



Agenda Date: 10/31/16  
Agenda Item: 6B

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 3<sup>rd</sup> Floor, Suite 314  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

RELIABILITY & SECURITY

IN THE MATTER OF ALLEGATIONS OF ) ORDER  
VIOLATIONS OF THE UNDERGROUND FACILITY )  
PROTECTION ACT BY HENKELS & MCCOY, INC. )  
WITH RESPECT TO A GAS PIPELINE INCIDENT )  
IN ELIZABETH, NEW JERSEY ON APRIL 5, 2016. ) DOCKET NO. GS16070664K

**Parties of Record:**

**Richard L. Scheff, Esq.**, Montgomery McCracken, on behalf of Henkels & McCoy

**BY THE BOARD:**

This matter has been opened to the Board of Public Utilities ("Board") following an investigation by the Board's Bureaus of Pipeline Safety and One Call ("BOC") (collectively "Board Staff") of a natural gas incident that occurred on April 5, 2016 on South Park Street in Elizabeth, New Jersey. Board Staff conducted a detailed and comprehensive investigation which included a review of the circumstances surrounding the incident as well as Henkels & McCoy, Inc.'s ("H&M") and Elizabethtown Gas Company's ("E-TOWN") procedures and actions. Based on this investigation, it was determined that an H&M crew damaged a low-pressure natural gas service line, servicing an apartment complex on South Park Street in Elizabeth. The damage to this service line initially went unreported as the H&M crew repaired the damaged service line.

The investigation disclosed that on April 5, 2016, H&M was working on a low pressure to high pressure gas main replacement for E-TOWN. This project was being conducted along the entire route of South Park Street in Elizabeth. In this particular incident, the H&M crew was scheduled to be replacing the low pressure service on the east side of the street with a new high pressure service connecting to the high pressure main that was previously installed. During the course of the initial excavation to connect the service to the east side of the street, a low pressure service to an apartment complex on the west side of the street became damaged. The H&M crew immediately began a field repair on the damaged service. H&M required access to the complex on the west side of the street in order to conduct a "re-light" of the burners throughout the apartment complex. Because they were not scheduled to be working on the service to the west side apartment complex, the H&M crew did not have access to any appliances or fixtures within

the apartment complex. H&M crew then were reported to the landlord while attempting to gain access to the utility room, who subsequently reported the activity to Elizabeth Police.

During the course of its interviews with H&M and E-TOWN personnel, Board staff became concerned with certain actions taken by H&M. In particular was the concern that the proper procedure of reporting the Natural Gas incident to both 911 and the underground facility operator were not followed.

As a result of the investigation, the BOC found probable violations of the Underground Facility Protection Act, N.J.S.A. 48:2-73 et seq. and applicable regulations on the part of H&M personnel. As a result of the investigation, the BOC notified H&M of certain probable violations relating to:

- coming in contact with an underground natural gas facility;
- reporting the damaged underground facility to the facility operator;
- how marked underground facilities were hand-dug and located; and
- seeking assistance from appropriate fire and police officials regarding the escaping gas emergency.

H&M contested certain facts and conclusions relating to Board Staff's determinations that probable violations of law existed. H&M and Board Staff engaged in settlement discussions pertaining to the identified probable violations. On August 31, 2016, H&M and Board Staff entered into a Stipulation and Settlement Agreement ("Stipulation") which among other things, provides for a one-time payment to the Treasurer of the State of New Jersey in the amount of One Hundred Thousand Dollars (\$100,000). As part of the Stipulation, H&M did not admit any wrongdoing nor violation of any law or regulation.

In addition to the \$100,000 payment amount referenced above, H&M agreed to take or has already implemented certain measures and to amend H&M procedures to ensure compliance with all laws and its ongoing safe operation in New Jersey, which are summarized below and set forth more fully in the Stipulation.

- H&M shall require all of their underground crews performing excavation and trenching work in New Jersey, to attend Locate All Utilities and Records Awareness ("LAURA") training, which includes the steps to take when an underground natural gas facility is damaged. This training shall be conducted on an annual basis.
- Additionally knowledge testing must be held for all attendants of the LAURA training. There will be a minimum pass/fail proficiency that each member of any crew performing underground excavation or trenching, must exhibit, before they will be allowed to conduct any excavation or trenching in the State of New Jersey. The results of the knowledge testing must be submitted to the Board Staff on an annual basis.

The Board and Board Staff take the responsibilities of investigating and addressing violations relating the natural gas and One Call incidences very seriously and appreciates the cooperation of all parties who have been involved in this matter, including E-TOWN and H&M.

