

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7134

Petitions to impose penalties upon J.A. McDonald, Inc. )  
re: probable Dig Safe violations involving (1) a Vermont )  
Gas Systems, Inc. utility line located in Shelburne, )  
Vermont, on 8/18/04; and (2) an Adelpia Cable )  
Communications utility line located in Shelburne, )  
Vermont, on 8/3/04 – )

Order entered: 7/12/2006

**FINDINGS AND ORDER**

**I. INTRODUCTION**

This docket concerns alleged violations of Vermont's Underground Utility Damage Prevention System statute, 30 V.S.A. §§ 7001-7008 ("Dig Safe Statute"), as set forth in Notices of Probable Violation ("NOPV") brought by the Vermont Department of Public Service ("Department") against J.A. McDonald, Inc. ("McDonald"), pursuant to Public Service Board Rule 3.800. This docket also concerns additional alleged violations of the Dig Safe Statute by McDonald for which no NOPV was issued. The alleged violations are as follows:

1. On December 14, 2004, the Department filed an NOPV alleging that, on August 18, 2004, McDonald violated the provisions of 30 V.S.A. § 7006b, with regard to certain underground facilities of Vermont Gas Systems ("VGS") located in Shelburne, Vermont (Dig Safe Notice ["DSN"] #169).
2. On July 13, 2004, the Department filed an NOPV alleging that, on August 3, 2004, McDonald violated the provisions of 30 V. S. A. § 7004, with regard to certain underground facilities of Adelpia Cable Company ("Adelpia") located in Shelburne, Vermont (DSN #195).
3. On July 7, 2005, the Department filed an NOPV alleging that on October 4, 2004, McDonald violated the provisions of 30 V.S.A. § 7006b, with regard to certain underground facilities of VGS, located in Shelburne, Vermont (DSN #183).

4. On July 7, 2005, the Department filed an NOPV alleging that on October 7, 2004, McDonald violated the provisions of 30 V.S.A. § 7006b, with regard to certain underground facilities of VGS, located in Shelburne, Vermont (DSN #185).
5. On May 12, 2006, the Department informed the Board that it had concluded that, on April 11, 2005, McDonald violated the provisions of 30 V.S.A. § 7006b with regard to a certain underground gas line located in Shelburne, Vermont. No NOPV was issued in connection with this alleged incident.<sup>1</sup>
6. On May 12, 2006, the Department informed the Board that it had concluded that, on April 18, 2005, McDonald violated the provisions of 30 V.S.A. § 7006b with regard to a certain underground cable located in Shelburne, Vermont. No NOPV was issued in connection with this alleged incident.<sup>2</sup>

Each NOPV sought Board imposition of specific penalties. In response to DSN #169 and DSN #195, McDonald filed an objection to the alleged violations and the penalties proposed by the Department. McDonald did not file a response to either DSN #183 or DSN #185.

On March 13, 2006, the parties filed a stipulation in full settlement of each of the incidents listed above.<sup>3</sup> Public Service Board ("Board") approval now is sought for that settlement stipulation.

For the reasons set forth below, I recommend that the Board approve the settlement stipulation filed by the parties.

## **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. Letter of Jim Porter, Esq., dated May 12, 2006, at 2. Mr. Porter's letter lists this incident as Notice of Probable Violation DPS case no. 805.

2. *Id.*, at 3. Mr. Porter's letter lists this incident as Notice of Probable Violation DPS case no. 806.

3. Stipulation and Agreement between the Vermont Department of Public Service and J.A. McDonald, Inc., dated January 30, 2006.

1. DSN #169 alleged that McDonald failed "to take reasonable precautions and avoid damage to underground facilities when excavating with the Safety Zone (18" on either side of a marked facility)." DSN #169 NOPV at 2.

2. DSN #195 alleged that McDonald "engaged in excavating activities outside the pre-marked area designated in the notice of proposed excavation to Dig Safe System and utility/company representatives." DSN #195 NOPV at 2.

3. DSN #183 alleged that McDonald failed "to take reasonable precautions and avoid damage to underground facilities when excavating with the Safety Zone (18" on either side of a marked facility)." DSN #183 NOPV at 2.

4. DSN #185 alleged that McDonald failed "to take reasonable precautions and avoid damage to underground facilities when excavating with the Safety Zone (18" on either side of a marked facility)." DSN #185 NOPV at 2.

5. Notice of Probable Violation DPS case no. 805 concerns an incident in which McDonald allegedly "had located the gas pipe at one end of excavation with a hand shovel - but did not check at the other side of the dig and damaged the steel gas pipe line with a 5' bucket." Letter of Jim Porter, Esq., dated May 12, 2006, at 2.

6. Notice of Probable Violation DPS case no. 806 concerns an incident in which McDonald's foreman allegedly "instructed operator to skim off the dirt thinking that cable was down deeper. Unfortunately it was just below the surface in that spot." Letter of Jim Porter, Esq., dated May 12, 2006, at 3.

7. With regard to DSN #169, the Department requested that the Board impose a monetary penalty and require McDonald to attend an underground damage prevention seminar approved by the Department. DSN #169 NOPV at 3.

8. With regard to DSN #195, DSN #183 and DSN #185, the Department requested that the Board impose a monetary penalty. DSN #195 NOPV at 3; DSN #183 NOPV at 3; DSN #185 NOPV at 3.

