FILED
SEP 14 2022
EXECUTIVE SECRETARY
G.P.S.C.

COMMISSIONERS:
TRICIA PRIDEMORE, CHAIRMAN
TIM G. ECHOLS
LAUREN "BUBBA" McDONALD
JASON SHAW
FITZ JOHNSON

REECE MCALISTER
EXECUTIVE DIRECTOR

SALLIE TANNER
EXECUTIVE SECRETARY

MAILED
9-20-2022

# Georgia Public Service Commission

(404) 656-4501
(800) 282-5813

244 WASHINGTON STREET, S.W.
ATLANTA GEORGIA 30334-5701

FAX: (404) 656-2341
psc.ga.gov

**DOCKET NO. 43076 Earth's Products, L.L.C. also d/b/a Earth's PSC Case No. 20-170 62**

## FINAL ORDER

DOCKET#43076
DOCUMENT#191553

## APPEARANCES:

Georgia Public Service Commission Staff: Janey Chauvet

Earth's Products, L.L.C. also d/b/a Earth's: No appearance

## PROCEDURAL HISTORY

On June 16, 2021 the Georgia Public Service Commission ("Commission") conducted an evidentiary hearings in order to hear and receive evidence of an alleged violation of the Georgia Utilities Facility Protection Act ("GUFPA") by the Respondent, Earth's Products, L.L.C. also d/b/a Earth's. No appearance was entered by the Respondent at that hearing. Subsequent to the hearing, the Commission entered an order on August 17, 2021 finding that the Respondent's actions had indeed violated O.C.G.A. §§ 25-9-6(a) Failure to contact the UPC before commencing excavation or blasting with mechanized equipment. 25-9-8(e) Failure to notify both the UPC and the affected utility facility owner/operator after a damage occurs(collectively, the "Violations"). The Commission ordered that the Respondent be assessed a penalty pursuant to O.C.G.A. § 25-9-13(h)(7). A penalty in the amount of $8,500 was ordered and the Respondent was provided an opportunity to mitigate $6,000 of the penalty by completing a Commission approved damage prevention training program (the "Original Civil Penalty").

On December 21, 2021, the Commission issued a Procedural and Scheduling Order to address Respondents failure to have complied with the Commission's Final Orders dated. Specifically, the Commission asserted the following:

1. The Commission has the power and authority to enforce the provisions of O.C.G.A. T46, Ch 2-91.
2. The Commission issued Orders on August 17, 2021, requiring payment of a civil penalty and/or completion of a damage prevention-training program for Respondent committing the Violations. Respondent has neither paid the civil penalty nor completed a damage prevention course, thus violating the terms of the Order issued by the Commission.

A proceeding was held in accordance with O.C.G.A. § 46-2-91 on March 30, 2022.

## FINDINGS AND CONCLUSIONS

Based upon the testimony of all witnesses, the documentary evidence at the evidentiary hearing, and an assessment of the credibility of the witnesses and evidence at this proceeding, the Commission hereby makes the following findings of fact and conclusions of law with respect to the issues involved in this case:

Marilyn Morris-Simmons testified in this proceeding on behalf of Commission Staff. Ms. Correa is the assistant to the GUFPA Program Managers for the Commission's Pipeline and Facilities Safety Section and is generally responsible for the delivery of consent agreements, Notice of Hearings, and Final Orders to probable violators of the GUFPA and/or O.C.G.A. § 46-2-91.

During the hearing Staff entered Exhibits 3 and 4 into evidence. Exhibit 3 was a chart that detailed information regarding the Final Order, Notice of Hearing and the date of service for both the Final Order and Notice of Hearing. Exhibit 4 included copies of the Final Order, Notice of Hearing and supporting documents for the date of service for both the Final Order and Notice of Hearing.

On August 17, 2021, the Commission issued a Final Order in this docket finding that the Respondent committed the Violations, and provided Respondent thirty (30) days from the date of the Final Order to pay the Original Civil Penalty.

Ms. Morris-Simmons testified that the Commission's Final Order was mailed to Respondents by regular mail. Per Ms. Morris-Simmons, the regular mail copy of the Final Order was not returned.

Ms. Morris-Simmons testified that as of the date of this proceeding, Respondents had failed to comply with the Order of the Commission in this Docket. Specifically, Respondents had failed to pay the penalty and/or to mitigate a portion thereof through damage prevention training class and further, Respondents had not given any adequate explanation therefor.

Ms. Morris-Simmons testified that Respondents were provided notice of this proceeding by both regular and certified mail. The certified mail receipt and signed return receipt indicating the delivery of the Notice of Hearing and Procedural and Scheduling Order for this proceeding were entered into evidence as part of Staff Exhibit #4. Per Ms. Morris-Simmons, the regular mail copy of the Notice of Hearing was not returned.

As of the date of this proceeding, Respondents had not given any adequate explanation for having failed to comply with the Commission's Final Order of August 17, 2021.

Based upon the facts and circumstances presented in this case, and in accordance with O.C.G.A. § 46-2-91(b), the Commission finds that Respondents have failed to comply with a lawful Order of this Commission.

## PENALTIES

Pursuant to O.C.G.A. § 46-2-91(a), the Commission has authority to impose a civil penalty not exceeding $15,000.00 for such violation of a Commission Order and an additional penalty not to exceed $10,000 for each day during which such violation continues. The Commission concludes that it is appropriate to impose a civil penalty against Respondents in the amount of **fifteen thousand dollars ($15,000)** for violation of O.C.G.A. § 46-2-91(a). This penalty is *in addition to* the Original Civil Penalty.

**WHEREFORE IT IS ORDERED,** that pursuant to O.C.G.A. § 46-2-91(a) The Commission concludes that it is appropriate to impose a civil penalty against Respondents in the amount of **fifteen thousand dollars ($15,000)** for violation of O.C.G.A. § 46-2-91(a). Respondents shall pay such civil penalty to the Commission, in certified funds, within thirty (30) days from the date of this Order.

**ORDERED FURTHER,** this penalty is *in addition to* those penalties already assessed by previous Commission Orders in this Docket.

**ORDERED FURTHER,** all findings, conclusions, and decisions contained within the preceding sections of this Order are hereby adopted as findings of fact, conclusions of law, and decisions of regulatory policy of this Commission.

**ORDERED FURTHER,** any motion for reconsideration, rehearing or oral argument, or any other motion shall not stay the effective date of this Order, unless otherwise ordered by this Commission.

**ORDERED FURTHER,** jurisdiction over this matter is expressly retained for the purpose of entering such further Order or Orders as this Commission may deem just and proper.

The above by action of the Commission in Administrative Session on the 5th day of July, 2022.

Sallie Tanner
**Sallie Tanner**
**Executive Secretary**

9-14-22
Date

**Tricia Pridemore**
**Chairman**

9/14/22
Date

**BEFORE THE PUBLIC SERVICE COMMISSION**
**STATE OF GEORGIA**

| | | |
|---|---|---|
| **Earth's Products, L.L.C. also d/b/a Earth's** | ) | **DOCKET NO. 43076** |
| | ) | **PSC Case No. 20-170 62** |
| | ) | |
| | ) | |

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Final Order** was filed with the Executive Secretary of the Georgia Public Service Commission, and a copy of same was served upon all parties listed below via hand or electronic delivery as indicated, or by depositing same in the United States mail with sufficient postage thereon to insure delivery and addressed as follows:

| | |
|---|---|
| Sallie Tanner, Executive Secretary<br>Georgia Public Service Commission<br>244 Washington Street, SW<br>Atlanta, GA 30334<br>(BY HAND) | Earth's Products, L.L.C. also d/b/a Earth's Products Demo, L.L.C.<br>Attn: Ken Finlon<br>4024 Sudderth Road<br>Buford, GA 30518 |
| Janey Chauvet<br>Georgia Public Service Commission<br>244 Washington Street, SW<br>Atlanta, GA 30334<br>(BY ELECTRONICALLY) | Crystal Garin, registered agent c/o<br>Earth's Products, L.L.C.<br>7601 Sprouts Springs Road<br>Buford, GA 30519 |

This 20th day of September 2022.

