



Agenda Date: 3/6/23

Agenda Item: VIA

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

RELIABILITY & SECURITY

IN THE MATTER OF THE ALLEGED VIOLATIONS BY)	FINAL ORDER OF PENALTY
SCENIC VIEW LANDSCAPING OF THE)	ASSESSMENT
UNDERGROUND FACILITY PROTECTION ACT,)	
N.J.S.A. 48:2-73 TO 91)	DOCKET NO. GS22120742K

Party of Record:

SCENIC VIEW LANDSCAPING

BY THE BOARD:

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 to -91 (“Act”). By this Decision and Order, the Board considers the issuance of a Final Order of Penalty Assessment (“FOPA”) pursuant to N.J.A.C. 14:2-6.6 and N.J.A.C. 14:7-2.4 regarding Scenic View Landscaping (“Respondent”).

BACKGROUND AND PROCEDURAL HISTORY

The Act established 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, 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.

The Act subjects violators of its provisions to civil penalties of not less than \$1,000.00 and not 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 subject the violator 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, a violator may be assessed the cost of any Board investigation, inspection or monitoring survey which leads to the establishment of a violation and for the reasonable costs of preparing and litigating the matter. N.J.S.A. 48:2-86(b)(2).

After being notified of damage to an underground facility on November 11, 2021, Staff of the Board of Public Utilities (“Board Staff”) investigated the incident, including reviewing electronic damage reports submitted by New Jersey Natural Gas Company (“NJNG”) demonstrating that the Respondent: 1) was the excavator; 2) did not request a markout prior to commencing construction; and 3) damaged an underground facility operated by NJNG at [REDACTED] Marlboro, New Jersey.

Subsequently, pursuant to N.J.A.C. 14:2-6.4 and N.J.A.C. 14:7-2.2, on December 8, 2021, Board Staff issued a Notice of Probable Violation (“NOPV”) to the Respondent, which included a blank Answering Certification Form. The NOPV was served via regular and Certified Mail. The NOPV advised the Respondent that failure to file an Answering Certification may result in the issuance of a FOPA, as required by N.J.A.C. 14:2-6.4(b)(5)(i) and N.J.A.C. 14:7-2.2(b)(5)(i). According to United States Postal Service tracking, the Respondent received the NOPV on December 20, 2021. See Exhibit A. A second NOPV was mailed to the Respondent on July 26, 2022. The Respondent received this notice on August 2, 2022, and signed the certified mail receipt. See Exhibit B. The regular mail was not returned. See Exhibit B. Pursuant to N.J.A.C. 14:2-6.5(a) and N.J.A.C. 14:7-2.3(a), the Respondent must file an Answering Certification within 21 days of receiving the NOPV. More than 21 days have elapsed since the Respondent received the certified mail. To date, the Respondent has not filed the Answering Certification with the Board or with Board Staff. See Exhibit C.

As the Respondent failed to file an Answering Certification, the Respondent is deemed to be in default pursuant to N.J.A.C. 14:2-6.6(a) and N.J.A.C. 14:7-2.4(a). Pursuant to N.J.A.C. 14:2-6.6(b) and N.J.A.C. 14:7-2.4(b), Board Staff has presented the NOPV to the Board and has requested that the Board issue a FOPA.

Pursuant to N.J.A.C. 14:2-6.6(d) and N.J.A.C. 14:7-2.4(d), the Board is not bound by any settlement offers made by Board Staff upon issuance of a NOPV and may order the payment of a civil administrative penalty up to the maximum permitted by law. In determining the appropriate penalty amount to be assessed, the Board must consider the factors enumerated in N.J.A.C. 14:2-6.2(c) and N.J.A.C. 14:7-2.7, including, but not limited to, the nature, circumstances and gravity of the violation, the degree of the violator’s culpability and any other factors justice may require.

DISCUSSION AND FINDINGS

The Board, having had an opportunity to review the record in this matter, **HEREBY FINDS** the NOPV issued by Board Staff to be reasonable and in the public interest. The Board, having reviewed the NOPV, **HEREBY FINDS** that an appropriate penalty for this matter is \$6,000.00 as

Respondent was provided with an opportunity to challenge the alleged violation, failed to file an Answering Certification, damaged an underground facility operated by NJNG and did not have a valid markout at the time of excavation. The Board **HEREBY ISSUES** this Final Order of Penalty Assessment and **ORDERS** that the Respondent shall be assessed the Civil Administrative Penalty of \$6,000.00. The Board **FURTHER ORDERS** that the Respondent shall pay the Civil Administrative Penalty as set forth in this Order no later than March 23, 2023.

