



DEPARTMENT OF JUSTICE  
GENERAL COUNSEL DIVISION

January 13, 2012

Dan Kauffman, Registered Agent  
Dan Kauffinan Excavating, Inc.  
PO Box 79  
Lincoln City OR 97367

Re: Violation of Oregon Utility Notification Center Rules  
DOJ File No.: 860-100-GB0843-11 / Docket No.: NC 317

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

On December 20, 2011, 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.

Dan Kauffman Excavating, Inc.  
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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,



Johanna M. Riemenschneider  
Assistant Attorney General  
Business Activities Section

Enclosures  
JMR/nal/#3151610-v1

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

3 NC 317

4 PUBLIC UTILITY COMMISSION OF  
OREGON,

5 Complainant,

COMPLAINT

6 v.

7 DAN KAUFFMAN EXCAVATING, INC.,  
8 (an Oregon corporation),

9 Defendant.

10  
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 St 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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OUNC adopted OAR 952-001-0050 which was in effect at all times herein relevant. The rule provides in relevant part:

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

6.

On or about July 25, 2011, defendant violated OAR 952-001-0050 in that the defendant failed to notify the Oregon Utility Notification Center of a proposed excavation before commencing the excavation.

7.

ORS 757.993 provides, in relevant part, that:

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

8.

Defendant has not violated OUNC rules in the past.

9.

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

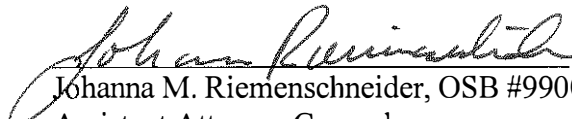
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1 complaint shall be deemed admitted, and a penalty shall be imposed in the amount of \$1,000 for  
2 each violation alleged, for a total of \$1,000.

3  
4 DATED this 13<sup>th</sup> day of January, 2012.

5 Respectfully submitted,

6 JOHN R. KROGER  
7 Attorney General

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9 Johanna M. Riemenschneider, OSB #99008  
10 Assistant Attorney General  
11 Of Attorneys for the Public Utility Commission  
12 of Oregon  
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1 4.

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

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

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

9 C. Payment shall be by money order made out to the Public Utility Commission of  
10 Oregon, and the memo line of the money order shall state the "NC" docket number in the  
11 caption of this stipulation.

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

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

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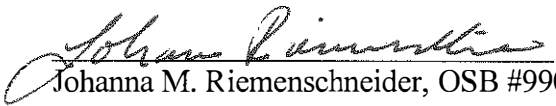
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5.

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 13<sup>th</sup> day of January, 2012.

  
Johanna M. Riemenschneider, OSB #99008  
Assistant Attorney General  
Of Attorneys for the Public Utility Commission  
of Oregon

DATED this \_\_\_\_ day of \_\_\_\_\_, 2012.

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

\_\_\_\_\_  
(Print name)