



Agenda Date: 8/16/23  
Agenda Item: 6D

**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 BY APPLE CORING & )  
SAWING, LLC )  
FINAL ORDER OF PENALTY )  
ASSESSMENT )  
DOCKET NO. GS23070433K )

**Party of Record:**

**Michael Ingaro**, Apple Coring & Sawing, LLC

BY THE BOARD:

By this Order, the New Jersey Board of Public Utilities ("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 a probable violation of the Underground Facility Protection Act, N.J.S.A. 48:2-73 to 91 ("Act") by Apple Coring & Sawing, LLC ("Apple Coring" or "Respondent").

**BACKGROUND**

The Board has jurisdiction to oversee and enforce the provisions of the Act. The Act established the One-Call Damage Prevention System ("One-Call 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 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**

On December 11, 2021, Public Service Electric and Gas Company (“PSE&G”) filed a damage report concerning a natural gas facility damage that occurred on November 17, 2021. Based upon a review of the damage report and information provided, Board Staff (“Staff”) found that Apple Coring: 1) engaged in excavation as defined by the Act; 2) did not have a valid markout at the time of excavation in violation of N.J.S.A. 48:2-82(a); and 3) on November 17, 2021, damaged an underground natural gas facility operated by PSE&G at 81 Teaneck Rd, Ridgefield Park, New Jersey.

On February 10, 2022, pursuant to N.J.A.C. 14:2-6.4 and N.J.A.C. 14:7-2.2, Staff issued a Notice of Probable Violation (“NOPV”) to Apple Coring. The NOPV was served via regular and certified mail and included an Answering Certification. The NOPV advised Apple Coring 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 certified mail and Answering Certification was delivered on February 18, 2022. See Attachment 1. The regular mail was not returned. 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 Apple Coring received the certified mail.

To date, the Respondent has not filed the Answering Certification with the Board or with Staff and is, therefore, 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).

### **Notice of Settlement Conference**

On May 9, 2023, Apple Coring was also served with a Notice of Settlement Conference (“Notice”) pursuant to N.J.A.C. 14:2-6.5(b). See Attachment 2. The Notice was delivered via certified mail to Apple Coring in response to an Answering Certification returned by Respondent concerning an NOPV for a natural gas facility damage that occurred on April 13, 2022 at 305 Main Street in Little Falls, New Jersey.<sup>1</sup> An informal settlement conference was scheduled for May 25, 2023 to discuss the April 13, 2022 damage, as well as the November 17, 2021 damage at 81 Teaneck Rd, Ridgefield Park, New Jersey.

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<sup>1</sup> The NOPV sent to Respondent for the April 13, 2022 damage (One –Call Case Number GOC2022-0430) was returned within the required 21 days with a signed and dated Answering Certification. The Answering Certification was returned with new evidence, and as such, Staff is not recommending enforcement action at this time with regard to Case Number GOC2022-0430.

The Notice advised Apple Coring that failure to appear on the scheduled date and time would result in a default as provided in N.J.A.C. 14:2-6.6(a), and the allegations provided in the NOPVs would be deemed uncontested. According to United States Postal Service tracking, the certified mail and Notice of Settlement Conference was delivered on May 12, 2023. See Attachment 3. Apple Coring failed to appear on May 25, 2023, and to date, Staff has no record of a response from Respondent concerning the notice to appear. Respondent is, therefore, deemed in default pursuant to N.J.A.C. 14:2-6.6(a).

### **DISCUSSION AND FINDINGS**

As Respondent has failed to file an Answering Certification for the NOPV mailed on February 10, 2022, and failed to appear on May 25, 2023 for a scheduled settlement conference, the Respondent is deemed to be in default pursuant to N.J.A.C. 14:2-6.6(a). The Board is, therefore, not bound by any compromise or settlement offer made by Staff 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), including but not limited to the nature, circumstances and gravity of the violation, history of prior offenses, the degree of the violator's culpability and any other factors as justice may require.

After careful consideration of the above listed penalty factors, in this instance: 1) the nature of the violation was a causal factor directly related to the damage; 2) the damage involved a high consequence natural gas facility struck by mechanized equipment; 3) Apple Coring has a history of prior offenses, having failed to respond to prior Board letters of inquiry and NOPVs concerning other damages; and 4) while having previously demonstrated an understanding of the One-Call notification system by requesting markouts for similar jobs, Apple Coring created an unnecessary safety risk to persons and property by failing to have a valid markout on November 17, 2021.

