



Agenda Date: 5/24/23
Agenda Item: VIA

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st 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.

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ORDER ACCEPTING
SETTLEMENTS

DOCKET NOS. GS23040215K
et al. (see attached Appendix)

Parties of Record:

- Aryeh Yellinz**, Yellinz Concrete & Excavation
- Michael Widmer**, South Jersey Gas Company
- Shelley Wyatt**, Homestead Fence Company
- Jacob Blech**, B&B Tent & Party Rentals
- Mike Scacifero**, Elizabethtown Gas Company
- Bill Halter**, Palmiere Electric
- Anthony Batelli**, Batelli Electric
- Mark Schafer**, Just Septic, LLC
- John Caddle, Jr.**, Apollo Sewer & Plumbing
- Rafael D. Tavarev**, Fox Fence
- Wes Covely**, Pioneer Pipe Contractors, Inc.

BY THE BOARD:

I. BACKGROUND

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, et seq. (“Act”). The Act establishes the One-Call Damage Prevention System (“One-Call 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, and/or hazardous liquids. 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.

Pursuant to the Act, violators of its provisions shall be subject to civil penalties of no less than \$1,000 and no 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 be subject 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, costs may be assessed related to any Board investigation, inspection, or monitoring survey which leads to the establishment of a violation, and/or the reasonable costs of preparing and litigating the matter. N.J.S.A. 48:2-86(b)(2).

Following reports of various alleged violations of the Act including, but not limited to, failure to properly mark facilities, not having a valid markout ticket, and failure to use reasonable care when excavating, Board Staff issued a Notice of Probable Violation to each of the alleged violators and informed them of the date and location of the alleged violations. A complete list of entities and violations is provided in Appendix A attached hereto and made a part hereof.

In an attempt to resolve these matters, the alleged violators listed in Appendix A submitted an Offer of Settlement to the Board for its review and consideration. Said Offers of Settlement are provided in Appendix A.

II. **DECISION AND FINDINGS**

After consideration of the matters provided in Appendix A, including the alleged violations and the Offers of Settlement, the Board **HEREBY FINDS** the Offers of Settlement to be reasonable and in the public interest, and **HEREBY ACCEPTS** the Offers of Settlement in full satisfaction of the alleged violations of the Act as provided in Appendix A attached hereto and made part hereof.


By acceptance of the 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 Act in connection with the above-referenced alleged violations. It must also be noted that the acceptance of the Offers of Settlement is for settlement purposes only and applies strictly to the specific incidents described in Appendix A. 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.

This Order shall be effective on May 31, 2023.

DATED: May 24, 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 ALLEGED VIOLATIONS OF THE UNDERGROUND FACILITY
PROTECTION ACT, N.J.S.A. 48:2-73 to -91

DOCKET NOS. GS23040215K et al. (see attached Appendix)

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APPENDIX A

In the Matter of Alleged Violations of the Underground Facility Protection Act, N.J.S.A. 48:2-73 et seq.

Docket Nos. GS23040215K et al.

Facility Damaged	BPU Dkt No.	One Call Case No.	Type of Violation	Penalty	Alleged Violator	Violation Date	Location	Payment Date
GAS	GS23040215K	GOC2021-1240	Did not have a valid mark out	\$3,000	Yellinz Concrete & Excavation	09/30/21	Lakewood, NJ	01/08/23
GAS	GS23040216K	GOC2021-1624	Did not properly mark out	\$3,000	South Jersey Gas Company	12/08/21	Lower, NJ	11/22/22
GAS	GS23040217K	GOC2021-0763	Did not have a valid mark out	\$3,000	Homestead Fence Co.	06/30/21	Surf City, NJ	01/16/23
GAS	GS23040218K	GOC2022-1496	Did not properly mark out	\$3,000	South Jersey Gas Company	11/10/22	Evesham, NJ	12/05/22
GAS	GS23040219K	GOC2022-0563	Did not properly mark out	\$3,000	South Jersey Gas Company	05/24/22	Ocean City, NJ	11/22/22
GAS	GS23040220K	GOC2022-0873	Did not properly mark out	\$3,000	South Jersey Gas Company	07/28/22	Cape May, NJ	11/28/22
GAS	GS23040221K	GOC2021-1239	Did not have a valid mark out	\$3,000	B & B Tent & Party Rental	09/30/21	Lakewood, NJ	01/18/23
GAS	GS23040222K	GOC2021-1546	Did not properly mark out	\$3,000	Elizabethtown Gas Company	12/03/21	Elizabeth, NJ	03/16/22
GAS	GS23040223K	GOC2021-1194	Did not have a valid mark out	\$3,000	Palmiere Electric	09/17/21	Atlantic City, NJ	01/16/23
GAS	GS23040224K	GOC2021-1224	Did not have a valid mark out	\$3,000	Batelli Electric	09/20/21	Seaside Heights, NJ	01/17/23
GAS	GS23040225K	GOC2021-0966	Did not have a valid mark out	\$3,000	Just Septic, LLC	08/09/21	Tabernacle, NJ	01/13/23
GAS	GS23040226K	GOC2021-1144	Did not have a valid mark out	\$3,000	Apollo Sewer & Plumbing	09/11/21	Keansburg, NJ	01/23/23
GAS	GS23040227K	GOC2021-1174	Did not have a valid mark out	\$3,000	Fox Fence	09/04/21	Newark, NJ	01/17/23
GAS	GS23040228K	GOC2021-1002	Did not properly mark out	\$3,000	South Jersey Gas Company	08/16/21	Glassboro, NJ	12/27/22
GAS	GS23040229K	GOC2022-1380	Failure to use reasonable care	\$3,000	Pioneer Pipe Contractors, Inc.	10/20/22	Ocean City, NJ	01/20/23
Total Cases: 15 Total Penalty: \$45,000								