

THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES

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GOVERNOR

KARYN E. POLITO
LIEUTENANT GOVERNOR

KATHLEEN A. THEOHARIDES
SECRETARY OF ENERGY
AND ENVIRONMENTAL AFFAIRS

ONE SOUTH STATION
BOSTON, MA 02110
(617) 305-3500

MATTHEW H. NELSON
CHAIR

ROBERT E. HAYDEN
COMMISSIONER

CECILE M. FRASER
COMMISSIONER

June 24, 2021

VIA EMAIL

Mark D. Marini, Secretary
Department of Public Utilities
One South Station, Fifth Floor
Boston MA 02110

Re: Onyx Corporation, D.P.U. 19-70

Dear Mr. Marini:

The Pipeline Safety Division ("Division") and Onyx Corporation have resolved the Dig Safe matter underlying the above-referenced adjudicatory hearing (D.P.U. 18-DS-0636). Attached please find a copy of the Consent Order and checks totaling \$15,000, signifying resolution of D.P.U. 18-DS-0636 (civil penalty \$5,000) and other matters pending before the Division. The parties request that the above-referenced adjudicatory hearing be closed without further action. Please contact me at laurie.e.weisman@mass.gov if you have any questions or need any additional information.

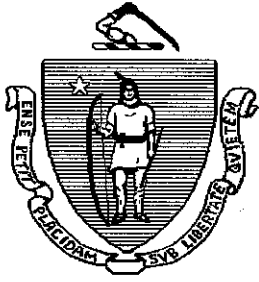
Sincerely,

A handwritten signature in blue ink that reads "Laurie Ellen Weisman".

Laurie Ellen Weisman
Division Counsel
Pipeline Safety Division
Department of Public Utilities

Enclosures

cc: Lauren Morris, Hearing Officer, Department of Public Utilities
Stacey G. Durkin, Treasurer, Onyx Corp.



The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

CONSENT ORDER

In the matter of Onyx Corporation

D.P.U. 17-DS-716

D.P.U. 18-DS-0636

D.P.U. 19-DS-0536

I. JURISDICTION

1. Pursuant to G.L. c. 82, § 40E and G.L. c. 164, § 105A, the Department of Public Utilities (“Department”) has authority to enforce violations of the provisions of G.L. c. 82, §§ 40 through 40E (“Dig Safe Law”), and 220 CMR 99.00 (“Dig Safe Regulations”).
2. The Department issued the Dig Safe Regulations to establish procedures for the determination and enforcement of violations of the Dig Safe Law and Dig Safe Regulations.
3. Pursuant to Delegation Order, D.P.U. 18-44-A (2018), the Commission of the Department delegated to the Department’s Pipeline Safety Division (“Division”) the administration and enforcement of the Dig Safe Law.
4. For purposes of this Consent Order, Onyx Corporation (“Respondent”) is an Excavator within the meaning of the Dig Safe Law and the Dig Safe Regulations.
5. Respondent has stipulated and consented to the issuance of this Consent Order with the attached Compliance Agreement.

II. DIG SAFE VIOLATIONS AND CIVIL PENALTY

Pursuant to the authority vested in it by D.P.U. 18-44-A, the Dig Safe Law, and the Dig Safe Regulations, the Division hereby orders that:

1. Regarding D.P.U. 17-DS-716, and based on information referenced in the June 8, 2018 Notice of Probable Violation (“NOPV”) issued by the Division and gathered during the informal review, the Division found that Respondent violated the Dig Safe Law or Dig Safe Regulations, or both, in connection with an excavation that occurred at 376 Main Street, Acton, Massachusetts, on or about November 1, 2017. Specifically, the Division had reason to believe that the Respondent failed to provide a proper initial notice to Dig Safe, Inc. prior to commencing the excavation, as required by the Dig Safe Law, G.L. c. 82, § 40A. The civil penalty for this matter is **\$1,000**.¹

¹ This matter was also the subject of Remedial Order, D.P.U. 19-01-03 (2019).

2. Regarding D.P.U. 18-DS-0636, and based on information referenced in the December 24, 2018 NOPV issued by the Division and gathered during the informal review, the Division found that Respondent violated the Dig Safe Law or Dig Safe Regulations, or both, in connection with an excavation that occurred at 134 Mount Auburn Street, Watertown, Massachusetts, on or about September 6, 2018. Specifically, the Division had reason to believe that the Respondent failed to employ reasonable precautions, such as by maintaining the marks or calling for remarking, to avoid damage to the underground facilities, as required by the Dig Safe Law, G.L. c. 82, § 40C. The civil penalty for this matter is **\$5,000**.²
3. Regarding D.P.U. 19-DS-0536, and based on information referenced in the September 18, 2020 NOPV issued by the Division, the Division finds that Respondent violated the Dig Safe Law or Dig Safe Regulations, or both, in connection with an excavation that occurred at 70 Sparks Street, Cambridge, Massachusetts, on or about August 12, 2019. The civil penalty for this matter is **\$12,000**.
4. Pursuant to G.L. c. 82, § 40E, and 220 CMR 99.14, the Division imposes upon Respondent a total civil penalty of **\$18,000**. A violation relating to a natural gas pipeline facility is subject to a civil penalty of not more than \$200,000 each day, up to a maximum civil penalty of \$2,000,000 for a related series of violations. 49 U.S.C. § 60122(a)(1); G.L. c. 164, § 105A; 220 CMR 99.14(1). A violation relating to any other underground facility is subject to a civil penalty of \$1,000 for a first offense, and between \$5,000 and \$10,000 for any subsequent offense within twelve consecutive months. G.L. c. 82, § 40E; 220 CMR 99.14(2).
5. Respondent shall pay the civil penalty ordered herein by remittance to the Division checks or money orders totaling **\$18,000** and made payable to the Commonwealth of Massachusetts. Details of these payments are contained in the Compliance Agreement.

