



Agenda Date: 5/10/23

Agenda Item: VIB

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 1<sup>st</sup> Floor  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

RELIABILITY & SECURITY

IN THE MATTER OF THE ALLEGED VIOLATION OF	)	FINAL ORDER OF PENALTY
THE UNDERGROUND FACILITY PROTECTION ACT,	)	ASSESSMENT
N.J.S.A. 48:2-73 TO 91 BY P&A CONSTRUCTION	)	
CORPORATION	)	DOCKET NO. GS23040230K

**Party of Record:**

**P&A Construction Corporation**

BY THE BOARD:

The New Jersey Board of Public Utilities ("Board") has jurisdiction to oversee and enforce the provisions of the Underground Facility Protection Act, N.J.S.A. 48:2-73 to -91 ("Act"). By this Decision and Order, the Board considers the issuance of a Final Order of Penalty Assessment ("FOPA") pursuant to N.J.A.C. 14:2-6.6 and N.J.A.C. 14:7-2.4 regarding P&A Construction Corporation, doing business as P&A Construction, Inc. ("P&A Construction" or "Respondent").

**BACKGROUND**

The Act established 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, or 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 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 \$200,000 per violation per day and not to exceed \$2,000,000 for any related series of violations. N.J.S.A. 48:2-86(c). 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).

### **PROCEDURAL HISTORY**

After receiving a notification of damage to an underground facility occurring on October 20, 2022, Board Staff (“Staff”) investigated the damage and reviewed electronic reports submitted by Elizabethtown Gas Company (“ETG”). According to ETG’s electronic reports, P&A Construction: 1) engaged in excavation; 2) did not use reasonable care at the time of the excavation; and 3) damaged an underground facility operated by ETG at 800 Milik Street in Carteret, New Jersey.

Subsequently, pursuant to N.J.A.C. 14:2-6.4 and N.J.A.C. 14:7-2.2, on December 19, 2022, Staff served a Notice of Probable Violation (“NOPV”), via certified and regular mail, to P&A Construction, which included a blank Answering Certification. The NOPV advised the Respondent that failure to complete and file the Answering Certification with the Board or with Board Staff within 21 days of receipt of the NOPV might result in the issuance of a FOPA.<sup>1</sup> According to United States Postal Service, the Respondent received the NOPV on January 4, 2023. The certified mail was signed and stamp dated on January 4, 2023, and the regular mail was not returned. See Exhibit A. As of the date of this Order, more than 21 days have elapsed, and the Respondent has not filed the Answering Certification. As such, the Respondent is deemed to be in default pursuant to N.J.A.C. 14:2-6.6(a) and N.J.A.C. 14:7-2.4(a).

### **DISCUSSION AND FINDINGS**

Pursuant to N.J.A.C. 14:2-6.6(d) and N.J.A.C. 14:7-2.4(d), the Board is not bound by any settlement offers made by Staff upon the issuance of a FOPA, and may order the payment of a Civil Administrative Penalty up to the maximum permitted by law. In determining the appropriate amount to be assessed, the Board must consider the factors enumerated in N.J.A.C. 14:2-6.2(c) and N.J.A.C. 14:7-2.7(b), including, but not limited to, the nature, circumstances and gravity of the violation, the degree of the violator’s culpability and any other factors as justice may require.

Having thoroughly reviewed the record in this matter, the Board **HEREBY FINDS** that the Respondent: 1) failed to use reasonable care; 2) damaged an underground facility operated by ETG; 3) was provided the opportunity to challenge the alleged violation; and 4) failed to challenge the alleged violation by not filing the Answering Certification. The Board **FURTHER FINDS** that the NOPV is just, reasonable, and in the public interest, and that \$6,000 is an appropriate penalty for this matter.

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<sup>1</sup> See N.J.A.C. 14:2-6.4(b)(5)(i); N.J.A.C. 14:2-6.5(a); N.J.A.C. 14:7-2.2(b)(5)(i); and N.J.A.C. 14:7-2.3(a).

As such, the Board **HEREBY ISSUES** this FOPA and **HEREBY ORDERS** that the Respondent shall be assessed a Civil Administrative Penalty of \$6,000. The Board **FURTHER ORDERS** that the Respondent shall pay the \$6,000 Civil Administrative Penalty no later than **May 27, 2023**.

