



Agenda Date: 5/21/14
Agenda Item: 6B

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 STEVEN G. BECKER,)
BECKER'S TREE SERVICE, INC.)

ADMINISTRATIVE ORDER AND
NOTICE OF CIVIL ADMINISTRATIVE
PENALTY ASSESSMENT (AONOCAPA)

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DOCKET NO. EO12020151

Party of Record:

Steven G. Becker, Becker's Tree Service Inc.

BY THE BOARD:

This Administrative Order and Notice of Civil Administrative Penalty Assessment (hereinafter "AONOCAPA") is issued pursuant to the authority vested in the New Jersey Board of Public Utilities (hereinafter "Board") by the Underground Facilities Protection Act, N.J.S.A. 48:2-73 et seq., Natural Gas Pipeline Safety Act of 1968 as amended, 49 U.S.C. 1671 et seq., and all regulations promulgated thereto and the Natural Gas Safety Act, N.J.S.A. 48:10-2, et seq., and all regulations promulgated thereto, including N.J.A.C. 14:7-2.5 and N.J.A.C. 14:2-6.4.

The Board has jurisdiction to oversee and enforce the provisions of the Underground Facility Protection Act ("Act"), N.J.S.A. 48:2-73 et seq. For violators of the Act involving natural gas facilities, the maximum penalties are \$100,000 per violation per day, with a total maximum of \$1,000,000 for a related series of violations. N.J.S.A. 48:2-86.

This matter was opened to the Board following an investigation by the Board's Bureau of Underground Facilities Protection ("UFP") of a natural gas incident that occurred on March 8, 2011 located at 41 2nd Avenue in the Borough of Atlantic Highlands, New Jersey. The excavator made contact with a New Jersey Natural Gas Company ("NJNG") underground facility which resulted in an escape of natural gas to the outdoor environment. No persons were hurt.

The UFP conducted a detailed and comprehensive investigation which included a review of New Jersey Natural Gas Company (the underground facility operator of the affected natural gas service line) and Becker's Tree Service Inc. (the Excavator) (hereinafter "Becker" or "Respondent") procedures and documents, actions, and other circumstances surrounding the incident. Based on this investigation, it was determined that the March 29, 2011 damage at 41 2nd Avenue in the Borough of Atlantic Highlands to the New Jersey Natural Gas underground facility was caused by the Respondent's actions and failure to comply with the Act, N.J.S.A. 48:2-73 et seq. and the N.J.A.C. 14:2-1.1 et seq.

Pursuant to this investigation, the Board makes the following findings regarding the conduct of Becker, the excavator present at the incident location on March 29, 2011.

FINDINGS

1. On or before March 8, 2011, Becker was contracted by the Borough of Atlantic Highlands to engage in excavation work in the vicinity of 2nd Ave. in the Borough of Atlantic Highlands.
2. On March 8, 2011, JADS Construction Company ("JADS Construction"), who was also contracted by the Borough of Atlantic Highlands for excavation work, as per N.J.S.A. 48:2-82, notifies the New Jersey One Call Damage Prevention System of its intent to engage in excavation for work on 2nd Ave. from the intersection of E. Mount to the intersection of Ocean Blvd. including both intersections, in the Municipality of the Borough of Atlantic Highlands. Markout Ticket Number: 110671054 Type of Work: Replace Curb, Sidewalk and Roadway Working For: Borough of Atlantic Highlands.
3. On March 11, 2011, UtiliQuest, Inc. ("UtiliQuest") completes a markout for New Jersey Natural Gas Company, as per N.J.S.A. 48:2-80, of New Jersey Natural Gas Company facilities on 2nd Ave. from the intersection of E. Mount to the intersection of Ocean Blvd. including both intersections in the Borough of Atlantic Highlands, in response to Markout Ticket Number: 110671054.
4. The gas line marked by Utiliquest constitutes an underground facility as defined in N.J.S.A. 48:2-75 and N.J.A.C. 14:2-1.2.
5. At no time between March 8, 2011 and March 29, 2011 did Becker contact the New Jersey One Call Damage Prevention System of its intent to engage in excavation for work on 2nd Ave or other surrounding streets not less than three business days and not more than 10 business days prior to the beginning of the excavation or demolition nor did they otherwise make a mark-out request.
6. On or about March 29, 2011, Becker engaged in excavation as defined in N.J.S.A. 48:2-75 and N.J.A.C. 14:2-1.2.
7. On March 29, 2011, Becker damaged a natural gas service line owned by New Jersey Natural Gas Company while performing excavation, as defined by N.J.S.A. 48:2-75 and N.J.A.C. 14:2-1.2.