III. RESPONDENT REQUIREMENTS

1. **Respondent shall sign the Stipulation below and return this complete document to the Division along with an initial payment of \$3,000. This initial payment shall be followed by five payments of \$3,000, one payment every 30 days, for a total of \$18,000 as set forth in the Compliance Agreement.**
2. All submissions by Respondent in accordance with this Consent Order shall be addressed to:

Attention: Damage Prevention Program
Pipeline Safety Division
Department of Public Utilities
One South Station
Boston, MA 02110

² This matter is also the subject of adjudicatory matter Onyx Corporation, D.P.U. 19-70, currently pending before the Department.

IV. STIPULATED TERMS

Respondent, through the signature below, by the person to whom this Consent Order is issued or a duly authorized representative, acknowledges agreement to the terms contained herein, pursuant to 220 CMR 99.13(1). In signing this Order, Respondent neither admits nor denies that a violation of any Department or federal pipeline safety law or regulation occurred in relation to the above-noted matters. Further, Respondent agrees to issuance of this Consent Order and stipulates to the following:

1. Respondent, by signing the Stipulation, hereby waives:
 - (a) All rights to informal review pursuant to 220 CMR 99.10;
 - (b) All rights to an adjudicatory hearing pursuant to 220 CMR 99.10(3);
 - (c) Any and all procedural rights available in connection with the issuance of the Consent Order;
 - (d) All rights to seek any type of administrative or judicial review of the Consent Order; and
 - (e) Any and all rights to challenge or contest the validity of the Consent Order.
2. Respondent expressly acknowledges that neither Respondent nor the Division has any intention to enter into a contract.
3. The terms and provisions of this Consent Order and Stipulation shall be binding upon, and inure to the benefit of, Respondent and the Division and their successors in interest.
4. Nothing in these Stipulated Terms shall preclude any proceedings brought by the Department to enforce the terms of the Consent Order, and nothing in these Stipulated Terms constitute, nor shall Respondent contend that they constitute, a waiver of any right, power, or authority of any other representative of the Commonwealth or an agency thereof to bring other actions deemed appropriate.

V. FINAL ORDER

1. This Consent Order and Stipulation is intended to be, and shall be construed to be, a final order of the Department issued pursuant to G.L. c. 25, § 5, having the force and effect of a remedial order, pursuant to 220 CMR 99.13(2), and expressly does not form, and may not be considered to form, a contract binding on the Division, the Department, or the Commonwealth of Massachusetts.
2. The terms of this Consent Order and Stipulation, including this paragraph, are not subject to amendment or modification by any extraneous expression, prior agreement, or prior arrangements between the Division and the Respondent, whether oral or written.

By Order of the Division



Richard Enright, Director

Date: June 16, 2021

Pipeline Safety Division
Department of Public Utilities

The undersigned, duly authorized, stipulates to and acknowledges agreement to the terms herein.

Onyx Corporation

By: Stacey G Durkin
Print name: STACEY G. DURKIN
Title: TREAS

Date: 11-20-2020

RECEIVED

DEC 16 2020

Department of Public Utilities
Pipeline Engineering-Dig Safe Division

COMPLIANCE AGREEMENT
BETWEEN THE DEPARTMENT OF PUBLIC UTILITIES
AND ONYX CORPORATION

D.P.U. 17-DS-716/D.P.U. 18-DS-0636/D.P.U. 19-DS-0536

Onyx Corporation (“Respondent”) agrees to take the following actions within the specified time periods:

1. Respondent shall return the signed Consent Order with a check or money order made payable to the Commonwealth of Massachusetts in the amount of **\$3,000**. This payment is to be followed by **five additional payments of \$3,000**, each made within **30 days of the prior payment**, for a total civil penalty of **\$18,000**. The final payment shall be made no later than May __, 2021.
2. Within 30 days of the effective date of this Order, Respondent shall provide the Division with written evidence regarding its internal Dig Safe and damage prevention training program.
3. Respondent shall ensure that all employees or contractors performing excavation work on its behalf are properly licensed to perform such work.
4. Respondent shall promptly respond to all correspondence from the Division regarding any future damage prevention enforcement matters.

Failure to comply with any of the above-noted items may subject the Respondent to further enforcement actions and civil penalties.

