5.

2 OUNC adopted OAR 952-001-0090 which was in effect at all times herein relevant. The
3 rule provides in relevant part:

4 (2) Once underground facilities have been marked, the excavator shall:

- 5 a) Maintain marks during the excavation period to ensure that the original
6 marks remain effective for the life of the project and can be re-
7 established;
- 8 b) Stop excavating in the vicinity of the underground facility and notify
9 the Oregon Utility Notification Center to have the route re-marked as
10 specified in these rules * * * , if prior to or during the excavation
11 process, the marking and/or route of any underground facility is
12 removed or no longer visible; and
- 13 c) Employ hand tools or other such non-invasive methods to determine
14 the exact location of the underground facility when excavation is to be
15 made within the reasonable accuracy zone.

12 6.

13 On or about July 8, 2009, defendant violated OAR 952-001-0090 in that the defendant
14 failed to maintain locate marks and continued excavating without having underground facilities
15 remarked.

16 7.

17 ORS 757.993 provides, in relevant part, that:

18 “* * * every person who violates or who procures, aids or abets in the violation of
19 any rule of the Oregon Utility Notification Center shall incur a penalty of not
20 more than \$1,000 for the first violation and not more than \$5,000 for each
21 subsequent violation.”

21 8.

22 Defendant has violated OUNC rules in the past. The prior violation resulted in Order No.
23 03-275 entered on May 5, 2003.

24 9.

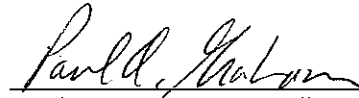
25 WHEREFORE, the Commission directs the defendant to file a verified answer to this
26 complaint within twenty (20) days from the date this complaint is mailed to the defendant. If no

1 verified answer or other written appearance raising a question of fact or law is filed with the
2 Commission at its office in Salem, Oregon, within the 20-day period, the allegations of the
3 complaint shall be deemed admitted, and a penalty shall be imposed in the amount of \$1,000 for
4 each violation alleged, for a total \$1,000.

5 DATED this 7th day of January, 2010.

6 Respectfully submitted,

7 JOHN R. KROGER
8 Attorney General

9 
10 Paul A. Graham, OSB #77190
11 Assistant Attorney General
12 Of Attorneys for the Public Utility Commission
13 of Oregon
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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

NC 280

PUBLIC UTILITY COMMISSION OF OREGON,

Complainant,

v.

NAVIGATIONAL CONSTRUCTION INC.,
(an Oregon corporation),

Defendant.

STIPULATION FOR ENTRY OF FINAL ORDER

The Public Utility Commission of Oregon, appearing by and through Paul A. Graham, Assistant Attorney General, and Navigational Construction, Inc., the defendant herein, hereby stipulate as follows:

1.

A Complaint in this case is pending before the Commission charging the defendant with one violation of law, OAR 952-001-0090.

2.

Both parties to this proceeding are willing to forego further processing of that Complaint and further are willing to resolve this matter on the basis of this stipulation.

3.

The defendant admits that the violation was committed as alleged in the Complaint and is willing for the Commission to enter an order finding that the violation was committed as alleged in the Complaint.

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The parties further agree that the Commission may enter an order assessing civil monetary penalties against the defendant in the amount of \$1,000 under the following terms and conditions:

- A. Defendant shall sign and return this stipulation within 20 days of the date it was served upon (mailed to) defendant.
- B. \$200 shall become due and payable on or before the 30th day following the Commission's entry of final order in this case.
- C. Payment shall be by money order or company check made out to the **Public Utility Commission of Oregon**, and the memo line of the money order or company check shall state the "NC" docket number in the caption of this stipulation.
- D. Payment of the balance of the penalties (\$800) shall be permanently suspended unless defendant fails to comply with all of the rules adopted by the Oregon Utility Notification Center (OUNC) under ORS 757.552 for a one year period following date of the Commission's entry of a final order.
- E. Defendant shall contact the OUNC Speakers Bureau online at www.digsafelyoregon.com or by calling (503) 232-1987 to arrange for and attend a training session on Oregon excavation laws within 45 days following the entry of a final order.
- F. In the event that complainant contends that the defendant has not complied with all OUNC rules for that one year period, complainant may reopen this proceeding and petition for imposition of all or a portion of the suspended penalties. In such case defendant shall be entitled to a hearing and to be notified of the basis upon which complainant contends that compliance has not occurred.

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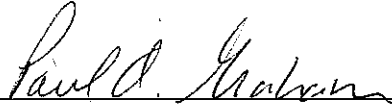
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5.

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 7th day of January 2010.



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

DATED this _____ day of _____, 2010.

Representative for Defendant (signature)

(Print name)