8. The excavation included the removal of trees and existing sidewalk and curbing for the Borough of Atlantic Highlands at 41 2nd Ave. in the Borough of Atlantic Highlands.
9. Prior to the excavation on March 29, 2011, Becker failed to comply with N.J.S.A. 48:2-82 (a), which requires Becker's Tree Service to notify the New Jersey One Call Damage Prevention System
10. On March 29, 2011, Becker was excavating at 41 2nd Avenue in the Borough of Atlantic Highlands using mechanized equipment and operated the mechanized equipment within two feet horizontally of the outside wall of any underground facility without first locating the underground facility by first hand digging.
11. During the March 29, 2011, excavation Becker failed to use reasonable care during the excavation or demolition to avoid damage to and to minimize interference with underground facilities.
12. A New Jersey Natural Gas first responder arrived on the scene at 2:55 p.m. on March 29, 2011. The damage was repaired by a NJNG technician on the same day, shortly thereafter.
13. The damage resulted in no injuries or loss of property.
14. On May 11, 2011, a Notice of an Alleged One-Call Violation for the event of March 29, 2011 was sent to Respondent.
15. On May 17, 2011, Mr. Becker responded with a letter that outlined his company's involvement in the project. He also stated that "several other streets were worked on as part of this project with no other incidents occurring."
16. Staff is not aware of any other damages that occurred at the other Becker excavation sites related to this project.
17. On June 1, 2011, a letter of Inquiry to Operator was sent to the NJNG.
18. On June 10, 2011, NJNG responded with a letter that outlined its involvement regarding the March 29th damage to its underground facilities located at 41 2nd Avenue in the Borough of Atlantic Highlands.
19. On September 16, 2011, a Notice of Probable Violation and Offer of Settlement was sent to the Respondent alleging failure to call for a markout. The settlement offer was the \$3000.00 minimum for natural gas violations.
20. On September 20, 2011, Becker files an answering certification that his company does not contest the charges and waives any rights to a hearing but seeks a mitigation conference to present new information.
21. On January 9, 2012, Becker's Tree Service owner Steve Becker meets with staff members Douglas Ziemba and Phillip Galka for a mitigation conference.

22. Staff discussed the findings and additional violations that were discovered during the investigation. Mr. Becker indicated that the facilities were marked pursuant to a mark-out request by JADS Construction.
23. Staff advised Becker that the additional violations, combined with the initial violation, would total \$12,000.00.
24. During the conference the Respondent sought a reduction in penalty in light of his assertion that mitigating circumstances existed. Because Respondent does not present new information not otherwise known by Board Staff, Staff does not offer a settlement reduction.
25. The Notice of Probable Violation was reissued on March 25, 2014 via certified mail, noting multiple violations.
26. The Notice of Probable Violation was returned to Board staff as refused on March 28, 2014.
27. The Notice of Probable Violation was then reissued via regular mail on April 8, 2014. This Notice of Probable Violation was not returned.
28. The Notice of Probable Violation remains unresolved and outstanding.