Maritza Rivera
Clerk
Georgia Public Service Commission
244 Washington Street, SW
Atlanta, Georgia 30334

COMMISSIONERS:
TRICIA PRIDEMORE, CHAIRMAN
TIM G. ECHOLS, VICE-CHAIRMAN
FITZ JOHNSON
LAUREN "BUBBA" McDONALD
JASON SHAW

FILED
EXHIBIT 4
FEB 10 2022
EXECUTIVE SECRETARY
G.P.S.C.

REECE McALISTER
EXECUTIVE DIRECTOR

SALLIE TANNER
EXECUTIVE SECRETARY

# Georgia Public Service Commission

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FAX: (404) 656-2341
www.psc.state.ga.us

**BEFORE THE GEORGIA PUBLIC SERVICE COMMISSION**
**STATE OF GEORGIA**

DOCKET# 43076
DOCUMENT# 188697

MAILED
2-15-2022

**IN THE MATTER OF:**

**GUFPA CASE NO. PSC 20-17062**

**DOCKET NO. 43076**

**Earth's Products, L.L.C. also d/b/a Earth's Products Demo, L.L.C.**
**Respondent**

## NOTICE OF HEARING AND PROCEDURAL AND SCHEDULING ORDER

To: **Earth's Products, L.L.C. also d/b/a Earth's Products Demo, L.L.C.**
**Attn: Ken Finlon**
**4024 Sudderth Road**
**Buford, GA 30518**

You are hereby notified that the Georgia Public Service Commission ("Commission") will hold a hearing in the Hearing Room of the Commission, located at 244 Washington Street, S.W., Atlanta, Georgia 30334-5701, commencing at **10:00 o'clock a.m. on the March 30, 2022**, and continuing on such further days as the Commission deems necessary until completed, for the purpose of hearing evidence regarding alleged violations of O.C.G.A. T.46, Ch.2-91, as set forth herein under the heading titled "Matters Asserted" that, if proven, may result in the imposition of a penalty against Earth's Products, L.L.C. also d/b/a Earth's Products Demo, L.L.C. (also referred to herein as "Respondent") in an amount not to exceed $15,000 per violation plus $10,000 for each day that the Respondent is found to be in violation of the Commission's Order. Notification of the following matters is hereby given:

## LEGAL AUTHORITY FOR HEARING

This hearing will be held under the authority and jurisdiction conferred upon the Commission by O.C.G.A. § 46-2-91; and in accordance with the Georgia Administrative Procedure Act, O.C.G.A. § 50-13, and the Rules and Regulations of the Commission.

**EXHIBIT 4**

## PROCEDURES

The following are the procedures to which any party to this hearing should adhere with respect to this docket:

1. **Intervention:**

   (a) Any person or party upon whom a statute does not confer an unconditional right to intervene must file an application to intervene within thirty (30) days following the first published notice of the proceedings.

   (b) Applications must clearly specify the docket in which the applicant seeks to intervene. In addition to the requirements prescribed in O.C.G.A. § 46-2-59 for applications for leave to intervene, the applicant must: (1) identify other intervening parties or intervening party applicants whose interest is similar to that of the applicant along with an explanation of why the identified intervening parties or intervening party applicant will not adequately represent the applicant's interest: and (2) state the applicant's present intention to submit direct testimony and by whom and on what subject. The requirements identified herein shall constitute a continuing obligation of the applicant or intervening party. Any objections to applications must be filed in accordance with O.C.G.A § 46-2-59(d).

   (c) Any application for leave to intervene that is filed late must state the reason why such application was not filed within thirty (30) days of the first published notice. Objections to later intervention application must be filed in conformity with the requirements of O.C.G.A. § 46-2-59(d).

   (d) The Commission will take up and rule on applications for leave to intervene at the first hearing date scheduled in this docket.

2. **Service:**

   In addition to filing an original and eight (8) copies of documents, with a 3.5" disk containing the electronic version of the document in either Microsoft Word for text documents or Microsoft Excel format for spreadsheets, with the Commission's Executive Secretary, copies of all pleadings, filings, correspondence, and any other documents related to an submitted in the course of this docketed matter should be served upon all other interveners recognized by the Commission in this docket.

3. **Hearing Exhibits:**

   It shall be the responsibility of the party sponsoring any hearing exhibits to see that the court reporter and all parties of record, in addition to the individual Commissioners or hearing officer, receive copies of all exhibits at the time of their introduction at the hearing.

**EXHIBIT 4**

## RIGHTS OF RESPONDENT

The Respondent has the following rights in connection with this hearing:

(1) To respond to the matters asserted in this document and to present evidence on any relevant issue;

(2) To be represented by counsel at its expense;

(3) To subpoena witnesses and documentary evidence through the Commission by filing requests with the Executive Secretary of the Commission; and

(4) Such other rights as are conferred by law and the rules and regulations of the Commission.

## MATTERS ASSERTED

1.

The Commission has the power and authority to enforce the provisions of O.C.G.A. T 46, Ch 2-91.

2.

The Commission issued an Order on requiring payment of a fine and/or completion of a damage prevention-training program in settlement of a violation of the Georgia Utility Facility Protection Act. That Order specified that any fine was to be paid within thirty (30) days of the date of the Order, and any training was to be accomplished within forty-five (45) days of the date of the Order. Respondent has not paid such fine and/or completed a damage-prevention training program, violating the terms of the Order issued by the Commission.

## STATUTES INVOLVED

O.C.G.A. § 46-2-91: Failure, neglect, or refusal to abide by the terms of an Order issued by the Commission

**WHEREFORE, THE COMMISSION ORDERS that:**

A. This Notice of Hearing and Procedural and Scheduling Order shall be served upon the Respondent by certified mail and shall constitute notice to the Respondent of the matters asserted pursuant to O.C.G.A. § 50-13-13(a). A copy of this Order shall be served upon the Consumers' Utility Counsel pursuant to Commission Rule 515-2-1-.09; and public notice of this investigation and hearing shall also be given by publication by the Commission.

B. The Commission hereby adopts the schedule, procedures, and statements regarding the issues and matters asserted set forth within this Order.

C. A motion for reconsideration, rehearing, oral argument, or any other motion shall not stay the effective date of this Order, unless otherwise ordered by the Commission.

D. Jurisdiction over these matters is expressly retained for the purpose of entering such further Order or Orders as this Commission may deem just and proper.

E. The Commission hereby assigns this matter for hearing before its hearing officer, Mr. Phillip J. Smith, Esq.

EXHIBIT 4

NOTICE: No continuance or postponement of the above-scheduled hearing will be granted, except upon 72 hours' written notice and except for good cause shown. All requests for continuance should be addressed to Mr. Will Culbreath, with a copy to Mrs. Yolanda Clay, at Georgia Public Service Commission, 244 Washington Street, SW, Atlanta, Georgia 30334-5701 [facsimile # 404-463-6532] or via e-mail to wculbreath@psc.state.ga.us and yclay@psc.state.ga.us. Please include documentation in support of your request for continuance. If your presence is required in court or before a government agency on the hearing date scheduled in this Notice, you must provide a copy of the court or agency calendar or subpoena showing the date and time of the conflicting hearing. Only upon receipt of written response from the Commission excusing your appearance are you excused from your duty to appear at the hearing noticed hereby.

The above by action of the Commission in Administrative Session on December 21, 2021.

Sallie Tanner
Executive Secretary

2-10-22
Date

Tricia Pridemore
Chairman

2-10-22
Date

COMMISSIONERS:
TRICIA PRIDEMORE, CHAIRMAN
TIM G. ECHOLS, VICE-CHAIRMAN
FITZ JOHNSON
LAUREN "BUBBA" McDONALD
JASON SHAW

**EXHIBIT 4**

REECE McALISTER
EXECUTIVE DIRECTOR

SALLIE TANNER
EXECUTIVE SECRETARY

# Georgia Public Service Commission

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(800) 282-5813

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ATLANTA, GEORGIA 30334-5701

FAX: (404) 656-2341
www.psc.state.ga.us

## BEFORE THE GEORGIA PUBLIC SERVICE COMMISSION

| | | |
|---|---|---|
| IN THE MATTER OF: | ) | |
| | ) | |
| Earth's Products, L.L.C. also d/b/a Earth's Products Demo, L.L.C., | ) | DOCKET NO. 43076 |
| RESPONDENTS | ) | (PSC Case No. 20-17062) |
| | ) | |

## CERTIFICATE OF SERVICE

I hereby certify that this Notice of Hearing was filed with the Commission's Executive Secretary and a copy of same was served upon all parties and persons listed below via hand delivery as indicated by an asterisk, or by depositing same in the United States mail.