As Respondent is deemed in default, and the Board is not bound by the initial Offer of Settlement, and after consideration of the penalty factors listed in N.J.A.C. 14:2-6.2(c), Staff recommended a penalty of \$10,000 for an alleged violation involving a high consequence natural gas facility damage. The Board, having had an opportunity to review the record in this matter, **HEREBY FINDS** the probable violation issued by Staff to be reasonable and in the public interest. The Board, having reviewed the alleged violation and the penalty assessment factors, **HEREBY FINDS** that an appropriate penalty for this matter is \$10,000.

As such, the Board **HEREBY ISSUES** this Final Order of Penalty Assessment and **HEREBY ORDERS** that the Respondent shall be assessed a Civil Administrative Penalty of \$10,000. The Board **FURTHER ORDERS** that the Respondent shall pay the Civil Administrative Penalty as set forth in this Order no later than September 3, 2023.

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

Send payment to:  
Chief Fiscal Officer  
Board of Public Utilities  
44 South Clinton Avenue, 1st Floor  
Post Office Box 350  
Trenton, New Jersey 08625  
Attn: One-Call Enforcement

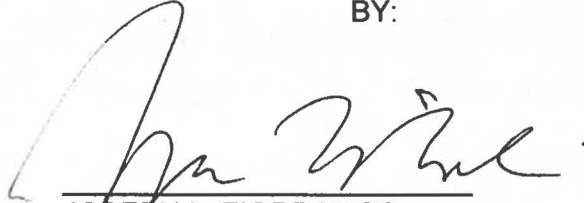
Please include a copy of this Order with your payment.

If the Respondent fails to make the required payment by September 3, 2023, the Board **HEREBY DIRECTS** 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 August 23, 2023.

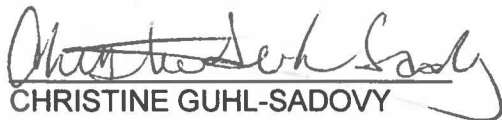
DATED: August 16, 2023

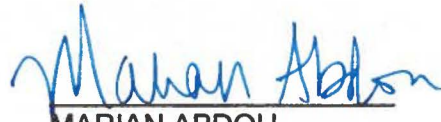
BOARD OF PUBLIC UTILITIES  
BY:

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

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

  
\_\_\_\_\_  
DR. ZENON CHRISTODOULOU  
COMMISSIONER

  
\_\_\_\_\_  
CHRISTINE GUHL-SADOVY  
COMMISSIONER

  
\_\_\_\_\_  
MARIAN ABDOU  
COMMISSIONER

ATTEST:   
\_\_\_\_\_  
SHERRIL 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 VIOLATIONS OF THE UNDERGROUND FACILITY  
PROTECTION ACT, N.J.S.A. 48:2-73 TO 91 BY APPLE CORING & SAWING, LLC

DOCKET NO. GS23070433K

SERVICE LIST

Michael Ingaro  
Apple Coring & Sawing, LLC  
350 Market St  
Kenilworth, NJ 07033

**Attorney General's Office**

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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](mailto:matko.ilic@law.njoag.gov)

**Board of Public Utilities**

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

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Lauren Mattox  
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# Attachment 1

Case#: GOC2021-1585

11/16/22, 12:54 PM

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# USPS Tracking®

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(<https://informedelivery.usps.com/>)

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### Delivered

**Delivered, Left with Individual**

KENILWORTH, NJ 07033  
February 18, 2022, 12:34 pm

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**Attachment 1****(Continued)**

State of New Jersey  
BOARD OF PUBLIC UTILITIES  
DIVISION OF RELIABILITY & SECURITY  
44 South Clinton Avenue, 1<sup>st</sup> Floor  
PO Box 350  
Trenton, NJ 08625-0350

**02/10/2022**

In the Matter of:

**Apple Coring & Sawing LLC  
350 Market St  
Kenilworth, NJ 07033**

## NOTICE OF PROBABLE VIOLATION AND OFFER OF SETTLEMENT

DATE OF PROBABLE VIOLATION: **11/17/2021**LOCATION: **81 Teaneck Rd, Ridgely Park, NJ 07660**OPERATOR OF THE FACILITY: **PSE&G (G)**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 #: **GOC2021-1585****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 **Apple Coring & Sawing LLC** ("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 , is 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**.