The Board reviewed the Stipulation and **HEREBY FINDS** it to be a reasonable settlement of the outstanding issues, in the public interest, in accordance with law and in accordance with the

intent and purpose of the Natural Gas Pipeline Safety Act of 1968 as amended, 49 U.S.C.A. § 1671 et seq. and all regulations promulgated thereto, the Natural Gas Safety Act, N.J.S.A. 48:10-2, et seq. and all regulations promulgated thereto, N.J.A.C. 14:7, et seq., and the New Jersey Underground Facility Protection Act, N.J.S.A. 48:2-73, et seq., and all regulations promulgated thereto, N.J.A.C. 14:2, et seq. Therefore, the Board **HEREBY APPROVES** and **ADOPTS** the Stipulation as its own, incorporating by reference the terms and conditions therein as if fully set forth at length herein.

The Board **HEREBY ORDERS** H&M to comply with the terms of the Stipulation as presented.

This Order shall be effective on November 10, 2016.

DATED: 10/31/16

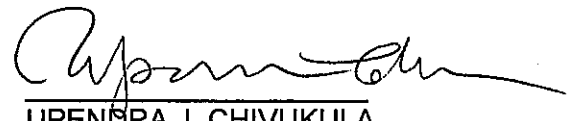
BOARD OF PUBLIC UTILITIES  
BY:

  
RICHARD S. MROZ  
PRESIDENT

  
JOSEPH L. FIORDALISO  
COMMISSIONER

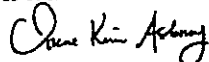
  
MARYANNA HOLDEN  
COMMISSIONER

  
DIANNE SOLOMON  
COMMISSIONER

  
UPENDRA J. CHIVUKULA  
COMMISSIONER

ATTEST:   
IRENE KIM ASBURY  
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 ALLEGATIONS OF VIOLATIONS OF THE UNDERGROUND FACILITY  
PROTECTION ACT BY HENKELS & MCCOY, INC. WITH RESPECT TO A GAS PIPELINE  
INCIDENT IN ELIZABETH, NEW JERSEY ON APRIL 5, 2016

DOCKET NO. GS16070664K

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VIOLATIONS OF PIPELINE SAFETY )  
REGULATIONS AND THE )  
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STIPULATION AND SETTLEMENT  
AGREEMENT

Docket No. GS16070664k

**Stipulation and Settlement Agreement**

This stipulation and Agreement of Settlement (“Stipulation”) is entered into by and between the Staff of the New Jersey Board of Public Utilities (the “Board”), and Henkels & McCoy, Inc. (“Henkels & McCoy” or “Company”) (collectively referred to as the “Parties”) as of this 28<sup>th</sup> day September 2016.

**Whereas**, on April 5, 2016, a natural gas incident occurred at South Park Street in Elizabeth, New Jersey as a result of a damaged buried gas service line related to a low pressure gas main replacement (the “Incident”); and

**Whereas**, the Bureau of Pipeline Safety and the Bureau of One Call and Meter Testing (“Board Staff”) of the Board, commenced an investigation of the Incident that included an evaluation of Henkels & McCoy’s compliance with applicable laws, rules and regulations pertaining to natural gas facilities included in the Underground Facility 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 (collectively “Applicable Laws”), as well as the Stipulation and Settlement Agreement Docket Number GS15020141K entered into by Henkels & McCoy in 2015; and

**Whereas**, as part of the investigation, Board Staff advised Henkels & McCoy that it had found certain probable violations of Applicable Laws; and

**Whereas**, the Parties have reached an agreement to resolve any and all claims the Board may have against the Company arising from or relating to the Incident in a comprehensive settlement in accordance with the terms of this Stipulation. Each party agrees that this Stipulation represents a fair and reasonable settlement of all issues that were or could have been raised in regard to the Incident, or the Board's subsequent investigation; and

**Whereas**, the resolution of this matter through the adoption of the stipulated positions set forth herein best serves the interests of the Parties, supports judicial economy and preservation of valuable judicial, administrative and corporate resources, and is therefore, in the public interest.