ONYX CORPORATION • 18 Wetherbee Street • Acton, MA 01720-5526

20149

MACOMM Invoice	COMMONWEALTH OF MASS Date	Description	Amount	Deductions	Net
DPU violat	11-01-20	DPU Consent order	3000.00	.00	3000.00

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DEC 16 2020

Department of Public Utilities
Pipeline Engineering-Dig Safe Division

RECEIVED

DEC 16 2020

Department of Public Utilities
Pipeline Engineering-Dig Safe Division

11-21-20 20149 3000.00 .00 3000.00

ONYX
CORPORATION
18 Wetherbee Street • Acton, MA 01720-5526
(978) 263-1185

Rollstone Bank & Trust
53-7073/2113

20149

VOID AFTER 90 DAYS

20149

AMOUNT

Pay: *****Three thousand dollars and no cents

November 21, 2020

\$*****3,000.00

TO THE
ORDER
OF

COMMONWEALTH OF MASS

DATE

Stacey Dun
SIGNATURE AREA CONTAINS SECURITY MICROPRINTING

DPU 17-DS 716
DPU 18 DS 0636
DPU 19 DS 0536
⑆020149⑆ ⑆211370736⑆ 88 104449 9⑆

Details on back
Security Features Included

ONYX CORPORATION 18 Wetherbee Street, Andover, MA 01720-0028

21190

MACOMM Invoice	COMMONWEALTH OF MASS Date	Description	Amount	Deductions	Net
	11-01-20	DPU Consent order	3000.00	.00	3000.00

DAU 17 DS 716
18 DS 0636
19 DS 0536

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MAY 26 2021

Department of Transportation
Public Engineering-Div. Safe Division

5-07-21

21190

3000.00

.00

3000.00

ONYX
corporation

18 Wetherbee Street • Andover, MA 01720-0028
(978) 263-1100

RollStone Bank & Trust
53-70732112

21190

VOID AFTER 90 DAYS

21190

Pay:Three thousand dollars and no cents
May 7, 2021 \$.....3,000.00

COMMONWEALTH OF MASS

TO THE ORDER OF

James Dur

⑆021190⑆ ⑆211370736⑆ 88 10449 9⑆

ONYX CORPORATION · 18 Wetherbee Street · Acton, MA 01720-5525

20677

MACOMM Invoice	COMMONWEALTH OF MASS Date	Description	Amount	Deductions	Net
	11-01-20	DPU Consent order	3000.00	.00	3000.00

DPU 17 DS 716
 18 DS 0636
 19 DS 0536

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 FEB 24 2021
 Deposit
 Posting Error

2-14-21 20677 3000.00 .00 3000.00

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ONYX
 corporation
 18 Wetherbee Street · Acton, MA 01720-5525
 (978) 263-1185

Rollstone Bank & Trust
 53-7073/2113

20677

VOID AFTER 90 DAYS

20677

AMOUNT

Pay: *****Three thousand dollars and no cents
 February 14, 2021 \$*****3,000.00

TO THE ORDER OF

COMMONWEALTH OF MASS

DATE

Handwritten Signature
 SECURITY AREA CONTAINS SECURITY MICROPRINTING

⑆020677⑆ ⑆211370736⑆ 88 104449 9⑆

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ONYX CORPORATION - 18 Wetherbee Street - Acton, MA 01720-5525

20635

MACOMM COMMONWEALTH OF MASS
Invoice Date Description

Amount Deductions Net
3000.00 .00 3000.00

DPU violat 11-01-20 DPU Consent order

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DPU 17 DS 716
18 DS 0636
19 DS 0536

FEB 17 2021

Department of Public Justice
Pipeline Engineering Div. Safe Division

2-06-21 20632 3000.00 .00 3000.00

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ONYX
corporation
18 Wetherbee Street - Acton, MA 01720-5525
(978) 263-1165

Rollstone Bank & Trust
63-70732113

20635

VOID AFTER 90 DAYS 20632

AMOUNT

Pay: *****Three thousand dollars and no cents

February 6, 2021 \$*****3,000.00

DATE

TO THE
ORDER
OF
COMMONWEALTH OF MASS

Stacy D...
SIGNATURE AREA FOR SECURITY MICROPRINTING

#020635# 1211370736: 88 104449 9#

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ONYX CORPORATION - 18 Wetherbee Street - Acton, MA 01720-5526

21027

MACOMM COMMONWEALTH OF MASS
Invoice Date Description

Amount Deductions Net
3000.00 .00 3000.00

DPU violat 11-01-20 DPU Consent order

17 DS 716
18 DS 0636
19 DS 0536

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APR 21 2021

Department of Public Utilities
Pipeline Engineering-Dig Safe Division

4-02-21 21027 3000.00 .00 3000.00

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Rollstone Bank & Trust
53-70732113

21027

VOID AFTER 90 DAYS 21027

AMOUNT

Pay:Three thousand dollars and no cents

April 2, 2021 \$*****3,000.0

DATE

COMMONWEALTH OF MASS

TO THE ORDER OF

Shirley Du
AREA CONTAINS SECURITY MARKING

DPU
DPU
DPU

17-DS-716
18-DS-0636
19-DS-0536

021027# 12113707361: 88 104449 9#

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