



Agenda Date: 3/18/15
Agenda Item: 6A

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
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 EWING, NEW JERSEY ON MARCH 4, 2014) DOCKET NO. GS15020141K

Parties of Record:

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

BY THE BOARD¹:

This matter has been opened to the Board of Public Utilities ("Board") following an investigation by the Board's Bureaus of Pipeline Safety ("BPS") and One Call ("BOC") (collectively "Board Staff") of a natural gas incident that occurred on March 4, 2014 at the South Fork townhouse development on Crockett Lane in Ewing, 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 Public Service Electric and Gas Company's ("PSE&G")² procedures and actions. Based on this investigation, it was determined that a build-up of natural gas accumulated in at least one of the townhouse units located at 24, 26, and 28 Crockett Lane, and ignited. The subsequent explosion and fire destroyed the three townhouse units and damaged approximately 52 additional units. The source of the ignition could not be determined. The explosion and fire caused one fatality of a townhouse resident and injured seven employees of the operator, PSE&G, and three employees of the excavator H&M.

The investigation disclosed that on February 5, 2014, a PSE&G customer at 28 Crockett Lane in Ewing, New Jersey, called PSE&G stating that the residence had lost electric service. On February 6, 2014, PSE&G service personnel determined the residence at 28 Crockett Lane had

¹ Commissioner Upendra J. Chivukula recused himself due to a potential conflict of interest and as such took no part in the discussion or deliberation of this matter.

² The Board's review of PSE&G's actions are addressed in a separate Order, In the Matter of Allegations of Violations of Pipeline Safety Regulations and the Underground Facility Protection Act by Public Service Electric and Gas Company with Respect to a Gas Pipeline Incident in Ewing, New Jersey on March 4, 2014, Docket No. GS15020140K, Dated March 18, 2015.

a faulty underground electric service line. As a result, a temporary aboveground electric line was run from a neighboring meter to restore service until a permanent repair could be made. PSE&G returned to the residence on February 7, 2014 to attempt a repair of the underground electric service line, but was unable to do so. Consequently, PSE&G determined that a new underground electric service line was necessary to permanently restore service. A work order was sent to subcontractor H&M on February 12, 2014 to have a new underground electric service line installed. Nearly one month later, on March 4, 2014, H&M began working to install a new electric service line at 28 Crockett Lane.

H&M called for three emergency markouts the morning of March 4, 2014, the latter two calls refined and corrected the scope of the initial markout request. A PSE&G electric inspector responded to the requests and made markings utilizing PSE&G records indicating a joint trench installation. The inspector connected to a nearby electric transformer to first mark the primary electric, and then the secondary electric lines. Gas markouts were then performed based on the inspector's knowledge and understanding of their position and distance relative to the electric lines in the joint trench installation.

On March 4, 2014, the operator of the horizontal directional drilling ("HDD") machine used by H&M to install a new underground electric cable struck a mismarked PSE&G gas main beneath the driveway of 26 and 28 Crockett Lane. The odor of the leaking gas was detected by H&M personnel who, shortly thereafter, pulled back the drilling rods that were in the ground and notified the H&M office of the leak. H&M office personnel notified PSE&G's Trenton district office that a gas pipeline was damaged, and PSE&G assistance was needed. PSE&G advised H&M to call PSE&G's emergency phone number for gas leaks. H&M called the PSE&G emergency number and was connected to a customer service representative at PSE&G's Southern Inquiry and Accounting Center to report the gas leak.

In post-accident interviews, the onsite H&M crew foreman stated that, after the gas facility was hit, he put a paint mark at the location where he thought it was hit, and he advised the resident of 28 Crockett Lane of the gas leak, and that PSE&G was notified and was on its way to the site. He also verified that the resident's gas service was still on.

PSE&G personnel were subsequently dispatched to Crockett Lane in response to the emergency gas leak notification. An appliance service technician ("AST") was the first PSE&G employee to arrive at the site. The AST proceeded to take open air readings with a combustible gas indicator inside and outside 28 Crockett Lane and outside the attached inaccessible neighboring residences. At the time of the inside open air readings, the AST spoke with the resident of 28 Crockett Lane. Additional PSE&G personnel responded to the gas leak emergency between 12:06 p.m. and 12:30 p.m., including a distribution inspector, two gas distribution supervisors, and a street crew consisting of three employees. At approximately 12:30 p.m., the AST again spoke with the resident of 28 Crockett Lane, who remained in the townhouse.

