



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 THE WILLIAM JAKE)
JACOBSEN, CASTLTON ENVIRONMENTAL) ADMINISTRATIVE ORDER AND NOTICE
CONTRACTORS, LLC.) OF CIVIL ADMINISTRATIVE PENALTY
) ASSESSMENT (AONOCAPA)
)
) DOCKET NO. EO12010084

Parties of Record:

William Jake Jacobsen, Castlton Environmental; Contractors, LLC
Keith R. Hemming, Esq., McElroy, Deutsch, Mulvaney & Carpenter, LLP.

BY THE BOARD:

This matter was opened to the Board of Public Utilities ("Board") following an investigation by the Board's Bureau of Underground Facilities Protection ("UFP") and Bureau of Pipeline Safety ("BPS") of a natural gas incident that occurred on April 9, 2010 at a single-family residence located at 64 Rutgers Place, Clifton, New Jersey.¹ The incident resulted in an explosion and fire that destroyed the residence. No persons were hurt inside the residence; however several fire fighters and Public Service Electric & Gas ("PSE&G") personnel were treated at the hospital.

The UFP and BPS conducted a detailed and comprehensive investigation which included a review of PSE&G (the underground facility operator of the affected natural gas service line) and Castlton Environmental Contractors, LLC's (the Excavator) (hereinafter "Castlton" or "Respondent") procedures and documents, actions, and other circumstances surrounding the incident. Based on this investigation, it was determined that a build-up of natural gas inside the residence was the likely source of the explosion and fire, however, the source of the ignition could not be determined with certainty.

¹ On February 10, 2012, the Board approved a settlement with PSE&G regarding this incident in In The Matter of Allegations of Violations of Pipeline Safety Regulations by Public Service Electric & Gas Company with Respect to a Gas Pipeline Incident in Clifton, New Jersey on April 9, 2010, Docket No. GO11110825.

The Board of Public Utilities ("Board") has jurisdiction to oversee and enforce the provisions of the Underground Facility Protection Act ("the UFPA") pursuant to the provisions set forth in N.J.S.A. 48:2-73, et seq. The primary purpose of the UFPA is to establish the One-Call Damage Prevention 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 UFPA, 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 UFPA 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 One-Call Damage Prevention System ("the System") coordinates communication and responsive action between these two groups of persons. N.J.S.A. 48:2-80, -82.

The UFPA 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 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 \$100,000.00 per violation per day and not to exceed \$1,000,000.00 for any related series of violations. 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).

The investigation by UFP disclosed findings that resulted in UFP issuing a Notice of Probable Violation and Offer of Settlement which was sent to Respondent on July 27, 2011. Subsequently, the Board issued an Administrative Order and Notice of Civil Administrative Penalty Assessment on February 10, 2012 to Castlton Environmental Contractors, LLC.

An Administrative Order and Notice of Civil Administrative Penalty Assessment (hereinafter "AONOCAPA") may be issued pursuant to the authority vested in the New Jersey Board of Public Utilities (hereinafter "BPU" or "Board") by the Underground Facilities 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.

On June 18, 2012 the Board granted Respondent's request for an Adjudicatory Hearing.

Staff and Respondent subsequently participated in settlement negotiations and entered into a Stipulation of Settlement ("Stipulation") which includes a monetary penalty of \$50,000.00, revisions to company operating procedures and retraining of company staff.

Having reviewed the record in this matter, including the Stipulation entered into with Castlton Environmental Contractors, LLC, the Board **HEREBY FINDS** that the Stipulation fully disposes of all issues in this proceeding and is consistent with law. The Board **FINDS** the Stipulation to be reasonable, in the public interest, and in accordance with the law. Therefore, the Board **HEREBY ADOPTS** the Stipulation, attached hereto, including all attachments and schedules, as its own, incorporating by reference the terms and conditions of the Stipulation, as if they were fully set forth at length herein

By settling these matters, Castlton Environmental Contractors, LLC has waived any rights to a hearing and this matter will be closed by the Board.

Accordingly, the Board **HEREBY ORDERS** Castlton Environmental Contractors, LLC to comply with the terms of the Stipulation as approved herein.

This Order shall be effective on March 2, 2013.

