Agenda Date: 10/5/10 Agenda Item: 6A



STATE OF NEW JERSEY

Board of Public Utilities Two Gateway Center, Suite 801 Newark, NJ 07102 www.nj.gov/bpu/

RFI	IARII	ITY 8	& SECI	IRITY
* ^	. 1/ \	_	X OLUI	217111

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 GS10080602K,
et al. (see attached appendix)

(SERVICE LIST ATTACHED)

BY THE BOARD:

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 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." N.J.S.A. 48:2-75. The One-Call Damage Prevention System ("the System") coordinates communication and responsive action between these two groups of persons. N.J.S.A. 48:2-80, -82.

The Act subjects violators of its provisions to civil penalties of not less than \$1,000.00 and not more than \$2,500.00 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 \$100,000.00 per violation per day and not to exceed \$1,000,000.00 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 reviewed and evaluated by Board Staff, and made available to the Board for its review. After consideration of these 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.

NO FURTHER ACTION BY THE RESPONDENTS IS REQUIRED

DATED: 10/5/10

BOARD OF PUBLIC UTILITIES

JÓSEPH L. FIORDALISO

ELIZABETH RANDALL

COMMISSIONER

COMMISSIONER

LEE A. SOLOMON PRESIDENT

JEANNE M. FOX COMMISSIONER

NICHOLAS ASSELTA COMMISSIONER

ATTEST:

KRISTI IZZO SECRETARY

document is a true copy of the original in the files of the Board of Public Utilities

7/16/2010	7/22/09 Hospital Evacuation	Meco Contractors*	000	\$6,000	request request	GOC2009-0015	GS10080564K	Damage Gas
8/4/2010	765 Newman Springs Rd., 6/24/09 Middletown-School Evacuation	Bed Rock Concrete Corp.*	000	\$6,000	Did not have a valid Markout request	GOC2009-0013	GS10080554K	Damage Gas
5/26/2010	6/22/09 30 Ashley Drive, Holmdel		New Jersey Natural 000 Gas*	\$3,000	Did not properly mark out	GOC2009-0012	GS10080576K	Damage Gas
7/23/2010	711 W. 5th Street, Dalmyra- 6/1/09 School Evacuation	D'Andrea Construction Co., Inc.*	000	\$6,000	Did not have a valid Markout request	GOC2009-0011	GS10080561K	Damage Gas
7/13/2010	Walnut Avenue, Clark- 6/2/09 Evacuation	Heckles & McCoy, Inc.*	000	\$6,000	Did not have a valid Markout request	GOC2009-0008	GS10080560K	Damage Gas
5/27/2010	Walnut Avenue, Clark- 6/2/09 Evacuation		\$6,000 Elizabethtown Gas*	\$6,0	Did not properly mark out	GOC2009-0007	GS10080575K	Damage Gas
7/31/2010	1275 Willow brook Blvd. Wayne- 4/1/09 Evacuation	Aivino Paving Contractors*	000	\$6,000	Did not have a valid Markout request	GOC2009-0004	GS10080553K	Damage Gas
5/19/2010	200 Garfield Avenue, Wildwood- 1/29/09 Evacuation		\$6,000 South Jersey Gas*	\$6,0	Did not properly mark out	GOC2009-0001	GS10080574K	Damage Gas
5/21/2010	9/24/08 635 US Hwy 22, Bridgewater		New Jersey American \$1,000 Water*	\$1,0	Did not properly mark out	WOC2008-0054	WS10080586K	Damage Water
5/21/2010	9/2/08 Papen Rd, Bridgewater		\$1,000 Water*	\$1,0	Did not properly mark out	WOC2008-0052	WS10080587K WOC2008-0052	Damage Water
6/7/2010	3/28/08 Princeton		\$3,000 PSE&G(G)*	\$3.0	Did not properly mark out	GOC2008-0127	GS10080573K	Damage Gas
5/26/2010	4/8/08 2101 Church Street, Mt. Laurel		\$3,000 PSE&G(G)*	\$3,0	Did not properly mark out	GOC2008-0121	GS10080572K	Damage Gas
6/7/2010	4/8/08 240 W. State Street, Trenton		\$3,000 PSE&G(G)*	\$3,0	Did not properly mark out	GOC2008-0118	GS10080571K	Damage Gas
7/9/2010	4/4/08 3 Mill Creek West, Secaucus	Industrial Concrete Const.*	000	\$3,000	Did not have a valid Markout request	GOC2008-0112	GS10080555K	Damage Gas
5/24/2010	4/2/08 123 JFK Blvd. Bayonne		\$3,000 PSE&G(G)*	\$3,0	Did not properly mark out	GOC2008-0110	GS10080570K	Damage Gas
7/13/2010	4/2/08 455 Broadway, Norwood	Boro of Norwood*	00	\$3.000	Did not have a valid Markout request	GOC2008-0107	GS10080557K	Damage Gas
7/21/2010	4/1/08 Adelphia Road, Howell	LUSA Construction, Inc.*	00	\$3,000	Did not have a valid Markout request	GOC2008-0106	GS10080569K	Damage Gas
5/26/2010	9/22/08 1214 18th Avenue, Belmar		New Jersey Natural \$3,000 Gas*	\$3,0	Did not properly mark out	GOC2008-0095	22	Damage Gas
5/26/2010	8/22/08 Middletown		New Jersey Natural 00 Gas*	\$3,000	Did not properly mark out	GOC2008-0080	686	Damage Gas
5/26/2010	8/16/08 603 Bounty Ct., Toms River		New Jersey Natural	\$3,000	Did not properly mark out	GOC2008-0075	2007	Damage Gas
7/21/2010	1031 Summerfield Avenue, 7/31/08 Asbury Park	Henkels & McCoy, Inc.*	00	\$3,000	Fallure to hand dig & locate	GOC2008-0068	200	Damage Gas
9/29/2009	12/14/06 124 Apple Street, Winslow Twp.	Township of Winslow*	00	\$3,000	Did not have a valid Markout request	GOC2007-0079	10080602K	
recv'd	Date Description/Location	Excavator C	Operator	Penalty	Type of Violation	One Call Case No.	BPU Docket No.	Damage type

