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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

NC 114

PUBLIC UTILITY COMMISSION OF)
OREGON,)
)
Complainant,)
)
v.)
)
LARRY A. SMIEJA, dba WILDCAT)
EXCAVATION & ENTERPRISES,)
)
Defendant.)

ORDER

DISPOSITION: STIPULATION ADOPTED

On May 27, 2004, the Public Utility Commission of Oregon filed a complaint against Defendant. The complaint charged Defendant with one violation of law and requested a penalty of \$5,000. On June 8, 2004, a copy of the complaint was served.

On June 15, 2004, the parties to this proceeding entered into a stipulation, which is attached as Appendix A.

Defendant admits committing the violation alleged in the complaint and has violated OUNC rules in the past. The stipulation is adopted.

From the foregoing, it is concluded that no hearing is required. Under the terms of the stipulation, the allegations of the complaint are true, and Defendant has violated Oregon Administrative Rule(s) as alleged. Pursuant to the provisions of ORS 757.993, penalties should be assessed against Defendant under the terms and conditions of the stipulation.

ORDER

IT IS ORDERED that:

1. Civil monetary penalties shall be assessed against Defendant in the amount of \$5,000 for one violation of law.
2. Defendant shall pay the sum of \$1,000, due and payable within 30 days from the date of service of this order.
3. Payment of the balance of the penalties (\$4,000) shall be suspended, unless Defendant fails to comply with paragraph 2 above or a showing is made that Defendant has violated, within one year of the date of this order, any rules administered by the Oregon Utility Notification Center.
4. Defendant shall contact the OUNC Speakers Bureau to arrange for and attend a training session on Oregon excavation laws within 45 days following the entry of this order.
5. If Defendant has not paid the amount assessed in paragraph 2 above within 30 days from the date of service of this order, then Defendant shall pay the amount assessed in paragraph 1 above (\$5,000). Such payment shall be due immediately following the expiration of the time period set out in paragraph 2 above.

Made, entered, and effective _____.

Lee Sparling
Director
Utility Program

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to ORS 756.580.

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

NC 114

PUBLIC UTILITY COMMISSION OF OREGON,

Complainant,

v.

LARRY A. SMIEJA, dba WILDCAT
EXCAVATION & ENTERPRISES,

Defendant.

STIPULATION FOR ENTRY OF FINAL
ORDER

The Public Utility Commission of Oregon, appearing by and through Paul A. Graham,
Assistant Attorney General, and Wildcat Excavation & Enterprises, the defendant herein, hereby
stipulate as follows:

1.

A Complaint in this case is pending before the Commission charging the defendant with
one violation of law, as set out in the attached Complaint on file herein.

2.

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

3.

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

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4.

The parties further agree that the Commission may enter an order assessing civil monetary penalties against the defendant in the amount of \$5,000 under the following terms and conditions:

- A. \$1,000 shall become due and payable on or before the 30th day following the Commission’s entry of a final order in this case.
- B. Payment shall be by cashier’s check or money order made out to the **Public Utility Commission of Oregon**, and the *memo line of the cashier’s check or money order shall state the “NC” docket number* in the caption of this stipulation. Payment of the balance of the penalties (\$4,000) shall be permanently suspended and no further penalties shall be imposed for the violation alleged in the Complaint unless defendant fails to comply with all of the rules adopted by the Oregon Utility Notification Center (OUNC) under ORS 757.552 for a one year period following date of the Commission’s entry of a final order.
- C. Defendant shall contact the OUNC Speakers Bureau at **(503) 232-1987** to arrange for a training session on Oregon excavation laws within 45 days following the entry of the Commission’s final order.
- D. In the event that complainant contends that the defendant has not complied with all OUNC rules for that one year period, complainant may reopen this proceeding and petition for imposition of all or a portion of the suspended penalties. In such case defendant shall be entitled to a hearing and to be notified of the basis upon which complainant contends that compliance has not occurred.

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5.

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

DATED this ____ day of _____, 2004.

Paul A. Graham, OSB #77190
Assistant Attorney General
Of Attorneys for PUC Staff

DATED this ____ day of _____, 2004.

Representative for Defendant