

ELLEN F. ROSENBLUM  
Attorney General



LISA M. UDLAND  
Deputy Attorney General

**DEPARTMENT OF JUSTICE**  
GENERAL COUNSEL DIVISION

May 5, 2023

VIA EMAIL - [puc.filingcenter@puc.oregon.gov](mailto:puc.filingcenter@puc.oregon.gov)

Public Utility Commission of Oregon  
ATTN: Filing Center  
201 High Street SE, Suite 100  
P.O. Box 1088  
Salem, OR 97308-1088

Re: NC 405 – In the Matter of Public Utility Commission of Oregon v. City of Portland

Filing Center:

Staff of the Public Utility Commission of Oregon submit its Opening Testimony regarding NC 405.

Sincerely,

*/s/ Pamela J. Rojek*

Pamela J. Rojek, Legal Secretary to  
Stephanie Andrus  
Sr. Assistant Attorney General  
Business Activities Section

SSA:pjr  
Enclosure

CASE: NC 405  
WITNESS: Kevin Hennessy

**PUBLIC UTILITY COMMISSION  
OF  
OREGON**

**STAFF EXHIBIT 100**

**OPENING TESTIMONY**

**July 6, 2023**

1 **Q. Please state your name, occupation, and business address.**

2 A. My name is Kevin Hennessy. I am the Chief of Pipeline Safety of the Utility Safety,  
3 Reliability and Security Division of the Public Utility Commission of Oregon (OPUC).  
4 My business address is 201 High Street SE, Suite 100, Salem, Oregon 97301.

5 **Q. What is this case about?**

6 A. This case concerns a Complaint issued by the OPUC against the City of Portland,  
7 Bureau of Environmental Services (hereinafter referred to as the “City” or “BES”), for  
8 failing to locate underground wastewater facilities in a public City (ROW) in response  
9 to a “locate” request submitted to the Oregon Utility Notification Center (OUNC) via  
10 the One Call Center, by an excavator.

11 **Q. What is the primary issue presented in this case?**

12 A. The primary issue is whether BES is responsible under the One Call System developed  
13 by the OUNC<sup>1</sup> for locating underground facilities in a public City ROW and used in  
14 providing City wastewater services to customers, when those facilities are not owned  
15 by City, i.e., were installed by a customer to reach a sewer main line. BES asserts it is  
16 only responsible for locating such facilities when it owns the facilities or has otherwise  
17 “accepted” the facilities pursuant to City Code. Staff believes BES is responsible for  
18 performing locates for all wastewater facilities used to provide City wastewater  
19 services located in City ROWs, whether they are owned or classified as “accepted”  
20 facilities by BES.

21 **Q. Please provide background on the OUNC and One Call System.**

---

<sup>1</sup> See ORS 757.452-757.593 and OAR 952-001-0001 through 952-001-0100.

1 A. Prior to 1995, several telephone service providers throughout the state would act as  
2 one-call centers for locating services. These various providers would accept  
3 notifications of proposed excavations and then distribute the notifications to affected  
4 utilities so the utilities could locate any underground facilities where the proposed  
5 excavations were to take place. In 1995, the Oregon legislature adopted Senate Bill  
6 (SB) 559 creating the OUNC as an independent not-for-profit public corporation and  
7 requiring the OUNC to adopt administrative rules to implement a one-call process for a  
8 person to give notification of proposed excavation activities and for utility operators to  
9 mark the presence and direction of buried underground facilities.<sup>2</sup> The OUNC adopted  
10 its first set of administrative rules in 1997.

11 The mission of the OUNC, is to “operate and maintain a state-of-the-art-one-call  
12 system for the state to reduce damages to underground facilities and to promote public  
13 safety related to excavation issues.”<sup>3</sup> In addition to providing a One Call System for  
14 locating underground utilities in proposed excavation sites, the OUNC conducts  
15 trainings for performing locates and excavator safety and does outreach to promote  
16 public awareness of the one-call program. Currently, the OUNC’s One Call Center is  
17 located in Portland and is staffed by about 50 persons. The One Call Center is  
18 available to process locate requests seven days a week, 24 hours a day. It accepts  
19 locate requests by telephone (through the 811 number) and online.

20 **Q. How does the One Call System operate?**

---

<sup>2</sup> ORS 757.552(1).

<sup>3</sup> <https://digsafelyoregon.com/about-ounc/mission-history/>

1 A. The OUNC board of directors has selected a qualified vendor to operator the One Call  
2 System. The One Call System vendor maintains a subscriber database of “notification  
3 boundaries” that represent polygons or areas of general locations for underground  
4 facilities. The notification boundaries are created and supplied by subscribers, who are  
5 the operators of underground facilities. ORS 757.557 requires all operators of  
6 “underground facilities” to “subscribe” to the OUNC. “Underground facilities” are  
7 facilities used in connection with the storage or conveyance of electrical energy, water,  
8 sewage, petroleum products, gas, gaseous vapor, or hazardous liquids. The specific  
9 process of how notification, location, marking and excavation activities work is set  
10 forth in administrative rule.

11 **Q. What is the process for an excavator to give notification of a proposed excavation?**

12 A. An excavator notifying the One Call Center of a proposed excavation for locating and  
13 marking services will delineate the area of proposed excavation by giving information  
14 and marking instructions to the one-call system. As required by rule, delineation can  
15 include the use of pre-marking in white paint within both public rights of way and  
16 underground easements.<sup>4</sup> The purpose of delineation is to identify the area of proposed  
17 excavation so operators will know where to respond with locating and marking  
18 services.

19 An excavator’s non-emergency notification to the One Call Center must occur at  
20 least two business days and not more than ten business days prior to excavation also  
21 an excavator must include how they can be contacted.<sup>5</sup> Upon receipt of the

---

<sup>4</sup> OAR 952-001-0040.

<sup>5</sup> OAR 952-001-0050.

1 notification of a planned excavation, the One Call Center will issue the excavator a  
2 reference ticket number, a copy of the received notification information, and a list of  
3 operator subscribers that were identified as having underground facilities within the  
4 proposed excavation area. The One Call Center determines the list of affected  
5 operators based on information previously provided to the One Call center, i.e., the  
6 operator-provided notification boundaries.

7 Upon receipt of a locate request, the One Call Center will notify operators with  
8 underground facilities in the proposed excavation area to perform the locate service.  
9 Once notified, the operators generally have two business days to provide locate  
10 services. To perform locate service, the operator must, within the area of the  
11 proposed excavation area, (1) mark its locatable underground facilities indicating the  
12 name, initials, or logo of the operator of the facilities; (2) provide marks or  
13 notification indicating unlocatable facilities using the best information available,  
14 including as-constructed drawings or other facility records maintained by the facility  
15 operator, indicating the name, initials, or logo of the operator of the facilities; or (3)  
16 notify the excavator that the operator does not have any underground facilities in the  
17 area of the proposed excavation.<sup>6</sup>

18 An excavator may not begin work at a proposed excavation site until the  
19 excavator has received a response from each operator of the underground facilities in  
20 the excavation area or at least two full business days have elapsed following the day  
21 the excavator notified the One Call Center.<sup>7</sup>

---

<sup>6</sup> OAR 952-001-0070.

<sup>7</sup> OAR 952-001-0090.

1 **Q. Who are operators that must subscribe to the OUNC?**

2 A. ORS 757.542(5) defines “operator” as any person, public utility, municipal  
3 corporation, political subdivision of the state, or other person with control over  
4 underground facilities. However, ORS 757.557(4) provides that operators of  
5 underground facilities that are located entirely on private property and that provide  
6 services exclusively for the use of the residents or owners of the property need not  
7 “subscribe” with OUNC, i.e, register underground facilities.

8 **Q. What are underground facilities for purposes of the locating requirements**  
9 **administered by the OUNC?**

10 A. ORS 757.542(6) defines “underground facilities” as “items partially or entirely below  
11 the surface of the ground for use in connection with the storage and conveyance of  
12 electrical energy, water, sewage, petroleum projects, gas, gaseous vapors or hazardous  
13 liquids, or the transmission of electronic, telephonic, telegraphic, or cable  
14 communications. Such items include, but are not limited to, pipes, sewers, conduits,  
15 cables, valves, lines, wires, manholes, attachments and those parts of poles or anchors  
16 that are underground.”

17 **Q. Is BES required to subscribe to the OUNC as an “operator” of a municipal**  
18 **wastewater system under ORS 757.557?**

19 A. Yes. BES provides water and sewer services and is subscribed to OUNC as an  
20 operator of underground facilities used to provide those services.

21 **Q. What does it mean for an operator to subscribe to the OUNC?**

22 A. Subscribing to the OUNC includes an information exchange between the  
23 subscribing operator and the One Call Center. The Center will initially collect

1 contact information, billing information, and mapping information that defines the  
2 notification boundaries for an operator. Once the operator is subscribed, they will  
3 receive notifications requesting locating and marking services for excavations the  
4 One Call Center has determined to be within the operator's notification boundary.  
5 A subscribing operator will also receive general information or update notices as  
6 determined by the One Call Center at the request of the OUNC board of directors.

7 **Q. Please describe the BES violation at issue in this case.**

8 A. The violation is BES's failure to provide locate services in response to a locate request  
9 submitted to the OUNC by Environmental Works, LLC (hereinafter referred to as  
10 "Excavator"). On January 15, 2022, Excavator notified the OUNC of planned  
11 excavation at 2928 NE Ainsworth, Portland, Oregon. The specific excavation project  
12 involved replacing a portion of sewer lateral and the installation of a cleanout located  
13 within the Ainsworth Right-of-Way ("Ainsworth ROW"). The request for locate  
14 included the following:

15 Please locate all facilities including sewer on the entire property including  
16 all ROWs and easements. Especially need the alley way approach to the  
17 easy marked outcorner lots, please mark all sides. Flags and Paint please.  
18

19 Upon receipt of the Excavator's Notification, the OUNC assigned Ticket number  
20 21334979 and notified BES of the locate request the same day, conveying specific  
21 instructions of the request. BES did not respond to the locate request within two  
22 business days as required under OAR 952-001-0070, or any time thereafter.

23 **Q. Who filed a complaint regarding the failure to provide locating service?**



1 A. The owner of the property adjacent to the Ainsworth ROW who is served by the  
2 sewer facility in the Ainsworth City of ROW (“Property Owner”). It was the Property  
3 Owner that hired the excavator to replace a portion of the sewer lateral and install a  
4 “cleanout.” The Property Owner owns, or at least is served by, the underground  
5 facility at issue. The underground facility in the Ainsworth ROW connects the  
6 facilities on his property to BES’s main sewer line located on a street intersected by  
7 the Ainsworth ROW.

8 **Q. Did the OPUC Safety Staff investigate the Complaint.**

9 A. Yes. Safety Staff Paul Pinto accompanied me to the Ainsworth ROW on June 17,  
10 2022. We inspected the site and were able to identify the sewer lateral in the  
11 Ainsworth ROW that serves the Property Owner. The facility is approximately 106  
12 feet long.<sup>8</sup>

13 We also spoke to the Property Owner. He informed us he had been in contact  
14 with BES and had been told by BES that BES was not obligated to provide locate  
15 service in response to the request for locate. The Property Owner provided us with e-  
16 mails he had received from City employee about who was responsible for locates for  
17 sewer facilities within the Ainsworth ROW.<sup>9</sup> We prepared a Safety Inspection Report  
18 with our findings and a Notice of Probable Violation Actions and Enforcement and  
19 sent it to BES. We noted in the Notice and cover letter sent with the Notice that Safety  
20 Staff would like to have an informal meeting between BES and Staff to discuss the  
21 matter before taking further legal action.<sup>10</sup>

---

<sup>8</sup> Staff/101.

<sup>9</sup> Staff/102, E-mail correspondence from City employees to Scott Donnell.

<sup>10</sup> Staff/101.

