

ELLEN F. ROSENBLUM
Attorney General



LISA M. UDLAND
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DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

February 4, 2022

R.A. "Andy" Millar, P.C., Registered Agent
920 S. Main Street
Milton Freewater, OR 97862

John B. Nelson, President
Moreno & Nelson Construction Corp.
P.O. Box 794
Walla Walla, WA 99362

Re: Violation of Oregon Utility Notification Center Rules
DOJ File No. 860140-GB0116-22 / Docket No. NC 401

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

On January 28, 2022, a representative from your company met with the Public Utility Commission of Oregon's Enforcement Committee to discuss an alleged rule violation. At that conference, 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 Enforcement 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 Enforcement 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 Enforcement 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
P.O. Box 1088
Salem, OR 97308-1088**

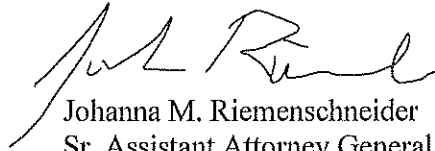
You do not need to make payment until the Commission has approved the Stipulation. The Commission should issue an order adopting the Stipulation within 30 days of its receipt. Please retain the extra copy of the Stipulation for your files.

R.A. "Andy" Millar, P.C., Registered Agent
John B. Nelson, President
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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, or a default order may be issued.

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,

A handwritten signature in black ink, appearing to read "Johanna M. Riemenschneider". The signature is fluid and cursive, with a long horizontal stroke at the end.

Johanna M. Riemenschneider
Sr. Assistant Attorney General
Business Activities Section

JMR:pjr #340591857
Enclosures

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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:

(9) An excavator must not begin an excavation more than 10 business days after providing notice to the Oregon Utility Notification Center of the excavation, or continue excavating at a location following expiration of its ticket life unless the excavator has re-notified the Oregon Utility Notification Center of the excavation as provided in OAR 952-001-0050.

6.

On or about November 17, 2021, Defendant violated OAR 952-001-0090(9), in that Defendant continued excavating without having underground facilities remarked while performing an excavation at or near SE 6th Street and SE Court Avenue in Pendleton, 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

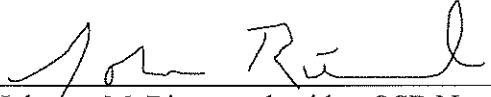
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1 allegations of the Complaint are deemed admitted, and a penalty will be imposed in the
2 amount of \$1,000 for each violation alleged, for a total of \$1,000.

3 DATED this 4th day of February 2022.

4 Respectfully submitted,

5 ELLEN F. ROSENBLUM
6 Attorney General

7 
8 _____
9 Johanna M. Riemenschneider, OSB No. 990083
10 Sr. Assistant Attorney General
11 Of Attorneys for the Public Utility Commission
12 of Oregon
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- 1 A. Defendant must sign and return this Stipulation within 20 days of the date it was
2 served upon (mailed to) Defendant.
- 3 B. \$200 becomes due and payable on or before the 30th day following the Commission's
4 entry of its order in this case.
- 5 C. Payment must be by money order made out to the Public Utility Commission of
6 Oregon, and the memo line of the money order must state the "NC" docket number
7 in the caption of this Stipulation.
- 8 D. Payment of the balance of the penalties (\$800) is suspended and will be waived with
9 no further penalties imposed for the violations alleged in the Complaint unless
10 Defendant fails to comply with all of the terms of this Stipulation and all of the rules
11 adopted by the Oregon Utility Notification Center (OUNC) under ORS 757.552 for a
12 one-year period following the date of the Commission's entry of an order.
- 13 E. Defendant must update company policy and procedures for giving notice of an
14 excavation to the OUNC. This includes but not limited to registering with the
15 OUNC's ITICnxt provider. Contact the OUNC's provider to register at this email:
16 nwtic@occinc.com. This also includes reviewing tool resource information at
17 http://or.tryitic.com.
- 18 F. In the event that Complainant contends that Defendant has not complied with all of
19 the terms of this Stipulation and all OUNC rules for that one-year period,
20 Complainant may reopen this proceeding and petition for imposition of all or a
21 portion of the suspended penalties. In such case, Defendant is entitled to a notice and
22 hearing on the basis upon which Complainant contends that compliance has not
23 occurred.
- 24 G. Complainant's failure to enforce any provision of this Stipulation, or decision to
25 waive any violation or nonperformance of this Stipulation in one instance, will not
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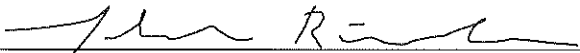
1 constitute a waiver by the Complainant of that provision, any other provision, or any
2 other violation or nonperformance in another instance.

3 H. If Defendant fails to comply with any of the conditions outlined above or the
4 Defendant is found to have violated any rule within Chapter 952, Division 1 within
5 12 months, the suspended amount of \$800 is forfeited.

6 5.

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

9
10 DATED this 4th day of February 2022.

11
12 
13 Johanna M. Riemenschneider, OSB No. 990083
14 Sr. Assistant Attorney General
Of Attorneys for the Public Utility Commission
of Oregon

15 DATED this _____ day of February 2022.

16
17 _____
Representative for Defendant (signature)

18 _____
19 (Print name)
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