



Agenda Date: 5/10/23  
Agenda Item: VIA

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 1<sup>st</sup> Floor  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://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. )  
)  
) DOCKET NOS. GS23030180K  
) et al. (see attached Appendix)

**Parties of Record:**

- Kristian J. Murray**, KJM Landscaping
- Michael P. Crescenzo**, Arawak Paving
- Jozef Sukovsky**, JS Mason Contractor
- Michael Cervino**, Sanitary Construction Company
- Scott Daum**, Four Seasons Nursery
- Carrie Iannella**, Iannella General Contracting, Inc.
- Maria Lobaton**, JV Fences LLC
- Michael T. Malloy**, New Jersey-American Water Company, Inc.
- Ryan Kasten**, Kane Communications, LLC
- John Kohut**, Kohut & Son Landscaping, LLC
- Stuart Hartnett**, Gray Supply
- Scott Tomaro**, J. Tomaro Construction
- Denise DeAlmeida**, C&S Foundations
- Matthew D. Shuler**, Esposito Construction

BY THE BOARD:<sup>1</sup>

**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:

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<sup>1</sup> Dr. Zenon Christodoulou recused himself due to a potential conflict of interest and as such took no part in the discussion or deliberation of this matter.

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 under the Act including, but not limited to, failing to call the One-Call System prior to commencing excavation or demolition activities, failing to hand dig and locate facilities, failing to use reasonable care, and/or failing to mark out or properly mark out underground facilities, 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.

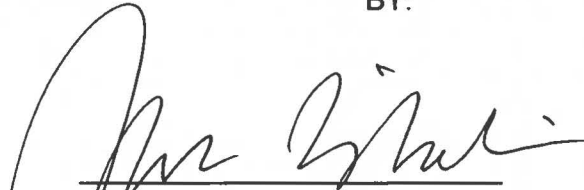
By acceptance of the Offers of Settlement and the timely payment thereof, the excavator or operator has waived any rights to a hearing, and the Board has waived any rights to bring an action for civil penalties as permitted by the Act in connection with the above-referenced alleged violations. It must 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.**

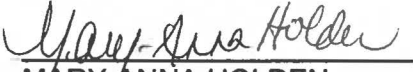
This Order shall be effective on May 17, 2023.

DATED: May 10, 2023

BOARD OF PUBLIC UTILITIES  
BY:



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



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



\_\_\_\_\_  
DIANNE SOLOMON  
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 ET SEQ.

DOCKET NOS. GS23030180K 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., Order Accepting Settlements  
Docket Nos. GS23030180K et al.

Facility Damaged	BPU Dkt No.	One Call Case No.	Type of Violation	Penalty	Alleged Violator	Violation Date	Location	Payment Date
GAS	GS23030180K	GOC2022-1419	Did not have a valid mark out	\$3,000	KJM Landscaping	10/19/2022	Manahawkin, NJ	01/16/2023
GAS	GS23030181K	GOC2022-1313	Failure to use reasonable care	\$3,000	Arawak Paving	10/13/2022	Egg Harbor, NJ	01/06/2023
GAS	GS23030182K	GOC2022-1428	Did not have a valid mark out	\$3,000	JS Mason Contractor	10/21/2022	Matawan, NJ	01/04/2023
GAS	GS23030183K	GOC2022-1407	Failure to use reasonable care	\$3,000	Sanitary Construction Company	10/17/2022	Matawan, NJ	01/05/2023
GAS	GS23030184K	GOC2022-1502	Did not have a valid mark out	\$3,000	Four Seasons Nursery	11/02/2022	Toms River, NJ	01/09/2023
GAS	GS23030185K	GOC2021-1028	Did not have a valid mark out	\$3,000	Iannella General Contracting, Inc	08/16/2021	Forked River, NJ	12/30/2022
GAS	GS23030186K	GOC2021-1034	Did not have a valid mark out	\$3,000	JV Fences, LLC	08/19/2021	Bayville, NJ	01/05/2023
WATER	WS23030187K	WOC2021-0046	Did not properly mark out	\$3,000	New Jersey-American Water Company, Inc.	06/25/2021	Millburn, NJ	12/20/2022
WATER	WS23030188K	WOC2021-0045	Did not properly mark out	\$3,000	New Jersey-American Water Company, Inc.	06/23/2021	Millburn, NJ	12/20/2022
WATER	WS23030189K	WOC2021-0037	Did not properly mark out	\$3,000	New Jersey-American Water Company, Inc.	04/28/2021	Summit, NJ	12/20/2022
WATER	WS23030190K	WOC2021-0042	Did not properly mark out	\$3,000	New Jersey-American Water Company, Inc.	05/06/2021	Millburn, NJ	12/20/2022
GAS	GS23030191K	GOC2022-1340	Failure to use reasonable care	\$3,000	Kane Communications, LLC	10/13/2022	Elizabeth, NJ	01/13/2023
GAS	GS23030192K	GOC2021-1029	Did not have a valid mark out	\$3,000	Kohut & Son Landscaping, LLC	08/16/2021	Boonton, NJ	01/09/2023
GAS	GS23030193K	GOC2022-1437	Failure to use reasonable care	\$3,000	Gray Supply	10/28/2022	Mt. Arlington, NJ	01/09/2023
GAS	GS23030194K	GOC2022-0082	Did not have a valid mark out	\$3,000	J. Tomaro Construction	01/28/2022	Lawrence, NJ	01/12/2023
GAS	GS23030195K	GOC2021-1169	Did not have a valid mark out	\$3,000	C&S Foundations	09/02/2021	Butler, NJ	01/15/2023
GAS	GS23030196K	GOC2022-1425	Failed to use reasonable care	\$3,000	Esposito Construction, LLC	10/19/2022	Parsippany, NJ	01/09/2023

**Total Cases: 17**  
**Total Penalty: \$51,000**