ELLEN F. ROSENBLUM Attorney General



LISA M. UDLAND Deputy Attorney General

DDEPARTMENT OF JUSTICE GENERAL COUNSEL DIVISION

June 13, 2023

Sharon Tate, Registered Agent Dynasty Concrete Co. P.O. Box 24124 Eugene, OR 97402

Robert Tate, President Dynasty Concrete Co. P.O. Box 24124 Eugene, OR 97402

Re: Violation of Oregon Utility Notification Center Rules DOJ File No. 860140-GB0246-23 / Docket No. NC 407

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

On April 3, 2023, a representative from your company met with the 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 Dynasty Concrete Co. June 13, 2023 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 within 20 days, 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 (503)378-6115.

Sincerely,

Johanna Riemenschneider

Johanna M. Riemenschneider Senior Assistant Attorney General Business Activities Section

JMR:pjr/#765380687 Enclosures

1	BEFORE THE PUBLIC	UTILITY COMMISSION	
2	<b>OF OREGON</b>		
3	NC 407		
4			
5	OREGON,		
6	Complainant,	COMPLAINT	
7	v.		
8	DYNASTY CONCRETE CO.,		
9	Defendant.		
10		1.	
11	This proceeding is initiated by the Publi	c Utility Commission of Oregon (hereinafter	
12	"Commission") to determine whether civil mon	etary penalties should be assessed as provided in	
13	ORS 757.993. The Commission maintains its offices at:		
14	201 High Street SE, Suite 100, Salem, Oregon 97301.		
15	2.		
16	At all times herein relevant, Defendant was doing business in this state.		
17		3.	
18	Under ORS 757.993, the Commission h	as discretion to seek penalties for violations of	
19	rules adopted by the Oregon Utility Notification	n Center (OUNC).	
20		4.	
21	Under ORS 757.552, OUNC has adopte	d 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	///		
Page 1 - COMPLAINT (NC 407) JMR:pjr/#765380687			

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 full business days, but not more than 10 full business			
5	days before beginning an excavation, the excavator must notify the Oregon Utility Notification Center of the date and location of the proposed excavation, and the type of work to be performed.			
6	type of work to be performed.			
7	6.			
8	On or about August 10, 2022, Defendant violated OAR 952-001-0050(1), in that			
9	Defendant failed to notify the Oregon Utility Notification Center of a proposed excavation			
10.	before commencing an excavation at or near Coburg Road and Oakmont Way, Eugene, Oregon.			
11	7.			
12	ORS 757.993 provides, in relevant part, that:			
13				
14	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 "			
15	subsequent violation."			
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. If no			
21	verified answer or other written appearance raising a question of fact or law is filed with the			
22	Commission at its office in Salem, Oregon, within the 20-day period, the allegations of the			
23	111			
24	///			
25	///			
26	111			
Page	2 - COMPLAINT (NC 407) JMR:pjr/#765380687 Department of Justice			

•

1162 Court Street NE Salem, OR 97301-4096 (503) 947-4342 / Fax: (503) 378-3784  $\sim$ 

1	Complaint is deemed	admitted, and	a penalty w	ill be impose	d by default	t order in the a	mount o
T	Complaint is decined	aumiteu, anu-	a penany w	m de impose	a by default	l order in the a	moun

2	\$1,000 for each violation alleged, for a total of \$1,000.	
---	---	--

3		
4	DATED this 13th day of June 2023.	
5		Respectfully submitted,
6		ELLEN F. ROSENBLUM
7		Attorney General
8		Johanna Rismenschneider
9		Johanna M. Riemenschneider, OSB No. 990083 Sr. Assistant Attorney General Of Attorneys for the Public Utility Commission
10		of Oregon
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
-		

