

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7127

Petition to impose penalties upon M & M)
Excavating re: probable Dig Safe violation)
involving a Village of Ludlow Electric Light)
Department utility line located in Ludlow,)
Vermont, on 7/6/04)

Order entered: 1/12/2006

I. INTRODUCTION

This docket concerns an alleged violation of Vermont's Underground Utility Damage Prevention System statute, 30 V.S.A. §§ 7001-7008 ("Dig Safe Statute"),¹ as set forth in a Notice of Probable Violation ("NOPV") brought by the Vermont Department of Public Service ("Department") against M & M Excavating ("M&M") pursuant to Public Service Board Rule 3.800. Specifically, on November 3, 2004, the Department filed an NOPV alleging that on July 6, 2004, M&M violated the provisions of 30 V.S.A. § 7004 with regard to certain underground facilities of the Village of Ludlow Electric Light Department ("Ludlow").² The NOPV sought Public Service Board ("Board") approval of recommended remedies (including a civil penalty) to which M&M initially objected. However, on December 7, 2005, M&M filed notice with the Board that it would agree to the remedies sought by the Department in the NOPV.³

II. FINDINGS

Pursuant to the provisions of 30 V.S.A. § 8, and based on the record and evidence before me, I present the following findings to the Board.

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1. This system is also referred to as "Dig Safe."
 2. Dig Safe Notice ("DSN") #148
 3. Letter of Mike O'Neil dated December 5, 2005.

1. The NOPV alleged that M&M violated the provisions of 30 V.S.A. § 7004 because it failed "to properly notify Dig Safe Systems of their proposed excavation activities." NOPV at 2.

2. The NOPV sought the following remedial action: imposition of a fine in the amount of Two Hundred Dollars (\$200.00) and M&M's attendance at a Department-approved underground damage prevention seminar. NOPV at 3.

3. M&M did not specifically deny the allegations in the NOPV, and has agreed to the remedies recommended by the Department. Letter of Mike O'Neil dated December 5, 2005.

III. DISCUSSION AND RECOMMENDATION

Because M&M has not contested the allegations in the NOPV and has agreed to the remedies sought by the Department therein, I recommend that the Board impose upon M&M a civil penalty in the amount of Two Hundred Dollars (\$200.00) and require an officer, director or employee of M&M who is actively involved in excavation activities to attend a Department-approved underground damage prevention seminar.

This Proposal for Decision has not been circulated to the parties pursuant to 3 V.S.A. § 811 because it does not adversely affect any party.

Dated at Montpelier, Vermont, this 12th day of January, 2006.

s/Judith M. Kasper
Judith M. Kasper, Esq.
Hearing Officer

IV. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The findings and recommendation of the Hearing Officer are hereby adopted.
2. Within fourteen (14) days of the date of this Order, M & M Excavating ("M&M") shall pay a civil penalty in the amount of Two Hundred Dollars (\$200.00) by submitting to the Public Service Board a check in that amount made payable to the State of Vermont.
3. An officer, director or employee of M&M who is actively involved in excavation activities shall attend an Underground Damage Prevention Seminar at such time and place as designated by the Vermont Department of Public Service.

Dated at Montpelier, Vermont, this 12th day of January, 2006.

<u>s/James Volz</u>)	PUBLIC SERVICE
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<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: January 12, 2006

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.