



Agenda Date: 3/23/22  
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 to -91 )  
)  
) ORDER ACCEPTING  
) SETTLEMENTS  
)  
) DOCKET NOS. GS22020064K  
) et al. (see attached Appendix)

**Parties of Record:**

- Ray Carr**, Gloucester Township MUA
- James O'Brien**, Long Beach Twp. Public Works
- Carolyn Jacobs**, South Jersey Gas Company
- Nick Depoto**, Elizabethtown Gas Company
- Byron Peters Jr.**, Atlantic City Electric Company
- Alison Sbriscia**, New Jersey Natural Gas Company
- Tim Kukoda**, Utility Line Services
- Derek Murphy**, Murphy's Landscaping
- Morgan Noonan**, Arthur Henry Inc.
- Frank Brex**, Jersey Shore Demolition
- Steven D. Zeuli, Chris Amos**, RD Zeuli Inc.
- Mike Liberi**, Liberi Landscaping & Fence
- Erich Eisenhart**, Pioneer Pipe Contractors
- Bob Perna**, Perna Finnegan
- Maciej Malinowski**, Modern Fence Direct
- Megan Yeager**, Think Pavers Hardscaping
- Joseph Porchetta**, GMP Contracting
- David N. Powell, Jr.**, Lafayette Construction
- Gregory Lopergolo**, Turf Construction
- Joseph Hackney**, Hackney Concrete

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 ("Act") pursuant to the provisions set forth

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<sup>1</sup> Commissioner Robert M. Gordon did not participate.

in N.J.S.A. 48:2-73 to -91. The Act establishes the One-Call Damage Prevention System (“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 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.

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 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 contacted the alleged entities and informed them of the date and location of the alleged violations. A complete list of entities and violations is provided in the Appendix attached hereto and made a part hereof.

In an attempt to resolve these matters, the entities in the Appendix submitted an Offer of Settlement to the Board for its review and consideration. Said Offers of Settlement are also provided in the attached Appendix. Each such Offer of Settlement is summarized in the Appendix.

**II. DECISION AND FINDINGS**

After consideration of the matters provided in the Appendix, 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 the Appendix attached hereto and made part hereof.

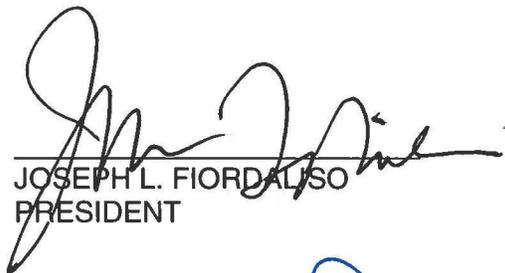
By acceptance of the Offers of Settlement and the timely payment thereof, the excavator or operator has waived any rights to a hearing, and the Board has waived any rights to bring an action for civil penalties as permitted by the Act in connection with the above-referenced alleged violations. It must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

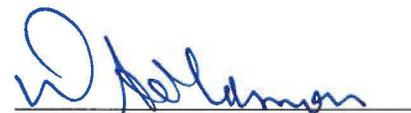
This Order shall be effective on March 30, 2022.

DATED: March 23, 2022

BOARD OF PUBLIC UTILITIES  
BY:

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

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

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

  
\_\_\_\_\_  
UPENDRA J. CHIVUKULA  
COMMISSIONER

ATTEST:   
\_\_\_\_\_  
AIDA CAMACHO-WELCH  
SECRETARY

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

DOCKET NOS. GS22020064K et al. (see attached Appendix)