1	<b>BEFORE THE PUBLIC UTILITY COMMISSION</b>			
2	<b>OF OREGON</b>			
3	NC 407			
4	PUBLIC UTILITY COMMISSION OF OREGON,			
5 6	Complainant,	STIPULATION FOR ENTRY OF ORDER		
	V.			
7	DYNASTY CONCRETE CO.,			
8 9	Defendant.			
10	The Public Utility Commission of Oregon, appearing by and through Johanna M.			
11	Riemenschneider, Senior Assistant Attorney Ge	eneral, and Dynasty Concrete Co., 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	///			
24	///			
25	///			
26	///	•		
Page		2 407)		
	JMR:pjr/#765380687			

Department of Justice 1162 Court Street NE Salem, OR 97301-4096 (503) 947-4342 / Fax: (503) 378-3784

1	4.
2	The parties further agree that the Commission may enter an order assessing civil
3	monetary penalties 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 penalty (\$1,000) is suspended and will be waived with no further
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 period
11	following the date of the Commission's entry of an order.
12	C. Within 60 days of entry of the OPUC Final Order: Defendant must develop and
13	implement updated safety plan procedures (policy) that identifies the workflow for
14	giving notice for proposed excavation work to the 811/One Call Center as required
15	by OAR Chapter 952. The policy must include but is not limited to the following:
16	a. Description of the purpose of the policy and commitment thereof by
17	leadership, management, and employees.
18	b. Identification of types of notifications given to the 811/One-Call Center.
19	c. Identification of tasks assigned to participants by title or position and their role
20	and responsibilities in the workflow process.
21	d. Workflow must address the reassignment of tasks when Company
22	participants are unable to fulfill notification to the 811/One Call Center.
23	e. Procedures in the policy must address the following:
24	i. Applicable Oregon Utility Notification Center OAR Chapter 952 safety
25	standards:
26	

,

Page 2 - STIPULATION FOR ENTRY OF ORDER (NC 407) JMR:pjr/#765380687

1	https://secure.sos.state.or.us/oard/displayChapterRules.action?selectedChapter
2	<u>=166</u>
3	ii. OR-OSHA Program Directive 303:
4	https://osha.oregon.gov/OSHARules/pd/pd-303.pdf
5	iii. Oregon One-Call Center manual for ITICnxt: http://or.tryitic.com/wp-
6	content/uploads/sites/7/2021/08/ITICnxt-Full-Manual-Oregon-080621.pdf
7	iv. Type of work and drawing tools to electronically premark/white line (Radius,
8	Route, Property Street and Other) and avoid over notification to 811/One Call
9	Center.
10	v. CGA best practice - White lining 5.02
11	https://bestpractices.commongroundalliance.com/5-Excavation/502-White-
12	Lining#mainContentAnchor
13	f. Identification of technology or systems and methods used throughout the policy
14	that enables the completion of identified tasks.
15	g. Criteria for periodic review of effectiveness and identification of best practices.
16	D. Within 60 days of entry of the OPUC Final Order: Defendant must provide a copy of
17	updated policy developed per Paragraph C to the Commission.
18	E. 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	F. 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
26	

Page 3 - STIPULATION FOR ENTRY OF ORDER (NC 407) JMR:pjr/#765380687

1	constitute a waiver by the Compla	inant of that provision, any other provision, or any	
2	other violation or nonperformance in another instance.		
3		5.	
4	This Stipulation is conditioned upon f	inal approval of its terms by the Commission. If	
5	the Stipulation is not accepted in its entirety,	it is deemed withdrawn.	
6			
7	DATED this 13 <sup>th</sup> day of June 2023.		
8		Johanna Riemenschneider	
9		Johanna M. Riemenschneider, OSB No. 990083	
10		Senior Assistant Attorney General Of Attorneys for the Public Utility Commission	
11		of Oregon	
12	DATED thisday of	2023.	
13			
14		Defendant / Representative (signature)	
15			
16		(Print Name)	
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			
D			

## Page 4 - STIPULATION FOR ENTRY OF ORDER (NC 407) JMR:pjr/#765380687