1 **Q. Did you meet with BES?**

2 A. Yes. BES explained its position that it is not required to perform locates on  
3 “nonconforming” private sewer facilities located in City ROWs such as the Property  
4 Owner’s, except in a specific circumstance. According to BES, it must perform locates  
5 for privately-owned sewer facilities in City ROWs if the sewer facilities have been  
6 “accepted” as part of the City’s wastewater system pursuant to the process outlined in  
7 City Code. BES believes that for any other privately-owned sewer facilities located in  
8 City ROWs, the customers served by facilities must perform the locates. As put by an  
9 attorney for BES in an e-mail to the Property Owner, “the rules do not require the City  
10 to mark facilities that it does not operate. Although you are correct that the City has  
11 ultimate control over the right-of-way, that does not make it an operator of private  
12 laterals within the right-of-way.”<sup>11</sup>

13 **Q. What is your response to the position taken by BES?**

14 A. ORS 757.542(5) is clear that the operator of underground facilities need not be the  
15 owner of the underground facilities. In fact, changing from an excavation law that  
16 applied to “owners” of “underground facilities” to one that applied to “operators” of  
17 underground facilities, was a deliberate choice by the Oregon legislature. Although the  
18 position taken by BES is not entirely based on who owns the underground facility, it is  
19 very similar to the facility ownership requirement addressed by the Oregon legislature  
20 in 1995.

---

<sup>11</sup> Staff/102, March 21, 2022 E-mail from Eric Shaffner to Scott Donnell.

1           As noted above, OUNC adopted rules implementing the One Call System in  
2           1997.<sup>12</sup> In the order adopting the rules, the OUNC explained that the rules were  
3           developed over a period of nearly three years and stated the Oregon Utility  
4           Coordinating Council had formed a legislative committee consisting of about 22  
5           original members of a wide spectrum of interested persons and the result of their work  
6           formed the nucleus of the rules adopted in the order. Attached to the order adopting the  
7           rules were comments by Jack Dent, Chief of Pipeline Safety at the OPUC. In those  
8           comments, Mr. Dent explained the new focus on the “operator” rather than “owner”:

9           The old excavation law (the current law) identified the person  
10          responsible for marking as the “owner”. What is interesting about the old  
11          law, is that “owner” was not defined, and responsibility was implied. This  
12          is of great importance, because the new law (SB 559), requires mandatory  
13          participation in the Center by all underground facility operators and  
14          defines the responsible party as the “Operator”.

15                   \* \* \* \* \*

16           The reasoning behind changing the concept from an “Owner” to an  
17          “Operator” is because an owner may not always have control over the buried  
18          facility. Therefore responsibility is shifted from ownership to administrative  
19          or operational control.  
20  
21  
22

23          For example, the sewer service laterals are normally installed from the  
24          sewer main in the street to the building. The city or service district requires  
25          the occupant to install a lateral, to their specifications from the main to the  
26          building. The city or service district then asserts that the lateral is owned by  
27          the building occupant. However, the owner of the lateral has no  
28          administrative or operational control over the lateral in the right-of-way. It  
29          is controlled and operated by the city or sewer district. The portion of the  
30          lateral on private property, outside the right-of-way, becomes the  
31          responsibility of the owner, because he does have operational and  
32          administrative control.  
33

---

<sup>12</sup> Staff/103, *In the Matter of the Adoption of OAR 952-001-0090*, UNC 1, Oregon Utility Notification Center Order No. 97-001 (April 9, 1997).

1 As a practical matter, the occupant would rarely have knowledge of the  
2 route of the lateral, would not have the expertise to locate it anyway, nor  
3 would he have the equipment to perform the locate.  
4

5 The operator of the sewer main (city or service district) would have the  
6 best knowledge of where the lateral would be (they installed it or controlled  
7 the installation) and they would have the expertise and equipment to perform  
8 the locate. If it is an “unlocatable” facility, they could provide the best  
9 information available to assist in its location.  
10

11 Because mandatory participation is required by SB 559, if the  
12 responsibility for marking remained with the “Owner”, every person in the  
13 state of Oregon with any kind of service lateral in a right-of-way, would be  
14 required to join the Center. Hundreds of thousands of homeowners would  
15 then be forced to join the Center, which would be counter-productive.<sup>13</sup>  
16

17 **Q. Is the BES argument that it is only the “operator” of privately-owned facilities**  
18 **used to provide wastewater service if it has officially “accepted” the facilities**  
19 **pursuant to City Code consistent with ORS 757.452 and the rules adopted by the**  
20 **OUNC.**

21 A. No. In fact, the BES position taken in this case appears to be precisely what the 1995  
22 Senate Bill and the 1997 implementing regulations were trying to prevent.

23 **Q. The 1997 comments set out above indicate it would be problematic if customers**  
24 **served by privately-owned wastewater facilities in ROWs had to perform the**  
25 **locates rather than the utility provider had to provide locate services. Do you**  
26 **think this is still the case.**

27 A. Yes, for the very same reasons discussed in 1997. A system that relies on utility  
28 customers to locate underground facilities in public ROWs is not going to be effective  
29 at protecting excavators, the general public, or buried facilities from damages caused by

---

<sup>13</sup> Staff/103, OPUC Order No. 97-001, App. B at 2.

1 excavation activities. Many wastewater service customers, which includes renters, will  
2 have no knowledge whatsoever of the facilities used to provide them with wastewater  
3 services. And, customers of City wastewater services are unlikely to know how to  
4 locate underground facilities in a ROW or have the necessary equipment to perform a  
5 locate.

6 It would not be prudent to create a One Call system that relies on the original owner  
7 of underground facilities to pass along to future owners or tenants information about  
8 OUNC requirements and underground facilities and to perform locates. If this is how  
9 the One Call System is operated, it should be expected that the efficacy of the One Call  
10 System will deteriorate significantly as wastewater service customers fail to subscribe  
11 upon purchasing property or signing a lease or fail to perform locates because they do  
12 not know how.

13 **Q. Does Staff believe the City is responsible for performing locates for all**  
14 **underground facilities located in City ROWs?**

15 A. Yes. The City is responsible for locating “underground facilities” (defined in ORS  
16 757.542(6)), used by the City to provide wastewater and water service that are not  
17 located on private property. Contrary to any argument BES may make, the wastewater  
18 system operated by BES includes underground facilities that connect its main sewer  
19 lines to customer premises, even if the facilities are privately owned. To the extent  
20 BES, as operator of the Portland wastewater system, is required to locate “all of its  
21 locatable facilities within the area of proposed excavation” in a public ROW, it must  
22 locate all of the facilities used to provide wastewater service, regardless of ownership  
23 or how they are classified by BES.

1 **Q. Can you explain what BES means by “accepted” privately-owned facilities?**

2 A. Chapter 17.32.70 of Portland City Code concerns “Public Sewer and Drainage System  
3 Permits, Connections and Maintenance” and “regulates access and connection to, and  
4 the use, construction, modification, maintenance, repair or removal of, components of  
5 the City sewer, storm sewer and drainage systems and their easements.”<sup>14</sup> Under this  
6 Chapter, privately-owned underground sewer facilities that have not been “accepted”  
7 or “adopted” into the system under City Code must be maintained by the property  
8 owners served by the facilities. Although the City Code does not address  
9 responsibility for performing “locates” on sewer facilities under OAR 952-002-0070,  
10 the correspondence from the City discussed reflects that the City has decided that  
11 whether a private facility has been “accepted” under City Code also determines  
12 whether the City will perform locate services for the facility.

13 **Q. Why is it inappropriate to leave it to the City to decide which of the private**  
14 **facilities used to provide City wastewater services it will “locate” under OAR**  
15 **952-01-0070 and which it will not?**

16 A. Putting aside that the City does not have legal authority to choose which facilities  
17 within the wastewater system it will locate and which it will not, Staff believes this  
18 BES practice seriously threatens the integrity of the One Call System. The purpose of  
19 the One Call System is to create a comprehensive data base of underground facilities  
20 used to provide utility services and the operators responsible for performing locates for  
21 the facilities within those systems. A system that relies on what could be hundreds of  
22 customers, rather than the single utility provider, to register and identify any customer-

---

<sup>14</sup> Staff/104, City Code 17.32.70.

1 owned facilities used in connection with utility service is untenable. The OUNC would  
2 not be able to secure participation in the One-Call Program from every owner of  
3 facilities in public ROWs.

4 **Q. In addition to arguing that it is not obliged to perform locates on private facilities**  
5 **in ROWs that have not been accepted, BES asserts that in this case, the Property**  
6 **Owner agreed to perform locates when it obtained an “encroachment permit”<sup>15</sup>**  
7 **that allowed Property Owner to open the Ainsworth ROW to perform**  
8 **maintenance on the privately-owned facilities located there. What is your**  
9 **response to this argument?**

10 A. As the operator of the City of Portland wastewater system, the City is statutorily  
11 required to perform locates for that system. Staff does not think the City can assign  
12 that statutory responsibility to its customers. This is a legal issue that will be  
13 addressed in legal briefs.

14 **Q. What is the recommended penalty for the BES violation of the OUNC rules?**

15 A. ORS 757.993 provides that every person who violates or who procures, aids, or abets  
16 in the violation of any rule of the Oregon Utility Notification Center shall incur a  
17 penalty of not more than \$1,000 for the first violation and not more than \$5,000 for  
18 each subsequent violation. Staff recommends the Commission impose a penalty in the  
19 amount of \$1000.00.

20 For the reasons discussed above, the City’s interpretation of its OUNC  
21 requirements will significantly damage the efficacy of the One Call System.

---

<sup>15</sup> Staff/105, City of Portland Encroachment Permit issued to Scott Donnell.

1           Accordingly, Staff recommends the Commission impose the maximum penalty for the  
2           City's failure to perform a locate pursuant to OUNC rules.

3           **Q. Does this conclude your testimony?**

4           A. Yes.



**PUBLIC UTILITY COMMISSION  
OF  
Oregon Dept of Justice**

**STAFF EXHIBIT 101**

**OPENING TESTIMONY**

**July 6, 2023**



# Oregon

Kate Brown, Governor

Staff/101  
Hennessy/1

## Public Utility Commission

201 High St SE Suite 100  
Salem, OR 97301

**Mailing Address:** PO Box 1088  
Salem, OR 97308-1088  
503-373-7394



July 18, 2022

Sent via email and U.S. Mail

Dawn Uchiyama, Interim Director  
City of Portland  
Bureau of Environmental Services  
1120 SW 5<sup>th</sup> Avenue, Suite 613  
Portland, OR 97204

Dear Ms. Uchiyama:

Under ORS 757.993 (8), the Oregon Public Utility Commission (PUC) on behalf of the Oregon Utility Notification Center (OUNC) is required to investigate complaints of Chapter 952 Oregon Administrative Rules and seek penalties under proper terms. The PUC received a complaint on February 16, 2022, alleging the City of Portland - Bureau of Environmental Services (BES) violated Chapter 952 Division 1 rules.

The complaint involves a concern that occurred at or near 2818 NE Ainsworth St in Portland. The complaint alleges BES (Operator), did not mark underground facilities or notify excavator that none exist as required by OAR 952-001-0070.

PUC Staff opened an investigation, provided findings and made a recommendation regarding the alleged violation (see attached safety inspection report).

At this point, the Commission wishes to investigate the complaint and if possible, reach a resolution. PUC Staff would like to hold an informal meeting at which time, the BES and Staff may discuss to settle the matter before taking further legal action. The meeting is not a formal administrative hearing; it is an informal meeting to allow BES to respond to the alleged violation and findings. After PUC Staff hears from BES, Staff will make a recommendation to settle the matter. The recommendation may be to drop the matter, issue a warning, or impose a civil penalty. If a civil penalty is recommended some or all the amounts may be suspended under proper terms, including but not limited to developing a safety management plan or procedure revision. There will be no court reporter present to make a transcript of the conference call and if the complaint ever goes to a formal administrative hearing, no statements made during the conference call will be used as evidence at that a formal hearing.