Payment must be made out to the **TREASURER, STATE OF NEW JERSEY**

Sent to: Chief Fiscal Officer
Board of Public Utilities
44 South Clinton Avenue
Post Office Box 350
Trenton, New Jersey 08625
Attn: One-Call Enforcement

Please include a copy of this Order with your payment.

If the Respondent fails to make the required payment by March 23, 2023, the Board **HEREBY DIRECTS** Board Staff to docket this Order against the Respondent as a Judgment with the New Jersey Superior Court or that the unpaid debt be transferred to the Department of Treasury for the issuance of a Certificate of Debt pursuant to N.J.S.A. 2A:16-11.1.

This Order shall be effective on March 13, 2023.

DATED: March 6, 2023

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER

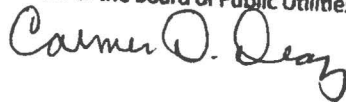


DR. ZENON CHRISTODOULOU
COMMISSIONER

ATTEST: 

CARMEN D. DIAZ
ACTING 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 THE ALLEGED VIOLATIONS BY SCENIC VIEW LANDSCAPING OF
THE UNDERGROUND FACILITY PROTECTION ACT, N.J.S.A. 48:2-73 TO 91

DOCKET NO. GS22120742K

SERVICE LIST

SCENIC VIEW LANDSCAPING
213 Broad Street
Keyport, NJ 07735

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

Board of Public Utilities

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

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Lauren Mattox
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EXHIBIT

A

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

Keyport, NJ 07735

OFFICIAL USE

Certified Mail Fee \$3.75

Extra Services & Fees (check box, add fee if appropriate)

Return Receipt (hardcopy)

Return Receipt (electronic)

Certified Mail Restricted Delivery

Adult Signature Required

Adult Signature Restricted Delivery

Postage \$0.78

Total Postage and Fees \$4.53

Sent To Scenic View Land

Street and Apt. No., or PO Box No.

City, State, ZIP+4®

PS Form 3800, April 2015 PSN 7530-02-000-9047

Postmark Here
DEC 16 2021
KEYPORT NJ

PS Form 3800, April 2015 (Reverse)

State of New Jersey
PUBLIC UTILITIES
REGULATORY & SECURITY
1 Clinton Avenue, 1st Floor
PO Box 350
Keyport, NJ 07735-0350

12/08/2021

Scenic View Landscaping
213 Broad St
Keyport, NJ 07735

NOTICE OF PROBABLE VIOLATION AND OFFER OF SETTLEMENT

DATE OF PROBABLE VIOLATION: 11/13/2021
 LOCATION: [REDACTED], Marlboro, NJ 07746
 OPERATOR OF THE FACILITY: NJ NATURAL GAS
 BRIEF DESCRIPTION OF POSSIBLE VIOLATION: DID NOT HAVE A VALID MARKOUT AT TIME OF EXCAVATION
 MARKOUT REQUEST NO.:
 STATUTE, REGULATION, OR ORDER VIOLATED: N.J.S.A. 48:2-82(a)

Case #: GOC2021-1453

To Whom it May Concern:

The Board of Public Utilities ("Board") has jurisdiction to oversee and enforce the provisions of the Underground Facility Protection Act ("Act"), N.J.S.A. 48:2-73 et seq. The Act requires excavators to notify the NJ One-Call Center prior to excavating ("One Call Obligation"). Violators of the Act are subject to a civil penalty of not less than \$1,000 and not more than \$2,500 per violation per day. The civil penalty for a related series of violations may not exceed \$25,000. If the violation of the Act involves natural gas facilities, the maximum penalties are \$200,000 per violation per day, with a total maximum of \$1,000,000 for a related series of violations.

Board Staff has reviewed information received in connection with a complaint concerning an Excavation, as defined in N.J.S.A. 48:2-75, undertaken by Scenic View Landscaping ("Respondent") ("You") without fulfilling the One Call Obligation.

Specifically, the information reviewed included: (1) Operator reports submitted by Utilities pursuant to N.J.A.C. 14:2-4.4; and (2) New Jersey One Call ticket records; A Certification by [REDACTED] attached hereto.

