



DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

August 5, 2016

Dwayne Klein, Member
Kleins Irrigation & Landscaping, LLC
20975 Royal Oak Circle
Bend, OR 97701

Dwayne Klein – Registered Agent
Kleins Irrigation & Landscaping, LLC
63376 Tristar Ln
Bend, OR 97701

Re: Violation of Oregon Utility Notification Center Rules
DOJ File No.: 860501-GB0463-16/ Docket No.: NC 353

**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**

Kleins Irrigation & Landscaping, LLC

August 5, 2016

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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 Kevin Hennessy at (503) 378-6115.

Sincerely,



Johanna M. Riemenschneider
Assistant Attorney General
Business Activities Section

Enclosures

JMR:mxg/#7507181

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

3 NC 353

4 PUBLIC UTILITY COMMISSION OF
5 OREGON,

6 Complainant,

7 v.

8 KLEIN'S IRRIGATION &
9 LANDSCAPING, LLC (An Oregon limited
liability Company),

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 other relevant definitions are
25 contained in OAR 952-001-0010.

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1 5.
2 OUNC adopted OAR 952-001-0050, which was in effect at all times herein relevant. The
3 rule 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 6.
9 On or about May 23, 2016, Defendant violated OAR 952-001-0050(1), in that Defendant
10 failed to notify the Oregon Utility Notification Center of a proposed excavation before
11 commencing an excavation near or at the address of 1493 NW Quincy Avenue Bend, Oregon.

12 7.
13 ORS 757.993 provides, in relevant part, that:
14 “* * * every person who violates or who procures, aids or abets in the violation of
15 any rule of the Oregon Utility Notification Center shall incur a penalty of not
16 more than \$1,000 for the first violation and not more than \$5,000 for each
17 subsequent violation.”

18 8.
19 Defendant has not violated OUNC rules in the past.

20 9.
21 WHEREFORE, the Commission directs Defendant to file a verified answer to this
22 Complaint within twenty (20) days from the date this Complaint is mailed to Defendant.
23 If no verified answer or other written appearance raising a question of fact or law is filed
24 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 5th day of August 2016.

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Respectfully submitted,

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

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

3 NC 353

4
5 PUBLIC UTILITY COMMISSION OF
OREGON,

6 Complainant,

7 v.

8 KLEIN'S IRRIGATION &
9 LANDSCAPING, LLC (An Oregon limited
liability Company)

10 Defendant.

STIPULATION FOR ENTRY OF ORDER

11
12 The Public Utility Commission of Oregon, appearing by and through Johanna M.
13 Riemenschneider, Assistant Attorney General, and Klein's Irrigation & Landscaping, LLC, the
14 Defendant herein, hereby stipulate as follows:

15 1.

16 A Complaint in this case is pending before the Commission charging the Defendant with
17 one violation of law, OAR 952-001-0050(1).

18 2.

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

21 3.

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

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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 30th 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 penalty (\$800) will be suspended and will be waived
13 and no further penalties will be imposed for the violation alleged in the Complaint
14 unless Defendant fails to comply with all of the terms of this stipulation and all of the
15 rules adopted by the Oregon Utility Notification Center (OUNC) under ORS 757.552
16 for a 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 and ensure
19 that all of defendant's employees that engage in excavation activity as part of their
20 job duties, including but not limited to notifying the Oregon Utility Notification
21 Center of proposed excavations, attend a training session on Oregon excavation laws
22 within 45 days following the entry of the Commission's order.
- 23 F. Defendant must contact Bill Walker at Cascade Natural Gas (CNG) by email
24 William.Walker@cngc.com or by calling (541) 706-6290 and arrange for and ensure
25 that all of defendant's employees that engage in excavation activity as a part of their
26

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.

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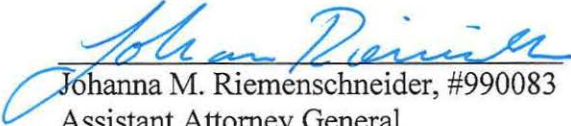
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5.

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

DATED this 5th day of August 2016.


Johanna M. Riemenschneider, #990083
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 353 _____

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