Upon arrival, the PSE&G street crew members put on personal protective equipment and began hand digging over the gas service line to 28 Crockett Lane, where PSE&G personnel reported hearing gas – attempting to find the location of the gas leak. This hole was also located over the path of the HDD. The HDD point of entry into the ground was approximately 7 feet from the hole over the gas service line. It was reported that the hole over the gas service line was already dug to a depth of approximately one foot when the crew began hand digging. In post-accident interviews, it was stated that H&M initially dug at the service line location prior to starting the HDD. At approximately 12:50 p.m., gas from the damaged gas main ignited inside

one of the townhouse units at 24, 26 or 28 Crockett Lane, causing an explosion and fire resulting in one fatality of a townhouse resident, and injuring seven employees of the operator, PSE&G, and three employees of the excavator H&M. The fire and explosion also, destroyed the three units and damaged approximately 52 neighboring units. After the explosion, the natural gas ignited and burned for approximately 2 hours. Thereafter, PSE&G shut off a portion of the damaged natural gas main by closing a valve at Heritage Way, squeezing off the main near the corner of Heritage Way and Pioneer Court, and also squeezing off near 16 Crockett Lane. Gas services to nearby residences on Crockett Lane, Pioneer Court, and Heritage Court were turned off at their respective meter shutoff valve.

During the course of its interviews with H&M and PSE&G personnel, Board Staff became concerned with certain actions taken by both companies with regard to how they contributed to the incident. Regarding H&M, Board Staff was concerned with: (1) the utilization of emergency markouts; (2) the manner of hand digging and locating of marked, underground utility facilities in the area of the proposed drill path; (3) the manner of reporting the damage to PSE&G's gas facility; and (4) H&M's failure to contact local fire and police for assistance. Regarding PSE&G, Board Staff was concerned with: (1) PSE&G's actions prior to the explosion regarding its marking of gas facilities; (2) PSE&G's leak investigation; and (3) PSE&G's failure to contact local fire and police for assistance. Additionally, neither H&M nor PSE&G evacuated the residences in the vicinity of the damage prior to the explosion.

During the course of the investigation, the BOC identified several opportunities for H&M personnel to take action prior to the incident. 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:

- engaging in excavation through operation of a directional drill utilizing the state's emergency mark out process when no emergency existed;
- 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 February 24, 2015, 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 Six Hundred Thousand Dollars (\$600,000). As part of the Stipulation, H&M did not admit any wrongdoing nor violation of any law or regulation.

In addition to the \$600,000 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.³

- **Training:**
 - All H&M supervisory personnel who are responsible for markout requests shall attend annual training regarding the (i) procedures to follow when requesting a mark-out; (ii) the conditions that constitute an “emergency” under N.J.A.C. 14:2-1.2; (iii) when to request an emergency mark-out, and (iv) other requirements associated with the Underground Facility Protection Act, N.J.S.A. 48:2-73 et seq.
 - All H&M underground crews performing excavation and trench work in New Jersey shall participate in an annual Locating All Utilities and Records Awareness (LAURA) training.
 - H&M’s Training Summits in 2014 and 2015 shall include a component for underground crews performing excavation and trenching work.
- **Drills:** All Henkels & McCoy offices in New Jersey shall conduct at least annual training on the procedures to follow when an underground natural gas, electric, water, telecommunications, or other facility is damaged.
- **Documentation:** Henkels & McCoy shall submit an annual report to Board Staff for three years, documenting all training and drills and thereafter keep records relating to the training provided.
- **Emergency Services:** Henkels & McCoy shall clarify and reinforce the requirement that all crews call 911 whenever they unexpectedly cause, discover or encounter a potentially hazardous release of natural gas or other hazardous substance pursuant to applicable regulations.

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 PSE&G 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.

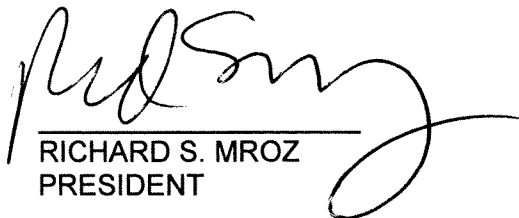
³ Although described in this Order, should there be any conflict between this summary and the Stipulation, the terms of the Stipulation control, subject to the findings and conclusions in this Order.

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

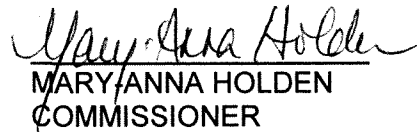
This Order shall be effective on March 27, 2015.