In this case, it has been determined that you failed to contact the One Call Center prior to commencing excavation in violation of N.J.S.A. 48:2-82 and N.J.A.C. 14:2-3.1 and 3.2.

no email

Delivered
12/20/21

USPS Tracking®

[Track Another Package +](#)

Tracking Number: 70210350000097725309

[Remove X](#)

Your item was delivered to an individual at the address at 11:59 am on December 20, 2021 in KEYPORT, NJ 07735.

USPS Tracking Plus® Available [v](#)

 **Delivered, Left with Individual**

December 20, 2021 at 11:59 am
KEYPORT, NJ 07735

Feedback

Get Updates [v](#)

Text & Email Updates [v](#)

Tracking History [^](#)

December 20, 2021, 11:59 am

Delivered, Left with Individual

KEYPORT, NJ 07735

Your item was delivered to an individual at the address at 11:59 am on December 20, 2021 in KEYPORT, NJ 07735.

December 20, 2021, 7:11 am

Out for Delivery

KEYPORT, NJ 07735

EXHIBIT

B

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

SCENIC VIEW Landscapes
 213 Broad St.
 Keyport, NJ 08035

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X



- Agent
- Addressee

B. Received by (Printed Name)

C. Date of Delivery

8-2-2

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No



9590 9402 3824 8032 4447 25

2. Article Number (Transfer from service label)

7019 2290 0001 8035 0080

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Insured Mail
- Insured Mail Restricted Delivery (over \$500)
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

BP DOCKET NO GS221207424

Tracking Number:

[Remove X](#)

70182290000180350080

[Copy](#)

[Add to Informed Delivery \(https://informedelivery.usps.com/\)](https://informedelivery.usps.com/)

Latest Update

Your item was delivered to an individual at the address at 11:06 am on August 2, 2022 in KEYPORT, NJ 07735.

Get More Out of USPS Tracking:

[USPS Tracking Plus[®]](#)

Feedback

Delivered

Delivered, Left with Individual

KEYPORT, NJ 07735

August 2, 2022, 11:06 am

[See All Tracking History](#)

[Text & Email Updates](#) 

[USPS Tracking Plus[®]](#) 

[Product Information](#) 

[See Less ^](#)

Track Another Package

Enter tracking or barcode numbers

EXHIBIT

C

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, New Jersey 08625-0350

CERTIFICATION OF ANN LANG

In the Matter of:

Scenic View Landscaping
213 Broad Street
Keyport, NJ 07735

I, Ann Lang, hereby certifies and says:

1. I am an Administrative Analyst at the New Jersey Board of Public Utilities and have held that position at all times relevant to this Certification and I have reviewed all of the documents in this matter.
2. On November 11, 2021, damage occurred to an underground facility operated by New Jersey Natural Gas at [REDACTED] Marlboro, NJ 07746.
3. After being notified of the damage, Staff of the Board of Public Utilities ("Board Staff") investigated the incident, including reviewing electronic damage reports, submitted by New Jersey Natural Gas. The reports from New Jersey Natural Gas indicated (1) that Scenic View Landscaping was the excavator; (2) that Scenic View Landscaping failed to obtain a markout prior to excavating (3) that Scenic View Landscaping damaged an underground facility operated by New Jersey Natural Gas.
4. Board Staff issued a Notice of Probable Violation and Offer of Settlement ("NOPV") dated December 8, 2021, pursuant to the Underground Facility Protection Act, N.J.S.A. 48:2-73 to -91 to Scenic View Landscaping.
5. On December 16, 2021, the NOPV was mailed to Scenic View Landscaping with tracking number 70210350000097725309. USPS tracking shows that the letter was delivered on December 20, 2021. A copy of the letter was also sent via regular mail.
6. On July 26, the NOPV was mailed to Scenic View Landscaping with tracking number 70182290000180350080. USPS tracking shows that the letter was delivered on August 2, 2022. A copy of the letter was also sent via regular mail.
7. The certified mail receipt enclosing the NOPV and Answering Certification was returned, signed. The certified mail receipt is attached hereto. The regular mail was not returned.
8. Despite having received proper notice, Scenic View Landscaping failed to file the Answering Certification within twenty-one (21) days pursuant to N.J.A.C. 14:2-6.5(a). To date, Scenic View Landscaping has not filed an Answering Certification.
9. As a result of this, Scenic View Landscaping is in default pursuant to N.J.A.C. 14:2-6.6(a).

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.



Ann Lang

Date: 12/20/2022