*Sallie Tanner, Executive Secretary
Georgia Public Service Commission
244 Washington Street, SW
Atlanta, Georgia 30334

Earth's Products, L.L.C. also d/b/a Earth's Products Demo, L.L.C.
Attn: Ken Finlon
4024 Sudderth Road
Buford, GA 30518

Crystal Garin, registered agent c/o
Earth's Products, L.L.C.
7601 Sprouts Springs Road
Buford, GA 30519

Respectfully Submitted this 15th day of February, 2022:

Maritza Rivera, Admin. Assistant
Facilities Protection Unit
Georgia Public Service Commission
244 Washington St. Ste. 112
Atlanta, GA 30334

EXHIBIT 4

COMMISSIONERS:

TRICIA PRIDEMORE, Chairman
TIM G. ECHOLS, Vice-Chairman
FITZ JOHNSON
LAUREN "BUBBA" McDONALD
JASON SHAW

REECE MCALISTER
EXECUTIVE SECRETARY

FILED
SEP 02 2021
EXECUTIVE SECRETARY
G.P.S.C.

# Georgia Public Service Commission

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244 WASHINGTON STREET, S.W.
ATLANTA GEORGIA 30334-5701

FAX: (404) 656-2341
www.psc.state.ga.us

**IN THE MATTER OF:** **Case Nos. 20-17062**

**Earth's Products, L.L.C. also d/b/a Earth's Products Demo, L.L.C.;**

**DOCKET NO. 43076**

DOCKET# 43076
DOCUMENT# 186977
MAILED
9.17.2021

## FINAL ORDER

## APPEARANCES:

Georgia Public Service Commission Staff: Alexander C. Davis

Earth's Products, L.L.C. also d/b/a Earth's Products Demo, L.L.C.: No appearance

## PROCEDURAL HISTORY

On January 24, 2020, while working at 0 Timber Valley Road Called in as 5195 Timber Valley Road, Sandy Springs, **Earth's Products, L.L.C. also d/b/a Earth's Products Demo, L.L.C.** ("Respondent") caused damage to a utility facility while using mechanized equipment. Following its investigation of this incident, Commission Staff determined that the Respondent was in violation of O.C.G.A. §§ 25-9-6(a) and 25-9-8(e) (the "Violations") and recommended, through Consent Agreement, that Respondent be assessed a $7,500 civil penalty with the ability to mitigate $6,000 by completing a Commission approved damage prevention training program.

On April 20, 2021, the Commission issued a Notice of Hearing and Procedural and Scheduling Order. Respondent was advised that a hearing would be held for the purpose of hearing evidence regarding the Violations and that, if proven, such Violations may result in the imposition of a civil penalty as provided by law.

On June 16, 2021, a hearing was conducted in this Docket, at which time the Commission's Hearing Officer heard testimony from Staff witnesses. Staff entered two exhibits into evidence. Exhibit 1 was a chart that detailed information regarding: the incident date and location, violation cited, terms of Consent Agreement, date of service for both Consent Agreement and Notice of

Hearing, and status of certified mail return receipt for Notice of Hearing. Exhibit 2 included copies of: The Notice of Probable Violation, Incident Investigation Report, Consent Agreement, Notice of Hearing and Procedural and Scheduling Order, Certified Mail Return Receipt and other supporting documentation. At the hearing, several issues were presented for determination, including whether Respondent committed the Violations and whether the Respondent should be penalized pursuant to O.C.G.A § 25-9-13(h)(7) in an amount of up to $10,000.00 for each violation. While Respondent initially responded to attempts to settle, they failed to appear for the hearing.

## FINDINGS AND CONCLUSIONS

Staff witnesses Onterio Johnson and Marilyn Morris-Simmons testified at the proceeding. Mr. Johnson is a Commission GUFPA investigator and is generally responsible for investigating notices of probable violation of the Act. Ms. Morris-Simmons is the assistant to the GUFPA Program and Assistant Program Managers, and is generally responsible for the delivery of consent agreements, Notice of Hearings, and Final Orders to probable violators of GUFPA and O.C.G.A. § 46-2-91. Mr. Johnson submitted a detailed copy of his report of the investigation. Based on the probable violation damage reports filed by the utility and upon further investigation into the matter, Mr. Johnson determined that:

1. Respondent failed to contact the UPC before commencing excavation or blasting with mechanized equipment in violation of O.C.G.A. § 25-9-6(a); and
2. Respondent failed to notify both the UPC and the affected facility owner/operator after a damage occurs in violation of O.C.G.A. § 25-9-8(e).

Based upon the facts and circumstances presented in this case, the Commission finds that Respondent committed the Violations.

## PENALTIES

Pursuant to O.C.G.A. § 25-9-13(h)(7), the Commission has the authority to impose a civil penalty not exceeding $10,000.00 for each violation of the Act, if it is proven that any person violated any provision of the Act as a result of a failure to exercise reasonable care.

**WHEREFORE IT IS ORDERED,** that pursuant to O.C.G.A § 25-9-13(h)(7), a civil penalty in the amount of **$8,500** be imposed against Respondent for failure to exercise reasonable care when excavating with mechanized equipment in violation of O.C.G.A. §§ 25-9-6(a) and 25-9-8(e). Respondent shall pay such civil penalty to the Commission, in certified funds, within thirty (30) days from the date of this Order.

**ORDERED FURTHER**, that Respondent may mitigate $6,000 of the civil penalty ordered in this case by a minimum of five (5) employees completing a Commission-approved damage prevention training course within forty-five (45) days from the date of this Order.

**ORDERED FURTHER,** that all findings, conclusions and decisions contained within the preceding sections of this Order are hereby adopted as findings of fact, conclusions of law, and decisions of regulatory policy of this Commission.

**ORDERED FURTHER,** that any motion for reconsideration, rehearing or oral argument or any other motion shall not stay the effective date of this Order, unless otherwise ordered by this Commission.

**ORDERED FURTHER,** that jurisdiction over this matter is expressly retained for the purpose of entering such further Order or Orders as this Commission may deem just and proper.

The above by action of the Commission in Administrative Session on the 17th day of August, 2021.

**Reece McAlister**
**Executive Secretary**

9-1-21
Date

**Tricia Pridemore**
**Chairman**

9-2-21
Date

**EXHIBIT 4**

**BEFORE THE PUBLIC SERVICE COMMISSION**
**STATE OF GEORGIA**

**DOCKET NO. 43076**

**Earth's Products, L.L.C. also d/b/a Earth's Products Demo, L.L.C.;**

**Case Nos. 20-17062**

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Final Order** was filed with the Executive Secretary of the Georgia Public Service Commission, and a copy of same was served upon all parties listed below via hand or electronic delivery as indicated, or by depositing same in the United States mail with sufficient postage thereon to insure delivery and addressed as follows:

| | |
|---|---|
| Reece McAlister, Executive Secretary<br>Georgia Public Service Commission<br>244 Washington Street, SW<br>Atlanta, GA 30334<br>(BY HAND) | **Earth's Products, L.L.C. also d/b/a Earth's Products Demo, L.L.C.**<br>Attn: Ken Finlon<br>4024 Sudderth Road<br>Buford, GA 30518 |
| Alexander C. Davis<br>Georgia Public Service Commission<br>244 Washington Street, SW<br>Atlanta, GA 30334<br>(BY ELECTRONICALLY) | |

This 17th day of September, 2021.

Maritza Rivera,
Clerk
Georgia Public Service Commission
244 Washington Street, SW
Atlanta, Georgia 30334

EXHIBIT 4

EXHIBIT 2

COMMISSIONERS:
CHUCK EATON, CHAIRMAN
TIM G. ECHOLS, VICE-CHAIRMAN
LAUREN "BUBBA" McDONALD
TRICIA PRIDEMORE
JASON SHAW

REECE McALISTER
EXECUTIVE SECRETARY

FILED
APR 29 2021
EXECUTIVE SECRETARY
G.P.S.C.