Please contact me at [kevin.hennessy@puc.oregon.gov](mailto:kevin.hennessy@puc.oregon.gov) or call 503-881-6738 to arrange for a virtual/remote informal meeting by July 29, 2022. If you have materials, you would like Staff to review that is relevant to this matter, please submit the information in prior to the informal meeting.

Please contact me if you have further questions.

Thank you,



Kevin Hennessy  
Chief Pipeline Safety  
Oregon Public Utility Commission

Enclosures:

2022-12 FLC City of Portland 2818 NE Ainsworth St Portland EA PUCFM832

OUNC #21334979

Email correspondence between Plaintiff and BES

Oregon Department of Justice letter – “Locating Sewer Laterals” dated June 4, 2014

OPUC 811 Complaint Form

CC:

Melanie Gualotunia [Melanie.Gualotunia@portlandoregon.gov](mailto:Melanie.Gualotunia@portlandoregon.gov)

Public Utility Commission of Oregon  
Safety Inspection Report

Date of Inspection:	June 17, 2022	Report No.:	2022-12 FLC
Operator:	City of Portland - Bureau of Environmental Services		
Headquarter Address:	1120 SW 5 <sup>th</sup> Avenue, Room 1000, Portland OR 97204		
Location of Inspection:	2818 NE Ainsworth Street, Portland, OR 97211		
Company Representative: (Present During Inspection)	Not Available		
PUC Representative: (Conducting Inspection)	Paulo Pinto, Kevin Hennessy		

Notice of Probable Violation Actions and Enforcement:

It should not be assumed that this inspection discovered all probable violations that could be involved, or that the remarks, recommendations and risk management principles, if followed, would ensure compliance with Title 49 Code of Federal Regulations (CFR) Part 196 and Oregon Administrative Rules (OAR) Chapter 952, Division 1 and OAR Chapter 437.

---

Citation Number: 2022-12 FLC      Probable Violations Involved: OAR 952-001-0070

Description of Probable Violation:

*Operators to Mark Underground Facilities or Notify Excavator that None Exist*

- (1) Except as provided in section (2) of this rule, within two full business days following the day an excavator notifies the Oregon Utility Notification Center of a proposed excavation, the operator or its designated agent must:*
- (a) Mark within 24 inches of the outside lateral dimensions of both sides of all its locatable underground facilities within the area of proposed excavation. All marks must indicate the name, initials or logo of the operator of the underground facilities, and the width of the facility if it is greater than 2 inches;*
  - (b) Provide marks to the excavator of the unlocatable underground facilities in the area of proposed excavation, using the best information available including as-constructed drawings or other facility records that are maintained by the facility operator; or*
  - (c) Notify the excavator that the operator does not have any underground facilities in the area of the proposed excavation. Acceptable notifications must include locate request call back information and if done with an AVR (Automated Voice Response) must have a repeat option and a call back number to hear the information again.*

The complaint alleges BES did not mark underground facilities or notify the excavator that none exist in response to OUNC notification #21334979, specifically a sewer lateral.

Summary of Findings:

Staff reviewed information provided by the Complainant, which included documentation and communications with BES. Staff spoke with the Complainant to obtain additional details regarding the alleged violation and reviewed the area (see image 1). The specific excavation project involved replacing a portion of sewer lateral and the installation of a cleanout located within the Right-of-Way (ROW) (see images 2 and 3).

Staff reviewed OUNC #21334979 requesting locating and marking services for the project, submitted by a contractor (Environmental Works LLC) hired by the Complainant (see attached). Staff notes the location of work indicates the following for ROW, easement and especially the Alley approach:

“PLEASE LOCATE ALL UTILITIES INCLUDING SEWER ON ENTIRE PROPERTY INCLUDING ALL ROWS AND EASEMENTS. ESPECIALLY NEED THE ALLEY WAY APPROACH TO THE EASY MARKED OUT!!CORNER LOTS, PLEASE MARK ALL SIDES. FLAGS AND PAINT PLEASE. NO PHONE CALLS UNLESS ABSOLUTELY NECESSARY.”

The excavator used digital white lining during the OUNC notification in order to define a general area needed for locating and marking services (see image 4). The project commenced after two full business days with a work to begin date and time of 11/18/21 12:00am. Evident in the complaint and thereafter by BES’s own justification, no locating and marking services were provided for the sewer lateral, that is approximate 106 feet long in the ROW of NE Anisworth St – Jarrett St. Alley, subject to OUNC #21334979.

Staff notes the Complainant provided correspondence with BES about the ongoing concern. On March 18,2022, the Complainant emailed the city attorney asking for clarity on locating and marking practices in question. On March 21, 2022, city attorney responds stating, “the rules do not require the City to mark facilities that it does not operate. Although you are correct that the City has ultimate control over the right-of-way, that does not make it an operator of private laterals within that right-of way” (see attached).

Correspondence also included reference to Oregon Department of Justice letter – “Locating Sewer Laterals” dated June 4, 2014 (see attached). Based on the findings of this investigation and review of the DOJ interpretation, Staff determined the sewer lateral of approximate 106 feet long that is within the ROW and under control of City of Portland BES. Therefore, subject to this complaint BES is responsible for providing locating and marking services as required per OAR 952-001-0070.

Although the following is not part of this complaint investigation, when Staff observed the installed cleanout and it did not appear to have a means to comply with OAR 952-001-0070 (10):

*Except while making minor repairs to existing non-conductive, unlocatable facilities, an operator burying non-conductive, unlocatable facilities within the public rights-of-way or utility easements must place a tracer wire or other similar conductive marking tape or device with the facility to allow for later location and marking.*

This OAR has been part of safety standards since the formation for rules designed to prevent damages in Oregon. Staff recognized the OAR aligns with Common Ground Alliance best practice 2.17, *Electronically Locatable Lines*: (see link <https://bestpractices.commongroundalliance.com/2-Planning-and-Design/217-Electronically-Locatable-Lines#mainContentAnchor>)

*Practice Statement:*

*When designing and installing new facilities, a means is provided to allow the facilities to be electronically locatable.*

*Practice Description:*

*Many facilities are damaged due to the fact of they cannot be located electronically. Non-conductive materials, such as PVC, cannot be located using traditional locate methods. When designing and installing non-conductive facilities, the use of a tracer wire or other method (refer to practice 2-5, *Markers for Underground Facilities*) is part of that design and installation. This will allow these facilities to be identified, located and marked prior to future excavation activities.*

Recommendation:

The PUC would like to hold an informal meeting at which time BES and PUC Staff may discuss and settle the matter before taking further legal action. A settlement may include dropping the matter, issue a warning, or impose a civil penalty. If a civil penalty is recommended, some or all the amounts may be suspended under proper terms. This includes but not limited to developing a safety management plan or procedure revisions.

IMAGES:

	<p>2022-12 FLC      Image #1</p> <p>Area of concern, street view image Ainsworth St – Jarrett St. Alley.</p> <p>Link: <a href="https://earth.google.com/web/@45.56591987,-122.63663912,45.36919785a,0d,87.82251597y,269.71895151h,68.2441619t,0r/dat a=lhoKFkNqcGV3V3pPQIJKe VpYRnRTUngOQ0EQAg">https://earth.google.com/web/@45.56591987,-122.63663912,45.36919785a,0d,87.82251597y,269.71895151h,68.2441619t,0r/dat a=lhoKFkNqcGV3V3pPQIJKe VpYRnRTUngOQ0EQAg</a></p>
--	---



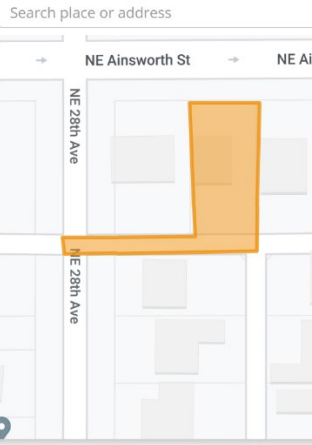

2022-12 FLC Image #2

Excavation project involved replacing a portion of sewer lateral and installation of cleanout in ROW.



2022-12 FLC Image #3

Excavation project included installation of cleanout in ROW.

<h2>Search Tickets</h2> <p>&lt;</p> <p><b>Ticket information</b> <span>⊖</span></p> <p>Ticket no: 21334979</p> <p>Original Call Date: 11/15/21 12:19 pm</p> <p>Work to Begin Date: 11/18/21 12:00 am</p> <p>Expiration date: 12/31/21 12:00 am</p> <p>Type/header: 2 FULL BUSINESS DAYS</p> <p><b>Ticket actions</b> <span>⊕</span></p> <p><b>Excavator information</b> <span>⊖</span></p> <p>Company Name: ENVIROMENTAL WORKS NW</p> <p>Type of excavator: CONTRACTOR</p> <p>Best Time:</p> <p>Contact Name: DWIGHT CARLISLE</p> <p>Phone: 503-719-6715</p> <p>Alt Contact: EVAN KEELING</p>  <p>Search place or address</p> <p>NE Ainsworth St</p> <p>NE Ai</p> <p>NE 28th Ave</p> <p>NE 28th Ave</p> <p>Powered by  ONE CALL CONCEPTS</p> <p>Copyright © 2022 One Call Concepts</p>	<p>2022-12 FLC Image #4</p> <p>OUNC ticket 21334979 digital white lining of polygon area.</p>
--	---

Prepared By:

Paulo Pinto and Kevin Hennessy

Date:

6/29/22

Reviewed By:

Kevin Hennessy

Date:

7/11/22



**Oregon One Call**

**Ticket number** 21334979 **Type/header** 2 FULL BUSINESS DAYS ITIC2.0  
**Original call date** 11/15/21 12:19 pm  
**Work to begin date** 11/18/21 12:00 am  
**Expiration date** 12/31/21 12:00 am

Excavator information

**Company** ENVIROMENTAL WORKS NW **Type of excavator** CONTRACTOR  
**Address/street** 22820 NE SANDY SANDY  
 BLVD  
 FAIRVIEW, OR 97024  
**Contact name** DWIGHT CARLISLE **Phone** 503-719-6715  
**Alt. contact** EVAN KEELING **Phone** 503-719-6715  
**Email** [DWIGHT@EWORKSNW.COM](mailto:DWIGHT@EWORKSNW.COM)

Excavation information

**Type of work** REPAIR SEWER SERVICE  
**Work being done for** PROPERTY OWNER  
**Type(s) of excavation equipment** Backhoe / Trackhoe  
**Expected duration of project** NO  
**45 days:**

