



Agenda Date: 11/21/14
Agenda Item: VIA

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

RELIABILITY & SECURITY

IN THE MATTER OF ALLEGED VIOLATIONS OF THE)
UNDERGROUND FACILITY PROTECTION ACT,)
N.J.S.A. 48:2-73 ET SEQ.)
)
) **ORDER ACCEPTING**
SETTLEMENTS
)
) **DOCKET NOs. TS14101170K**
) **et al.** (see attached appendix)

Parties of Record:

- Craig Lynch, Vice President, New Jersey Natural Gas Company**
- Sandra Morizzo, Seminole Construction**
- Benedita Barros, P&A Construction**
- Chris Chapman, Chapman Landscaping**
- Howard Butensky, Viking Marine Construction**
- Richard McLaughlin, J Fletcher Creamer**
- Samuel De Angelis, Vincent Owens Excavating**
- Rosemarie Boyd, Cavan Construction**
- Matthew Esposito, Esposito Company**
- James Zelenick, Tri-State Contracting Group**
- Patricia Bencardino, Bencardino Contractors**
- James Curley, Berkeley Township Sewerage Authority**
- Mike Goncalves, Simpson & Brown**
- Eric Olsen, Shorelands Water**
- Thomas Tirrell, Tirrell Landscaping**
- Michael Siervo, Cloverland Landscape Co**
- Louis Suppa, Prestige Party Rental**
- Meredith Henry, Arthur Henry Inc**
- Jay McDermott, Builder Services**

BY THE BOARD¹:

The Board of Public Utilities ("Board") has jurisdiction to oversee and enforce the provisions of the Underground Facility Protection Act ("the Act") pursuant to the provisions set forth in N.J.S.A. 48:2-73, et seq. The primary purpose of the Act is to establish the One-Call Damage Prevention System for the protection of underground facilities that are used for the conveyance of water, forced sewage, telecommunications, cable television, electricity, oil, petroleum

¹ Commissioner Dianne Solomon was not present at the 11/21/14 agenda meeting.

products, gas, optical signals, traffic control, or for the transportation of a hazardous liquid. In declaring its findings and the purpose of the Act, the Legislature stated, in pertinent part:

That damage to underground facilities caused by excavation and the discharge of explosives poses a significant risk to the public safety; that such damage to underground natural gas facilities poses a substantial risk to the public safety; and that the implementation of a comprehensive One-Call Damage Prevention System can substantially reduce the frequency of damage caused by these activities.

The Legislature therefore determines that it is in the public interest for the State to require all operators of underground facilities to participate in a One-Call Damage Prevention System and to require all excavators to notify the One-Call Damage Prevention System prior to excavation or demolition.

N.J.S.A. 48:2-74. The Act defines "excavator" as "any person performing excavation or demolition," and "operator" as "a person owning or operating, or controlling the operation of, an underground facility..."

The Act subjects violators of its provisions to civil penalties of not less than \$1,000 and not more than \$2,500 per violation per day, not to exceed \$25,000 for any related series of violations. N.J.S.A. 48:2-88(a). Violations relating to natural gas or hazardous liquid underground pipelines or distribution facilities shall subject the violator to civil penalties not to exceed \$100,000 per violation per day and not to exceed \$1,000,000 for any related series of violations. In addition, a violator may be assessed the cost of any Board investigation, inspection or monitoring survey which leads to the establishment of a violation and for the reasonable costs of preparing and litigating the matter. N.J.S.A. 48:2-86(b)(2).

Following reports of failure to call the System prior to commencing excavation or demolition activities, failure to hand dig and locate facilities, failure to use reasonable care, or reports of failure to mark out underground facilities or properly mark them, Board Staff contacted the entities listed on the attached Appendix and informed them of the date and location of the alleged violations, also listed on the Appendix.

In an attempt to resolve these matters, each excavator or operator listed on the Appendix has submitted an Offer of Settlement to the Board for its consideration. Each such Offer of Settlement is summarized in the Appendix. The Offers of Settlement were made available to the Board for its review. After consideration of the matters, the Board **HEREBY FINDS** these Offers of Settlement to be reasonable and in the public interest, and **HEREBY ACCEPTS** these Offers of Settlement in full satisfaction of the above referenced alleged violations of the Act.

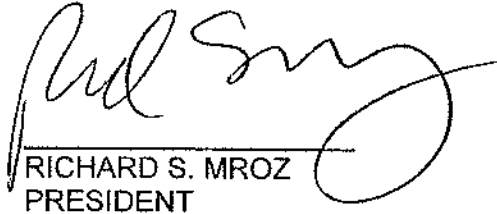
By acceptance of the various Offers of Settlement and the timely payment thereof, the excavator or operator has waived any rights to a hearing, and the Board has waived any rights to bring an action for civil penalties as permitted by the Underground Facility Protection Act in connection with the above-referenced alleged violations of the Act. It must also be noted that the acceptance of the Offers of Settlement are for settlement purposes only, and apply strictly to the specific incidents described in the Appendix. This acceptance is without prejudice as to the position of the State of New Jersey or any agency or subdivision thereof if other violations are present, now or in the future.

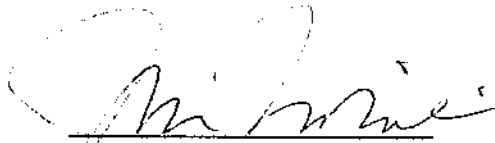
This Order shall be effective on November 30, 2014.

