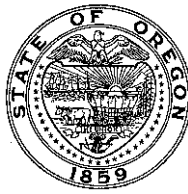


ELLEN F. ROSENBLUM
Attorney General



MARY H. WILLIAMS
Deputy Attorney General

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

September 19, 2013

Chris Braun, Registered Agent
Braun Excavating, Inc.
26361 Perkins Road
Veneta, OR 97487

Chris Braun, President
Braun Excavating, Inc.
P.O. Box 967
Veneta, OR 97487

Re: Violation of Oregon Utility Notification Center Rules
DOJ File No.: 860501-GB0600-13 / Docket No.: NC 335

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

On August 27, 2013, 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 contain a Complaint and a Stipulation. The Complaint serves as a formal notice to you of the violation you were charged with and requires that you Answer the allegation. 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. If you had not reached an agreement with the OUNC Committee, filing an Answer would be your opportunity to admit or deny the allegation and, if denied, to ask for a formal hearing.

The Stipulation sets forth the terms and conditions of the agreement you reached with the OUNC Committee. To finalize the settlement, **you must sign the original Stipulation and mail it within 20 days of the date of this letter to:**

**Public Utility Commission of Oregon
Administrative Hearings Division
(Temporarily located at)
3930 Fairview Industrial Drive SE
PO Box 1088
Salem OR 97308-1088**

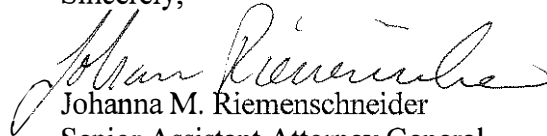
Braun Excavating, Inc.
September 19, 2013
Page 2

You do not need to make payment until the Commission has approved the Stipulation. The Commission should issue an order adopting the Stipulation within 30 days of its receipt. Please retain the extra copy of the Stipulation for your files.

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.

Sincerely,



Johanna M. Riemenschneider
Senior Assistant Attorney General
Business Activities Section

JMR:jrs/#4568407
Enclosures

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

3 NC 335

4 PUBLIC UTILITY COMMISSION OF
5 OREGON,

6 Complainant,

7 v.

8 Braun Excavating, Inc.,
(an Oregon corporation),

9 Defendant.

COMPLAINT

10 1.

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

14 3930 Fairview Industrial Drive SE, P.O. Box 1088, Salem, Oregon, 97308-1088.

15 At all times herein relevant, Defendant was doing business in this state.

16 3.

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

19 4.

20 Under ORS 757.552, OUNC has adopted rules that prescribe requirements for
21 notification to OUNC of excavation activity and marking of underground facilities for the
22 purpose of preventing damage to such facilities. “Excavation” and other relevant definitions are
23 contained in OAR 952-001-0010.

24 ///

25 ///

26 ///

1 5.

2 OUNC adopted OAR 952-001-0050 and 952-001-0090 which were in effect at all times
3 herein relevant. The rules provide in part:

4 OAR 952-001-0050:

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

8 OAR 952-001-0090:

9 (1) An excavator shall not commence an excavation which requires notice
10 under these rules until the excavator has received a response from each operator
11 of underground facilities in the area of the proposed excavation, or until at least
12 two (2) business days (48 hours) have elapsed from the time the excavator
13 notified the Oregon Utility Notification Center.

12 6.

13 On or about September 25, 2012, Defendant violated OAR 952-001-0090(1) by
14 commencing an excavation at 4261 Marcum Lane, Eugene, Oregon without waiting the required
15 48 hours to receive a response from the operators of the underground facilities.

16 On or about March 25, 2013, Defendant violated OAR 952-001-0050, in that Defendant
17 intentionally failed to notify the Oregon Utility Notification Center of a proposed excavation
18 before commencing an excavation from the street addresses of 1685 to 1695 Chasa, Eugene,
19 Oregon.

20 7.

21 ORS 757.993 provides, in relevant part, that:

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

26 (2) In addition to all other penalties provided by law, every person who
intentionally violates or who intentionally procures, aids or abets in the violation
of any rule of the Oregon Utility Notification Center shall incur a penalty of not
more than \$5,000 for the first violation and not more than \$10,000 for each
subsequent violation.

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8.

Defendant has not violated OUNC rules in the past.

