

**DEPARTMENT OF JUSTICE** GENERAL COUNSEL DIVISION

November 18, 2019

Shaun R. Nielsen, Registered Agent CRN Excavation, Inc. 6400 SE 101<sup>st</sup> Avenue, #5 Portland, OR 97266

Clayton R. Nielsen, President CRN Excavation, Inc. P.O. Box 301517 Portland, OR 97294

Re: Violation of Oregon Utility Notification Center Rules DOJ File No. 860140-GB0651-19 / Docket No. NC 394

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

On October 29, 2019, a representative from your company participated in a telephone conference 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 Shaun R. Nielsen, Registered Agent Clayton R. Nielsen, President November 18, 2019 Page 2

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, 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,

John Rand

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

JMR:pjr /#9918954 Enclosures

1	BEFORE THE PUBLIC UTILITY COMMISSION		
2	<b>OF OREGON</b>		
3	NC 394		
4	PUBLIC UTILITY COMMISSION OF		
5	OREGON,		
6	Complainant,	COMPLAINT	
7	V.		
8	CRN EXCAVATION, INC.,		
9	Defendant.		
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 at:		
14	201 High Street SE, P.O. Box 1088, Salem, Oregon 97308-1088.		
15	2	).	
16	At all times herein relevant, Defendant was doing business in this state.		
17	3.		
18	Under ORS 757.993, the Commission has discretion to seek penalties for violations of		
19	rules adopted by the Oregon Utility Notification Center (OUNC).		
20	4	k.	
21	Under ORS 757.552, OUNC has adopted rules that prescribe requirements for		
22	notification to OUNC of excavation activity and marking of underground facilities for the		
23	purpose of preventing damage to such facilities. "Excavation" and other relevant definitions are		
24	contained in OAR 952-001-0010.		
25	///		
26	///		

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1	5.			
2	OUNC adopted OAR 952-001-0090 which was in effect at all times herein relevant. The			
3	rule provides in relevant part:			
4	(1) An excavator may not begin an excavation that requires notice under these rules until the excavator has received a response from each operator of underground facilities in the area of the proposed excavation, or until at least two full business days have elapsed following the day the excavator notified			
5				
7	examples.			
8	6.			
o 9	On or about March 7, 2019, Defendant violated OAR 952-001-0090(1), by commencing			
9 10	an excavation near 6435 NE Colwood Way in Portland, Oregon without waiting the required 48 hours to receive a response from the operators of the underground facilities.			
10				
11	7.			
12	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			
13				
15				
16	8.			
17	Defendant has not violated OUNC rules in the past.			
18	9.			
19	WHEREFORE, the Commission directs Defendant to file a verified answer to this			
20	Complaint within twenty (20) days from the date this Complaint is mailed to Defendant.			
21	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			
22				
23	///			
24	///			
25	///			
26				

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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 $1844$ day of November 2019.
4	Respectfully submitted,
5	ELLEN F. ROSENBLUM
6	Attorney General
7	1 Jan Real
8	Johanna M. Riemenschneider, #990083
9	Sr. Assistant Attorney General Of Attorneys for the Public Utility Commission
10 11	of Oregon
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1	<b>BEFORE THE PUBLIC UTILITY COMMISSION</b>			
2	<b>OF OREGON</b>			
3	NC 394			
4	PUBLIC UTILITY COMMISSION OF OREGON,			
5	Complainant,	STIPULATION FOR ENTRY OF FINAL ORDER		
6	V			
7	CRN EXCAVATION, INC.,			
8	Defendant.			
9		I		
10	The Public Utility Commission of Orego	n, appearing by and through Johanna M.		
11	Riemenschneider, Sr. Assistant Attorney General, and CRN 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 952-001-0090(1).			
16	2.			
17	Both parties to this proceeding are willin	g 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 f	inding that the violation was committed as		
22	alleged in the Complaint.			
23	///			
24	///			
25	///			
26	///			
Page		DER (NC 394)		
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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. Payment of the civil penalty (\$1,000) is suspended and will be waived with no furthe	r
8	penalties imposed for the violation alleged in the complaint unless Defendant fails to	)
9	comply with all of the terms of this Stipulation and all of the rules adopted by the	
10	Oregon Utility Notification Center (OUNC) under ORS 757.552 for a one-year perio	d
11	following the date of the Commission's entry of an order.	
12	C. Defendant must contact the OUNC Speakers Bureau online at	
13	www.digsafelyoregon.com or by calling (503) 232-1987 to arrange for and ensure	
14	that all of Defendant's employees that engage in excavation activity as part of their	
15	job duties, including but not limited to notifying the Oregon Utility Notification	
16	Center of proposed excavations, attend a training session on Oregon excavation laws	;
17	within 45 days following the entry of the Commission's order.	
18	D. Defendant must take a blank copy of the Training Verification form attached to this	
19	Stipulation as Attachment 1 to document all required trainings scheduled under	
20	paragraph 4.C. above. Defendant must ensure that all of its employees attending a	
21	required training sign a Training Verification form to verify attendance. A	
22	representative of the organization providing the training (Instructor) must sign the	
23	Training Verification form to verify each person listed on the form completed the	
24	training. Defendant must return all completed Training Verification forms to	
25	Complainant at the address on the Form within 10 days of the date of the last training	3
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1		session and in no event later than 55 days following the date of the Commission's
2		entry of an order in this docket.
3	]	E. In the event that Complainant contends that Defendant has not complied with all of
4		the terms of this Stipulation and all OUNC rules for that one-year period,
5		Complainant may reopen this proceeding and petition for imposition of all or a
6		portion of the suspended penalties. In such case, Defendant is entitled to a notice and
7		hearing on the basis upon which Complainant contends that compliance has not
8		occurred.
9	]	Complainant's failure to enforce any provision of this Stipulation, or decision to
10		waive any violation or nonperformance of this Stipulation in one instance, will not
11		constitute a waiver by the Complainant of that provision, any other provision, or any
12		other violation or nonperformance in another instance.
13		5.
14	4 This Stipulation is conditioned upon final approval of its terms by the Commission. If	
15	the Stip	lation is not accepted in its entirety, it is deemed withdrawn.
16		
17	]	DATED this $/8$ day of November 2019.
18		John Ret
19		Johanna M. Riemenschneider, #990083
20		Sr. Assistant Attorney General Of Attorneys for the Public Utility Commission
21		of Oregon
22		
23	]	DATED this day of 2019.
24		
25		Representative for Defendant (signature)
26		(Print name)
		(Print name)
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**Oregon Public Utility Commission** 

Public Utility Commission Training Verification **Docket NC** 394 Instructions: • Defendant: • 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 • Have instructor date and sign the Training Verification form upon completion of training • Defendant must mail completed Training Verification form to the address below (retain a copy for your records) Instructor: • Date and sign the Training Verification form upon completion of training **Type of Training:** (*To be filled out by the instructor*) OUNC – Oregon Excavation Laws Operator Safety Presentation Other: Instructor Print Name: Instructor Signature: \_\_\_\_\_ Date: \_\_\_\_\_ Name (Signed) Name (Printed) )

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