



THE COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF PUBLIC UTILITIES

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**DIG SAFE  
INFORMAL REVIEW DECISION**

ELECTRONIC MAIL - RETURN RECEIPT REQUESTED

July 30, 2022

D.P.U. 21-DS-0039U

Angelina Franklin  
Dig It Construction, LLC  
P.O. Box 268  
South Dennis, MA 02660

Dear Ms. Franklin:

On **March 28, 2022**, the Pipeline Safety Division (“Division”) of the Department of Public Utilities (“Department”), pursuant to 220 CMR 99.09(1), issued **Dig It Construction, LLC** (“Respondent”) a Notice of Probable Violation (“NOPV”), stating that the Division had reason to believe that on or about **January 25, 2021**, Respondent performed excavations at **7 Bulow Road, Hingham**, Massachusetts, without complying with the applicable provisions of G.L. c. 82, §§ 40 through 40E (“Dig Safe Law”) or 220 CMR 99.00 (“Dig Safe Regulations”), or both.

Specifically, the NOPV stated that the Division had reason to believe that Respondent **failed to maintain the designation marking of underground facilities in violation of 220 CMR 99.07(3), failed to perform the excavation using non-mechanical means or failed to employ reasonable precautions to**

**avoid damage to the underground facilities in violation of the Dig Safe Law, G.L. c. 82, § 40C and 220 CMR 99.07(3), and failed to send a Dig Safe Violation Report within 30 days of the knowing about the incident as required by 220 CMR 99.07(10).** The NOPV further stated that Respondent had a right to reply in writing within 30 days, or to appear before a Division investigator at a virtual informal conference. Respondent filed a written reply to the NOPV ("Response"), which we received on **April 18, 2022**.

The evidence includes a Dig Safe Violation Report ("DSVR") provided by **National Grid** and the following items: **a copy of the Dig Safe ticket, pre-excavation photographs, photographs of the damage, and mark-out records.** The DSVR indicates that Respondent was digging to install a water main and services when it struck and damaged a gas service stub with a backhoe. The DSVR also states that the markings had not been maintained and that Respondent failed to request a remark. In its Response, Respondent states that it denies the allegations because it was working on Bulow *Place* and not Bulow *Road* at the time of the incident and provided supporting documentation. The Division notes that Bulow Place and Bulow Road are two adjoining streets where Respondent was executing a project. The Dig Safe ticket indicates that excavation was to take place at the "entire length of Bulow Pl & incl. intr of Bulow Rd." Although the DSVR indicates that the damage occurred on Bulow Road, photographs of the damage and the markout appear to show that it occurred on Bulow Place. This is confirmed by the Daily Construction Site Report, submitted by the Respondent, which states that it "hit an unmarked gas service crossing at 6 Bulow Place". Respondent did not substantively dispute the allegations but instead pointed out a typographical error in the DSVR which has no bearing on whether the violation occurred as described. There is no dispute, and Respondent does not deny, that Respondent caused the damage on Bulow Place and had failed to maintain marks at that location. Photographs show that the area where the damage occurred had been previously marked and photographs of the damage appear to show that the marks were absent at the time of

excavation. Photographs also show Respondent's excavator at the location of the damage. Respondent does not contest that it failed to file a DSVR within 30 days of this incident. Therefore, based on a review of all the evidence in this investigation, including the information that Respondent provided in response to the NOPV, the Division finds that Respondent violated G.L. c. 82, § 40C and 220 CMR 99.07(3), and failed to send a Dig Safe Violation Report within 30 days of the knowing about the incident as required by 220 CMR 99.07(10).

To resolve this matter, you or a duly authorized representative should sign and return the enclosed Consent Order **within 30 days of the date of this decision**. 220 CMR 99.13(1). The Consent Order must be accompanied by a check or money order for **\$15,000** made payable to the Commonwealth of Massachusetts.