APPENDIX

Damage Water	Damage Water	Damage Water	Damage Water	Telephone	Damage Gas	Damage Gas	Damage Gas	Damage Gas	Damage Gas	Damage Gas	Damage Gas	Damage Gas	Damage Gas	Damage Gas	Damage Gas	Damage Gas	Damage Gas	Damage Gas	Damage Gas	Damage type
WS10080597K	WS10080598K	WS10080599K	WS10080600K	TS10080585K	GS10080584K	GS10080582K	GS10080563K	GS10080559K	GS10080556K	GS10080583K	GS10080601K	GS10080581K	GS10080580K	GS10080552K	GS10080603K	GS10080604K	GS10080578K	GS10080577K	GS10080565K	BPU Docket No.
Damage Water WS10080597K WOC2008-0010	WOC2008-0011	WOC2008-0009	WOC2008-0005	TOC2009-0001	GOC2009-0086	GOC2009-0062	GOC2009-0061	GOC2009-0053	GOC2009-0050	GOC2009-0048	GOC2008-0060	GOC2009-0043	GOC2009-0042	GOC2009-0040	GOC2009-0037	GOC2009-0036	GOC2009-0033	GOC2009-0022	GOC2008-0021	One Call Case No.
Did not properly mark out	Did not properly mark out	Did not properly mark out	Did not properly mark out	Did not properly mark out	Did not properly mark out	Did not properly mark out	Did not have a valid Markout request	Failure to hand dig & locate	Did not have a valid Markout request	Did not properly mark out	Did not have a valid Markout request	Did not properly mark out	Did not properly mark out	Did not have a valid Markout request	Did not have a valid Markout request	Did not properly mark out	Did not properly mark out	Did not properly mark out	Did not have a valid Markout request	Type of Violation
New Jersey American \$1,000 Water*	New Jersey American \$1,000 Water*	New Jersey American \$1,000 Water*	New Jersey American \$1,000 Water*	\$2,000 Verizon*	\$6,000 PSE&G*	\$6,000 Elizabethtown Gas*	\$6,000	\$3,000	\$3,000	\$3,000 PSE&G(G)*	\$3,000	\$3,000 Elizabethtown Gas*	\$3,000 Elizabethtown Gas*	\$3,000	\$3,000	\$3,000 South Jersey Gas*	\$3,000 PSE&G(G)*	\$3,000	\$6,000	Penalty Operator
n							Tarheel Enterprises*	PSE&G(E)*	Four Quarters*		Central Jersey Pools*			S. Batata Construction*	Lindenwold DPW*			1	Lombardo Electric*	Excavator
206 Linc 2/20/08 Ephraim	1/10/08 6:	1/4/08 1	3/12/08 80	US Hwy 5/12/09 Outage	10/29/09 S	9/24/09 S	9/23/09 R	8/10/09 22	8/3/09 92	9/8/09 O	7/21/09 9	8/20/09 12	8/13/09 Ca	8/17/09 13	lrving & Eas 7/24/09 Lindenwold	7/30/09 Creek	7/16/09 1	7/22/09 20	6/16/08 Tv	Violation Date De
206 Lincoln Avenue, Mount Ephraim	1/10/08 62 Liberty Street, West Orange	1/4/08 1179 Bergen, Camden	3/12/08 801 New Road, Northfield	JS Hwy 46, Denville-Major Outage	107 Bragaw Avenue, Newark- 10/29/09 School Evacuation	97- 1st Street, Perth Amboy- 9/24/09 School Closure	Grand Avenue, North Bergen- 9/23/09 Road Closure	8/10/09 221 Davis Avenue, Piscataway	8/3/09 922 Garfield Avenue Palmyra	Intersection Belleville Avenue, & 9/8/09 Orchard Street, Bloomfield	7/21/09 9 Georgetown Road, Colts Neck	8/20/09 124 Helen Street, Fanwood	8/13/09 Center Street/Semour, Linden	8/17/09 137 Jersey Ave., Cliffwood	Irving & East Maple Ave., Lindenwold	1045 Dragston Rd., Dividing Creek	7/16/09 1 Dockwatch Hollow Rd., Warren	7/22/09 20 Hillside Avenue, Barnegat	1 Princess Diana Drive, Ewing 6/16/08 TwpSchool Evacuation	Description/Location
10/30/2009	10/30/2009	10/30/2009	10/30/2009	6/1/2010	5/24/2010	5/27/2010	7/19/2010	7/26/2010	7/28/2010	5/28/2010	8/20/2009	5/27/2010	5/27/2010	8/10/2010	8/11/2010	5/19/2010	6/14/2010	5/26/2010	5/3/2010	la de selecto de tenencia de con