SERVICE LIST

<p>James O'Brien Long Beach Twp. Public Works 6805 Long Beach Blvd Brant Beach, NJ 08008 <a href="mailto:job75@comcast.net">job75@comcast.net</a> <a href="mailto:jobrien@longbeachtownship.com">jobrien@longbeachtownship.com</a></p> <p>Tim Kukoda Utility Line Services 547 Woodbine N Rte. 9 Ocean View, NJ 08230 <a href="mailto:mcollins@ulscopr.com">mcollins@ulscopr.com</a></p> <p>Morgan Noonan Arthur Henry Inc. 3031 Ocean Heights Ave. Egg Harbor Township, NJ 08234 <a href="mailto:arhenry@arhenry.com">arhenry@arhenry.com</a></p> <p>Ray Carr Gloucester Township MUA P.O. Box 216 Glendora, NJ 08029 <a href="mailto:rcarr@gtmua.com">rcarr@gtmua.com</a></p> <p>Derek Murphy Murphy's Landscaping 7506 Atlantic Ave. Wildwood Crest, NJ 08260 <a href="mailto:murphyslawncare@hotmail.com">murphyslawncare@hotmail.com</a></p> <p>Frank Brex Jersey Shore Demolition 9 Hart Terrace Tinton Falls, NJ 07753 <a href="mailto:jsdh@comcast.net">jsdh@comcast.net</a></p> <p>Steven D. Zeuli, Chris Amos RD Zeuli Inc. 288 Pineage Dr. West Berlin, NJ 08091 <a href="mailto:camos@rdzeuli.com">camos@rdzeuli.com</a></p>	<p>David N. Powell, Jr. Lafayette Construction 9 Atlantic Ave. Egg Harbor Township, NJ 08234 <a href="mailto:davejrlutil@comcast.ent">davejrlutil@comcast.ent</a></p> <p>Gregory Lopergolo Turf Construction 3192 N. West Blvd. Vineland, NJ 08360 <a href="mailto:turf@turfcon.com">turf@turfcon.com</a></p> <p>Joseph Hackney Hackney Concrete 416 North Elberton Ave. Atlantic City, NJ 08401 <a href="mailto:caiuto@hackneyconcrete.com">caiuto@hackneyconcrete.com</a></p> <p>Alison Sbriscia New Jersey Natural Gas Company 1415 Wyckoff Rd. Wall, NJ 07719 <a href="mailto:asbriscia@njng.com">asbriscia@njng.com</a></p> <p>Carolyn Jacobs South Jersey Gas Company One South Jersey Plaza Folsom, NJ 08037 <a href="mailto:cjacobs@sjindustries.com">cjacobs@sjindustries.com</a></p> <p>Nick Depoto Elizabethtown Gas Company 520 Green Ln. Union, NJ 07083 <a href="mailto:cdepoto@sjindustries.com">cdepoto@sjindustries.com</a></p> <p>Byron Peters Jr. Atlantic City Electric 5100 Harding Hwy. Mays Landing, NJ 08330 <a href="mailto:byron.petersjr@exeloncorp.com">byron.petersjr@exeloncorp.com</a></p>
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Erich Eisenhart  
Pioneer Pipe Contractors  
2682 Glassboro Cross Keys Rd.  
Sewell, NJ 08080  
[pioneerpipe2020@gmail.com](mailto:pioneerpipe2020@gmail.com)

Bob Perna  
Perna Finnegan  
1921 E. Sherman Ave.  
Vineland, NJ 08361  
[jlicciardello@pernafinnigan.com](mailto:jlicciardello@pernafinnigan.com)

Maciej Malinowski  
Modern Fence Direct  
103 Riverbend Dr.  
North Brunswick, NJ 08902  
[mike@modernfenceco.com](mailto:mike@modernfenceco.com)

Megan Yeager  
Think Pavers Hardscaping  
125 King Hwy.  
Mount Royal, NJ 08061  
[myeager@thinkpavers.com](mailto:myeager@thinkpavers.com)

Joseph Porchetta  
GMP Contracting  
2240 S. Clinton Ave.  
South Plainfield, NJ 07086  
[gmpcontractinginfo@gmail.com](mailto:gmpcontractinginfo@gmail.com)

Mike Liberi  
Liberi Landscaping & Fence  
5 Theresa Way  
Sewell, NJ 08080  
[liberi212@yahoo.com](mailto:liberi212@yahoo.com)

Matko Ilic, DAG  
NJ Department of Law and Public Safety  
Richard J. Hughes Justice Complex  
Public Utilities Section  
25 Market Street, P.O. Box 112  
Trenton, NJ 08625  
[matko.ilic@law.njoag.gov](mailto:matko.ilic@law.njoag.gov)

**Board of Public Utilities**

44 South Clinton Avenue, 1<sup>st</sup> Floor  
Post Office Box 350  
Trenton, NJ 08625

**Secretary of the Board**  
[board.secretary@bpu.nj.gov](mailto:board.secretary@bpu.nj.gov)

Heather Weisband, Senior Counsel  
[heather.weisband@bpu.nj.gov](mailto:heather.weisband@bpu.nj.gov)

**Division of Reliability & Security**

Lauren Mattox, Executive Assistant  
[lauren.mattox@bpu.nj.gov](mailto:lauren.mattox@bpu.nj.gov)

Thomasine Osborne, Analyst  
[thomasine.osborne@bpu.nj.gov](mailto:thomasine.osborne@bpu.nj.gov)