DATED: 2/25/13

BOARD OF PUBLIC UTILITIES
BY:


ROBERT M. HANNA
PRESIDENT


JEANNE M. FOX
COMMISSIONER

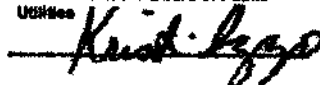

JOSEPH L. FIORDALISO
COMMISSIONER


MARYANNA HOLDEN
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



SERVICE LIST

Parties of Record

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Nanuet, NY 10954

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Division of Law
124 Halsey Street 5th floor
Newark NJ 07102

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is made effective and entered into this 22nd day of October, 2012, by and among, CASTLTON ENVIRONMENTAL CONTRACTORS, LLC, a Limited Liability Company, with a place of business at 80 West Nyack Road, Nanuet, NY 10954 ("Castlton"), and the STAFF of the NEW JERSEY BOARD OF PUBLIC UTILITIES ("BPU"), an agency of the State of New Jersey located at 44 So. Clinton Avenue, 7th Floor, Trenton, NJ 08625. Castlton and BPU are hereinafter collectively referred to as "Parties".

WITNESSETH

WHEREAS, on or about February 10, 2012, an Administrative Order and Notice of Civil Administrative Penalty Assessment ("AONOCAPA"), was issued as to Castlton in the amount of \$100,000, captioned In the Matter of Castlton Environmental Contractors, LLC, and bearing Docket No. EO12010084 (the "Dispute") (See Attachment A); and

WHEREAS, to the extent provided for in the terms and conditions set forth herein, the Parties have reached an agreement to fully and finally settle and discharge all matters in controversy between and among them arising out of the AONOCAPA and/or the Dispute; and

NOW THEREFORE, in consideration of the agreements, promises and undertakings hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and intending to be legally bound hereby, Castlton and the BPU agree as follows:

1. **Payment.** In addition to the other good and valuable consideration, Castlton shall pay and the BPU shall accept Fifty Thousand Dollars (\$50,000.00) (the "Payment"), to be paid in the following manner:

- Twenty thousand Dollars (\$20,000.00) to be paid in a single lump sum payment due and owing on or before February 1, 2013;
- Twelve (12) installment payments of Two Thousand Five Hundred Dollars (\$2,500.00) to be paid on the last day of each month for 12 months. The first installment payment shall be due and owing on or before February 28, 2013;
- Castlton shall be allotted a seven (7) day grace period following each due date for Castlton to timely remit the monthly installment payments of Two Thousand Five Hundred Dollars (\$2,500.00); and
- Payment shall be made payable to the Treasurer of the State of New Jersey, and delivered to:

Joseph J. Potena, Chief Fiscal Officer
Board of Public Utilities
44 South Clinton Avenue, 7th Floor
P.O. Box 350
Trenton, New Jersey 08625

2. **Default.** If Castlton does not make the Payment in the time and manner set forth in the terms above, the BPU shall be entitled to enter a judgment in the Superior Court of New Jersey, send the default to the State of New Jersey, Division of Revenue for handling and collection, or other appropriate forum against Castlton and to take such steps it deems reasonable to recover the Payment in one lump sum, less any monies already paid. If Castlton's check bounces when deposited, the act of the check bouncing results in an automatic default.

3. **Release.** In consideration of Payment, the Parties, on behalf of itself and its successors, past and present affiliates, parents, subsidiaries, divisions and assigns, together with their past and present principals, owners, shareholders, controlling persons, officers, directors, employees, successors, assigns, agents, insurers, and attorneys, and their respective heirs, executors, administrators, successors, assigns, agents, insurers, and attorneys, do hereby fully and forever release, remise, hold harmless and discharge each other and their attorneys, officers, employees, directors, heirs, personal representatives, executors, shareholders, agents, representatives, members, affiliates and subsidiaries, and the successors and assigns of any of them, from any and all claims, demands, damages, liabilities, obligations, accounts, covenants, agreements, judgments, reckonings, losses and undertakings of any nature and kind, both in law and in equity, from the beginning of the world to the Effective Date of this Release, whether known or unknown, suspected or unsuspected, claimed or concealed, fixed or contingent, for or by reason of anything arising from or relating to the AONOCAPA and/or the Dispute. Nothing in this Agreement shall be construed as an admission of guilt, fault or liability on the part of Castlton.

