



Agenda Date: 12/20/23
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.)
)
) DOCKET NOS. GS23110819K
) et al. (see attached Appendix)

Party of Record:

Michael Malloy, New Jersey American Water Company
Fiscal Manager of Operations, Nava Construction
Fiscal Manager of Operations, Kemsco Construction & Equipment Company
Fiscal Manager, Murphy Fence

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 \$1,000.00 and no more than \$2,500.00 per violation per day, not to exceed \$25,000.00 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 \$200,000.00 per violation per day, and not to exceed \$2,000,000.00 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 and failing to mark out or properly mark out underground facilities, Board Staff issued a Notice of Probable Violation and Offer of Settlement to each of the alleged violators and informed them of the date and location of the alleged violations. A complete list of entities that accepted said Offers of Settlement is provided in Appendix A attached hereto and made a part hereof.¹

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.

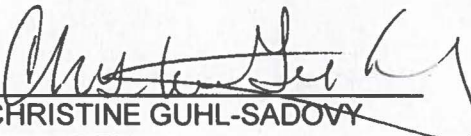
¹ The 25 Offers of Settlement were accepted by the alleged violators, and each made full payment on the dates provided in Appendix A.

NO FURTHER ACTION BY THE RESPONDENTS IS REQUIRED.

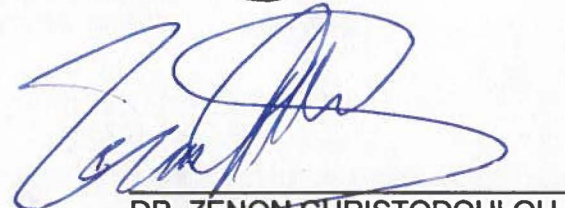
This Order shall be effective on December 27, 2023.

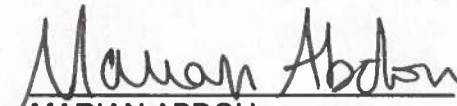
DATED: December 20, 2023

BOARD OF PUBLIC UTILITIES
BY:


CHRISTINE GUHL-SADOVY
PRESIDENT


MARY-ANNA HOLDEN
COMMISSIONER


DR. ZENON CHRISTODOULOU
COMMISSIONER


MARIAN ABDOU
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. GS23110819K et al. (see attached Appendix)

SERVICE LIST

Michael Malloy
New Jersey American Water Company
167 John F. Kennedy Pkwy
Short Hills, NJ 07078
mike.malloy@amwater.com

Nava Construction
1216 Stockton Drive
North Brunswick, NJ 08902

Kemsco Construction & Equip Company
139 Harper Street
Newark, NJ 07714
kemscojobs@aol.com

Murphy Fence
507 Seashore Road
Cape May, NJ 08204

Board of Public Utilities

44 South Clinton Avenue, 1st Floor
PO Box 350
Trenton NJ, 08625-0350

Sherri L. Golden, Board Secretary
board.secretary@bpu.nj.gov

Stacy Peterson, Deputy Executive Director
stacy.peterson@bpu.nj.gov

Heather Weisband, Senior Counsel
heather.weisband@bpu.nj.gov

Division of Reliability & Security

Francis Gaffney, Director
francis.gaffney@bpu.nj.gov

Shawn McIvor
Shawn.mcivor@bpu.nj.gov

Lauren Mattox
lauren.mattox@bpu.nj.gov

Attorney General's Office

Matko Ilic, DAG
NJ Department of Law and Public Safety
Richard J. Hughes Justice Complex
25 Market Street – P.O. Box 112
Trenton, NJ 08625
matko.ilic@law.njoag.gov

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. GS23110819K et al.