Payment must be made out to the **TREASURER, STATE OF NEW JERSEY**

Sent to: Chief Fiscal Officer  
Board of Public Utilities  
44 South Clinton Avenue  
Post Office Box 350  
Trenton, New Jersey 08625  
Attn: One-Call Enforcement

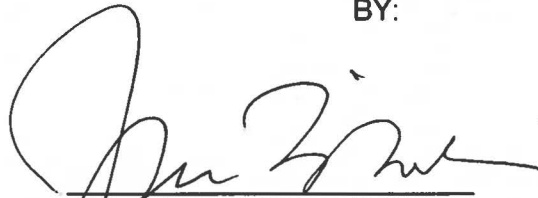
Please include a copy of this Order with your payment.

If the Respondent fails to make the required payment by May 27, 2023, the Board **HEREBY DIRECTS** Board Staff to docket this Order against the Respondent as a Judgment with the New Jersey Superior Court, or transfer the unpaid debt to the Department of Treasury for the issuance of a Certificate of Debt pursuant to N.J.S.A. 2A:16-11.1.

This Order shall be effective on May 17, 2023.

DATED: May 10, 2023

BOARD OF PUBLIC UTILITIES  
BY:

  
\_\_\_\_\_  
JOSEPH L. FIORDALISO  
PRESIDENT

  
\_\_\_\_\_  
MARY-ANNA HOLDEN  
COMMISSIONER

  
\_\_\_\_\_  
DIANNE SOLOMON  
COMMISSIONER

  
\_\_\_\_\_  
DR. ZENON CHRISTODOULOU  
COMMISSIONER

ATTEST:   
\_\_\_\_\_  
SHERRI L. GOLDEN  
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 THE ALLEGED VIOLATION OF THE UNDERGROUND FACILITY  
PROTECTION ACT, N.J.S.A. 48:2-73 TO 91 BY P&A CONSTRUCTION CORPORATION

DOCKET NO. GS23040230K

SERVICE LIST

**P&A Construction, Inc.**

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[justin@paconst.com](mailto:justin@paconst.com)

**Attorney General's Office**

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Trenton, NJ 08625  
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### Attachment-GS23040230K

PLACE STICKER AT TOP OF ENVELOPE

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY																
<ul style="list-style-type: none"> <li>■ Complete items 1, 2, and 3.</li> <li>■ Print your name and address on the reverse so that we can return the card to you.</li> <li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul> <p>1. Article Addressed to:  <b>P.P.A Construction Corp.</b>  <b>P.O. Box 28</b>  <b>Colonia, NJ 07067</b></p>  <p>9590 9402 3824 8032 4428 06</p> <p>7018 2290 0001 8035 2060  <small>Transfer from service label</small></p>	<p>A. Signature  <b>X S. Kera</b> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) _____ C. Date of Delivery _____</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No      If YES, enter delivery address below _____</p> <p>3. Service Type</p> <table border="0"> <tr> <td><input type="checkbox"/> Adult Signature</td> <td><input type="checkbox"/> Priority Mail Express®</td> </tr> <tr> <td><input type="checkbox"/> Adult Signature Restricted Delivery</td> <td><input type="checkbox"/> Registered Mail™</td> </tr> <tr> <td><input type="checkbox"/> Certified Mail®</td> <td><input type="checkbox"/> Registered Mail Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Certified Mail Restricted Delivery</td> <td><input type="checkbox"/> Return Receipt for Merchandise</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery</td> <td><input type="checkbox"/> Signature Confirmation™</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery Restricted Delivery</td> <td><input type="checkbox"/> Signature Confirmation Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Insured Mail</td> <td></td> </tr> <tr> <td><input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</td> <td></td> </tr> </table>	<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®	<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail™	<input type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery	<input type="checkbox"/> Certified Mail Restricted Delivery	<input type="checkbox"/> Return Receipt for Merchandise	<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation™	<input type="checkbox"/> Collect on Delivery Restricted Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery	<input type="checkbox"/> Insured Mail		<input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)	
<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®																
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<input type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery																
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<input type="checkbox"/> Collect on Delivery Restricted Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery																
<input type="checkbox"/> Insured Mail																	
<input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)																	

Domestic Return Receipt

PS Form 3811, July 2015 PSN 7530-02-000-9053

## USPS Tracking®

FAQs >

Remove X

Tracking Number:  
**70182290000180352060**

Copy      Add to Informed Delivery (<https://informedelivery.usps.com/>)

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**Latest Update**

Your item was picked up at the post office at 1:02 pm on January 4, 2023 in COLONIA, NJ 07067.

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**Get More Out of USPS Tracking:**

USPS Tracking Plus®

**Delivered**  
 Delivered, Individual Picked Up at Post Office  
 COLONIA, NJ 07067  
 January 4, 2023, 1:02 pm

**Available for Pickup**  
 RAHWAY, NJ 07065  
 January 3, 2023, 7:02 am

Feedback