# Georgia Public Service Commission

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(800) 282-5813

244 WASHINGTON STREET, SW
ATLANTA, GEORGIA 30334-5701

FAX: (404) 656-2341
www.psc.state.ga.us

**BEFORE THE GEORGIA PUBLIC SERVICE COMMISSION**
**STATE OF GEORGIA**

DOCKET# 43076
DOCUMENT# 185385

**IN THE MATTER OF:**

**GUFPA CASE NO. PSC 20-17062**

**DOCKET NO. 43076**

MAILED
5-1-2021

**Earth's Products, L.L.C. also d/b/a Earth's Products Demo, L.L.C., Respondent**

## NOTICE OF HEARING AND PROCEDURAL AND SCHEDULING ORDER

To: **Earth's Products, L.L.C. also d/b/a Earth's Products Demo, L.L.C.**
**Attn: Ken Finlon**
**4024 Sudderth Road**
**Buford, GA 30518**

You are hereby notified that the Georgia Public Service Commission ("Commission") will hold a hearing in the Hearing Room of the Commission, located at 244 Washington Street, S.W., Atlanta, Georgia 30334-5701, commencing at **10:00 o'clock a.m. on June 16, 2021** and continuing on such further days as the Commission deems necessary until completed, for the purpose of hearing evidence regarding alleged violations of O.C.G.A. T. 25, Ch. 9, as set forth herein under the heading titled "Matters Asserted" that, if proven, may result in the imposition of a penalty against Earth's Products, L.L.C. also d/b/a Earth's Products Demo, L.L.C. (also referred to herein as "Respondents") in an amount not to exceed $10,000.00 per violation. Notification of the following matters is hereby given:

## LEGAL AUTHORITY FOR HEARING

This hearing will be held under the authority and jurisdiction conferred upon the Commission by O.C.G.A. §25-9-13 and §46-2-91; and in accordance with the Georgia Administrative Procedure Act, O.C.G.A. §50-13, and the Rules and Regulations of the Commission.

## PROCEDURES

The following are the procedures to which any party to this hearing should adhere with respect to this docket:

1. **Intervention:**

   (a) Any person or party upon whom a statute does not confer an unconditional right to intervene must file an application to intervene within thirty (30) days following the first published notice of the proceedings.

   (b) Applications must clearly specify the docket in which the applicant seeks to intervene. In addition to the requirements prescribed in O.C.G.A. §46-2-59 for applications for leave to intervene, the applicant must: (1) identify other intervening parties or intervening party applicants whose interest is similar to that of the applicant along with an explanation of why the identified intervening parties or intervening party applicant will not adequately represent the applicant's interest: and (2) state the applicant's present intention to submit direct testimony and by whom and on what subject. The requirements identified herein shall constitute a continuing obligation of the applicant or intervening party. Any objections to applications must be filed in accordance with O.C.G.A §46-2-59(d).

   (c) Any application for leave to intervene that is filed late must state the reason why such application was not filed within thirty (30) days of the first published notice. Objections to later intervention application must be filed in conformity with the requirements of O.C.G.A. §46-2-59(d).

   (d) The Commission will take up and rule on applications for leave to intervene at the first hearing date scheduled in this docket.

2. **Service:**

   In addition to filing an original and eight (8) copies of documents, with a 3.5" disk containing the electronic version of the document in either Microsoft Word for text documents or Microsoft Excel format for spreadsheets, with the Commission's Executive Secretary, copies of all pleadings, filings, correspondence, and any other documents related to, and submitted in, the course of this docketed matter should be served upon all other interveners recognized by the Commission in this docket.

3. **Hearing Exhibits:**

   It shall be the responsibility of the party sponsoring any hearing exhibits to see that the court reporter and all parties of record, in addition to the individual Commissioners or hearing officer, receive copies of all exhibits at the time of their introduction at the hearing.

EXHIBIT 4

EXHIBIT 2

## RIGHTS OF RESPONDENT

Respondent have the following rights in connection with this hearing:

(1) To respond to the matters asserted in this document and to present evidence on any relevant issue;

(2) To be represented by counsel at its expense;

(3) To subpoena witnesses and documentary evidence through the Commission by filing requests with the Executive Secretary of the Commission; and

(4) Such other rights as are conferred by law and the rules and regulations of the Commission.

## MATTERS ASSERTED

1.

The Commission has the power and authority to enforce the provisions of O.C.G.A. T, 25, Ch 9.

2.

The Commission Staff received reports of multiple probable violation of GUFPA alleging that on or about January 24, 2020, Respondent violated O.C.G.A. T. 25, Ch. 9. A copy of this report is attached hereto as Attachment A. The allegations contained in the report constitute violations of O.C.G.A. T. 25, Ch. 9.

## STATUTES INVOLVED

**25-9-6(a) Failure to wait 48 hours beginning the next business day after notifying the UPC before commencing excavation.**

**25-9-8(e) Failure to notify both the UPC and the affected utility facility owner/operator after a damage occurs**

**WHEREFORE, THE COMMISSION ORDERS that:**

A. This Notice of Hearing and Procedural and Scheduling Order shall be served upon the Respondent by certified mail and shall constitute notice to the Respondent of the matters asserted pursuant to O.C.G.A. §50-13-13(a). A copy of this Order shall be served upon the Consumers' Utility Counsel pursuant to Commission Rule 515-2-1-.09; and public notice of this investigation and hearing shall be given by the Commission.

EXHIBIT 4

EXHIBIT 2

B. The Commission hereby adopts the schedule, procedures, and statements regarding the issues and matters asserted set forth within this Order.

C. A motion for reconsideration, rehearing, oral argument, or any other motion shall not stay the effective date of this Order, unless otherwise ordered by the Commission.

D. Jurisdiction over these matters is expressly retained for the purpose of entering such further Order or Orders as this Commission may deem just and proper.

E. The Commission hereby assigns this matter for hearing before its hearing officer, Nancy Gibson.

NOTICE: If Commission Staff determines to its satisfaction that the Respondent has satisfied the obligations of the prior Consent Order, Staff shall be authorized to *nolle prosequi* the Rule Nisi. No continuance or postponement of the above-scheduled hearing will be granted, except upon 72 hours' written notice and except for good cause shown. All requests for continuance should be addressed to Mr. Will Culbreath at Georgia Public Service Commission, 244 Washington Street, SW, Atlanta, Georgia 30334-5701 [facsimile # 404-463-6532] or via e-mail to wculbreath@psc.state.ga.us. Please include documentation in support of your request for continuance. If your presence is required in court or before a government agency on the hearing date scheduled in this Notice, you must provide a copy of the court or agency calendar or subpoena showing the date and time of the conflicting hearing. Only upon receipt of written response from the Commission excusing your appearance are you excused from your duty to appear at the hearing noticed hereby.

The above by action of the Commission in Administrative Session on April 20, 2021.

Reece McAlister
Executive Secretary

4-29-21
Date

Chuck Eaton
Chairman

4/29/21
Date

EXHIBIT 4

EXHIBIT 2

COMMISSIONERS:
CHUCK EATON, CHAIRMAN
TIM G. ECHOLS, VICE-CHAIRMAN
LAUREN "BUBBA" McDONALD
TRICIA PRIDEMORE
JASON SHAW

REECE McALISTER
EXECUTIVE SECRETARY

# Georgia Public Service Commission

(404) 656-4501
(800) 282-5813

244 WASHINGTON STREET, SW
ATLANTA, GEORGIA 30334-5701

FAX: (404) 656-2341
www.psc.state.ga.us

## BEFORE THE GEORGIA PUBLIC SERVICE COMMISSION

| | | |
|---|---|---|
| IN THE MATTER OF: | ) | |
| | ) | |
| Earth's Products, L.L.C. also d/b/a Earth's Products Demo, L.L.C., | ) | DOCKET NO. 43076 |
| RESPONDENTS | ) | (PSC Case No. 20-17062) |
| | ) | |

## CERTIFICATE OF SERVICE

I hereby certify that this Notice of Hearing was filed with the Commission's Executive Secretary and a copy of same was served upon all parties and persons listed below via hand delivery as indicated by an asterisk, or by depositing same in the United States mail.