Facility Damaged	BPU Docket #	Case #	Type of Violation	Penalty	Alleged Violator	Violation Date	Location	Payment Date
Natural Gas	GS23110819K	GOC2021-0805	Did not have a valid mark out	\$3,000	Nava Construction	06/28/2021	Sayreville, NJ	02/21/2023
Water	WS23110820K	WOC2021-0030	Did not properly mark out	\$3,000	NJ American Water Company	04/08/2021	North Plainfield, NJ	11/01/2022
Water	WS23110821K	WOC2021-0032	Did not properly mark out	\$3,000	NJ American Water Company	04/06/2021	Palmyra, NJ	10/12/2022
Water	WS23110822K	WOC2021-0034	Did not properly mark out	\$3,000	NJ American Water Company	04/06/2021	Camden, NJ	10/12/2022
Water	WS23110823K	WOC2021-0039	Did not properly mark out	\$3,000	NJ American Water Company	04/10/2021	South Orange, NJ	10/18/2022
Water	WS23110824K	WOC2021-0123	Did not properly mark out	\$3,000	NJ American Water Company	12/01/2021	Plainfield, NJ	04/25/2022
Water	WS23110825K	WOC2022-0049	Did not properly mark out	\$3,000	NJ American Water Company	03/17/2022	Irvington, NJ	03/23/2023
Water	WS23110826K	WOC2022-0053	Did not have a valid mark out	\$3,000	Kemsco Construct & Equip Company	03/23/2022	Irvington, NJ	10/03/2022
Water	WS23110827K	WOC2022-0060	Did not properly mark out	\$3,000	NJ American Water Company	04/18/2022	Ocean City, NJ	02/23/2023
Water	WS23110828K	WOC2022-0061	Did not properly mark out	\$3,000	NJ American Water Company	04/18/2022	Toms River, NJ	03/09/2023
Water	WS23110829K	WOC2022-0066	Did not properly mark out	\$3,000	NJ American Water Company	04/14/2022	West Orange, NJ	03/23/2023
Water	WS23110830K	WOC2022-0087	Did not properly mark out	\$3,000	NJ American Water Company	06/28/2022	Plainfield, NJ	11/01/2022
Water	WS23110831K	WOC2022-0162	Did not properly mark out	\$3,000	NJ American Water Company	11/01/2022	New Providence, NJ	03/23/2023
Water	WS23110832K	WOC2022-0169	Did not properly mark out	\$3,000	NJ American Water Company	10/06/2022	Northfield, NJ	02/23/2023
Water	WS23110833K	WOC2022-0171	Did not properly mark out	\$3,000	NJ American Water Company	12/02/2022	Long Hill, NJ	03/23/2023
Water	WS23110834K	WOC2017-0028	Did not properly mark out	\$3,000	NJ American Water Company	06/21/2018	Oldmans Twsp., NJ	11/17/2019
Water	WS23110835K	WOC2017-0031	Did not properly mark out	\$3,000	NJ American Water Company	06/28/2018	Cherry Hill, NJ	10/28/2019
Non-Damage	WS23110836K	NOC2022-002	Did not properly mark out	\$3,000	NJ American Water Company	06/25/2022	Maplewood, NJ	09/06/2022
Water	WS23110837K	WOC2016-0051	Did not properly mark out	\$3,000	NJ American Water Company	08/09/2016	Maplewood, NJ	04/10/2019
Water	WS23110838K	WOC2016-0065	Did not properly mark out	\$3,000	NJ American Water Company	11/10/2016	Barrington, NJ	02/08/2018
Water	WS23110839K	WOC2017-0035	Did not properly mark out	\$2,000	NJ American Water Company	04/22/2017	Gloucester Twsp., NJ	09/28/2018
Water	WS23110840K	WOC2017-0088	Did not properly mark out	\$3,000	NJ American Water Company	12/11/2017	Audubon, NJ	04/24/2019
Natural Gas	GS16010052K	GOC2014-0743	Did not have a valid mark out	\$3,000	Murphy Fence	09/11/2014	West Cape May, NJ	05/28/2015

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Facility Damaged	BPU Docket #	One Call Case #	Type of Violation	Penalty	Alleged Violator	Violation Date	Location	Payment Date
Water	WS23040257K	WOC2022-0152	Did not properly mark out	\$3,000	NJ American Water Company	10/12/2022	New Providence, NJ	03/23/2023
Water	WS23040259K	WOC2022-0170	Did not properly mark out	\$3,000	NJ American Water Company	11/28/2022	New Providence, NJ	02/14/2023
Total Cases: 25 Total Penalties: \$74,000								