VIOLATIONS

The Board has reviewed the information gathered during the course of the investigation, including records regarding any applicable One Call Ticket(s), documents provided by Respondent and interview(s) conducted by Board Staff, and the Board **HEREBY FINDS** that Respondent has committed the following violations:

- a. **Violation:** N.J.A.C. 14:2-3.1
Excavator failed to have a valid Mark-Out at the time of excavation on March 29, 2011.
- b. **Violation:** N.J.A.C. 14:2-3.3(a)(1)
Excavator operated mechanized equipment within two feet horizontally of the outside wall of an underground facility.
- c. **Violation:** N.J.A.C. 14:2-3.3(a)(3)
Excavator failed to use reasonable care during excavation to avoid damage or interference with underground facilities.
- d. **Violation:** N.J.A.C. 14:2-3.1
Excavator failed to have a valid Mark-Out at the time of excavation at several other locations, in conjunction with this project, in violations of the N.J.A.C. 14:2-3.1 requirements.

**NOTICE OF CIVIL ADMINISTRATIVE PENALTY ASSESSMENT
AND NOTICE OF RIGHT TO A HEARING**

Pursuant to N.J.A.C. 14:7-2.5, and based upon the above **FINDINGS**, the Board **HEREBY DETERMINES** that a civil administrative penalty is **HEREBY ASSESSED** against Respondent in the amount of \$12,000.00. The Board's rationale for the civil administrative penalty is incorporated herein.

Respondent is **HEREBY NOTIFIED** that pursuant to N.J.A.C. 14:7-2.6, Respondent may request an adjudicatory hearing. If no hearing is requested within 20 days regarding this AONOCAPA, the penalty set forth will be due and owing on the 21st day following service of this AONOCAPA on the violator, without further notice. N.J.A.C. 14:7-2.5(e).

If the Board grants the request for a hearing pursuant to N.J.A.C. 14:7-2.6, Respondent will be given an opportunity to respond to the charges and submit evidence and present testimony as may be necessary in order for the Board to make a final determination concerning the charges of unlawful activity.

If a hearing is requested but the Board denies the hearing request pursuant to N.J.A.C. 14:7-2.6, this AONOCAPA shall become a Final Order, and the penalty in this AONOCAPA shall become due and owing, upon service on the Respondent of notice of the hearing request denial.

If an adjudicatory hearing is requested and conducted, this AONOCAPA shall become a Final Order upon service on the Respondent of a Final Order in the contested case. N.J.A.C. 14:7-2.5 (g).

Payment shall be made by check payable to Treasurer, State of New Jersey and shall be submitted along with the enclosed Enforcement Invoice to:

Chief Fiscal Officer
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08635-0350

GENERAL PROVISIONS

This AONOCAPA is binding on Respondent, its principals, directors, officers, agents, successors, assigns, employees, tenants, any trustee in bankruptcy or other trustee, and any receiver appointed pursuant to a proceeding in law or equity.

No obligations imposed by this AONOCAPA are intended to constitute a debt which should be limited or discharged in a bankruptcy proceeding. All obligations are imposed pursuant to the police powers of the State of New Jersey, intended to protect the public health, safety, welfare and the environment.

This AONOCAPA is issued only for the violations identified in the **FINDINGS** herein above and violations of any statutes, rules or permits other than those herein cited may be cause for additional enforcement actions, either administrative or judicial, being instituted. By issuing this AONOCAPA, the Board does not waive its rights to initiate additional enforcement actions.

Neither the issuance of this AONOCAPA nor anything contained herein shall relieve the Respondent of the obligation to comply with all applicable laws, including but not limited to the statutes and regulations cited herein.

When requesting an Adjudicatory Hearing, Respondent must comply with N.J.A.C.14:7-2.6

- (a) To request an adjudicatory hearing to contest an AONOCAPA issued pursuant to this subchapter, the alleged violator shall submit the following information in writing to the

Secretary of the Board
Attention: Adjudicatory Hearing Request/Pipeline Safety/One Call
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350

A copy of any request must also be sent via electronic mail to board.secretary@bpu.state.nj.us and geoffrey.gersten@lps.state.nj.us.