*Reece McAlister, Executive Secretary
Georgia Public Service Commission
244 Washington Street, SW
Atlanta, Georgia 30334

Earth's Products, L.L.C. also d/b/a Earth's
Products Demo, L.L.C.
Attn: Ken Finlon
4024 Sudderth Road
Buford, GA 30518

Crystal Garin, registered agent c/o
Earth's Products, L.L.C.
7601 Sprouts Springs Road
Buford, GA 30519

Respectfully Submitted this 21 day of May, 2021:

Maritza Rivera, Admin. Assistant
Facilities Protection Unit
Georgia Public Service Commission
244 Washington St. Ste. 112
Atlanta, GA 30334

EXHIBIT 4

EXHIBIT 2

COMMISSIONERS:
CHUCK EATON, CHAIRMAN
TIM G. ECHOLS, VICE-CHAIRMAN
LAUREN "BUBBA" McDONALD
TRICIA PRIDEMORE
JASON SHAW

DEBORAH K. FLANNAGAN
EXECUTIVE DIRECTOR

MICHELLE THEBERT
FACILITIES PROTECTION
UNIT DIRECTOR

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7/8//2020

Earth's Products, L.L.C. also d/b/a Earth's Products Demo, L.L.C.
Attn: Ken Finlon
4024 Sudderth Road
Buford, GA 30518

**Date of Incident:** 1/24/2020
**Docket #:** 43076
**Case #:** PSC 20-17062
**Incident Location:** 0 Timber Valley Road Called in as 5195 Timber Valley Road, Sandy Springs

To Whom It May Concern:

A Notice of Probable Violation(s) ("NOPV") of the Georgia Utility Facility Protection Act ("GUFPA" or the "Act") has been filed with the Georgia Public Service Commission Pipeline/Facilities Safety Office ("Staff") naming you as the probable violator ("Respondent"). A copy of the Act can be found at www.lexisnexis.com/hottopics/gacode (Title 25, Chapter 9). The probable violations alleged are as follows:

**O.C.G.A. Violations**

**25-9-6(a) Failure to wait 48 hours beginning the next business day after notifying the UPC before commencing excavation.**

**25-9-8(e) Failure to notify both the UPC and the affected utility facility owner/operator after a damage occurs.**

Violations of the Act are punishable by civil penalties of up to $10,000.00 (ten thousand dollars) *per violation*. **Staff recommends a civil penalty of $7,500.00. Respondent may choose from one of several options regarding the alleged probable violations. Staff recommends mitigation of $6,000.00 of the above-recommended civil penalty by attendance of five or more employees at a Commission approved damage prevention class. The respondent will be responsible for completing the training class and submitting the remaining $1,500.00 penalty in certified funds or cashier's check to the Georgia Public Service Commission.**

Specific information about the above probable violation(s) is provided in this packet so please read all documentation **completely** and **carefully**. In this packet, you will find the **Response Options**, **NOPV/Incident Report**, **Consent Agreement**, **GUFPA Questionnaire**, additional information on **Requests for GUFPAAC**, and a list of **Commission Approved Damage Prevention Trainers**.

**YOUR AFFIRMATIVE WRITTEN RESPONSE IS REQUIRED WITHIN 30 DAYS OF THE DATE OF THIS NOPV (See "Response Options" page for more information). Failure to respond either by executing the consent agreement or requesting a hearing before the Advisory Committee will result in the issuance of a Rule NISI to be heard before the Georgia Public Service Commission.**

If you have any questions, please call me at (404) 463-6526.

Sincerely,

Onterio Johnson
ojohnson@psc.state.ga.us
GPSC GUFPA Investigator

EXHIBIT 4

# RESPONSE OPTIONS EXHIBIT 2

**(Please check only one)**

**Respondent:** Earth's Products, L.L.C. also d/b/a Earth's Products Demo, L.L.C.
**Docket #:** 43076
**Case #:** PSC 20-17062

Respondent may choose from **ONE** of the following **OPTIONS** to dispose of this case:

☐ **OPTION 1 – I Disagree and want to attend GUFPAAC**: If you *disagree* with the probable violation(s) alleged you may request to appear and have your case heard before the Georgia Utility Facility Act Advisory Committee ("GUFPAAC"), a committee of industry stakeholders and peers. Please dispute same by submitting a detailed written response and return it along with all supporting evidence (pictures, diagrams, maps, witness statements and any other documentation to be used in support of your position) and sign/return the below statement within **thirty (30) days** of this NOPV:

I hereby request the opportunity to present my case to the GUFPAAC and I certify under the penalty of perjury that the response(s) and information provided regarding the afore-mentioned probable violation(s) are true and correct to the best of my knowledge.

_____ _____
Authorized Representative of Respondent Date

*****Upon receipt of your signature above, your detailed written response and all supporting evidence, your case will be scheduled to be heard by the GUFPAAC and you will be notified by mail of the date of this GUFPAAC meeting.**

☐ **OPTION 2 – I Disagree and want a Hearing before the Hearing Officer:** If you disagree with the probable violation(s) alleged, please dispute by submitting a detailed, written response along with all supporting evidence (pictures, diagrams, maps, witness statements and any other documentation) to be used in support of your position **within 30 days of receipt of this letter**. If you need more time to gather your information, **you must contact the GUFPA staff to request additional time. Note: The information you provide will not close the case, it will assist the investigator in his/her investigation to arrive at a more informed conclusion. If at the point you still disagree with the findings of the investigator, your case will be heard by a Commission hearing officer.**

**** Sign below only if you are choosing Option 2 ****

I certify under the penalty of perjury that the response(s) and information provided regarding the afore-mentioned probable violation(s) are true and correct to the best of my knowledge.

_____ _____
Authorized Representative of Respondent Date

☐ **OPTION 3 – I Agree and Wish to Pay the Mitigated Civil Penalty and attend Training:** If you agree with the alleged probable violation(s) please complete, sign and return the **Consent Agreement** provided for in this package. A **minimum of five (5) employees** of your company shall attend Commission approved damage prevention training. You must pay the recommended **mitigated** civil penalty of **$1,500.00**. Staff must receive the **signed Consent Agreement** and **this "Response" page** indicating your decision, and the mitigated penalty amount by certified check or money order within 30 days of receipt of this letter.

**PLEASE NOTE: Georgia Law requires that ALL information requested in OPTION 1 and OPTION 2 be provided upon Staff's request.** (O.C.G.A. §§ 24-10-26, 46-2-20 and 25-9-1 *et. seq.*). Failure to respond and/or comply with these requests for information in the 30 days provided for shall result in the loss of one or more of the **OPTIONS** presented.

☐ **OPTION 4 – I Agree and Wish to Pay the Full Civil Penalty**: If you agree with the alleged probable violation(s) please complete, sign and return the **Consent Agreement** provided for in this package and pay the full recommended civil penalty of **$7,500.00**. Staff must receive the **signed Consent Agreement** within **thirty (30) days** of this NOPV. THIS OPTION DOES NOT REQUIRE TRAINING.

EXHIBIT 4

EXHIBIT 2

COMMISSIONERS:
CHUCK EATON, CHAIRMAN
TIM G. ECHOLS, VICE-CHAIRMAN
LAUREN "BUBBA" McDONALD
TRICIA PRIDEMORE
JASON SHAW

DEBORAH K. FLANNAGAN
EXECUTIVE DIRECTOR

MICHELLE THEBERT
FACILITIES PROTECTION
UNIT DIRECTOR

# Georgia Public Service Commission

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FAX: (404) 463-6532
www.psc.state.ga.us

## DAMAGE REPORT (PROBABLE VIOLATION) – PSC 20-17062

### INCIDENT INFORMATION

| | | | |
|---|---|---|---|
| INCIDENT DATE: | 1/24/2020 | MATERIAL TYPE: | Plastic |
| FACILITY TYPE: | Gas | SIZE: | 2 |
| INCIDENT ADDRESS: | 0 Timber Valley Road Called in as 5195 Timber Valley Road, Sandy Springs | | |
| UTILITY LINE FUNCTION: | Main | | |
| MECHANZIED EQPT.: | Grader/Scraper | | |