DATED: 3/18/15

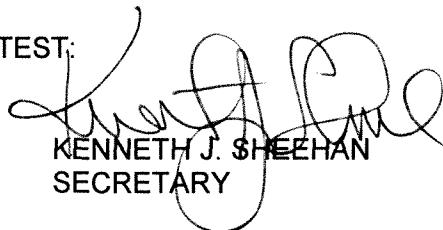
BOARD OF PUBLIC UTILITIES
BY:


RICHARD S. MROZ
PRESIDENT

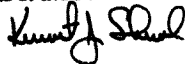

JOSEPH L. FIORDALISO
COMMISSIONER


MARY ANNA HOLDEN
COMMISSIONER


DIANNE SOLOMON
COMMISSIONER

ATTEST:

KENNETH J. SHEEHAN
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 EWING, NEW JERSEY ON MARCH 4, 2014

DOCKET NO. GS15020141K

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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 EWING, NEW JERSEY ON)
MARCH 4, 2014)

STIPULATION AND SETTLEMENT
AGREEMENT

Docket No. GS15020141K

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, and Henkels & McCoy (“Henkels & McCoy” or “Company”) (collectively referred to as the “Parties”) as of this 2nd day of February 2015.

WHEREAS, on March 4, 2014 an explosion occurred at Crockett Lane in Ewing Township, New Jersey related to the ignition of natural gas from a damaged buried gas main line related to the replacement of an underground electrical service (the “Incident”); and

WHEREAS, the Bureau of Pipeline Safety and the Bureau of One Call and Meter Testing (“Board Staff”) of the New Jersey Board of Public Utilities (the “Board”) commenced an investigation of the Incident including an evaluation of Henkels & McCoy’s compliance with applicable laws, rules and regulations pertaining to natural gas facilities including 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”); 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 Six Hundred Thousand Dollars (\$600,000.00) to the Treasurer of the 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 Six Hundred Thousand Dollars (\$600,000) 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, 7th 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, 5th 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 a 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 sponsor and pay for two New Jersey One-Call breakfast training sessions on an annual basis for a 3-year period wherein all New Jersey based Henkels & McCoy supervisory employees who are responsible for mark out requests will be trained on (i) procedures to follow when requesting a mark-out; (ii) the conditions that constitute an "emergency" under N.J.A.C. § 14:2-1.2; (iii) when to request an emergency mark-out, and (iv) other requirements associated with the Underground Facility Protection Act, N.J.S.A. 48:2-73 *et seq.* These training sessions are normally held annually at various New Jersey locations by New Jersey One Call during the months of February through April. All Henkels & McCoy supervisory employees based in and performing work in New Jersey who are responsible for mark out requests must attend at least one One-Call breakfast training session on an annual basis. Henkels & McCoy shall submit an annual report to Board Staff for three years, commencing in 2015, documenting such training attended, including each employee name, position and date trained. After the initial three years, Henkels & McCoy shall continue to document and maintain records of each training session attended, which shall be made available for review by Board Staff upon request. Additionally, Henkels & McCoy shall provide any new supervisory employees based in and performing work in New Jersey who are responsible for mark out requests with this training within 90 days of commencement of the new supervisory employment. If a breakfast training session is not scheduled within 90 days of commencement of new supervisory employment, then Henkels and McCoy shall conduct and document an in house training session covering the above topics for such

new supervisory employee(s) who will then also attend a session during the next annual training period. Henkels & McCoy has reinforced with all supervisors and coordinators based in and performing work in New Jersey the requirement to adhere to the statutory definition of an “emergency” in calling in emergency mark outs.

- (b) All Henkels & McCoy offices in New Jersey shall conduct at least annual training on the procedures to follow when an underground natural gas, electric, water, telecommunications, or other facility is damaged. Henkels & McCoy shall submit an annual report for three years, commencing in 2015, documenting such training, including the employee name, position and date trained. After the initial three years, Henkels & McCoy shall continue to document and maintain records of each training session which shall be made available for review by Board Staff upon request.
- (c) Henkels & McCoy has clarified and reinforced the requirement that all crews call 911 whenever they unexpectedly cause, discover or encounter a potentially hazardous release of natural gas or other hazardous substance pursuant to applicable regulations.
- (d) Henkels & McCoy’s Locating All Utilities and Records Awareness (LAURA) training has been successfully completed for all underground crews performing excavation and trenching work in New Jersey and additional such training will be undertaken for such underground crews and any new underground crews performing excavation and trenching in New Jersey on an annual basis going forward. Henkels & McCoy shall document and maintain records of each training session including the employee name, position and date trained, which shall be made available for review by Board Staff upon request.
- (e) All Henkels & McCoy crews in New Jersey have met for a full day of Safety training (Safety Summits) in 2014 and the Safety Training in 2015 will include training for underground crews performing excavation and trenching work.

4. Henkels & McCoy 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 argued 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 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 judgment 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 provision 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: Caroline Henrich
Caroline Henrich, Esq.
Vice President & General Counsel
On behalf of Henkels & McCoy

Dated: February 24, 2015

John Jay Hoffman, Jr.
Acting Attorney General of New Jersey
Attorney for Board Staff

By: Geoffrey R. Gersten
Geoffrey R. Gersten
Deputy Attorney General

Dated: February 24, 2015