



Agenda Date: 6/29/23
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 ALLEGED VIOLATIONS OF THE)
UNDERGROUND FACILITY PROTECTION ACT, N.J.S.A.)
48:2-73 TO 91 BY WYSHINSKI CONSTRUCTION LLC)
)
FINAL ORDER OF PENALTY)
ASSESSMENT)
DOCKET NO. GS23050286K)

Party of Record:

John Wyshinski, Wyshinski Construction LLC

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 Wyshinski Construction LLC (“Respondent”).

BACKGROUND

The Act established 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, or 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 and not more than \$2,500 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 \$200,000 per violation per day and not to exceed \$2,000,000 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).

PROCEDURAL HISTORY

After receiving a notification of damage to an underground facility occurring on October 17, 2022, Board Staff (“Staff”) investigated the damage and reviewed electronic reports submitted by New Jersey Natural Gas Company (“NJNG”). According to NJNG’s electronic reports, Wyshinski Construction LLC: 1) engaged in excavation; 2) commenced excavation less than three (3) business days after notifying the One-Call Damage Prevention System; and 3) damaged an underground facility operated by NJNG at 1900 Virginia Ave, Beach Haven, New Jersey.

Subsequently, pursuant to N.J.A.C. 14:2-6.4 and N.J.A.C. 14:7-2.2, on December 20, 2022, Staff served a Notice of Probable Violation (“NOPV”), via certified and regular mail, to Wyshinski Construction LLC, which included a blank Answering Certification. The NOPV advised the Respondent that failure to complete and file the Answering Certification with the Board or with Board Staff within 21 days of receipt of the NOPV might result in the issuance of a FOPA.¹ According to United States Postal Service, the Respondent received the NOPV on January 3, 2023. The certified mail was delivered and signed by an individual at the address of record for Wyshinski Construction LLC, and the regular mail was not returned. See Attachment A. As of the date of this Order, more than 21 days have elapsed, and the Respondent has not filed the Answering Certification. As such, 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).

DISCUSSION AND FINDINGS

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 Staff upon the issuance of a FOPA, and may order the payment of a Civil Administrative Penalty up to the maximum permitted by law. In determining the appropriate 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(b), including, but not limited to, the nature, circumstances and gravity of the violation, the degree of the violator’s culpability and any other factors as justice may require.

Having thoroughly reviewed the record in this matter, the Board **HEREBY FINDS** that the Respondent: 1) did not wait three business days to commence excavation after notifying the One-Call Damage Prevention System as required by N.J.S.A. 48:2-82(a); 2) damaged an underground facility operated by NJNG; 3) was provided the opportunity to challenge the alleged violation; and 4) failed to challenge the alleged violation by not filing the Answering Certification. The Board

¹ See N.J.A.C. 14:2-6.4(b)(5)(i); N.J.A.C. 14:2-6.5(a); N.J.A.C. 14:7-2.2(b)(5)(i); and N.J.A.C. 14:7-2.3(a).

FURTHER FINDS that the NOPV is just, reasonable, and in the public interest, and that four-thousand dollars (\$4,000) is an appropriate penalty for this matter.

As such, the Board **HEREBY ISSUES** this FOPA and **HEREBY ORDERS** that the Respondent shall be assessed a Civil Administrative Penalty of \$4,000. The Board **FURTHER ORDERS** that the Respondent shall pay the \$4,000 Civil Administrative Penalty no later than **July 16, 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

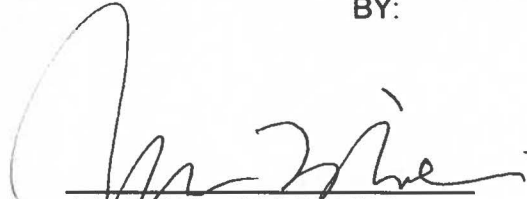
Please include a copy of this Order with your payment.

If the Respondent fails to make the required payment by July 16, 2023, the Board **HEREBY DIRECTS** Board Staff to docket this Order against the Respondent as a Judgment with the New Jersey Superior Court, or transfer the unpaid debt 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 July 6, 2023.

DATED: June 29, 2023

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



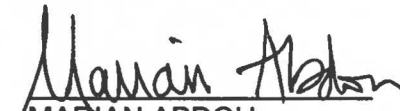
MARY-ANNA HOLDEN
COMMISSIONER



DR. ZENON CHRISTODOULOU
COMMISSIONER



CHRISTINE GUHL-SADOVY
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 THE ALLEGED VIOLATION OF THE UNDERGROUND FACILITY
PROTECTION ACT, N.J.S.A. 48:2-73 TO 91 BY WYSHINSKI CONSTRUCTION LLC

DOCKET NO. GS23050286K

SERVICE LIST

John Wyshinski
Wyshinski Construction LLC
234 N Hook Rd
Pennsville, NJ 08070

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

Sherri L. Golden, 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

Joseph Costa
Joseph.costa@bpu.nj.gov


Phillip Galka
phillip.galka@bpu.nj.gov

Ann Lang
ann.lang@bpu.nj.gov

Lauren Mattox
lauren.mattox@bpu.nj.gov

ATTACHMENT A

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS FOR BEST RESULTS

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY																
<ul style="list-style-type: none"> ■ 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. <p>1. Article Addressed to: Wyshinski Construction 281 N. Hook Rd Pennsville, NJ 08070</p> <div style="text-align: center;">  9590 9402 3824 8032 4429 98 </div> <p>2. Article Number (Transfer from service label) 7018 2290 0001 8035 1919</p>	<p>A. Signature X <i>Jalie Wyshinski</i> <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) _____ C. Date of Delivery _____</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes if YES, enter delivery address below: <input type="checkbox"/> No</p> <p>3. Service Type</p> <table style="width: 100%; font-size: small;"> <tr> <td><input type="checkbox"/> Adult Signature</td> <td><input type="checkbox"/> Priority Mail Express®</td> </tr> <tr> <td><input type="checkbox"/> Adult Signature Restricted Delivery</td> <td><input type="checkbox"/> Registered Mail™</td> </tr> <tr> <td><input type="checkbox"/> Certified Mail®</td> <td><input type="checkbox"/> Registered Mail Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Certified Mail Restricted Delivery</td> <td><input type="checkbox"/> Return Receipt for Merchandise</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery</td> <td><input type="checkbox"/> Signature Confirmation™</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery Restricted Delivery</td> <td><input type="checkbox"/> Signature Confirmation Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Insured Mail</td> <td></td> </tr> <tr> <td><input type="checkbox"/> Insured Mail Restricted Delivery or \$500</td> <td></td> </tr> </table>	<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®	<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail™	<input type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery	<input type="checkbox"/> Certified Mail Restricted Delivery	<input type="checkbox"/> Return Receipt for Merchandise	<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation™	<input type="checkbox"/> Collect on Delivery Restricted Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery	<input type="checkbox"/> Insured Mail		<input type="checkbox"/> Insured Mail Restricted Delivery or \$500	
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PS Form 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt

USPS Tracking®

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70182290000180351919

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

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Your item was delivered to an individual at the address at 12:37 pm on January 3, 2023 in PENNSVILLE, NJ 08070.

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[USPS Tracking Plus®](#)

Delivered

Delivered, Left with Individual

PENNSVILLE, NJ 08070
January 3, 2023, 12:37 pm

Feedback