### LOCATE INFORMATION

| | |
|---|---|
| LOCATE COMPANY NAME: | USIC Locating Services, Inc. |
| LOCATE NUMBER: | 01210-283-003 |
| WAS FACILITY LOCATED? | No |
| LOCATE MARKS WITHIN 24 INCHES? | No |

### REPORTING INFORMATION

| | |
|---|---|
| REPORTING COMPANY: | Atlanta Gas Light |
| CONTACT NAME: | Christy Rainwater |
| CONTACT NUMBER: | 404-584-3135 |
| MAILING ADDRESS: | Ten Peachtree Place N.E. |
| CITY, STATE, ZIP: | Atlanta, GA 30309 |
| CUSTOMERS AFFECTED: | 0 |
| REPAIR COST: | $1,135.00 |

### PROBABLE VIOLATOR INFORMATION

| | |
|---|---|
| VIOLATOR COMPANY NAME: | Earth's Products, L.L.C. also d/b/a Earth's Products Demo, L.L.C. |
| CONTACT NAME: | Ken Finlon |
| CONTACT NUMBER: | 404-557-8739 |
| MAILING ADDRESS: | Attn: Ken Finlon<br>4024 Sudderth Road |
| CITY, STATE, ZIP: | Buford, GA 30518 |

### FACILITY OWNER INFORMATION

| | |
|---|---|
| FACILITY OWNER: | Atlanta Gas Light |
| CONTACT NUMBER: | 404-584-3135 |

### PROBABLE VIOLATION(s)

**O.C.G.A Violations**

25-9-6(a) Failure to wait 48 hours beginning the next business day after notifying the UPC before commencing excavation.

25-9-8(e) Failure to notify both the UPC and the affected utility facility owner/operator after a damage occurs.

### DESCRIPTION OF DAMAGES:

Mirome Construction damaged a 2" plastic gas main with grading equipment while installing a road.
***Original Notice of Probably Violation (NOPV) was sent to Mirome Construction, Inc., Staff received a written response and documentation from Mr. James Rossetti on behalf of Mirome Construction. Information provided (invoice) indicates Earth's Products, LLC was hired as subcontractor to perform excavation duties at the incident location. Based on this information staff reissued the NOPV to Earth's Products, L.L.C.****

EXHIBIT 4

EXHIBIT 2

**GEORGIA PUBLIC SERVICE COMMISSION**
**GEORGIA UTILITY FACILITY PROTECTION ACT**

# NOPV / INCIDENT REPORT – PSC 20-17062

| | |
|---|---|
| **Mail, Fax or e-mail to:** | Georgia Public Service Commission<br>Facilities Protection Unit<br>244 Washington Street, SW<br>Atlanta, Georgia 30334 |
| **Investigator:** | Onterio Johnson |
| **Work Number:** | (404) 463-6526 |
| **Website:** | www.psc.state.ga.us |
| **Docket Number:** | 43076 |
| **Case Number:** | PSC 20-17062 |
| **Report Date:** | 2/12/2020 |
| **Incident Date:** | 1/24/2020 |
| **Facility Owner:** | Atlanta Gas Light |
| **Facility Owner Phone:** | 404-584-3135 |
| **Locator:** | USIC Locating Services, Inc. |
| **Locator Phone:** | 317-810-8077 |
| **Excavator:** | Earths Products |
| **Excavator Phone:** | 404-557-8739 |
| **Violator:** | Earth's Products, L.L.C. also d/b/a Earth's Products Demo, L.L.C. |
| **Contact:** | Ken Finlon |
| **Address:** | Attn: Ken Finlon<br>4024 Sudderth Road |
| **City, State, Zip** | Buford, GA 30518 |
| **Incident Location:** | 0 Timber Valley Road Called in as 5195 Timber Valley Road |
| **Incident City:** | Sandy Springs |
| **Incident County:** | Fulton |
| **Jurisdiction:** | NOT REPORTED |

## UTILITY LINE IMPACT

| | |
|---|---|
| **Facility Type:** | Gas |
| **Material Type:** | Plastic |
| **Size (Diameter/Voltage/Pairs/etc.):** | 2 |
| **Pressure (PSIG/Inches):** | MP |
| **Utility Line Function:** | Main |
| **Number of Customers Affected:** | 0 |
| **Repair Cost:** | $1,135.00 |

## INCIDENT IMPACT

| | |
|---|---|
| **Injury (# of outpatient care):** | 0 |
| **Injury (# of inpatient care):** | 0 |
| **Fatalities:** | 0 |
| **Fire Department Response:** | Unknown |
| **Police Department Response:** | Unknown |

## EXCAVATION ACTIVITIES

| | |
|---|---|
| **Utility Ticket Number(s):** | 01210-283-003 |
| **Equipment Involved:** | Grader/Scraper |
| **Nature of Excavation:** | Road Work |
| **Direction of Excavation Relative to Damaged Utility Line:** | |

EXHIBIT 4

EXHIBIT 2

**SYNOPSIS**

According to a submitted report of probable violation, Earth's Products, L.L.C. was excavating on Timber Valley Road, in Sandy Springs, Georgia on January 24, 2020. Atlanta Gas Light reported this incident because Earth's Products, L.L.C. failed to check the positive response database prior to excavating with mechanized equipment.

**INVESTIGATION:**

Staff from the Facilities Protection Unit of the Georgia Public Service Commission received a notification of probable violation from Atlanta Gas Light regarding the damage that occurred on Timber Valley Road, in Sandy Springs, Georgia on January 24, 2020. The submitted Atlanta Gas Light damage report indicates Earth's Products, L.L.C. caused damage to a 2" plastic gas service line. According to the report, the contractor was installing or repairing a roadway and while excavating with mechanized equipment, the contractor struck and damaged a buried gas service facility. This incident was reported as a violation of OCGA 25-9-6(a) Failure to wait 48 hours beginning the next business day after notifying the UPC before commencing excavation. OCGA 25-9-8(e) Failure to notify both the UPC and the affected utility facility owner/operator after a damage occurs.

Staff conducted a search of the Georgia (811) locate request database and was not able to find a valid locate ticket present. The contractors locate ticket 01210-283-003 had a legal start date of 1/24/20 and was valid until 2/20/20. On January 23rd the day prior to the incident, AGL left a PRIS code of 3M (late due to weather). The Contractor failed to check the positive response database prior to excavating, all utilities were not marked. Staff was unable to find a valid damage ticket covering incident date and address. Damage at incident location coincides with the damage report submitted by Atlanta Gas Light. Thus far, based on this initial information submitted by Atlanta Gas Light, GUFPA staff finds Earth's Products, L.L.C. in violation.

***Original Notice of Probably Violation (NOPV) was sent to Mirome Construction, L.L.C.., Staff received a written response and documentation from Mr. James Rossetti on behalf of Mirome Construction. Information provided (invoice) indicates Earth's Products, LLC was hired as subcontractor to perform excavation duties at the incident location. Based on this information staff reissued the NOPV to Earth's Products, L.L.C.****

**CONCLUSION:**

The Pipeline/Facilities Safety Staff found **Earth's Products, L.L.C. also d/b/a Earth's Products Demo, L.L.C.** in violation of:

**O.C.G.A. Violations**

**25-9-6(a) Failure to wait 48 hours beginning the next business day after notifying the UPC before commencing excavation.**

**25-9-8(e) Failure to notify both the UPC and the affected utility facility owner/operator after a damage occurs.**

This investigation is pending the excavator's (your) response. If no response is submitted, staff will proceed to hearing based solely on the information submitted by the facility owner.

**Note:** The information you provide will not close the case, it will assist the investigator in his/her investigation to arrive at a more informed conclusion.

EXHIBIT 4

EXHIBIT 2

COMMISSIONERS:
CHUCK EATON, CHAIRMAN
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EXECUTIVE DIRECTOR

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UNIT DIRECTOR

# Georgia Public Service Commission

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FAX: (404) 463-6532
www.psc.state.ga.us

## BEFORE THE GEORGIA PUBLIC SERVICE COMMISSION
## STATE OF GEORGIA

**IN THE MATTER OF:**

**Earth's Products, L.L.C. also d/b/a Earth's Products Demo, L.L.C.,**
**RESPONDENTS**

**CASE NUMBER: PSC 20-17062**

# CONSENT AGREEMENT

Earth's Products, L.L.C. also d/b/a Earth's Products Demo, L.L.C., ("Respondent(s)"), hereby agrees to presentation of the following proposed disposition of the above named matter to the Georgia Public Service Commission ("Commission"):

### FINDINGS AND CONCLUSIONS:

**1.**

The Commission has the power and authority to enforce the provisions of the Georgia Utility Facility Protection Act, ("Act"), O.C.G.A. T. 25, Ch. 9.