Location information

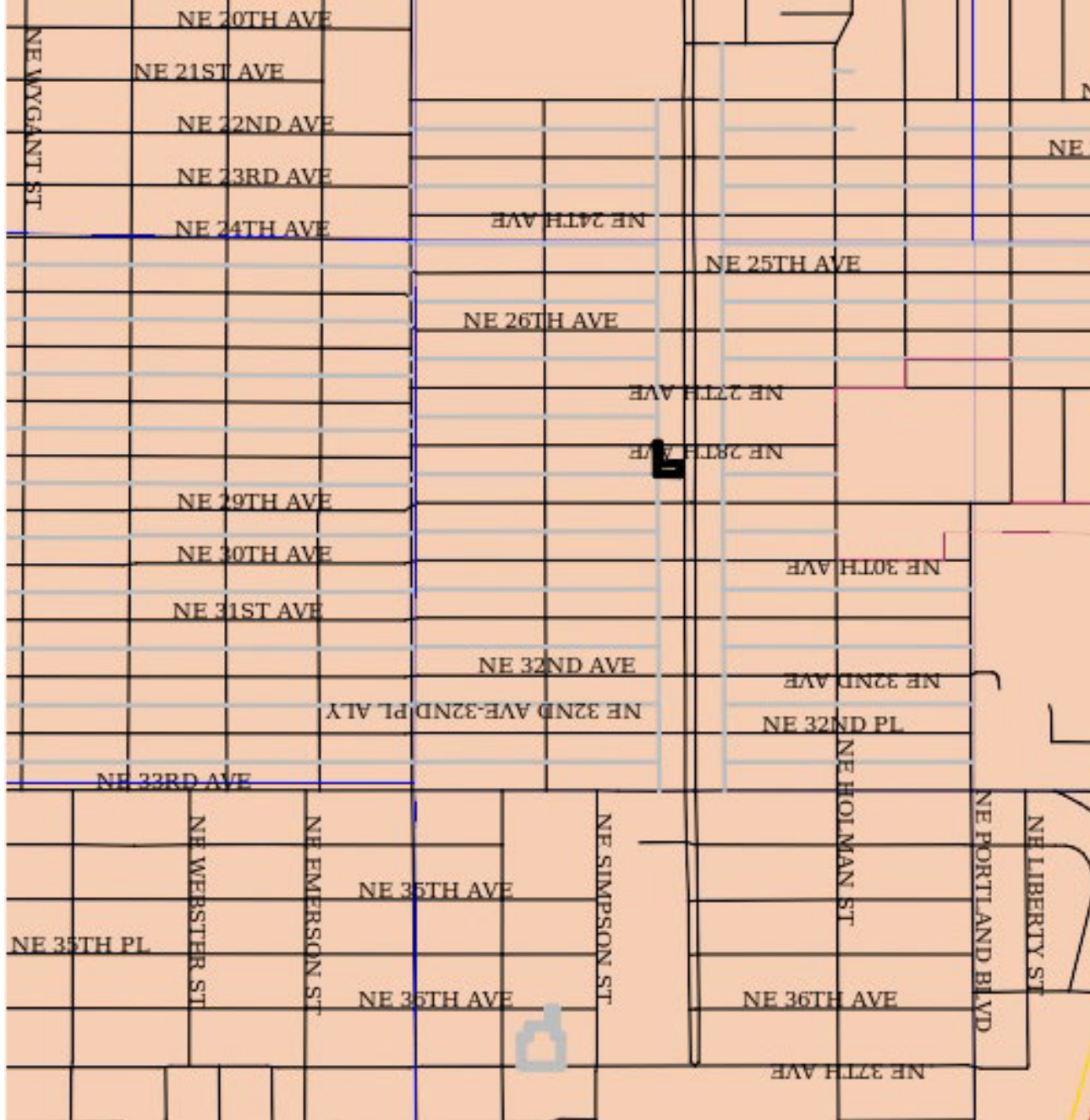
**State** OR  
**County** MULTNOMAH **City/place** PORTLAND  
**Address/street** 2818 NE AINSWORTH ST  
**Intersecting street** NE 26TH AVE  
**Location of work** PLEASE LOCATE ALL UTILITIES INCLUDING SEWER ON ENTIRE PROPERTY INCLUDING ALL ROWS AND EASEMENTS. ESPECIALLY NEED THE ALLEY WAY APPROACH TO THE EASY MARKED OUT!!CORNER LOTS, PLEASE MARK ALL SIDES. FLAGS AND PAINT PLEASE. NO PHONE CALLS UNLESS ABSOLUTELY NECESSARY

Remarks

**NW Lat** 45.5661964 **Lon** -122.6371094 **SE Lat** 45.5658884 **Lon** -122.6365274

Members notified

District	Company name	Marking concerns	Customer service	Repair	Status
NWN01	NW NATURAL	503-255-4634	503-220-2415	800-882-3377	Marked (Response by Utiliquest)
PPL01	PACIFIC POWER	503-255-4634	888-221-7070	888-221-7070	Clear/No conflict (Response by Utiliquest)



**PUBLIC UTILITY COMMISSION  
OF  
Oregon Dept of Justice**

**STAFF EXHIBIT 102**

**OPENING TESTIMONY**

**July 6, 2023**



Scott Donnell &lt;donnesa@gmail.com&gt;

---

**RE: OR - Transaction Notification (2818 NE Ainsworth)**

4 messages

**BES Nonconforming Sewer Program** <nonconforming@portlandoregon.gov>

Mon, Feb 7, 2022 at 4:33 PM

To: Scott Donnell &lt;donnesa@gmail.com&gt;, BES Nonconforming Sewer Program &lt;nonconforming@portlandoregon.gov&gt;

Scott

We are not taking responsibility for maintenance of your private sewer line. There are many private sewers throughout the City of Portland, and the City does not maintain or mark them. I'm copying the relevant sections of our code below for your reference. Private lines are only allowed to remain at the discretion of the Chief Engineer. Instead of requiring homeowners to abandon their private sewers and build a new public sewer at their own expense, we generally have chosen to allow these lines to remain as long as they are registered through our encroachment process. The encroachment process is designed to acknowledge the City is not requiring your to abandon your line until a public sewer becomes available and that are aware of your line's status and location and can make sure it is clearly marked if there is ever any utility work completed. This is intended to protect your service and keep it from being damaged.

You are correct that the City does mark sewer laterals when we get called by 811. However, that would not extend to private sewer systems, as we do not consider your lateral to be one that we own and maintain. As part of the encroachment process, you created a map of your sewer location. I recommend that you keep this map handy, as it will provide you with an tool to go out and easily spray paint the location of your sewer line if you were ever to receive a call from 811.

Sincerely

**Melanie Gualotunia, PE**

Senior Engineer

**Note:** *Due to the COVID-19 emergency I am currently working from home. I am available by email and cell phone (503) 823-8112.*

**City of Portland Bureau of Environmental Services**

1120 SW 5th Avenue, Room 1000, Portland, Oregon 97204

Phone: 503-823-7189

Melanie.Gualotunia@portlandoregon.gov

[www.portlandoregon.gov/bes](http://www.portlandoregon.gov/bes)**News | Twitter | Facebook**

And from the city engineer highlighting the code that is in violation of the letter:

**17.32.070 Maintenance of Sewer and Drainage Systems.**

(Amended by Ordinance Nos. 188477 and 189506, effective June 21, 2019.) Sewer system maintenance obligations including inspection, rehabilitation, routine cleaning and repair are based on ownership of the system:

**A. Private Systems.** A sewer or drainage system that was not constructed by the City, built under a public works permit, or otherwise accepted pursuant to Subsections 17.32.070 B.1. or B.2. must be maintained by the parties served by the system, regardless of whether the system is located within a public right-of-way.

**1.** If any portion of an existing sewer or drainage system extends into a public right-of-way, the property owner must obtain a permit pursuant to Chapter 17.24 before beginning work within the right-of-way.

**2.** For a sewer or drainage system located in a public right-of-way that is under either private or unclear ownership, the BES Chief Engineer may grant or deny a permit to repair, upgrade, or replace the system as provided by Section 17.32.030. Such a system may only remain in the public right-of-way at the discretion of the BES Chief Engineer.

**3.** Incidental, inadvertent, or emergency City maintenance of private sewer or drainage systems or systems with unclear ownership does not obligate the City to perform future maintenance, imply acceptance of the system, or confer ownership of the system on the City.

Thank you,

Scott Donnell

[Quoted text hidden]

--

Scott



**DOJ-letter-sewer-laterals.pdf**

221K

---

**Shaffner, Eric** <Eric.Shaffner@portlandoregon.gov>  
To: "donnesa@gmail.com" <donnesa@gmail.com>  
Cc: "Gualotunia, Melanie" <Melanie.Gualotunia@portlandoregon.gov>

Mon, Mar 21, 2022 at 10:21 AM

Mr. Donnell,

Thank you for your email.

As you note, my office cannot provide you legal advice, but I will make two quick points in the hope of clarifying the application of the DOJ's letter to what BES is asking you to do:

1. The statutes cited in the Oregon DOJ memorandum require the City to subscribe to the Oregon Utility Notification Center and to comply with the Center's administrative rules.

2. Those rules require that the City mark its own facilities in response to a notice from the Center. OAR 952-001-0070(1)(a), for example, requires an operator such as the City to mark "all of its locatable underground facilities . . ." (emphasis added). The same language is in OAR 952-001-0080(1)(a) and 952-001-0010(21)(a). The rules do not require the City to mark facilities that it does not operate. Although you are correct that the City has ultimate control over the right-of-way, that does not make it an operator of private laterals within that right-of-way. The City can order the removal of such pipes, but it is under no obligation to maintain, operate, or "locate" them. The State has no authority to require the City to accept into its public sewer system a lateral that the City has no record of installing and for which the available evidence indicates a purely private use.

I encourage you to continue to work with BES staff (I've copied Melanie here) as they work to help you keep your lateral within the public right-of-way rather than replacing it with a conforming connection.

**ERIC SHAFFNER | Deputy City Attorney** (he/him)

**PORTLAND OFFICE OF THE CITY ATTORNEY**

1221 SW Fourth Avenue, Room 430

Portland, OR 97204

Voice: 503-823-3609 | Fax: 503-823-3089

[eric.shaffner@portlandoregon.gov](mailto:eric.shaffner@portlandoregon.gov)

**Equal Access Notice:** *The City of Portland operates without regard to race, color, national origin, religion, sex, sexual orientation, gender identity, marital status, familial status, age or disability according to all applicable non-discrimination laws, Title VI of the Civil Rights Act, and Title II of the ADA. To help ensure equal access to City services, the City will provide translation and interpretation, and will reasonably modify policies or procedures for persons with disabilities. For auxiliary aid requests, please e-mail [cityattorneysoffice@portlandoregon.gov](mailto:cityattorneysoffice@portlandoregon.gov), call (503) 823-4047, TTY 503-823-6868 or Oregon Relay Service: 711. For translation and interpretation services, please call 311 if you are calling from Multnomah County, (503) 823-4000 if outside of Multnomah County, or email [cityattorneysoffice@portlandoregon.gov](mailto:cityattorneysoffice@portlandoregon.gov).*

**Portland City Attorney Confidentiality Notice:** *This message may contain confidential or legally privileged information belonging to the sender. If you have received this message by mistake, please immediately notify the sender, delete the original message, and destroy all copies.*

[Quoted text hidden]

---

**Scott Donnell** <[donnesa@gmail.com](mailto:donnesa@gmail.com)>

Mon, Mar 21, 2022 at 11:24 AM

To: "Shaffner, Eric" <[Eric.Shaffner@portlandoregon.gov](mailto:Eric.Shaffner@portlandoregon.gov)>

Cc: "Gualotunia, Melanie" <[Melanie.Gualotunia@portlandoregon.gov](mailto:Melanie.Gualotunia@portlandoregon.gov)>

Thank you for the quick response.

Scott

On Mar 21, 2022, at 10:21 AM, Shaffner, Eric <[Eric.Shaffner@portlandoregon.gov](mailto:Eric.Shaffner@portlandoregon.gov)> wrote:

[Quoted text hidden]

**PUBLIC UTILITY COMMISSION  
OF  
Oregon Dept of Justice**

**STAFF EXHIBIT 103**

**OPENING TESTIMONY**

**July 6, 2023**

ORDER NO. 87-001

ENTERED APR 09 1997

**BEFORE THE OREGON UTILITY  
NOTIFICATION CENTER**

UNC 1

In the Matter of the Adoption of )  
OAR 952-001-0010 through 952-001-0090. ) ORDER

**DISPOSITION: RULES ADOPTED**

On January 10, 1997, the Oregon Utility Notification Center (the Center) filed a notice of proposed rule making with the Oregon Secretary of State. Notice of the proposed rules was published by the Secretary of State in the Oregon Bulletin on February 1, 1997. The Center also sent notice of the proposed rules to a list of persons who had expressed interest in receiving notice of such proceedings.

On February 27, 1997, Allen Scott, an Administrative Law Judge for the Center, held a public hearing in this matter in Salem. Comments were offered by five individuals, including four Board members of the Center. Those comments are reflected in the discussion below.

At its board meeting on April 9, 1997, the Oregon Utility Notification Center adopted the proposed rules attached to this order as Appendix A.

**BACKGROUND**

The 1995 Oregon Legislative Assembly adopted Senate Bill 559, which created the Oregon Utility Notification Center (OUNC) as a new state agency and gave it authority to adopt administrative rules to implement the law. The new law incorporates several important changes in the existing law, including the following:

1. Creation of a single statewide one-call Center;
2. A requirement for a single toll-free number for access to the Center;



ORDER NO. 97-001

3. Mandatory participation in the Center by all operators of underground facilities and public rights-of-way or utility easements; and
4. Civil penalties for those failing to comply with the law.