APPENDIX

Damage type No.		No.	Type of Violation	Penalty (Operator	Excavator	Date	Description/Location	
Damage Water WS10080598K WOC2008-0019	S10080598K	WOC2008-0019	Did not properly mark out	\$1,000 Water	New Jersey American Water*		3/4/08	3/4/08 620 Bangs Avenue, Asbury Park 10/30/2009	10/30/2
Damage Water WS	S10080595K	WS10080595K WOC2008-0018	Did not properly mark out	\$1,000 Water	New Jersey American Water*		3/4/08	3/4/08 Bangs Avenue, Asbury Park	10/30/2009
Damage Water WS10080594K WOC2008-0031	\$10080594K	WOC2008-0031	Did not properly mark out	\$1,000 Water	New Jersey American Water*	-50	4/23/08	4/23/08 0 Mount Airy Road, Bernardsville 10/30/2009	10/30/2
Damage Water WS10080593K WOC2008-0039	\$10080593K	WOC2008-0039	Did not properly mark out	S1,000 Water	New Jersey American Water*		8/18/08 Twp.	Oakland Avenue, Egg Harbor Twp.	10/30/2009
Damage Water WS10080592K WOC2008-0040	\$10080592K	WOC2008-0040	Did not properly mark out	\$1,000 Water	New Jersey American Water*		7/18/08	7/18/08 Adelphia Road, Howell	10/30/2009
Damage Water WS10080591K WOC2008-0045	\$10080591K	WOC2008-0045	Did not properly mark out	\$1,000 Water	New Jersey American Water*		8/29/08	8/29/08 9 Mount Airy Road, Bernardsville 10/30/2009	10/30/2
Damage Water WS10080590K WOC2008-0047	\$10080590K	WOC2008-0047	Did not properly mark out	New J. \$1,000 Water	New Jersey American Water*		7/23/08	107 Brinley Avenue, Bradley 7/23/08 Beach	10/30/2009
Damage Water WS	\$10080589K	WS10080589K WOC2008-0049	Did not properly mark out	\$1,000 Water	New Jersey American Water*		8/6/08	Scotch Plains	10/30/2009
Damage Water WS10080588K WOC2008-0050	\$10080588K		Did not properly mark out	New J \$1,000 Water	New Jersey American Water*		8/13/08	8/13/08 Westfield Road, Scotch Plains	10/30/2009
Total Cases: 51 Total Amount									