1. The name, address and telephone number of the alleged violator and its authorized representative;
2. The alleged violator's defenses, stated in short and plain terms, to each of the Board's preliminary findings of fact contained in the AONOCAPA;
3. An admission or denial of each of the Board's preliminary findings of fact contained in the AONOCAPA. If the alleged violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the alleged violator shall so state and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings denied. When the alleged violator intends, in good faith, to deny only a part of or qualify a finding, the alleged violator shall specify so much of it as true and material and deny only the remainder. The alleged violator may not generally deny all of the findings but shall make all denials as specific denials of designated findings. For each finding denied, the alleged violator shall allege the fact or facts as the alleged violator believes it or them to be;
4. Information supporting the request and specific reference to or copies of other written documents relied upon to support the request;
5. An estimate of the time required for the hearing (in days and/or hours); and

6. A request, if necessary, for a barrier-free hearing location to accommodate physically disabled persons.
 - (b) If the Board does not receive the hearing request within 20 days after service on the violator of the AONOCAPA being challenged, the Board shall deny the hearing request.
 - (c) If the Respondent fails to include all the information required by (a) above or if upon review of the submission, the Board determines that there is no dispute of material facts, the Board may deny the hearing request.
 - (d) All adjudicatory hearings shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rule, N.J.A.C. 1:1.

PENALTY CALCULATION

1. N.J.S.A. 48:2-86 (c) holds, a person who is determined by the board, after notice and opportunity to be heard, to have violated any provision of P.L.1994, c.118 or any rule, regulation, or order adopted pursuant thereto with respect to a natural gas underground pipeline or distribution facility, or a hazardous liquid underground pipeline or distribution facility, shall be liable to a civil penalty not to exceed \$100,000 for each violation for each day the violation continues, except that the maximum civil penalty may not exceed \$1,000,000 for any related series of violations.

Pursuant to the above **FINDINGS** and the determination that Respondent has engaged in multiple violations of the One Call Act and Regulations, the Board is assessing a penalty of \$12,000 for the series of violations leading to the March 29, 2011 incident. The Board recognizes that a higher penalty could be imposed for the above series of violations, but having considered the statutory factors set forth at N.J.S.A. 48:2-86, the Board has determined that a \$12,000 penalty is appropriate.

Now, therefore, it is **HEREBY ORDERED** that Respondents shall comply with the following:

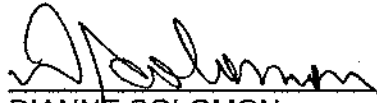
- a. Cease and desist from violating the provisions of N.J.S.A. 48:2-73 et seq. and N.J.A.C. 14:2-1.1 et seq. as set forth above; and
- b. Pay a penalty in the amount of \$12,000.00.

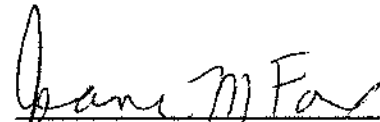
The Board **HEREBY ORDERS** this AONOCAPA be served on Becker's Tree Service, Inc. in accordance with the Administrative Procedure Rules at N.J.A.C. 1:1-7.2 for the violations of the Underground Facilities Protection Act leading to the March 29, 2011 incident located at 41 2nd Avenue in the Borough of Atlantic Highlands, New Jersey.

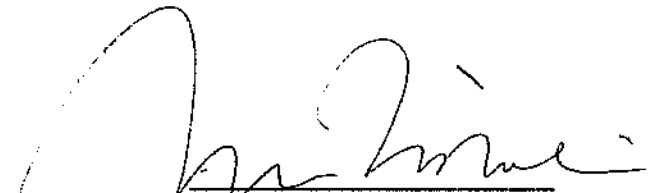
This Order shall be effective on May 30, 2014.

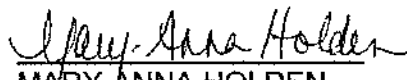
DATED: 5/21/14


BOARD OF PUBLIC UTILITIES
BY:


DIANNE SOLOMON
PRESIDENT

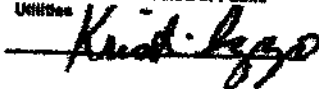

JEANNE M. FOX
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER


MARY-ANNA HOLDEN
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 STEVEN G. BECKER, BECKER'S TREE SERVICE INC.
DOCKET NO. EO12020151

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