If you wish to dispute the Division's decision, you have the right to request an adjudicatory hearing by submitting a written request within 14 days of the date of this decision to Mark D. Marini, Department Secretary. **Until further notice, the Department requires that the written request be submitted in electronic format to [dpu.efiling@mass.gov](mailto:dpu.efiling@mass.gov).**<sup>1</sup>

An adjudicatory hearing is a formal proceeding as defined by G.L. c. 30A and is conducted by a Department hearing officer pursuant to 220 CMR 1.00. The adjudicatory hearing provides an opportunity for the Department to review the facts and circumstances of the alleged Dig Safe violation(s). The amount of the civil penalty sought at an adjudicatory hearing may be higher than the fine amount stated herein. At the adjudicatory hearing, Respondent must be represented by an attorney, unless Respondent is an individual representing him or herself.

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<sup>1</sup> If you do not have access to email, please call Mark D. Marini at 617-305-3618 in advance of the 14-day deadline to make other arrangements.

Failure to request an adjudicatory hearing constitutes a waiver of Respondent's right to contest the decision and authorizes the Department, without further notice to Respondent, to hold Respondent liable to pay the civil penalty through the issuance of a Remedial Order.<sup>2</sup> 220 CMR 99.10(3).

If you have any questions regarding this matter, please direct your inquiries to  
DPU.DamagePrevention@mass.gov.

Very truly yours,

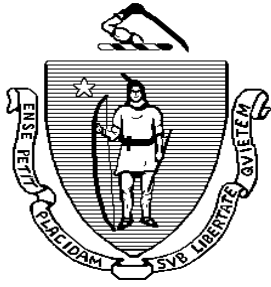


Richard Enright, Director  
Pipeline Safety Division  
Department of Public Utilities

Enclosure: Consent Order

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<sup>2</sup> A Remedial Order is a final decision of the Department within the meaning of G.L. c. 25, § 5, subject to review by the Massachusetts Supreme Judicial Court, and effective upon issuance unless stayed, suspended, modified, or rescinded. 220 CMR 99.12.



# The Commonwealth of Massachusetts

## DEPARTMENT OF PUBLIC UTILITIES

### CONSENT ORDER

In the matter of **Dig It Construction, LLC**

D.P.U. **21-DS-0039U**

#### **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-B (2020), 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, Dig It Construction, LLC (“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.

#### **II. DIG SAFE VIOLATIONS AND CIVIL PENALTY**

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

1. Based on information referenced in the **March 28, 2022** Notice of Probable Violation (“NOPV”) issued by the Division and gathered during the informal review, the Division finds that Respondent violated the Dig Safe Law or Dig Safe Regulations, or both, in connection with an excavation that occurred at **7 Bulow Road, Hingham, Massachusetts**, on or about «Incident\_Date». The NOPV is attached hereto and made a part hereof.
2. Pursuant to G.L. c. 82, § 40E, and 220 CMR 99.14, the Division imposes upon Respondent a civil penalty of **\$15,000**. 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).

3. Respondent shall pay the civil penalty ordered herein by remittance to the Division of a check or money order in the amount of **\$15,000** made payable to the Commonwealth of Massachusetts.

### **III. RESPONDENT REQUIREMENTS**

1. **Respondent shall sign the Stipulation below and return this complete document to the Division along with payment of the civil penalty.**
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, 5<sup>th</sup> Floor  
Boston, MA 02110

### **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 an adjudicatory hearing pursuant to 220 CMR 99.10(3);
  - (b) Any and all procedural rights available in connection with the issuance of the Consent Order;
  - (c) All rights to seek any type of administrative or judicial review of the Consent Order; and
  - (d) 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

\_\_\_\_\_ Date: \_\_\_\_\_  
Richard Enright, Director  
Pipeline Safety Division  
Department of Public Utilities

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

**Dig It Construction, LLC**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Print name: \_\_\_\_\_  
Title: \_\_\_\_\_