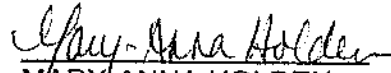
NO FURTHER ACTION BY THE RESPONDENTS IS REQUIRED

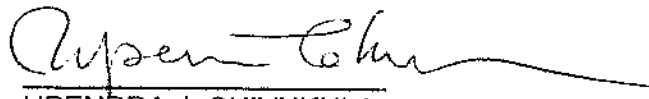
DATED: 11/21/14

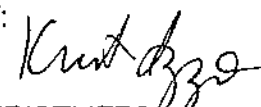
BOARD OF PUBLIC UTILITIES
BY:


RICHARD S. MROZ
PRESIDENT

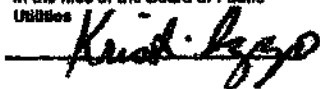

JOSEPH L. FIORDALISO
COMMISSIONER


MARY-ANNA HOLDEN
COMMISSIONER


UPENDRA J. CHIVUKULA
COMMISSIONER

ATTEST: 
KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public
Utilities



**IN THE MATTER OF ALLEGED VIOLATIONS OF THE UNDERGROUND FACILITY
PROTECTION ACT, N.J.S.A. 48:2-73 ET SEQ. ORDER ACCEPTING SETTLEMENTS
DOCKET NO. TS14101170K et al. (see attached appendix)**

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IN THE MATTER OF:
ALLEGED VIOLATIONS OF THE UNDERGROUND FACILITY PROTECTION ACT,
N.J.S.A. 48:2-73 ET.SEQ. ORDER ACCEPTING SETTLEMENTS

Bureau of One Call - Settlements -APPENDIX-November VIA 2014

Damage Type	BPU Dkt No.	One Call Case No.	Type of Violation	Penalty	Operator	Excavator	Violation Date	Description/Location	Received
Non Damage	TS14101170K	NOC2014-0009	Did not have valid markout	\$1,000		J Fletcher Creamer	5/8/2014	Pitman Downer Rd, Washington	9/18/2014
Non Damage	GS14101171K	GOC2014-0165	Did not have a valid markout	\$3,000		Tirrell Landscaping	5/19/2014	8th Ave, Mantoloking	8/26/2014
Damage, Gas	GS14101172K	NOC2014-0035	Did not properly mark out	\$3,000	NJ Natural Gas		3/7/2014	Sea Breeze Rd, Toms River	9/10/2014
Damage, Gas	GS141-1212K	GOC2014-0180	Did not have a valid markout	\$3,000		Tri-State Contracting	6/3/2014	Main St, Bedminster	9/16/2014
Damage, Gas	GS14101210K	GOC2014-0158	Did not have a valid markout	\$3,000		Bencardino Excavating	5/13/2014	US 1, Princeton	9/18/2014
Damage, Gas	GS14101175K	GOC2014-0261	Did not have a valid markout	\$3,000		Cloverland Landscape	6/7/2014	Chestnut Ridge Rd, Montvale	9/16/2014
Non Damage	WS14101177K	NOC2014-0032	Did not properly mark out	\$1,000	Shorelands Water		6/11/2014	Hwy 35, Holmdel	9/8/2014
Non Damage	GS14101176K	GOC2014-0134	Did not have a valid markout	\$3,000		Prestige Party Rental	5/25/2014	Franklin Lake Rd, Franklin Lakes	9/15/2014
Non Damage	GS14101178K	GOC2014-0065	Did not have a valid markout	\$3,000		Esposito Company	3/4/2014	Hwy 34, Old Bridge	9/10/2014
Damage, Gas	GS14101180K	GOC2014-0206	Did not have a valid markout	\$3,000		Arthur Henry Inc.	6/10/2014	Lake Rd, Wildwood Crest	9/8/2014
Damage, Gas	GS14101193K	GOC2014-0125	Did not have a valid markout	\$3,000		Seminole Construction	5/8/2014	Schuykill Dr, Little Egg Harbor	8/19/2014
Damage, Gas	AS14101194K	NOC2014-0023	Did not have a valid markout	\$1,000		P&A Construction	7/11/2014	Woodbine Ave, Avenel	8/26/2014
Damage, Gas	GS14101202K	GOC2014-0162	Did not properly mark out	\$3,000	NJ Natural Gas		5/15/2014	Holmdel Rd, Holmdel	9/24/2014
Damage, Gas	GS14101203K	GOC2014-0294	Did not have a valid markout	\$3,000		Chapman Landscaping	6/20/2014	Centerton Rd, Pittsgrove	9/18/2014
Damage, Gas	AS14101204K	NOC2014-0033	Did not have a valid markout	\$1,000		Viking Marine Construction	7/28/2014	Lake Superior Dr, Little Egg Harbor	9/19/2014
Non Damage	AS14101205K	NOC2014-0026	Did not have a valid markout	\$1,000		J Fletcher Creamer	7/11/2014	Madison Ave, Elizabeth	9/24/2014
Damage, Gas	AS14101206K	NOC2014-0025	Did not have a valid markout	\$1,000		J Fletcher Creamer	7/14/2014	Britten Rd, Chatham Twp	9/24/2014
Damage, Gas	GS14101208K	GOC2014-0334	Did not have a valid markout	\$3,000		Berkely Twp SA	6/24/2014	Bowspirit Dr, Bayville	9/24/2014
Damage, Gas	GS14101209K	GOC2014-0129	Did not have a valid markout	\$3,000		Cavan Construction	4/23/2014	Brunswick Pike, Lawrence Twp	9/22/2014
Non Damage	GS14101163K	NOC2014-0031	Did not properly mark out	\$1,000	NJ Natural Gas		5/5/2014	Demarest Dr, Manalapan	10/1/2014
Damage, Gas	GS14101164K	GOC2014-0147	Did not properly mark out	\$3,000	NJ Natural Gas		5/5/2014	Summerfield Ave, Asbury Park	10/1/2014