**2.**

The Commission received a Notice of Probable Violation ("NOPV"), alleging that on 1/24/2020, Respondent(s) violated O.C.G.A. T. 25, Ch. 9. The Staff has recommended to the Commission that the NOPV be resolved pursuant to the terms set forth in this Consent Agreement.

### AGREEMENT

***By signing below***, Respondent(s) hereby agree that this matter should be resolved as follows:

**1.**

This Consent Agreement, if approved by the Commission, shall constitute a final resolution of this proceeding. Respondent(s) agree that each will abide by the terms of this Consent Agreement.

**2.**

Respondent(s) agree that each will comply with all applicable provisions of the Act.

EXHIBIT 4

EXHIBIT 2

3.

Respondent(s) agree to pay to the Commission a penalty of $7,500.00 within thirty (30) days after the date of an Order issued by the Commission approving of this Consent Agreement. Payment must be forwarded to:

Georgia Public Service Commission
Facilities Protection Unit
244 Washington Street, S.W.
Atlanta, Georgia 30334-5701

**All payment of penalties must be remitted in certified funds: money order, cashier's check, or official check.**

**Personal/Company checks will not be accepted.**

4.

If Respondent(s) choose training in lieu of paying $6,000.00 of the penalty described above, Respondent(s) agree to promptly complete a training program acceptable to the Commission, ***minimum of five (5) employees required to attend training***. **The respondent will be responsible for completing the training class and submitting the remaining $1,500.00 penalty in certified funds or cashier's check to the Georgia Public Service Commission.**

5.

Respondent(s) understands that failure to comply with the terms of this Consent Agreement could subject each to additional penalties.

6.

This Consent Agreement shall not become effective until and unless approved by the Commission. Respondent(s) enter into this Consent Agreement without admission of fault or liability.

7.

The undersigned authorized representative of the Respondent(s) acknowledges that he/she has read this Consent Agreement and understands its contents. The undersigned representative acknowledges that the undersigned party freely, knowingly and voluntarily enters into this agreement. The undersigned representative hereby consents to the resolution of this proceeding as provided herein.

This _____ day of _____, 20__.

**Consented to:**
***(Sign, date, and mail, email, or fax)***

_____

**On behalf of: Earth's Products, L.L.C. also d/b/a Earth's Products Demo, L.L.C.**

**PSC 20-17062**

EXHIBIT 4

EXHIBIT 2

# "GUFPA" Questionnaire

## PSC 20-17062, Docket No. 43076

Please answer all questions in a written statement and include your case number on each page.

1. Name of entity (company, corporation, municipality, etc.) submitting this information?

2. Name of person submitting this information and title or position in the company or corporation?

3. Is this business incorporated? If incorporated, how so (corporation or limited liability)? In what state? Name and full address of the corporation's Registered Agent? If not incorporated, how is the business organized (i.e. partnership, sole proprietor, "D/B/A" or other)? Name and full address of the businesses highest ranking official (i.e. president or chief executive officer)?

4. Was a locate request made with **Georgia 811/Utilities Protection Center** prior to beginning excavation? If so, when and by whom? Provide the ticket number and the name of the company/party requesting the locate? Legal date of ticket? Expiration date of ticket? Provide name of party performing the excavation if different from ticket holder? Please provide a copy of all locate tickets associated with this excavation.

5. Was any other contractor (i.e. primary or subcontractor) involved? If subcontractor involved, is there a signed contractor agreement of responsibility? If subcontractor involved, is there a signed contract allowing one party to work under the locate ticket of another? Please provide a copy all contracts associated with this excavation.

6. Were you working under an emergency locate request? If so, please ***describe in detail*** what qualifies this as an emergency situation and describe what actions you took to perform your excavation with reasonable care in order to prevent damage to the underground facilities.

   **Please note: An emergency as defined by the Georgia Utility Facility Protection Act means there is an *immediate danger* to life or property or the loss of utility service requiring *immediate action*. Even in an emergency situation, the excavator is held responsible for exercising reasonable care in carrying out its excavation activities and is held responsible for any damage such activities might cause. Furthermore, there is no required show-up time for an emergency locate. The only timeframe required for performing locates by the facility owner/operator is 48 hours beginning the next business day as contained in 25-9-7 of the dig law.**

7. Did you physically white-line **OR** "describe with sufficient particularity" (verbal white-lining), the area of excavation, prior to the utility owner/operator marking their facilities? Please provide proof thereof? If not, explain.

EXHIBIT 4

EXHIBIT 2

# "GUFPA" Questionnaire

## PSC 20-17062, Docket No. 43076

8. Did your company utilize the Positive Response Information System through **Georgia 811/Utilities Protection Center** to verify that all utility owner/operators had responded prior to your beginning excavation? Please provide a copy of the Positive Response information for each locate ticket associated with this excavation? If not, explain.

9. Was locate marking done within the allotted time frame? If not, was a second request made to **Georgia 811/Utilities Protection Center**?

10. Were any/all utilities marked? If not, explain.

11. Please provide evidence (signed witness statements which must include name, address and contact number for each witness, pictures, maps, diagrams and any other written documentation) that supports each of the above responses.

12. Were the utilities marked accurately (within 18" of either side of the facility)? Were pictures taken of the utility markings prior to excavation? If so, please provide copies and any other supporting documentation.

13. Were the utilities "potholed" prior to excavation to get a visual of the utilities and exposed with non-mechanized means to prevent damage (i.e. shovel, hand tools, etc.)?

14. What type of work was being performed when the incident occurred (i.e. installing CATV, landscaping, grading, installing irrigation, etc.)?

15. What type of equipment or machinery was being used when the incident occurred (i.e. backhoe, mechanical auger, directional drill, etc.)?

EXHIBIT 4

EXHIBIT 2

# "GUFPA" Questionnaire

## PSC 20-17062, Docket No. 43076

16. Was the direction of excavation parallel or perpendicular to the damaged utility?

17. Did excavation cease after the damage occurred?

18. Was Georgia 811/Utilities Protection Center contacted after the incident occurred? If yes, provide the damage ticket number and a copy of each damage ticket associated with this excavation.

19. Was 911 called for all damages to natural gas facilities?

EXHIBIT 4

COMMISSIONERS:
CHUCK EATON, CHAIRMAN
TIM G. ECHOLS, VICE-CHAIRMAN
LAUREN "BUBBA" McDONALD
TRICIA PRIDEMORE
JASON SHAW

EXHIBIT 2

DEBORAH K. FLANNAGAN
EXECUTIVE DIRECTOR

MICHELLE THEBERT
FACILITIES PROTECTION
UNIT DIRECTOR

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## REQUESTS FOR CASES TO COME BEFORE "GUFPAAC"

THE GEORGIA UTILITY FACILTY PROTECTION ACT ADVISORY COMMITTEE

All requests for cases to come before the Georgia Utility Facility Protection Act Advisory Committee (GUFPAAC) shall be submitted in writing and shall be accompanied by each respondent's written response to each and every allegation listed in the notice of probable violation (NOPV) to which this notice is attached.

To better assist the Advisory Committee's preparation to review your case, the assigned investigator has requested from both the Excavator and Utility any pertinent documentation such as pictures, maps, and/or any other documentation.

Receipt of this documentation is being requested prior to the GUFPAAC meeting in order to insure the investigator and Advisory Committee both have the appropriate time in which to review all details related to your case. The admittance of additional information on the day of this meeting will be at the discretion of the Advisory Committee.

EXHIBIT 4

EXHIBIT 2

COMMISSIONERS:
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TIM G. ECHOLS, VICE-CHAIRMAN
LAUREN "BUBBA" McDONALD
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## GUFPA Training

If your company has been assessed a civil penalty for a violation of the ACT with the offer to attend a Commission approved training class in lieu of paying the penalty, you may choose to have your employees attend damage prevention classes presented in English, Spanish or both.

