



DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

April 22, 2016

Patrick K. McClain, President
Mark Latham Excavation, Inc. dba Latham Excavation
84 SE 5th Street, #100
Bend, OR 97702

HLR Corporate Services, Inc. – Registered Agent
747 SW Mill View Way
Bend, OR 97702

Re: Violation of Oregon Utility Notification Center Rules
DOJ File No. 860501-GB0303-16 / Docket No. NC 350

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

On April 11, 2016, 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
201 High St. SE, Ste. 100
PO Box 1088
Salem OR 97308-1088**


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You do not need to make payment, if any is due, 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 Kevin Hennessy at (503) 378-6115.

Sincerely,



Johanna M. Riemenschneider
Senior Assistant Attorney General
Business Activities Section

JMR:pjr/#7306636
Enclosures

1 **BEFORE THE PUBLIC UTILITY COMMISSION**

2 **OF OREGON**

3 NC 350

4 PUBLIC UTILITY COMMISSION OF
5 OREGON,

6 Complainant,

7 v.

8 MARK LATHAM EXCAVATION, INC., (an
9 Oregon corporation) dba LATHAM
EXCAVATION,

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 offices at:

15 201 High Street SE, P.O. Box 1088, Salem, Oregon, 97308-1088.

16 2.

17 At all times herein relevant, 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. "Excavation" and "reasonable accuracy" and
25 other relevant definitions are contained in OAR 952-001-0010.
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5.

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

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

(c) Employ hand tools or other such non-invasive methods to determine the exact location of the underground facility when excavation is to be made within the reasonable accuracy zone.

6.

On or about February 25, 2016, Defendant violated OAR 952-001-0090(2) in that Defendant failed to expose marked facilities by hand while performing an excavation near SW 32nd Street and SW Volcano Avenue, Redmond, Oregon.

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 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

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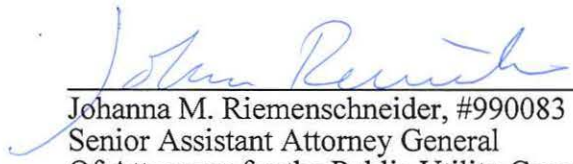
1 allegations of the Complaint are deemed admitted, and a penalty will be imposed in the
2 amount of \$1,000 for each violation alleged, for a total of \$1,000.

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DATED this 22 day of April, 2016.

Respectfully submitted,

ELLEN F. ROSENBLUM
Attorney General



Johanna M. Riemenschneider, #990083
Senior Assistant Attorney General
Of Attorneys for the Public Utility Commission
of Oregon

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

3 NC 350

4 PUBLIC UTILITY COMMISSION OF
5 OREGON,

6 Complainant,

7 v.

8 MARK LATHAM EXCAVATION, INC., (an
9 Oregon corporation) dba LATHAM
10 EXCAVATION,

11 Defendant.

12 STIPULATION FOR ENTRY
13 OF FINAL ORDER

14 The Public Utility Commission of Oregon, appearing by and through Johanna M.
15 Riemenschneider, Assistant Attorney General, and Mark Latham Excavation, Inc., the Defendant
16 herein, hereby stipulate as follows:

17 1.

18 A Complaint in this case is pending before the Commission charging the Defendant with
19 one violation of law, OAR 952-001-0090(2).

20 2.

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

23 3.

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

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1 4.

2 The parties further agree that the Commission may enter an order assessing a civil
3 monetary penalty against Defendant in the amount of \$1,000 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. \$200 becomes due and payable on or before the 30th day following the Commission's
8 entry of its order in this case.
- 9 C. Payment must be by cashier's check or money order made out to the Public Utility
10 Commission of Oregon, and the memo line of the money order must state the "NC
11 350" docket number in the caption of this Stipulation.
- 12 D. Payment of the balance of the penalty (\$800) will be permanently suspended and no
13 further penalties will 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
16 one-year period following the date of the Commission's entry of an order.
- 17 E. Defendant must contact the OUNC Speakers Bureau online at
18 www.digsafelyoregon.com or by calling (503) 232-1987 to arrange for a training
19 session on Oregon excavation laws within 45 days following the entry of the
20 Commission's order. All employees of Defendant that perform excavation work must
21 attend a training session.
- 22 F. Defendant must also contact Bill Walker at Cascade Natural Gas (CNG) by email
23 William.Walker@cngc.com or by calling (541) 706-6290 to arrange for and attend an
24 operator safety presentation provided by CNG within 45 days following the entry of
25 the Commission's order. All employees of Defendant that perform excavation work
26 must attend a safety presentation from CNG.

1 G. Defendant must take a blank copy of the Training Verification Form attached to this
2 Stipulation as Attachment 1 to all required trainings under Paragraphs 4.E and 4.F
3 above. Each individual attending training must sign the form to verify attendance. A
4 representative of the organization providing the training (Instructor) must sign the
5 Training Verification Form that the training is complete with respect to the
6 individuals listed on the Training Verification Form for the form to be complete.
7 Defendant shall return all completed Training Verification Forms to Complainant at
8 the address on the Form within 10 days of date of the last training session and in no
9 event no later than 55 days following the date of the Commission's entry of an order
10 in this docket.

11 H. In the event that Complainant contends that Defendant has not complied with all of
12 the terms of this Stipulation and all OUNC rules for that one-year period,
13 Complainant may reopen this proceeding and petition for imposition of all or a
14 portion of the suspended penalty. In such case, Defendant is entitled to a hearing and
15 to be notified of the basis upon which Complainant contends that compliance has not
16 occurred.

17 I. Complainant's failure to enforce any provision of this Stipulation, or decision to
18 waive any violation or nonperformance of this Stipulation in one instance, will not
19 constitute a waiver by the Complainant of that provision, any other provision, or any
20 other violation or nonperformance in another instance.


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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 is deemed withdrawn.

DATED this 22 day of April, 2016.



Johanna M. Riemenschneider, #990083
Senior Assistant Attorney General
Of Attorneys for the Public Utility Commission
of Oregon

DATED this _____ day of April, 2016.

Defendant / Representative (signature)

(Print Name)



Oregon Public Utility Commission Training Verification

Docket NC 350

- Instructions:**
- Schedule training(s) outlined in Stipulation
 - Complete the Training Verification form on the day of the training
 - All attendees must print and sign their name on the Training Verification form
 - Instructor must date and sign the Training Verification form upon completion of training
 - Mail completed Training Verification form to the address below *(retain a copy for your records)*

Type of Training: *(To be filled out and signed by the instructor)*

OUNC – Oregon Excavation Laws Instructor: _____ Date: _____

Operator Safety Presentation Instructor: _____ Date: _____

Other: Instructor: _____ Date: _____

Name (Printed)	Name (Signed)

Mail Completed form to:

Public Utility Commission of Oregon
Administrative Hearings Division
201 High St. SE, Ste. 100
PO Box 1088
Salem OR 97308-1088