9. On March 13, 2006, the parties filed a Stipulation and Agreement ("Stipulation") that resolves all of the incidents that are the subject of this docket. Stipulation at 1-2; letter of Jim Porter, Esq., dated May 12, 2006, at 1.

10. The Stipulation provides that McDonald will pay a civil penalty in the amount of Two Thousand Dollars (\$2,000.00). Stipulation at 2.

11. The Stipulation provides that McDonald will research each incident of underground facility damage involving McDonald during the period 2003-2005, and that McDonald will file a report ("Report") with the Department and the Board citing the root cause of each facility damage incident and the situation that allowed it to occur. Stipulation at 2-3.

12. The Stipulation also provides that McDonald will develop and produce a comprehensive procedural manual, to be approved by the Department, for the prevention of underground facility damage. This manual will address all responsibilities related to excavating in Vermont, the practices of McDonald that allow for compliance with Board Rule 3.800 and the Dig Safe Statute, and methods to avoid incidents similar to those researched for the Report. Stipulation at 3.

13. The Stipulation further provides that McDonald will establish methods with a continuing schedule to provide Dig Safe training to its employees and contractors. Stipulation at 3.

### **III. CONCLUSION AND RECOMMENDATION**

The allegations made in this docket indicate that on six separate occasions McDonald engaged in actions that violated Vermont's Dig Safe statute. Most of these incidents involved an alleged failure to take reasonable precautions to prevent damage to underground facilities, and one incident involved alleged excavation in an area outside the boundaries that had been described in the notice given by McDonald to Dig Safe prior to its initiating excavation activities.

Although McDonald initially objected to the alleged violations and proposed penalties in the DSN #169 NOPV and the DSN #195 NOPV, it has now agreed with the Department to resolve through the Stipulation those two NOPVs, as well as the four additional alleged incidents outlined above.<sup>4</sup> McDonald has not affirmatively admitted any of the violations alleged by the Department; however, it has agreed to accept the remedial actions and penalties set forth in the

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4. The four additional alleged incidents are DSN #183, DSN #185, and the two alleged incidents for which NOPVs were not issued.

Stipulation. This approach toward resolving Dig Safe violation complaints is consistent with the Dig Safe statute and Public Service Board Rule 3.800.

The Stipulation filed by the parties imposes a financial penalty upon McDonald for its alleged failure to comply with the requirements of Vermont's Dig Safe statute, and this penalty falls within the parameters set by 30 V.S.A. § 7008.<sup>5</sup>

The Stipulation also imposes rigorous requirements upon McDonald. First, McDonald must research each incident of underground facility damage involving McDonald during the period 2003-2005 and file a report ("Report") with the Department and the Board citing the root cause of each facility damage incident and the situation that allowed it to occur. Second, McDonald must develop and produce a comprehensive procedural manual (to be approved by the Department) that will address all responsibilities related to excavating in Vermont, the practices of McDonald that allow compliance with Board Rule 3.800 and the Dig Safe Statute, and methods to avoid incidents similar to those researched for the Report. Finally, McDonald must establish methods with a continuing schedule to provide Dig Safe training to its employees and contractors. These requirements are designed to help McDonald understand the Dig Safe system as well as the importance of compliance with Dig Safe standards, and thereby enhance prevention of future underground utility facility mishaps. Therefore, I recommend that the Board approve the Stipulation.

This Proposal for Decision has not been circulated to the parties because they have waived their rights under 3 V.S.A. § 811 to file written comments or present oral argument thereon.<sup>6</sup>

Dated at Montpelier, Vermont, this 12<sup>th</sup> day of July, 2006.

s/Judith M. Kasper

Judith M. Kasper, Esq.  
Hearing Officer

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5. Stipulation at 2; 30 V.S.A. § 7008.

6. Stipulation at 4.

#### **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. The Stipulation and Agreement ("Stipulation") between J. A. McDonald, Inc. ("McDonald"), and the Vermont Department of Public Service ("Department"), dated January 30, 2006, is hereby approved.
3. Within ten (10) days of the date of this Order, J. A. McDonald, Inc., shall pay a civil penalty in the amount of Two Thousand Dollars (\$2,000.00) by submitting to the Public Service Board a check in that amount made payable to the State of Vermont. McDonald shall provide notice of this payment to the Department as directed in the Stipulation.
3. Within sixty (60) days of the date of this Order, McDonald shall research each incident of underground facility damage involving McDonald during the period 2003-2005, and shall file a report ("Report") with the Department and the Board citing the root cause of each facility damage incident and the situation that allowed it to occur.
4. Within sixty (60) days of the date of this Order, McDonald shall develop and produce a comprehensive procedural manual, to be approved by the Department, for the prevention of underground facility damage. This manual will address all responsibilities related to excavating in Vermont, the practices of McDonald that allow compliance with Board Rule 3.800 and the Dig Safe Statute, and methods to avoid incidents similar to those researched for the Report.
5. Within sixty (60) days of the date of this Order, McDonald shall establish methods with a continuing schedule to provide Dig Safe training to its employees and contractors.

Dated at Montpelier, Vermont, this 12<sup>th</sup> day of July, 2006.

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

OFFICE OF THE CLERK

FILED: July 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.*