



Agenda Date: 1/19/11
Agenda Item: 6A

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center Suite 801
Newark, NJ 07102
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. GS10120902K,)
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 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: 1/19/11

BOARD OF PUBLIC UTILITIES
BY:


LEE A. SOLOMON
PRESIDENT

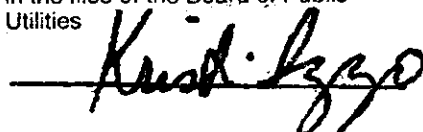

JEANNE M. FOX
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER


NICHOLAS ASSELTA
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



Damage Type	BPU Dkt No.	One Call Case No.	Type of Violation	Penalty	Operator	Excavator	Violation Date	Description/Location	Payment Received
Damage, Gas	GS10120902K	GOC2008-0126	Did not have a valid markout	\$3,000		Polagra Landscaping*	4/11/2008	273 Seton Hall Drive, Paramus	09/22/10
Damage, Gas	GS10120909K	GOC2009-0002	Did not have a valid markout	\$3,000		Aqua Doctor, Inc.*	1/9/2009	Plainfield/Kilmer Avenue, Edison	08/04/10
Damage, Gas	GS10120912K	GOC2009-0020	Did not have a valid markout	\$3,000		Johnson Masonry LLC*	7/17/2009	74 Dohphin Rd., Tuckerton	11/24/10
Damage, Gas	GS10120908K	GOC2009-0021	Did not have a valid markout	\$3,000		County of Ocean*	7/22/2009	1606 Beaver Dam Rd., Pt. Pleasant	08/18/10
Damage, Cable	CS10120906K	COC2009-0001	Did not have a valid markout	\$2,000		Waters & Bugbee, Inc.*	2/24/2009	1 Highland Avenue, Madison	07/15/10
Damage, Water	WS10120907K	WOC2009-0001	Did not properly mark out	\$6,000	United Water*		2/6/2009	48 Tonnelle Ave., North Bergen	07/29/10
Damage, Gas	GS10120911K	GOC2010-0042	Did not have a valid markout	\$3,000		D. Dazell & Son Hardware*	5/4/2010	509 Laurel Blvd., Pemberton	11/02/10
Non Damage	TS10120894K	OC#5-09	Use of non-compliant flags	\$1,000	PSEG(G)*			Various	10/13/10
Non Damage	ES1012089K	OC#7-09	Use of non-compliant flags	\$1,000	Spectra Energy*			Various	10/15/10
Non Damage	GS10120897K	OC#8-09	Use of non-compliant flags	\$1,000	Elizabethtown*			Various	10/05/10
Non Damage	GS10120898K	OC#10-9	Use of non-compliant flags	\$1,000	South Jersey Gas*			Various	10/06/10
Non Damage	GS10120899K	OC#11-09	Use of non-compliant flags	\$1,000	Jersey Central Power & Light*			Various	10/18/10
Non Damage	WS10120895K	OC#16-09	Use of non-compliant flags	\$1,000	New Jersey American Water Co.*			Various	10/07/10
Non Damage	WS10120901K	OC#17-09	Use of non-compliant flags	\$1,000	Shorelands Water*			Various	10/07/10

Total number of cases: 14

Total amount collected: \$30,000

SERVICE LIST

Polagra Landscaping
195 Fairview Avenue
Paramus, NJ 07652

Johnson Masonry
122 Mountain Lake Rd.
Little Egg Harbor, NJ 08087

South Jersey Gas Co.
Sam Pignatelli, VP
1 South Jersey Plaza
Folsom, NJ 08037

D. Dazell & Son Hardware
21-23 West Hampton Street
Pemberton, NJ 08068

Douglas R. Ziemba, Chief
James Giuliano, Director
NJ Board of Public Utilities
2 Gateway Center Suite 801
Newark, NJ 07102

Public Service Electric & Gas Co.
Chris La Rossa
80 Park Plaza Mail Code T14
Newark NJ 07102

County of Ocean
Dept. of Finance
PO Box 2191
Toms River, NJ 08754-2191

Robert Van Ingen
United Water Company
60 DeVoe Place
Hackensack, NJ 07601

Shorelands Water Co.
Eric Olsen, PE
1709 Union Avenue
Hazlet, NJ 07730

Jersey Central Power & Light
300 Madison Avenue
PO Box 1911
Morristown, NJ 07962

Aqua Doctor, Inc.
27 Pinchbrook Drive
Florham Park, NJ 07932

Waters & Bugbee, Inc.
75 S. Gold Drive
Hamilton, NJ 08692

New Jersey American Water
Tom Schrober
1341 North Avenue
Plainfield, NJ 07062

Elizabethtown Gas Co.
Mary Patricia Keefe
One Elizabethtown Plaza
Union, NJ 07083-1975

Spectra Energy Transmission
501 Collidge Street
South Plainfield, NJ 07080