4. **Severability.** If any term or provision of this Agreement is determined by a court of competent jurisdiction to be illegal or unenforceable, all other terms and provisions of this Agreement will remain effective and will be enforced to the fullest extent permitted by applicable law.

5. **Any Amendment Shall Be In Writing.** This Agreement shall not be amended, altered, revised, modified, terminated, or changed except by a subsequent written agreement executed by all Parties hereto, and then such amendment shall be effective only in the particular instance and for the purpose for which it is given.

6. **No Reliance on Representations of Other Parties.** It is understood and agreed that, in connection with the negotiation and consummation of this Agreement, the Parties have relied and are relying wholly upon their own judgment, beliefs, knowledge, and the advice of counsel, and have not relied and are not relying upon any statement, representation, or conduct of the other or any other person or the various representatives, agents, employees, or attorneys of the other or any other person outside of this Agreement.

7. **Access to Legal Counsel.** The Parties acknowledge that they each have had an opportunity to consult with legal counsel of their choosing prior to entering into this Agreement, that they have relied upon the legal advice of such counsel, that the terms of this Agreement have been completely read and explained to them by their attorney(s) and that those terms are fully understood and voluntarily accepted by them. The Parties further stipulate and agree that they each have had an opportunity to participate in the negotiation and drafting of this Agreement and that any ambiguity in this Agreement shall not be construed for or against either party.

8. **Each Party to Bear Own Costs.** Each party shall bear its own costs, including but not limited to legal fees and expenses in connection with the Dispute, the matters set forth in this Agreement, and the negotiations for and preparation of this Agreement.

9. **Limits of Stipulation.** The Parties agree that the terms of this Agreement shall not be cited or otherwise used by or against each other or other parties or argued as binding or persuasive precedent in this or any other forum, except in any proceeding to enforce the Agreement or the terms and conditions thereof following the Board Order adopting this Agreement.

10. **Board Approval.** After this Agreement has been fully executed, it shall be presented to the New Jersey Board of Public Utilities ("Board") for Approval. Upon approval of this Agreement by the Board, it shall then constitute the entire agreement between Castlton and the BPU with respect to the AONOCOPA and shall operate as a complete and final disposition of the AONOCOPA subject only to the fulfillment of all of the provisions of this Agreement and subject to any reservation of rights set forth above.

11. **Miscellaneous Terms and Conditions**

(a) **Entire Agreement and Successors in Interest.** This Agreement contains the entire agreement among the Parties with regard to the matters set forth herein and supersedes any prior written or oral agreements, understandings or arrangements, and shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors, and assigns of each.

(b) **Execution in Counterparts.** This Agreement may be executed in several counterparts, and as so executed shall constitute an agreement, binding to the extent provided herein on the Parties, notwithstanding the fact that the Parties have not physically signed the signature page of the original or the same counterpart. Facsimile signatures shall be accepted and deemed to be original signatures and shall be binding on the parties upon signing.

(c) **Headings.** The headings contained in this Agreement are merely for convenience of reference and shall not under any circumstances affect the meaning or interpretation of this Agreement.

(d) **Authority.** The persons executing this Agreement represent and warrant that they have the authority to sign on behalf of their respective Parties.

(e) **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of New Jersey. The Superior Courts of the State of New Jersey shall be the sole and exclusive jurisdiction of any and all claims arising out of this Agreement.

IN WITNESS WHEREOF, we have hereunto set our hand and seals as of the date above written.

CASTLTON ENVIRONMENTAL CONTRACTORS. LLC

By William Jacobson

Print Name William Jacobson

Title President

Subscribed and sworn to before me this 8th day of JAN, 2013

[Signature]
Notary Public

EDWARD J. WAHID
Notary Public of New Jersey
My Commission Expires 3-22-2016

JEFFREY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY
ATTORNEY FOR THE STAFF OF THE
NEW JERSEY BOARD OF PUBLIC UTILITIES

By Jennifer S. Hsia

Print Name Jennifer S. Hsia

Print Title Deputy Attorney General

Subscribed and sworn to before me this 25 day of Jan, 2013

[Signature]
Notary Public

JENIQUE D. JONES
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 6/16/2013