The rules adopted in this order were developed over a period of nearly three years. The Oregon Utility Coordinating Council formed a legislative committee to address the weaknesses in the current excavation laws. The legislative committee consisted of about 22 original members from a wide spectrum of interested parties. The result of their work forms the nucleus of the rules adopted in this order.

### PUBLIC HEARING

At the public hearing, Jack Dent, a member of the Board, offered a written statement explaining the background and history of the rules. It is adopted by the Board and attached to and made part of this order as Appendix B. Mr. Dent also asked that several small typographical or other errors in the proposed rules be corrected. The Board adopts these changes in the final rules. Mr. Dent also outlined some of the more significant issues considered by the Center in developing the rules.

Guy Johnson of the Board presented a statement from the Oregon Department of Transportation (ODOT) expressing concern about OAR 952-001-0030, which requires that all entities authorized to issue permits must include the language set out in OAR 952-001-0020 in each permit. The statement asks that the Board consider striking proposed OAR 952-001-0030, because it is redundant of requirements placed upon ODOT by its own rules and may subject ODOT to liability.

The Board has considered ODOT's statement but concludes that there is no need to modify the proposed rule. The Board sees no basis for concern that the proposed rule would place any added liability upon ODOT.

Christopher Meyers of the Portland Water Bureau inquired about OAR 952-001-0080. He was assured by legal counsel for the Board that the requirements in this section are intended to be disjunctive (that is, the word "or" applies to all the three subsections) rather than conjunctive.

Dan Boldt, Board member and employee of the Oregon Association of Counties, testified in support of the process and the rules. He supports the Board's decision to retain OAR 952-001-0070 (7) in its present form and to continue to interpret that provision as needed.

Frank Planton, General Manager of the Call Center, noted that the telephone number listed in OAR 952-001-0020 will soon be changed. Mr. Graham, legal counsel to the Center, suggested that the phone number could be put in a "note" below

ORDER NO. 92-001

the rule. It would therefore not be part of the rule and could be changed as needed without a formal rule making proceeding. The Board adopts this suggestion.

**OPINION**

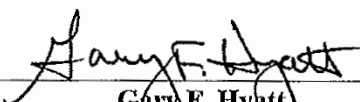
The Board has considered the proposed rules, including the corrections noted by Mr. Dent and the change relating to the telephone number, and concludes that they are appropriate and should be adopted.

**ORDER**

It is ordered that OAR 952-001-0001 through 952-001-0090, as set forth in Appendix A attached, are adopted. The rules shall become effective upon filing with the Secretary of State.

APR 09 1997

Made, entered, and effective \_\_\_\_\_.

  
\_\_\_\_\_  
Gary F. Hyatt  
Chairman

ORDER NO.

97-001

**DEFINITIONS**

952-001-0010 (1) "Business day" means any 24-hour day other than a Saturday, Sunday or federal or state legal holiday.

(2) "Damage" means harm to, or destruction of underground facilities including, but not limited to, the weakening of structural, lateral or subjacent support; the penetration, impairment or destruction of any coating, housing or other protective device; or the denting of, penetration into or severance of underground facilities.

(3) "Designer" means any person who prepares a drawing for construction or other project which requires excavation or demolition.

(4) "Emergency" means an occurrence involving an immediate danger, demanding prompt action to prevent loss of life, or to mitigate damage to property, or to prevent interruption of essential public services (as determined by an emergency response agency or the facility operator) or to prevent a customer service outage (as determined by the facility operator).

(5) "Excavation" means any operation in which earth, rock or other material on or below the ground is moved or otherwise displaced by any means, except sidewalk, road and ditch maintenance less than 12 inches in depth that does not lower the original grade or original ditch flow line. "Excavation" does not include the tilling of soil for agricultural purposes, as defined in ORS 215.203(2), conducted on private property that is not within the boundaries of a recorded right-of-way or easement for underground facilities.

(6) "Excavator" means any person who engages in excavation.

(7) "Locatable underground facilities" means underground facilities which can be marked with reasonable accuracy.

(8) "Mark" or "marking" means an indication, from the use of stakes, paint or other clearly identifiable material, to show the field location or absence of underground facilities at a proposed work site. A "mark" or "marking" also includes permanent marking devices, such as disks, posts or signs, placed to show the location of underground facilities.

(9) "Operator" means any person, municipal corporation, political subdivision of the state with control over underground facilities. Operator includes any person, as defined in ORS 756.010, having the right to bury underground facilities in any public right-of-way, or in any utility easement.

(10) "Oregon Utility Notification Center" (Center) means the state agency that administers a statewide system through which a person can notify operators of underground facilities of proposed excavations and can request that the underground facilities be marked.

(11) "Project plans" mean any drawings, specifications or any other documents prepared in anticipation of work involving excavation.

ORDER NO. 97-001

(12) "Reasonable accuracy" means location, within twenty-four (24) inches, of the outside lateral dimensions of both sides of an underground facility.

(13) "Response" means action taken by operators of underground facilities to:

(a) Mark or identify by other means the location of its locatable underground facilities in the area of the proposed excavation;

(b) Notify the excavator that there are unlocatable underground facilities in the area of the proposed excavation;

(c) Notify the excavator that there are no underground facilities in the area of the proposed excavation; or

(d) Notify the excavator that there are underground facilities in the area of the proposed excavation which are at a depth greater than the proposed excavation.

(14) "Underground facilities" means items partially or entirely below the surface of the ground for use in connection with the storage or conveyance of electrical energy, water, sewage, petroleum products, gas, gaseous vapors or hazardous liquids, or the transmission of electronic, telephonic, telegraphic or cable communications. Such items include, but are not limited to, pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments and those parts of poles or anchors that are underground.

(15) "Unlocatable underground facilities" mean underground facilities that cannot be marked with reasonable accuracy, including nonconductive sewers and nonmetallic underground facilities that have no trace wires.

#### **PROJECT PLANS TO NOTIFY EXCAVATOR OF REQUIREMENTS OF LAW**

952-001-0020 All project plans shall contain the following statement: ATTENTION: Oregon law requires you to follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in OAR 952-001-0010 through OAR 952-001-0090. You may obtain copies of the rules by calling the center.

(Note: the telephone number for the Oregon Utility Notification Center is (503) 232-1987.)

#### **PERMITS TO NOTIFY EXCAVATOR OF REQUIREMENTS OF LAW**

952-001-0030 Any entity authorized to issue permits for construction which requires excavation shall include on such permits the language set out in OAR 952-001-0020.

ORDER NO. 97-001

**PRE-MARKING REQUIRED BY THE EXCAVATOR; EXEMPTION**

952-001-0040 (1) Except as provided in paragraph (2) of this rule, prior to notifying the Oregon Utility Notification Center, an excavator shall pre-mark with the color white the immediate area of the proposed excavation within both the public rights-of-way and underground easements.

(2) An excavator need not pre-mark as required in paragraph (1) of this rule if:

(a) The operator can determine precisely the direction, length and location of the proposed excavation by referring to a locate ticket; or

(b) The excavator and operator have had a meeting prior to the beginning of the proposed project, at the construction site for the exchange of information required under paragraph (1) of this rule.

**EXCAVATOR TO GIVE NOTICE OF PROPOSED WORK; EXEMPTION**

952-001-0050 (1) Except as provided in paragraph (2) of this rule, at least two (2) business days, but not more than ten (10) business days before commencing an excavation, the excavator shall notify the Oregon Utility Notification Center of the date and location of the proposed excavation, and the type of work to be performed.

(2) The notice requirement of paragraph (1) of this section shall not apply if the excavation is in response to an emergency, or if all of the following apply:

(a) The excavator is a tenant or an owner of private property;

(b) The excavation is on private property of that owner or tenant;

(c) The excavation is less than twelve (12) inches in depth; and

(d) The excavation is not within an established easement.

(3) An excavator, when giving notice in compliance with paragraph (1) of this rule, shall furnish information as to how the excavator can be contacted.

**WHEN EXCAVATOR MAY GIVE LESS THAN FORTY-EIGHT (48) BUSINESS DAY HOUR NOTICE**

952-001-0060 An excavator may provide less than two (2) business days (48) hours prior notice if:

(1) The excavator is responding to an emergency, so long as the excavator notifies the Oregon Utility Notification Center immediately and so long as the excavator takes reasonable care to protect underground facilities;

(2) The excavator has an agreement with each operator of underground facilities that marks will be provided on a regular basis as the excavator progresses through a project; or

ORDER NO. 97-001

(3) The excavator discovers an underground facility in an area where the operator of underground facilities had previously indicated there were no facilities.

**OPERATORS TO MARK UNDERGROUND FACILITIES OR NOTIFY EXCAVATOR THAT NONE EXIST**

952-001-0070 (1) Except as provided in paragraph (3) of the rule, within two business days (48 hours) after the excavator notifies the Oregon Utility Notification Center of a proposed excavation, the operator of the underground facilities shall:

(a) Mark with reasonable accuracy all of its locatable underground facilities within the area of proposed excavation. All marks shall indicate the name, initials or logo of the operator of the underground facilities, and the width of the facility if it is greater than two (2) inches;

(b) Provide the excavator the best description available to the operator of the unlocatable underground facilities in the area of the proposed excavation including as-constructed drawings, or other facility maps that are maintained by the facility operator;

(c) Notify the excavator that in the area of the proposed excavation there are underground facilities which are not marked because those facilities are at a depth greater than the excavator plans to excavate; or

(d) Notify the excavator that the operator does not have any underground facilities in the area of the proposed excavation.

(2) If an excavator uses offset marking, the excavator shall correctly measure the amount of offset, so that the excavator can reestablish the location of underground facilities where originally marked.

(3) If the excavator notifies the operator of underground facilities discovered during an excavation in response to an emergency, the operator of underground facilities shall comply with subsection (1) of this section as soon as possible.

(4) Underground facilities shall be marked in accordance with the following designated color code;

- |        |   |
|--------|---|
| RED    | Electric power lines, cables or conduit, and lighting cables.               |
| YELLOW | Gas, oil, steam, petroleum, or other hazardous liquid or gaseous materials. |
| ORANGE | Communications, cable TV, alarm or signal lines, cables or conduits.        |
| BLUE   | Water, irrigation, and slurry lines.  |

ORDER NO. 97-001

- GREEN Sewers, drainage facilities or other drain lines.
- WHITE Pre-marking of the outer limits of the proposed excavation or marking the centerline and width of proposed lineal installations of buried facilities.
- PINK Temporary Survey Markings

(5) In areas of ongoing excavation or construction operators shall mark newly installed underground facilities immediately upon placement.

(6) Except while making minor repairs to existing non-conductive, unlocatable facilities, an operator burying non-conductive, unlocatable facilities within the public rights-of-way or utility easements shall place a tracer wire or other similar conductive marking tape or device with the facility to allow for later location and marking.

(7) An operator of underground drainage lines is not required to indicate the presence of those facilities if the existence and route of those facilities can be determined from the presence of other visible facilities, such as manholes, catch basins, inlets, outlets, junction boxes, storm drains or permanent marking devices.

**OPERATORS TO RESPOND TO NOTIFICATIONS REQUESTING DESIGN INFORMATION**

952-001-0080 Within ten (10) business days after a designer notifies the Oregon Utility Notification Center of a proposed project, the operator of the underground facilities shall:

(1) Mark with reasonable accuracy all of its locatable underground facilities within the area of proposed excavation. All marks shall indicate the name, initials or logo of the operator of the underground facilities, and the width of the facility if it is greater than two (2) inches;

(2) Provide the excavator the best description available to the operator of the unlocatable underground facilities in the area of the proposed excavation including as-constructed drawings, or other facility maps that are maintained by the facility operator; or

(3) Contact the person requesting design information and agree on a time, prior to the beginning of the proposed project, for exchange of the information required under paragraph (1) or paragraph (2) of this rule.

