



Agenda Date: 03/18/15
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.GS15010019K)
et al. (see attached appendix)

Parties of Record:

- Dwayne Lamken**, Atlantic Tree Service
- Craig Lynch, Vice President**, NJ Natural Gas
- Shawn Yesko**, Structural Solutions, LLC.
- John Laganella**, JML Excavating
- Leigh Jones**, East Brunswick Water Utility
- Richard Maltese**, Malvern Development Group
- Carlos Alves**, Dynamic Construction, LLC.
- Michael Lukach**, County Irrigation, Inc.
- Jim Hutchison**, Middlesex Water
- Rich Weinssen**, Hidden Fence
- William Hemberger**, Super Stuff Party Rental
- Jeffrey Layton**, North Jersey Septic and Excavating
- Jim Roberts**, Century Link
- Brian O’Gibney**, Fairway Mews
- Steven Ussman**, Keansburg MUA
- Milton Nicholas**, Kline Construction
- Mark Ressa**, MD Landscape Management
- Darius Sheik**, Coastal Landscaping
- Cesar Escobar**, Absolute Lawn Maintenance, LLC.
- Theodore Slack III**, Slack Environmental Solutions
- Paula James**, Atlantic City Electric
- David Winton**, Lakehurst Public Works

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..."

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 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 waives any rights to a hearing, and the Board waives 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 March 31, 2015.

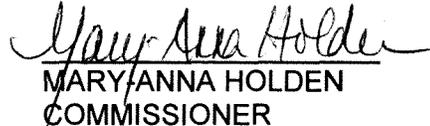
NO FURTHER ACTION BY THE RESPONDENTS IS REQUIRED

DATED: 3/18/15

BOARD OF PUBLIC UTILITIES
BY:

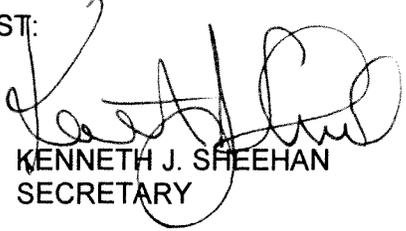

RICHARD S. MROZ
PRESIDENT

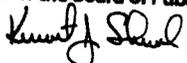

JOSEPH L. FIORDALISO
COMMISSIONER


MARYANNA HOLDEN
COMMISSIONER


DIANNE SOLOMON
COMMISSIONER


UPENDRA CHIVUKULA
COMMISSIONER

ATTEST:

KENNETH J. SHEEHAN
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. GS15010019K et al. (see attached appendix)**

SERVICE LIST

Dwayne Lamken
Atlantic Tree Service
Post Office Boc 207
Holmdel, NJ 07733

Craig Lynch
NJ Natural Gas
1415 Wyckoff Rd., P.O. Box 1464
Wall, NJ 07719

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80 Main St., Suite 450
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John Laganella
JML Excavating
46 Franklin St.,
Mahwah, NJ 07430

Leigh Jones
East Brunswick Water Utility
26 Harts Lane
East Brunswick, NJ 08816

Richard Maltese
Malvern Development Group
41 Ruthland Ave.,
Malvern, PA 19355

Carlos Alves
Dynamic Construction, LLC.
246 Long Ave.,
Hillside, NJ 07205

Michael Lukach
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P.O. Box 213
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Division of Law and Public Safety
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Rio Grande, NJ 08242

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Absolute Lawn Maintenance, LLC.
355 Summit St.,
Bridgewater, NJ 08807

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Slack Environmental Solutions
180 Market St.,
Kenilworth, NJ 07033

Paula James
Atlantic City Electric
5100 Harding Highway
Mays Landing, NJ 08330

David Winton
Lakehurst Public Works
5 Union Ave.,
Lakehurst, NJ 08733

Rich Weissen
Hidden Fence
304 State Route 10
Randolph, NJ 07869

William Hemberger
Super Stuff Party Rental
10 Shade Tree Lane
Newton, NJ 07860

Jeffrey Layton
North Jersey Septic and Excavating
43 Layton Lane
Sparta, NJ 07871