**NOW THEREFORE**, the Parties hereby agree as follows:

1. As a compromise of civil penalties for alleged violations of Applicable Laws, the Company, without any admission of any violation of law or wrongdoing, shall make a one-time payment of One Hundred Thousand Dollars (\$100,000.00) to the Treasurer State of New Jersey. This Stipulation represents a settlement of all claims the Board may have against the Company regarding violations of the Applicable Laws in connection with the Incident. No later than thirty (30) days after the date that the Board enters an Order approving this Stipulation. Henkels and McCoy will send a check for One Hundred Thousand Dollars (\$100,000) payable to the Treasurer of the State of New Jersey to Michael Greco, Acting Chief Fiscal Officer, Board of Public Utilities, 44 South Clinton Avenue, 7<sup>th</sup> Floor, P.O. Box 350, Trenton, New Jersey 08625. A copy of this check shall be provided to Geoffrey Gersten, Deputy Attorney General, Department of Law and Public Safety, P.O. Box 45029, 124 Halsey Street, 5<sup>th</sup> Floor Newark, New Jersey 07102.
2. Henkels & McCoy's agreement to pay the foregoing sum is not an acknowledgement of non-compliance with the law, including the Applicable Laws, the Board Orders, or the Board requirements. The payment is made as part of the negotiated settlement intended to resolve the claims of the respective Parties without further litigation.
3. In addition, Henkels & McCoy hereby agrees to take the following measures, or already has implemented the following measures:
  - (a) Following a Board Order approving the Stipulation, Henkels & McCoy shall require all of their underground crews performing excavation and trenching work in New Jersey, to attend Locate All Utilities and Records Awareness ("LAURA") training, which includes the steps to take when an underground

natural gas facility is damaged. This training shall be conducted on an annual basis.

(b) Additionally, knowledge testing must be held for all attendants of the LAURA training. There will be a minimum pass/fail proficiency that each member of any crew performing underground excavation or trenching, must exhibit, before they will be allowed to conduct any excavation or trenching in the State of New Jersey. The results of this knowledge testing must be submitted to Board staff on an annual basis.

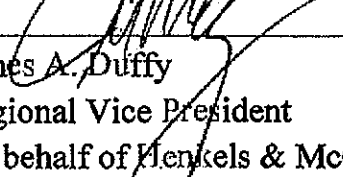
4. **Henkels & McCoy's participation in this Stipulation is not an admission of any violation of Applicable Laws or wrongdoing by Henkels & McCoy, and does not constitute any admission of liability.**
5. **The Parties agree that the terms of this Stipulation shall not be cited or otherwise used by or against each other or other parties or argues as binding persuasive precedent in this or any other forum, except in any proceeding to enforce the Stipulation or the terms and conditions thereof the Stipulation or the terms and conditions thereof and/or Board Order adopting this Stipulation.**
6. **Should Henkels & McCoy default in paying the amounts set forth in the Paragraph 1 above, the Board shall be entitled to enforce the order pursuant to the Penalty Enforcement Law of 1999 as amended, N.J.S.A. 2A:58-10 et. seq. or enter a judgement in the Superior Court of New Jersey, or other appropriate forum against Henkels & McCoy for any unpaid amount set forth in Paragraph 1 above and to take such steps as it deems reasonable to collect the amount due plus interest thereon and to otherwise enforce this Stipulation.**
7. **After this Stipulation has been fully executed, it shall be presented to the Board for Approval.**
8. **Upon approval of this Stipulation by the Board, it shall then constitute the entire agreement between the Board and Henkels & McCoy with respect to the Incident and the above referenced matters, and shall operate as complete and final disposition of the investigation by the Board subject only to the fulfillment of all of the provisions of this Stipulation.**
9. **This Stipulation may not be amended in any way, or any part of its provisions waived, except by writing executed by all of the Parties to this Stipulation. In the event the Board modifies any provisions of this Stipulation, absent express written**

consent of the Parties, the Stipulation shall be void and the Parties shall be restored to their positions prior to the execution of the Stipulation.

10. This Stipulation may be executed in as many counterparts as there are signatures, thereof each of which shall be original, but all of which shall constitute one and the same instrument. No amendment or waiver of any substantive provision of this Stipulation shall be effective unless it is agreed to by the authorized representative of each party thereto.


11. This Stipulation shall be governed by, and construed in accordance with the laws of the State of New Jersey.

**NOW THEREFORE**, the Parties cause this stipulation to be executed by their duly authorized officers and officials.

By:   
James A. Duffy  
Regional Vice President  
On behalf of Klenkels & McCoy, Inc.

September  
Dated: 26, 2016

Christopher Porrino  
Attorney General of New Jersey  
Attorney for Board Staff

By:   
Geoffrey R. Gersten  
Deputy Attorney General

September  
Dated: 28, 2016