**DELAY OF EXCAVATION UNTIL RESPONSE FROM FACILITY OPERATORS; DUTY OF EXCAVATOR TO USE REASONABLE CARE; DAMAGE TO FACILITIES**

952-001-0090 (1) An excavator shall not commence an excavation which 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 (2) business days (48 hours) have elapsed from the time the excavator notified the Oregon Utility Notification Center.

ORDER NO.

97-001

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

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

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

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

(3) The excavator shall provide such lateral and subjacent support for underground facilities as may be reasonably necessary for the protection of such facilities.

(4) If the excavator causes or observes damage to underground facilities, the excavator shall notify the operator of the underground facilities immediately. If the damage causes an emergency, the excavator shall also notify all appropriate local public safety agencies immediately by calling 911 and shall take reasonable steps to insure the public safety. The excavator shall not bury damaged underground facilities without the consent of the operator of the damaged underground facilities.

(5) If an excavator discovers underground facilities in an area where the operator of the underground facilities had previously stated there were no underground facilities, the excavator shall, prior to continuing excavation, notify the Oregon Utility Notification Center. After providing notification, the excavator shall use extreme care in the affected area.

Stat. Auth.: Sections 1 to 5 and 7, Chapter 691, Oregon Laws 1995  
Hist:



ORDER NO.

97-001

# Oregon

Date: February 26, 1997

To: Hon. Allen Scott, Administrative Law Judge

From: Jack P. Dent, Chief, Pipeline Safety

RE: Comments On OAR 952-001-0010 through 952-001-0090

PUBLIC  
UTILITY  
COMMISSION

There are several errors and omissions in the proposed OAR's. The following changes are considered to be non-controversial and I request that they be incorporated into the final Rules. (Terms enclosed with [ ] indicate deletion, and those terms underlined indicate insertion).

1. 952-001-0010 (9) "Operator" means any . . . having the right to bury underground facilities in any [ public road ] public right-of-way, or in any utility easement.

Explanation: The term "public road" needs to be deleted as it is redundant. A public road is a public right-of-way.

2. 952-001-0010 (10) "Oregon Utility Notification Center" (Center) means the state... .

Explanation: The word (Center) needs to be added, as "Center" is used throughout the OAR's as an abbreviated term for the Oregon Utility Notification Center.

3. 952-001-0020 All project plans shall contain the following statement: **ATTENTION: Oregon Law requires you to follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in OAR 952-001-0010 through 952-001-00[ 8 ] 90.** You may obtain copies of the[se] rules from the Center by calling (503) 246-1987. [ If you have any questions about the rules, you may call the Center. ]

Explanations: 1) The reference to OAR 952-001-0080 is incorrect. It should be OAR 952-001-0090,  
2) For clarity, the word "these" should be changed to "the", and  
3) The last sentence is unnecessary and should be deleted.

4. 952-001-0070 Except as provided in paragraph [ (2) ] (3) of the rule ...

Explanation: Paragraph (2) is incorrect. Paragraph (3) is the correct reference.

In addition to the errors and omissions described above, I would like to discuss some of the provisions in the proposed OAR's and the history behind their evolution and intent.

The rules being considered for adoption today, were developed over a period of nearly three years. The Oregon Utility Coordinating Council formed a Legislative Committee (LC) to address the weaknesses in the current excavation laws. The LC consisted of about 22 original members from a wide spectrum of interested parties. The result of their work formed the nucleus of the OAR's proposed for adoption at this hearing.

John A. Kitzhaber  
Governor



550 Capitol St. NE  
Salem, OR 97310-1380  
(503) 378-2080



ORDER NO. 8.7-001

SB 559 created the Oregon Utility Notification Center( OUNC) as a new state agency and gave it the authority to adopt administrative rules to implement the law. Several other important changes were incorporated into the new excavation law, such as;

- 1) Creation of a single statewide one-call center,
- 2) Requirement for a single toll-free number for access to the center,
- 3) Mandatory participation in the Center by all operators of underground facilities in public rights-of-way or utility easements, and
- 4) Civil penalties for those failing to comply with the law.

The OUNC is, in effect, a mini-legislature because the proposed rules have been developed by the same entities that will ultimately be subject to its requirements. Many meetings have been held throughout the state over the past two years to ensure that all interested parties have had a voice in the final version of the rules. Even though there has been considerable discussion on the rules, and general agreement with the content, there are a few issues that remain troublesome, and are discussed, below.

#### ISSUE #1

The old excavation law (the current law) identified the person responsible for marking as the "owner". What is interesting about the old law, is that "owner" was not defined, and responsibility was implied. This is of great importance, because the new law (SB 559), requires mandatory participation in the Center by all underground facility operators and defines the responsible party as the "Operator".

The definition of an "Operator" is found in SB 559, Section 1, (5), and states:

**"Operator" means any person, public utility, municipal corporation, political subdivision of the state or other person with control over underground facilities.**

(Emphasis added)

The reasoning behind changing the concept from an "Owner" to an "Operator" is because an owner may not always have control over the buried facility. Therefore, responsibility is shifted from ownership to administrative or operational control.

For example, sewer service laterals are normally installed from the sewer main in the street to the building. The city or service district requires the occupant to install the lateral, to their specifications, from the main to the building. The city or service district then asserts that the lateral is owned by the building occupant. However, the owner of the lateral has no administrative or operational control over the lateral in the right-of-way. It is controlled and operated by the city or sewer district. The portion of the lateral on private property, outside of the right-of-way, becomes the responsibility of the owner, because he does have operational and administrative control.

As a practical matter, the occupant would rarely have knowledge of the route of the lateral, would not have the expertise to locate it anyway, nor would he have the equipment to perform the locate.

The operator of the sewer main (city or service district) would have the best knowledge of where the lateral would be (they installed it or controlled the installation) and they would have the expertise and equipment to perform the locate. If it is an "unlocatable" facility, they could provide the best information available to assist in its location.

Because mandatory participation is required by SB 559, if the responsibility for marking remained with the "Owner", every person in the state of Oregon with any kind of service lateral in a right-of-way, would be required to join the Center. Hundreds of thousands of homeowners would then be forced to join the Center, which would be counterproductive.

ORDER NO.

92-001

ISSUE #2

Elimination of the "10- day rule". The old excavation law established 10 days as the maximum time that locate marks were good for. Therefore, an excavator had to call for re-marking on an on-going basis to keep the marks "legal", even if the marks were still visible. The problems encountered were two-fold; 1) for very large projects, a locator could spend the majority of his time constantly re-marking the same project, and 2) many excavators did not take reasonable care to maintain the marks placed by the operator, and re-marking had to be done repeatedly.

The new rules eliminate the maximum time that locate marks are good for. OAR 952-001-0090(2)(a) requires the excavator to maintain the original marks during the life of the project. This rule taken together with OAR 952-001-0070(4), which designates the color white as the color to be used for pre-marking the limits of proposed excavation, provides flexibility to both the operator and the excavator.

Rather than prescribing a maximum time limit, the rules require an excavator to pre-mark the limits of proposed excavation with white paint. An excavator may pre-mark only as much of a project as he feels comfortable with, regarding maintenance of the original marks. The operator can then mark the underground facilities and the excavator is allowed to begin work. As long as the original marks are maintained by the excavator, he is not required to call the Center for re-marking. This arrangement can save time and money for both the operator and the excavator.

ISSUE #3

The last issue is a matter of interpretation and enforcement policy concerning culverts. Many County Public Works Officials have expressed their opposition to having to register the numerous culverts found under their roads. In some counties, there may be hundreds of culverts. The definition of "Underground facilities", found under OAR 952-001-0010(14) would include culverts. However, the LC recognized that culverts are normally visible at either side of the road and provided an exemption, found under OAR 952-001-0070(7), from the marking requirements. There is no explicit exemption for registering underground facilities, but many of the counties do not feel that they should be required to register their culverts with the Center.

In view of the fact that culverts are not interconnected to other underground facilities and are actually "open" systems that are easily seen, in most cases, I feel that their arguments are persuasive, and I agree with them. However, by not having the culverts registered with the Center, an excavator would not be given information about culverts in the proposed work area, and may not know of their existence. The counties feel that their permit process is capable of dealing with excavation near their culverts, but there have been instances of excavators not getting permits from the county and damaging critical facilities.

I would leave the issue open for each county to deal with as they see fit, but strongly urge that at least critical facilities be registered with the Center to provide a back-up warning system. In the event that a culvert is damaged by excavation because the existence of the culvert was not evident, because of heavy brush or not permanently marked, I feel that the excavator should not be held liable.

CONCLUSION

The proposed rules have been approved for adoption by the Oregon Utility Notification Center Board of Directors. The concepts contained in the rules capture the best ideas and insights from a very broad range of experts from all sides of the excavation community. In the absence of compelling evidence to the contrary, I recommend that the rules be adopted as written.

**PUBLIC UTILITY COMMISSION  
OF  
Oregon Dept of Justice**

**STAFF EXHIBIT 104**

**OPENING TESTIMONY**

**July 6, 2023**

## **17.32.070 Maintenance of Sewer and Drainage Systems**

(Amended by Ordinance Nos. 188477 and 189506, effective June 21, 2019.) Sewer system maintenance obligations including inspection, rehabilitation, routine cleaning and repair are based on ownership of the system:

**A. Private Systems.** A sewer or drainage system that was not constructed by the City, built under a public works permit, or otherwise accepted pursuant to Subsections 17.32.070 B.1. or B.2. must be maintained by the parties served by the system, regardless of whether the system is located within a public right-of-way.

**1.** If any portion of an existing sewer or drainage system extends into a public right-of-way, the property owner must obtain a permit pursuant to Chapter 17.24 before beginning work within the right-of-way.

**2.** For a sewer or drainage system located in a public right-of-way that is under either private or unclear ownership, the BES Chief Engineer may grant or deny a permit to repair, upgrade, or replace the system as provided by Section 17.32.030. Such a system may only remain in the public right-of-way at the discretion of the BES Chief Engineer.

**3.** Incidental, inadvertent, or emergency City maintenance of private sewer or drainage systems or systems with unclear ownership does not obligate the City to perform future maintenance, imply acceptance of the system, or confer ownership of the system on the City.

**B. Public Systems.** A sewer or drainage system constructed by the City, constructed under a public works permit, or accepted by the City pursuant to Subsections 17.32.070 B.1. or B.3. will be maintained by the City as explained below in this Section unless otherwise specified by written agreement with the City.

**1. Limits of City Maintenance Responsibility.** The City maintains City sewer and drainage improvements that are located in City rights-of-way and that are described as part of the City public sewer, storm sewer and drainage system. However, the City only maintains laterals as follows:

**a.** For a City-paved street with curbs, the City will maintain a lateral from the sewer main to the street-side curb face nearest the property being served. If there is more than one curb, as with stormwater facilities, the City will maintain to the street-side curb face closest to the property line. Otherwise, the City will maintain only the wye or tee connection for laterals.

**b.** For a City-paved street without curbs, the City will maintain a lateral from the sewer main to the edge of the City paved street area.

**c.** Under Subsections 17.32.070 B.1.a. and b., when the sewer main is located in the right-of-way between the property line and the street-side curb face closest to the property line, the City will maintain only the wye or tee connection for the lateral.

**d.** For an unpaved street, the City will maintain those portions of any lateral within an area of right-of-way up to 28 feet wide and centered on the centerline of the City right-of-way, as determined by the City, as follows:

**(1)** When the sewer main is within the 28-foot maintenance area, the City will maintain the lateral to the limit of the maintenance area;

**(2)** When the sewer main is outside the 28-foot maintenance area and at least a portion of the lateral lies within the maintenance area, the City will maintain the lateral to the limit of the maintenance area; and

**(3)** When the sewer main is outside the 28-foot maintenance area and no portion of the lateral lies within the maintenance area, the City will maintain only the wye or tee connection for the lateral.

**e.** In City sewer, storm sewer and drainage system easements, the City will maintain public sewer mains and only the wye or tee connections for laterals.

