



DEPARTMENT OF JUSTICE  
GENERAL COUNSEL DIVISION

August 5, 2016

Justin L. Latham, President  
Justin Latham Excavation, Inc.  
P O Box 1891  
Redmond, OR 97756

Jeffrey T. Eager – Registered Agent  
C/O Eagerlaw PC  
62910 O.B. Riley Rd. #130  
Bend, OR 97703

Re: Violation of Oregon Utility Notification Center Rules  
DOJ File No. 860501-GB0464-16 / Docket No. NC 354

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

On June 27, 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**

Justin Latham Excavation, Inc.  
August 5, 2016  
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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:mxg/#7518129  
Enclosures

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

NC 354

<p>PUBLIC UTILITY COMMISSION OF OREGON,</p> <p style="padding-left: 100px;">Complainant,</p> <p style="padding-left: 100px;">v.</p> <p>JUSTIN LATHAM EXCAVATION, INC. (An Oregon Corporation),</p> <p style="padding-left: 100px;">Defendant.</p>		COMPLAINT
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1.

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

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

2.

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

3.

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

4.

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

///

1 5.

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

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

8 OAR 952-001-0090 provides in relevant part:

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

10 (a) Maintain marks during the excavation period to ensure that the original  
11 marks remain effective for the life of the project and can be re-established;

12 (b) Stop excavating in the vicinity of the underground facility and notify  
13 the Oregon Utility Notification Center to have the route remarked as specified in  
14 these rules, if prior to or during the excavation process, the marking or route of  
15 any underground facility is removed or no longer visible; and

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

19 6.

20 On or about April 4, 2016, Defendant violated OAR 952-001-0050(1) in that Defendant  
21 failed to notify the Oregon Utility Notification Center of a proposed excavation before  
22 commencing excavation near 61310 Meeks Cutoff Rd, Bend, Oregon.

23 7.

24 ORS 757.993 provides, in relevant part, that:

25 “\* \* \* every person who violates or who procures, aids or abets in the violation of  
26 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.

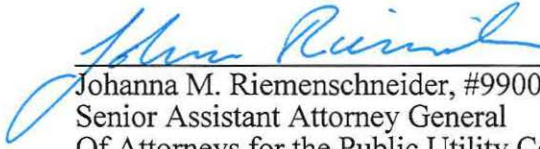
9.

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

DATED this 5<sup>th</sup> day of August 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 354

4 PUBLIC UTILITY COMMISSION OF  
OREGON,

5 Complainant,

6 v.

7 JUSTIN LATHAM EXCAVATION, INC.,  
8 (An Oregon Corporation),

9 Defendant.

STIPULATION FOR ENTRY  
OF FINAL ORDER

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

13 1.

14 A Complaint in this case is pending before the Commission charging the Defendant with  
15 one violation of law, OAR 952-001-0050(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 violation was committed as alleged in the Complaint and  
21 is willing for the Commission to enter an order finding that the violation was committed as  
22 alleged in the Complaint.

23 ///

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26 ///

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 30<sup>th</sup> day following the Commission's  
8 entry of its order in this case.
- 9 C. Payment must be by money order made out to the Public Utility Commission of  
10 Oregon, and the memo line of the money order must state the "NC" docket number  
11 in the caption of this Stipulation.
- 12 D. Payment of the balance of the penalties (\$800) will be suspended and the suspended  
13 penalties will be waived and no further penalties will be imposed for the violation  
14 alleged in the Complaint unless Defendant fails to comply with all of the terms of this  
15 stipulation and all of the rules adopted by the Oregon Utility Notification Center  
16 (OUNC) under ORS 757.552 for a one-year period following the date of the  
17 Commission's entry of an order.
- 18 E. Defendant must contact the OUNC Speakers Bureau online at  
19 www.digsafelyoregon.com or by calling (503) 232-1987 to arrange for and ensure  
20 that all of defendant's employees that engage in excavation activity as a part of their  
21 job duties, including but not limited to notifying the Oregon Utility Notification  
22 Center of proposed excavations, attend a training session on Oregon excavation laws  
23 within 45 days following the entry of the Commission's order.
- 24 F. Defendant must contact Bill Walker at Cascade Natural Gas (CNG) by email  
25 William.Walker@cngc.com or by calling (541) 706-6290 and arrange for and ensure  
26 that all of defendant's employees that engage in excavation activity as a part of their

1 job duties attend an operator safety presentation provided by CNG within 45 days  
2 following the entry of a final order.

3 G. Defendant must take a blank copy of the Training Verification form attached to this  
4 Stipulation as Attachment 1 to all required trainings scheduled under paragraphs 4.E.  
5 and 4.F. above. Defendant must ensure that all of its employees attending a required  
6 training sign a Training Verification form to verify attendance. A representative of  
7 the organization providing the training (Instructor) must sign the Training  
8 Verification Form to verify that each person listed on the form completed the training.  
9 Defendant must return all completed training verification forms to Complainant at the  
10 address on the Form within 10 days of the date of the last training session and in no  
11 event later than 55 days following the date of the Commission's entry of an order in  
12 this docket.

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

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

23 ///

24 ///

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26 ///

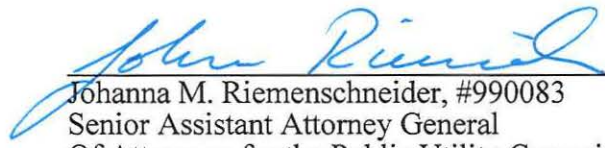


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5.

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 5<sup>th</sup> day of August 2016.

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

DATED this \_\_\_\_\_ day of August 2016.

\_\_\_\_\_  
Defendant / Representative (signature)

\_\_\_\_\_  
(Print Name)



Oregon Public Utility Commission
Training Verification

Docket NC 354

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:

Table with 2 columns: Name (Printed), Name (Signed). Multiple empty rows for data entry.

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