Jim Roberts
Century Link
240 North Street, Suite 201
Harrisburg, PA 17101

Brian O'Gibney
Fairway Mews
2 Locust Way
Spring Lake Heights, NJ 07762

Steven Ussman
Keansburg MUA
120 Main Street
Keansburg, NJ 07734

Milton Nicholas
Kline Construction
240 Waveland Ave.,
Galloway, NJ 08205

Mark Ressa
MD Landscape Management
200 Walt Whitman Blvd.,
Cherry Hill, NJ 08003

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-March VIA 2015

Damage Type	BPU Dkt No.	One Call Case No.	Type of Violation	Penalty	Operator	Excavator	Violation Date	Description/Location	Payment Received
Damage, Gas	GS15010019K	GOC2014-0887	Did not have a valid markout	\$3,000		Atlantic Tree Service	9/17/2014	Bellevue Ave., Rumson	12/14/2014
Damage, Gas	GS15010020K	GOC2014-0687	Did not properly mark out	\$3,000	NJ Natural Gas		8/25/2014	Coleman Rd., Washington	12/10/2014
Damage, Gas	GS15010021K	GOC2014-0227	Did not properly mark out	\$3,000	NJ Natural Gas		6/11/2014	Rt 35 & Catalina Dr., Lavallette	12/10/2014
Damage, Gas	GS15010022K	GOC2014-0316	Did not have a valid markout	\$3,000		Structural Solutions, LLC.	6/16/2014	Ship Ct., Toms River	12/12/2014
Damage, Gas	GS15010023K	GOC2014-0254	Did not have a valid markout	\$3,000		JML Excavating	6/12/2014	Force Hill Rd., Livingston	12/9/2014
Non Damage	WS15010024K	NOC2014-0045	Did not have a valid markout	\$1,000		East Brunswick Water Utility	9/2/2014	Eggers St., East Brunswick	12/1/2014
Damage, Gas	GS15010025K	GOC2014-0671	Did not have a valid markout	\$3,000		Malvern Development Group	8/26/2014	Flamingo Dr., Avalon	12/1/2014
Damage, Gas	GS15010026K	GOC2014-0467	Did not have a valid markout	\$3,000		Dynamic Construction	7/28/2014	Morris and Essex Tpke., Summit	12/2/2014
Damage, Gas	GS15010027K	GOC2014-0688	Did not properly mark out	\$3,000	NJ Natural Gas		8/26/2014	Gordon Rd., Malawan	11/19/2014
Damage, Gas	GS15010028K	GOC2014-0151	Did not have a valid markout	\$3,000		County Irrigation, Inc.	5/12/2014	Rumson Rd., Rumson	12/1/2014
Damage, Gas	GS15010029K	GOC2014-0694	Did not have a valid markout	\$1,000		Middlesex Water Company	8/20/2014	Main St., Metuchen	12/5/2014
Damage, Telephone	TS15010083K	TOC2014-0028	Did not have a valid markout	\$2,000		Hidden Fence	5/1/2014	Phillip Dr., Rockaway	12/27/2014
Damage, Gas	GS15010084K	GOC2014-0272	Did not have a valid markout	\$3,000		Hidden Fence	6/19/2014	Stoney Hill Rd., Mendham Twp.	12/27/2014
Damage, Gas	GS15010082K	GOC2010-0108	Did not have a valid markout	\$3,000		Super Stuff Party Rental	8/9/2010	East Main St., Chester	1/29/2014
Damage, Gas	GS15010081K	GOC2010-0096	Did not have a valid markout	\$3,000		North Jersey Septic and Excavating	8/7/2010	Richard St., Rockaway	1/7/2015
Non Damage	TS15010080K	OC29-13	Did not properly mark out	\$1,000	Century Link		7/26/2013	Oxford St., Belvidere	10/31/2014
Damage, Gas	GS15010079K	GOC2010-0057	Did not have a valid markout	\$3,000		Fairway Mews	5/4/2010	Willow Rd., Spring Lake Heights	1/30/2014
Damage, Gas	GS15010078K	GOC2010-0017	Did not have a valid markout	\$3,000		Keansburg MUA	1/13/2010	Evergreen & Forest, Keansburg	2/5/2014
Non Damage	AS15010077K	NOC2014-0086	Did not have a valid markout	\$1,000		Kline Construction	9/30/2014	Harding Hwy., Mays Landing	1/6/2015
Damage, Electric	ES15010076K	EOC2014-0044	Did not have a valid markout	\$2,000		MD Landscape Management	6/20/2014	Heidi Ln., Swedesboro	1/9/2015
Damage, Gas	GS15010125K	GOC2014-0660	Did not have a valid markout	\$3,000		Coastal Landscaping	8/19/2014	Stevens St., Cape May	1/13/2015
Damage, Gas	GS15010124K	GOC2014-0918	Did not properly mark out	\$3,000	NJ Natural Gas		9/29/2014	Ocean Blvd., Atlantic Highlands	1/14/2015
Damage, Gas	GS15010123K	GOC2014-0194	Did not properly mark out	\$3,000	NJ Natural Gas		6/1/2014	7th Ave, Ortle Beach	1/14/2015
Damage, Gas	GS15010122K	GOC2014-0522	Did not properly mark out	\$3,000	NJ Natural Gas		7/30/2014	W. Front St., Red Bank	1/14/2015

Damage Type	BPU Dkt No.	One Call Case No.	Type of Violation	Penalty	Operator	Excavator	Violation Date	Description/Location	Payment Received
Damage, Gas	GS15010121K	GOC2014-0413	Did not properly mark out	\$3,000	NJ Natural Gas		7/11/2014	Dartford & Exeter St., Parsippany	1/14/2015
Damage, Gas	GS15010120K	GOC2014-0245	Did not have a valid markout	\$3,000		Absolute Lawn Maintenance, LLC.	6/7/2014		
Damage, Gas	GS15010119K	GOC2014-0172	Did not have a valid markout	\$3,000		Slack Environmental Services	5/29/2014	Dorian Rd., Westfield	1/15/2015
Damage, Electric	ES15010117K	EOC2014-0041	Did not properly mark out	\$2,000	Atlantic City Electric		6/11/2014	McDonald Dr., Seaville	1/7/2015
Damage, Gas	GS15010018K	GOC2014-0219	Did not have a valid markout	\$3,000		Lakehurst Public Works	6/5/2014	Pine St., Lakehurst	12/8/2014
Total	29			\$76,000					