**f.** Those portions of a lateral not addressed by Subsections 17.32.070 B.1.a. through d. are the responsibility of the property owner receiving service through the lateral.

**2.** Acceptance of Systems with Unclear Ownership. The Chief Engineer may agree to conduct future maintenance of a sewer or drainage system located in a public right-of-way or City utility easement where the ownership is unclear if, in the judgment of the BES Chief Engineer, the public will benefit thereby and:

**a.** The system conveys only domestic sanitary or stormwater flows from residential property; or

**b.** The system has been specifically modified through City permit or by the City to accept stormwater flows from City rights-of-way or other City-controlled property.

**c.** Acceptance of a system under this Section does not include or imply acceptance by the City of any maintenance responsibility, cost, liability or damage that arises from conditions or use of the system before acceptance by the City.

**3.** Acceptance of Systems from Other Agencies., utilities or Individuals. The BES Chief Engineer may accept sewer, storm sewer and drainage systems from other public or private utilities, public agencies, non-profit groups or other persons as the BES Chief Engineer deems appropriate. This acceptance may include full ownership or only assumption of maintenance responsibilities.

- 4.** Adoption of Private Systems in the Public Right-of-Way. The BES Chief Engineer may agree to take ownership of a private sewer system or drainage improvement in the City right-of-way as provided by administrative rule. At the discretion of the BES Chief Engineer, a system meeting the following general criteria may be adopted:
- a.** All the properties connected to the system are participating in the City's Nonconforming Sewer Conversion Program pursuant to Chapter 17.33;
  - b.** The sewer system conveys only domestic sanitary or stormwater flows from residential property;
  - c.** The owners of all properties connected to the system provide the City with detailed information about the design, location, and condition of the system, and the properties connected to it as specified by administrative rule;
  - d.** The owners of all the properties connected to the system relinquish all claims to the system; and
  - e.** All branch fees assessed by the City are paid or financed.
- 5.** A system accepted under Subsection 17.32.070 B.1. or adopted under Subsection 17.32.070 B.2. will be added to the City maintenance roles as of the date of acknowledgment by the BES Chief Engineer.
- 6.** The City's responsibility for maintenance of any sewer or drainage system, branch or connection point is subject to the City's annual budget appropriation and will be limited to the level of service dictated by the City Council's discretionary budget decision. The City assumes no responsibility for activities requiring a level of maintenance in excess of the level for which funds have been appropriated.
- 7.** Any private piping, collection or conveyance structures needed to provide service to or used to transport discharges to the City's sewer, storm sewer or drainage system, will be the sole responsibility of the property owners(s) served by such systems. System installation, maintenance and repair will occur at the expense of the applicable property owner(s).
- 8.** Volunteer Maintenance. Property owners adjacent to City green street or other drainage improvement are not responsible for routine maintenance of the facilities, but BES-approved volunteers may voluntarily perform any of the following tasks:
- a.** Trash, debris, and sediment removal;
  - b.** Weed removal;
  - c.** Leaf pick up and removal;

- d. Watering of vegetation;
- e. Clearing inlets and outlets to allow stormwater to freely enter and exit the facility; and
- f. Planting vegetation with written approval from BES.

**C. Nuisance Abatement.**

1. The BES Chief Engineer may determine that a sewer or drainage improvement located in a public right-of-way that is under either private or unclear ownership constitutes a public nuisance if it:

- a. Impairs or threatens to impair the operation, maintenance or installation of any street or public utility;
- b. Is so deteriorated that its flows infiltrate or threaten to infiltrate any public utility or impact or threaten to impact the support structures of any street or public utilities;
- c. Violates City operation, maintenance or construction standards or rules, or
- d. Otherwise creates a public health or safety hazard.

2. Summary abatement of the nuisance is authorized when the BES Chief Engineer determines it is necessary to take immediate action to meet the purposes of this Title.

3. Notice to the responsible party before summary abatement is not required. Following summary abatement, the BES Chief Engineer will notify all owners identified in this Chapter or Chapter 25.09 as having maintenance or repair responsibilities. An error in the name of the property owner or address listed in the county assessment and taxation records does not affect the sufficiency of the notice.

4. The City will bill each property that the City determines caused or contributed to the nuisance to recover the costs of abatement. If the amount due is not paid in full within 30 days of the date of notice, the City may place a lien against the property.



**PUBLIC UTILITY COMMISSION  
OF  
Oregon Dept of Justice**

**STAFF EXHIBIT 105**

**OPENING TESTIMONY**

**July 6, 2023**

**RECORDING COVER SHEET (Please Print or Type)** this cover sheet was prepared by the person presenting the instrument for recording. The information on this sheet is a reflection of the attached instrument and was added for the purpose of meeting first page recording requirements in the State of Oregon, ORS 205.234, and does NOT affect the instrument.


**AFTER RECORDING RETURN TO:**

Scott Donnell  
2818 NE Ainsworth St  
Portland, OR 97211

**SEND TAX STATEMENTS TO:**

Scott Donnell  
2818 NE Ainsworth St  
Portland, OR 97211

Multnomah County Official Records **2022-052027**  
 E Murray, Deputy Clerk



02893625202200520270080083 **\$111.00**  
 05/20/2022 11:34:10 AM  
 PERM-PERMIT Pgs=8 Stn=85 ATTC  
 \$40.00 \$11.00 \$60.00

**TITLE(S) OF THE TRANSACTION(S) ORS 205.234(a)**

I don't know what that means. The permit says "REVOCABLE PERMIT TO USE DEDICATED STREET AREAS"

**DIRECT PARTY(S)** -- (i.e., DEEDS: Seller/Grantor; MORTGAGES: Borrower/Grantor; LIENS; Creditor/Plaintiff)

ORS 205.125(1) (b) and 205.160  
Scott Donnell

**INDIRECT PARTY(S)** -- (i.e., DEEDS: Buyer/Grantee; MORTGAGES: Beneficiary/Lender; LIENS: Debtor/Defendant)

ORS 205.125(1) (a) and 205.160  
none

**TRUE AND ACTUAL CONSIDERATION--** (Amount in dollars or other) ORS 93.030(5)

\$ I don't know what that means.

**JUDGMENT AMOUNT--** (obligation imposed by the order or warrant) ORS 205.125(1) (c)

\$ I don't know what that means.

If this instrument is being Re-Recorded, complete the following statement, in accordance with ORS 205.244:

"RERECORDED AT THE REQUEST OF  
TO CORRECT

PREVIOUSLY RECORDED IN BOOK/PAGE/FEE NUMBER

**THIS PERMIT DOES NOT BECOME EFFECTIVE UNTIL  
PBOT HAS RECEIVED THE RECORDED COPY AND  
HAS CHANGED THE STATUS TO ISSUED**

**FOR COUNTY RECORDERS USE ONLY**

EMAIL PDF TO: [Encroachments@portlandoregon.gov](mailto:Encroachments@portlandoregon.gov)



**CITY OF PORTLAND, OREGON  
BUREAU OF TRANSPORTATION**

**ENGINEERING AND DEVELOPMENT SERVICES**

Permit No.: 21-097574-TR

Application Date: 10/15/2021

### **REVOCABLE PERMIT TO USE DEDICATED STREET AREAS**

**SCOTT DONNELL – (the “Owner”) applied for a revocable permit (this “Permit”) in accordance with the provisions of the City Charter and Title 17, Public Improvements of the Code of the City of Portland (the “City”) for use of the public Right-of-Way adjacent to 2818 NE AINSWORTH ST, PORTLAND, OR 97211 and fronting the south property line, located approximately 3’ within the public right-of-way for the construction and use of a non conforming sewer connection (the “Encroachment”).**

**More specifically: The Encroachment authorized under this Permit is to be located adjacent and parallel to the above described property as indicated in the attached Exhibit ‘A’.**

**The Encroachment authorized above shall encumber:  
IRVINGTON PK, BLOCK 32, LOT 3&4 (R190229, 1N1E13CC -02100)  
As last recorded in QUIT CLAIM DEED – 2016156347**

### **DEFINITIONS**

**Permittee: Owner of the encumbered property described above.**

**Right-of-way: Centerline of asphalt paved, concrete paved, gravel, dirt, or unimproved roadway to the adjacent property line including curbs, stormwater devices and sidewalks.**

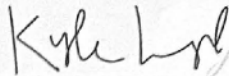
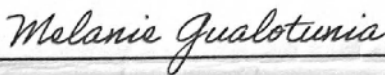
### **CONDITIONS**

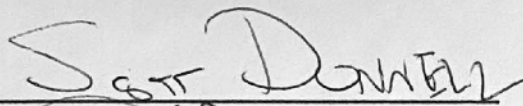
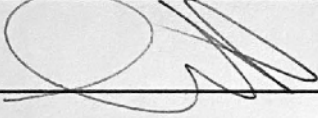
- (1) This “Permit” is for the use of the Right-of-Way only and shall not exempt the “Permittee” from obtaining any license or permit required by the City Code or Ordinances for any act to be performed under this “Permit”, nor shall this “Permit” waive the provisions of any City Code, Ordinance, or the City Charter, except as herein stated.
- (2) This “Permit” is revocable by the City Engineer at any time in the in the event the public’s need requires it, or the “Permittee” fails to comply with the conditions of this “Permit,” and no expenditure of money hereunder, lapse of time, or other act or thing shall operate as an estoppel against the City, or be held to give the Permittee any vested or other right. Upon the revocation by the City Engineer, at the City Engineer’s discretion the, within 30 days the “Permittee” shall remove the “Encroachment” from the Right-of-Way and restore the Right-of-Way as directed by the City Engineer. In addition, this “Permit” will be revoked if and when re-development of the lot occurs, and the “Permittee” will be required to disconnect from the private sewer and extend the public sewer to the property. In addition, if the City builds a public sewer extension in NE Ainsworth St before the private line is abandoned, the “Permittee” will be required to connect to the public sewer within 180 days of sewer completion.

- (3) This "Permit" shall not become effective until the "Permittee" or the "Permittee's" contractor have provided proof of bond and license and an insurance policy which has been approved by the City Attorney, naming the City as additional named insured. This insurance is to remain in effect throughout all phases of construction performed under this "Permit." Submit information to Transportation Street Systems Management (503-823-7142), [insurance@portlandoregon.gov](mailto:insurance@portlandoregon.gov).
- (4) This "Permit" is a burden upon the adjacent property described above and runs with the land.
- (5) To protect underground facilities, the "Permittee" shall comply with the requirements of OAR 952-001-0010 through OAR 952-001-0090 and must incorporate applicable erosion control measures referenced in chapter 17.38.050 of the City Code.
- (6) The "Permittee" or "Permittee's" contractor shall be responsible for obtaining an approved temporary street use permit to implement the traffic plan for the work zone covered under this "Permit." Submit your proposed street use plan for review to [cpac@portlandoregon.gov](mailto:cpac@portlandoregon.gov) five days prior to proposed work date. Work that requires closure of a street or lane shall not commence unless an approved traffic control plan and permit to implement the plan have been obtained. For questions about a permit to implement a traffic control plan contact 503.823.7365.
- (7) The "Permittee" shall be liable to any person who is injured or otherwise suffers damage by reason of the "Permittee's" failure to keep the "Encroachment" and/or surrounding area located in the portion of the Right-of-Way covered by this "Permit" in safe condition and good repair or properly secured. Furthermore, "Permittee" shall be liable to the "City," it's officers, agents and employees, for any judgment or expense incurred or paid by the "City," it's officers, agents or employees, by reason of the existence of any structure in the right-of-way covered by this "Permit."
- (8) No work shall be permitted in the right-of-way until plans for the "Encroachment" have been submitted and approved by the City Engineer. It is understood by "Permittee" that such plan approval shall not work as an estoppel nor shall it be construed as a defense to the "Permittee's" guarantee to reimburse the "City" for damage or destruction of utilities or private property.
- (9) The "Permittee" guarantees the cost of any repairs or replacement of private or public utilities or private property damaged or destroyed caused in whole or in part by activities associated with installing or maintenance of the "Encroachment." The "Permittee" further agrees to guarantee all costs by the "City" in ascertaining the extent of damage or destruction to utilities or private property. The "Permittee" recognizes and agrees that the "City" cannot guarantee the accuracy of location of utilities in the street, and that the information used by the "City" and furnished the "Permittee" in approving the plans may be incorrect; and the "Permittee" further agrees to be responsible for any and all damage caused by the construction, maintenance or use of the "Encroachment," although such damage or destruction may have resulted in whole or in part because of the "City's" mis-location or misinformation in relation to the utilities.
- 10) The "Permittee" must provide notification of proposed work schedule and request inspection for the permitted activity; contact Right-of-Way Inspection at 503.823.7002 opt #1 a minimum of two business days prior to beginning work and before 6am the day of inspection. Inspection is not available on weekends and City holidays.
- 11) Repair, maintenance and installation of existing or future utility facilities in the right-of-way may require the "Permittee" or associated utility provider to reconstruct, excavate, move or remove the "Encroachment" authorized by this "Permit" at the "Permittee's" expense. Utility service providers and municipalities performing work in the "Encroachment" area will not be required to incur an expense for the closure and reconstruction of surfaces that exceed the cost of repair to provide the current City Standard. The "Permittee" shall be responsible for cost of repairs exceeding the cost of the current City Standard, or existing condition (whichever is less), and assuring that the work is performed to match the City Engineer approved design.
- 2) No modification shall be made to any installation authorized under this "Permit" without prior approval from the City Engineer. Failure to maintain the "Encroachment" in conformance with the approved plans. No repair to or modification of the "Encroachment" without obtaining prior approval from the City Engineer shall cause immediate revocation of this "Permit" without further action by the City Engineer. Within 30 days of revocation, the "Permittee" shall remove the "Encroachment" from the right-of-way area and restore the street area to the satisfaction of the City Engineer.