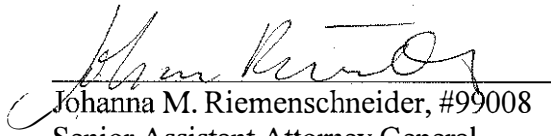
9.

WHEREFORE, the Commission directs Defendant to file a verified answer to this Complaint within twenty (20) days from the date this Complaint is mailed to 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 are deemed admitted, and a penalty will be imposed for each violation alleged, for a total amount of \$6,000.

DATED this 19 day of September 2013.

Respectfully submitted,

ELLEN F. ROSENBLUM
Attorney General


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

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

3 NC 335

4 PUBLIC UTILITY COMMISSION OF
5 OREGON,

6 Complainant,

7 v.

8 Braun Excavating, Inc.,
(an Oregon corporation),

9 Defendant.

STIPULATION FOR ENTRY OF ORDER

10 The Public Utility Commission of Oregon, appearing by and through Johanna M.
11 Riemenschneider, Assistant Attorney General, and Braun Excavating, Inc., the Defendant herein,
12 hereby stipulate as follows:

13 1.

14 A Complaint in this case is pending before the Commission charging the Defendant with
15 two violations of law, OAR 952-001-0050(1) and OAR 952-001-0090(1).

16 2.

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

19 3.

20 The Defendant admits that the violations were committed as alleged in the Complaint and
21 is willing for the Commission to enter an order finding that the violations were committed as
22 alleged in the Complaint.

23 ///

24 ///

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26 ///

1 4.

2 The parties further agree that the Commission may enter an order assessing civil
3 monetary penalties against Defendant in the amount of \$6,000 under the following terms and
4 conditions:

- 5 A. Defendant must sign and return this Stipulation within 20 days of the date it was
6 served upon (mailed to) Defendant.
- 7 B. For the first violation, \$200 becomes due and payable on or before the 30th day
8 following the Commission's entry of its order in this case.
- 9 C. The second violation, because Defendant was aware of OUNC requirements, is
10 considered an intentional violation, therefore \$1,000 shall become due and payable on
11 or before the 30th day following the Commission's entry of a final order in this case.
- 12 D. Payment must be by **money order** made out to the **Public Utility Commission of**
13 **Oregon**, and the memo line of the money order must state the "NC" docket number
14 in the caption of this Stipulation.
- 15 E. Payment of the balance of the penalties (\$4,800) will be permanently suspended and
16 no further penalties will be imposed for the violation alleged in the Complaint unless
17 Defendant fails to comply with all of the terms of this Stipulation and all of the rules
18 adopted by the Oregon Utility Notification Center (OUNC) under ORS 757.552 for a
19 two-year period following the date of the Commission's entry of an order.
- 20 F. Defendant must contact the OUNC Speakers Bureau online at
21 www.digsafelyoregon.com or by calling **(503) 232-1987** to arrange for and attend a
22 training session on Oregon excavation laws within 45 days following the entry of the
23 Commission's order.
- 24 G. In the event that Complainant contends that Defendant has not complied with all of
25 the terms of this Stipulation and all OUNC rules for that two-year period,
26 Complainant may reopen this proceeding and petition for imposition of all or a

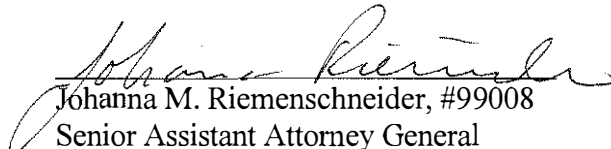
1 portion of the suspended penalties. In such case, Defendant is entitled to a hearing
2 and to be notified of the basis upon which Complainant contends that compliance has
3 not occurred.

4 H. Complainant's failure to enforce any provision of this Stipulation, or decision to
5 waive any violation or nonperformance of this Stipulation in one instance, will not
6 constitute a waiver by the Complainant of that provision, any other provision, or any
7 other violation or nonperformance in another instance.

8 5.

9 This Stipulation is conditioned upon final approval of its terms by the Commission. If
10 the Stipulation is not accepted in its entirety, it is deemed withdrawn.

11 DATED this 19 day of September 2013.

12
13
14 
15 Johanna M. Riemenschneider, #99008
16 Senior Assistant Attorney General
17 Of Attorneys for the Public Utility Commission
18 of Oregon

19 DATED this _____ day of _____ 2013.

20 _____
21 Defendant / Representative (signature)

22 _____
23 (Print Name)