## Attachment 2

JOSEPH L. FIORDALISO  
PRESIDENT

MARY-ANNA HOLDEN  
COMMISSIONER

DIANNE SOLOMON  
COMMISSIONER

DR. ZENON CHRISTODOULOU  
COMMISSIONER



**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  
May 9, 2023

DIVISION OF RELIABILITY  
& SECURITY

BUREAU OF ONE-CALL  
& METER TESTING  
[BPUNECALL@BPU.NJ.GOV](mailto:BPUNECALL@BPU.NJ.GOV)

Attn: Michael Ingaro  
Apple Coring & Sawing, L.L.C.  
350 Market St.  
Kenilworth, NJ 07033

### NOTICE OF SETTLEMENT CONFERENCE

**Re: Probable Violation of the Underground Facility Protection Act**  
**Location of Probable Violation:** 305 Main St, Little Falls, NJ  
**Date of Probable Violation:** 4/13/2022  
**OC Case Number:** GOC2022-0430

Michael Ingaro:

**PLEASE TAKE NOTICE** that the New Jersey Board of Public Utilities ("Board") oversees and enforces the provisions of the Underground Facility Protection Act, N.J.S.A. 48:2-73, et seq ("Act"). Pursuant thereto, the Board is the State agency that oversees the One-Call Damage Prevention System ("One-Call System"), and enforces the rules and regulations promulgated pursuant to the Act.

**PLEASE TAKE FURTHER NOTICE** that on 5/11/2022 the Board issued you (or your company) a Notice of Probable Violation ("NOPV") citing alleged violation(s) of the Act at the above-referenced location. The Board is in receipt of your Answering Certification. Pursuant to N.J.A.C. 14:2-6.5(b), an informal settlement conference to discuss the 5/11/2022 NOPV, as well as the other alleged probable violations listed in Attachment A, is scheduled for the following date and time:

**Date:** 5/25/2023  
**Time:** 9:30:00 AM  
**Location:** Zoom Virtual Meeting

<https://us06web.zoom.us/j/83957231085?pwd=Zml1bFo3OEI4U04vMVNKWmVMV1RFUT09>

Representatives from the Board's Staff and the Office of the Attorney General will participate in the conference. In order to encourage full participation, please submit any requests for needed accommodations, such as interpreters or listening devices, 48 hours prior to the scheduled date and time, to the Board's Secretary at [board.secretary@bpu.nj.gov](mailto:board.secretary@bpu.nj.gov).

**PLEASE BE ADVISED** that failure to appear at the above date and time may result in the following:

1. A default as provided in N.J.A.C. 14:2-6.6(a);
2. The allegations provided in the NOPV will be deemed uncontested; and
3. The Board issuing a Final Order of Penalty Assessment assessing the maximum penalty authorized by law without further notice and without further opportunity to contest the penalty.

**PLEASE CONFIRM ATTENDANCE WITHIN SEVEN (7) DAYS OF RECEIPT OF THIS NOTICE VIA EMAIL AT:** [bpu.onecall@bpu.nj.gov](mailto:bpu.onecall@bpu.nj.gov)

Notice of Settlement Conference  
Apple Coring & Sawing, L.L.C.  
May 9, 2023

### ATTACHMENT A

| OC Case Number | Date of Damage | Location of Damage                 | Date of Notice of Probable Violation | Violation Cited     | Answering Certification Received |
|----------------|----------------|------------------------------------|--------------------------------------|---------------------|----------------------------------|
| GOC2022-0430   | 4/13/2022      | 305 Main St, Little Falls, NJ      | 5/11/2022                            | N.J.S.A. 48:2-82(a) | Yes                              |
| GOC2021-1585   | 11/17/2021     | 81 Teaneck Rd, Ridgefield Park, NJ | 2/10/2022                            | N.J.S.A. 48:2-82(a) | No                               |
| GOC2020-1552   | 10/22/2020     | 565 Tonnelle Ave, Jersey City, NJ  | 6/8/2022                             | N.J.S.A. 48:2-82(a) | No                               |
| EOC2021-0089   | 5/3/2021       | 206 Manor Ave, Cranford, NJ        | 1/24/2023                            | N.J.S.A. 48:2-82(a) | No                               |



# Attachment 3

## Notice of Settlement Conference

Case #: GOC2020-1552, GOC2022-0430, EOC2021-0089, GOC2021-1585

5/24/23, 6:46 PM USPS.com® - USPS Tracking® Results

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**Delivered**

**Delivered, Left with Individual**

KENILWORTH, NJ 07033

May 12, 2023, 11:38 am

●

**Departed USPS Regional Facility**

KEARNY NJ DISTRIBUTION CENTER

May 11, 2023, 5:08 pm