- (13) Failure to maintain the "Encroachment," failure to repair or replace any portion of the "Encroachment," or failure to maintain the Right-of-Way adjacent to the "Encroachment" immediately upon notification from the City Engineer, shall be cause for the City Engineer to declare the "Encroachment" a nuisance, initiate proceedings through the Code Hearings Officer, file civil suit or take any other action necessary to insure the "Permittee," transferee or assignee performs the required repairs to the Right-of-Way.
- (14) Upon order of the City Engineer, "Permittee" shall immediately stop work and repair any damage to the street areas or utilities or private property as directed.
- (15) The "Permittee" is required as a condition of this "Permit" to contact and register the property and the location of all below grade utilities which are associated with the encroachments authorized under this "Permit", with the Oregon Utility Notification Center (OUNC, phone #811 or email at [ORdatabase@occinc.com](mailto:ORdatabase@occinc.com)). Additionally, it shall be the "Permittee's" responsibility to locate all utilities by means of survey or by potholing in order to assure that the assumed depths that have been indicated on plans are accurate and that public and city operated utilities are safeguarded against any damage due to construction activities. All laterals from sewer or water mains which could be impacted by construction activity are to be identified and capped prior to commencement of work which may damage them.
- (16) The "Permittee" shall provide proof of the 811 registration by submitting evidence of registration to the BES Nonconforming Sewer Program at [nonconforming@portlandoregon.gov](mailto:nonconforming@portlandoregon.gov) prior to commencing work.
- (17) The "Permittee" shall, a minimum of two working days prior to beginning work on the private sewer / storm line, notify PBOT Utilities Construction and Inspection (503-823-7002) of the proposed work schedule for the installation, and arrange for a site consultation with the inspector prior to commencing work.
- (18) The "Owner" shall be responsible for all maintenance of the sewer / storm line authorized under this "Permit." BES may perform emergency maintenance of the sewer / storm line, as necessary at the "Permittee's" expense
- (19) The "Permittee" shall pay a onetime "Permit" fee of \$575.00 required by Section 17.24.020 of the City Code. This "Permit" does not become effective until the fee is paid in full.
- (20) The "Permittee" shall file this original certified copy of this "Permit" with Multnomah County's Division of Assessment, Recording and Taxation once it is deemed completed to the satisfaction of Bureau of Transportation City Engineer, or City Engineer Representative. Upon Recording this "Permit", the "Permittee" shall provide a copy of the recorded permit to the Bureau of Transportation (as directed).

Continued  
Signatures page 4

<b>Insurance Required: YES</b>	<b>- BUREAU OF TRANSPORTATION - CITY ENGINEER OR REPRESENTATIVE</b>
<b>Permit Fee: \$575.00</b> <small>per City Code Sect 17.24.020</small>	 <small>Digitally signed by Kyle Livengood Date: 2022.02.09 15:40:32 -08'00'</small>
<b>Structural Review Fee: \$N/A</b>	
<b>Appeal Fee: \$N/A</b>	
<b>Total Permit Fee: \$575.00</b>	<b>- BUREAU OF ENVIRONMENTAL SERVICES - CITY ENGINEER OR REPRESENTATIVE</b>
<b>Paid Under Permit: 21-097574-TR</b>	 2/8/22
<b>IVR #: 4738653</b>	

<b>OWNER: SCOTT DONNELL</b>	
<b>PRINT:</b> 	<b>OWNER ADDRESS:</b>
<b>SIGN:</b> 	<b>2818 NE AINSWORTH ST. PORTLAND, OR 97211</b>

**Acknowledgment**

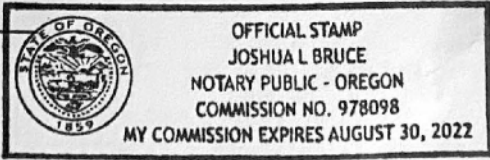
State of Oregon

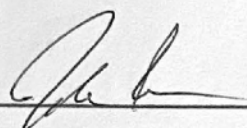
County of Multnomah

This instrument was acknowledged before me on March 25<sup>th</sup> 20 22

by Scott Donnell  
(PRINTED NAME OF ABOVE PERMITTEE SIGNATORY)

SCOTT DONNELL



Notary Public: 

My Commission Expires: \_\_\_\_\_

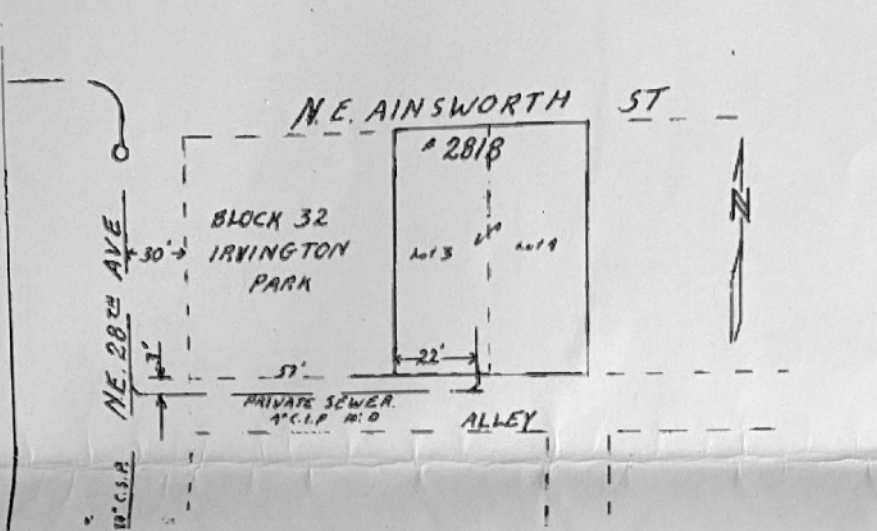


Image C:

2433	CITY OF PORTLAND, OREGON	Permit No. 76624
FORM W 271-1 (11-58)	DEPARTMENT OF PUBLIC WORKS	Date 9-9-60 19
	BUREAU OF MAINTENANCE	
	SEWER BRANCH	
Location	2818 N. E. AINSWORTH ST.	
Between		
Addition	IRVINGTON PARK	Lot 3 & 4 Blk. 32
Applicant	REX L. WALKER PLBG.CO.	
Remarks	HOOKED ONTO EXISTING WYE IN MAIN SEWER ON NE 28th 3' S OF NORTH LINE OF ALLEY, 4" C.I.P. 10' D. INTO PROP. 22' EAST OF WEST LINE. PLBG. CUT 2 X 112 CONCRETE	
Inspected	9-16-60 19	By EK
Book	7	Page 318 New Repair ✓
Other House on Branch		

EXHIBIT A

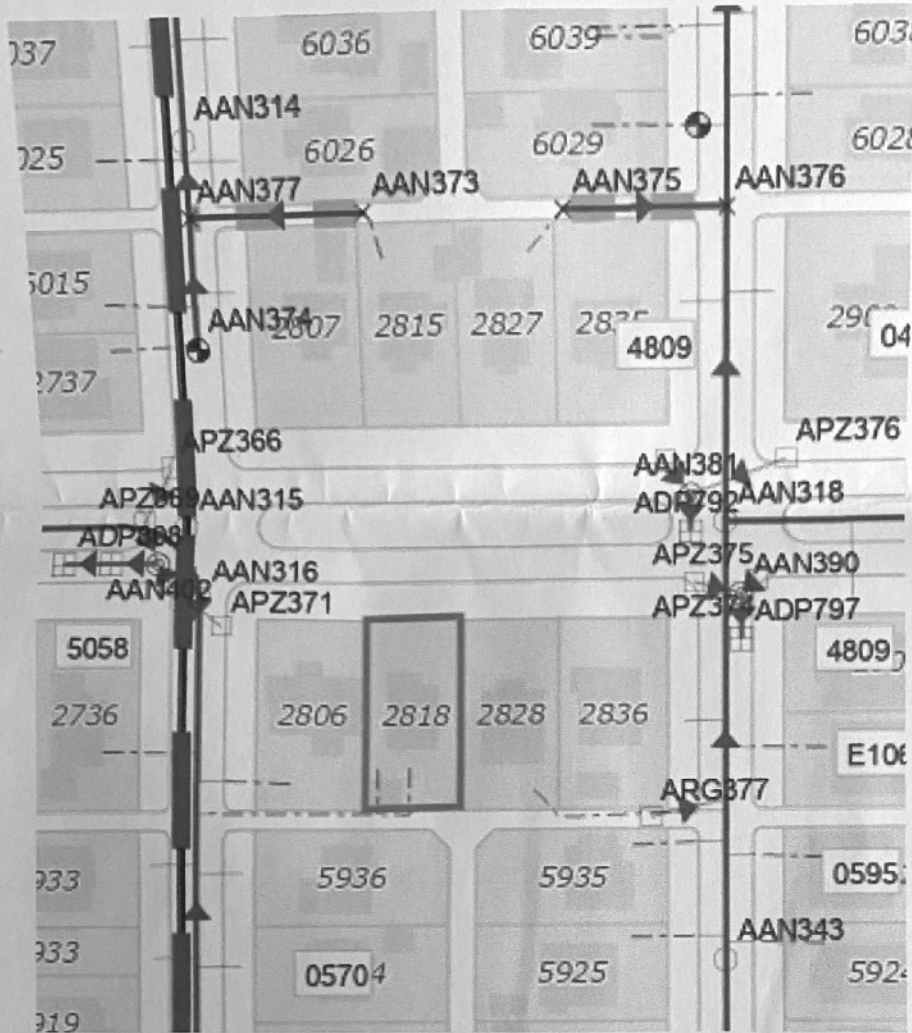


Image B and C are images from previous city repairs on file. Image B is an elevation hand drawing, and Image C is a scan of the report.

IMAGE B:

EXHIBIT A



NE 28th Ave

Neighbor House

2818 2818 Hou

YARD BIGGER  
WYE 6" 11"  
3 ABS

GAR 7'6"  
7'1"

Main  
10'5"

10'5"  
MAIN

9'11"

9'2"

10'2"

8'3"

8'4"

7'9"

118'

56'

EXI