**For classes in English, contact one of the following:**

Ms. Vicki Temple, Georgia Utility Contractors Association ("GUCA")
(404) 362-9995

Ms. Becky Kinsey, Georgia 811
(404) 375-6209 or email: bkinsey@georgia811.com

Mr. Ryan Boling, HB NEXT
(770) 619-1669 or (877) 442-4282 (Toll Free)

Mr. Diego Alvarado, daBaires Group
(678) 643-8278, 678-237-8192, or email: dsalvador678@gmail.com

Mr. Jimmy Davis, The Georgia Utility Training Academy ("GUTA")
(678) 635-8980 or email: guta@monroega.gov

**For classes in Spanish, contact one of the following:**

Mr. Diego Alvarado, daBaires Group
(678) 643-8278, 678-237-8192, or dsalvador678@gmail.com

Mr. Ryan Boling, HB NEXT
(770) 619-1669 or (877) 442-4282 (Toll Free)

Ms. Becky Kinsey, Georgia 811
(404) 375-6209 or email: bkinsey@georgia811.com

Ms. Vicki Temple, Georgia Utility Contractors Association ("GUCA")
(404) 362-9995

If you have questions or need additional information, please call (404) 463-6526.

EXHIBIT 4

COMMISSIONERS:
CHUCK EATON, CHAIRMAN
TIM G. ECHOLS, VICE-CHAIRMAN
LAUREN "BUBBA" McDONALD
TRICIA PRIDEMORE
JASON SHAW

EXHIBIT 2

DEBORAH K. FLANNAGAN
EXECUTIVE DIRECTOR

MICHELLE THEBERT
FACILITIES PROTECTION
UNIT DIRECTOR

# Georgia Public Service Commission

(404) 463-6526
(800) 282-5813

244 WASHINGTON STREET, SW
ATLANTA, GEORGIA 30334-5701

FAX: (404) 463-6532
www.psc.state.ga.us

## BEFORE THE GEORGIA PUBLIC SERVICE COMMISSION

| | | |
|---|---|---|
| IN THE MATTER OF: | ) | |
| | ) | |
| Earth's Products, L.L.C. also d/b/a Earth's Products Demo, L.L.C., | ) | DOCKET NO. 43076 |
| RESPONDENTS | ) | (PSC Case No. 20-17062) |
| | ) | |

## CERTIFICATE OF SERVICE

I hereby certify that this Consent Agreement was served upon all parties and persons listed below by depositing same in the United States mail.

Earth's Products, L.L.C. also d/b/a Earth's Products Demo, L.L.C.
Attn: Ken Finlon
4024 Sudderth Road
Buford, GA 30518

Crystal Garin, registered agent c/o
Earth's Products, L.L.C.
7601 Sprouts Springs Road
Buford, GA 30519

Respectfully Submitted this 8th day of July, 2020:

Marilyn K. Morris-Simmons

Marilyn K. Morris-Simmons, Admin. Assistant
Facilities Protection Unit
Georgia Public Service Commission
244 Washington St. Ste. 112
Atlanta, GA 30334

EXHIBIT 4

EXHIBIT 2

# GEORGIA DIG LAW

## NOTICE OF PROBABLE VIOLATION

### Why you are receiving this letter?

You are receiving the attached information because our office (The Georgia Public Service Commission/ Facilities Protection Division) has been notified by a utility owner or operator that you have damaged their facility and have been submitted as having possibly violated one or more parts of the GA Dig Law.

### What is the GA Dig Law (also known as The Georgia Utility Facility Protection Act (GUFPA))?

The Georgia Utility Facility Protection Act (GUFPA), enacted by the General Assembly in July 2000, provides for the protection of the buried utility facility infrastructure within the State of Georgia. Excavators using mechanized equipment are required to call for a utility facility locate prior to excavating with mechanized equipment or blasting. Upon receipt of a locate request, each affected facility owner/operator must locate their respective utility facilities. Violations of the GUFPA are subject to a civil penalty of up to $10,000 each violations. For the full version of the Act please visit our website at www.psc.state.ga.us.

### What is the GA Public Service Commission Facilities Protection Division?

We are responsible for the enforcement of the GUFPA Act.

### I have paid for the damages to the utility company, why am I getting something from the PSC?

Damages paid for repairs to utility facilities are separate from the civil penalties assessed for violation(s) of GA's Dig Law. Although you may have paid for the damaged utility facility, you are now being assessed a civil penalty for probable violation(s) of the GA Dig Law.

### How has an investigation been completed and I was not contacted before now?"

Utility owner/operators are mandated by Commission Rule to report ALL damages to their facilities. Utility owner/operators are to conduct an investigation of the damage and any resulting probable violation(s) prior to submitting the probable violation to the PSC. PSC Staff Investigators will assign each case a number and send out a Notice of Probable Violation ("NOPV") to the Respondent in order to 1) notify the Respondent of the alleged probable violation(s) and 2) request a written response and supporting documents that show a Respondent's side of the story.

### I do NOT agree with the probable violation alleged how do I tell my side?

Once you have reviewed the information included in this package you have 30 days from the date listed on the letter to respond in writing, to each alleged probable violation and to provide all evidence you wish to submit in support thereof.

### What are my response options?

There are several ways you can respond to the probable violation:

- Send in a written statement by mail, fax, or email of the events as you recall them. Send in any pictures or other documentation you may have along with witness statements if available. Use the questionnaire attached to the NOPV packet as a guide for your written statement.
- If you agree with the investigation please sign and date the attached consent agreement and mail or fax it back to our office.
- Contact our office and speak with your investigator (you must still submit your statement in writing).

### What happens after I submit my response?

Your investigator will review your information along with the information that was submitted by the utility owner/operator and will determine/complete their investigation based upon their findings and will contact you either by mail, email, or phone call of their conclusion.

### What happens if the investigator still finds me in violation after I have submitted my response and I still do NOT agree?

You may request to appear before the GUFPAAC (Georgia Utility Facility Protection Act Advisory Committee). The GUFPAAC is comprised of approx 13 members of industry stakeholders and your peers who will hear and make a recommendation on your case.

### What happens if I do NOT respond at all?

After the 30 day response time has expired your case will be set for a *Rule NISI* hearing on the Title 25 probable violations of the Dig Law. Your case will be heard by a hearing officer who will issue a recommended order on the merits of your case. If the hearing officer finds that the probable violation(s) is(are) supported by the evidence, an additional one-thousand dollars will be added to the civil penalty initially recommended by Staff. For Title 25 *Rule Nisis*, the civil penalties cannot exceed $10,000.00 per violation.

### How do I contact The Georgia Public Service Commission?

Our mailing address:
244 Washington Street, SW
Atlanta, GA 30334
Phone: 404-463-6526
Fax: 404-463-6532

# EXHIBIT 4



7011 3500 0001 0594 2459

*Georgia Public Service Commission*
**GUPFA Department**
**244 Washington Street**
**Atlanta, GA 30334**

...ovided)

...com®

Postage $ FILED

Certified Fee

Return Receipt Fee (Endorsement Required)

Restricted Delivery Fee (Endorsement Required)

Total Postag

FEB 16 2022

EXECUTIVE SECRETARY
G.P.S.C.

Postmark Here

Sent To **Earth's Products, L.L.C. also d/b/a Earth's Products Demo, L.L.C.**

Street, Apt. No. or PO Box No. **Attn: Ken Finlon**
**4024 Sudderth Road**

City, State, ZIP **Buford, GA 30518**

**46-2-91 20-17062 *3/30/22**

PS Form 3800, August 2006 ... See Reverse for Instructions

EXHIBIT 4

CERTIFIED MAIL™

7011 3500 0001 0594 2466

US POSTAGE PITNEY BOWES
ZIP 30334 $ 008.96⁰
02 4W
0000358407 FEB 16 2022

Geo

244 WASHINGTON STREET, S.W.
ATLANTA, GEORGIA 30334-5701

20-17062

**SENDER: *COMPLETE THIS SECTION***

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Crystal Garin, registered agent c/o
Earth's Products, L.L.C.
7601 Sprouts Springs Road
Buford, GA 30519
46-2-91 20-17062 *3/30/22

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature
X ☐ Agent ☐ Addressee

B. Received by *(Printed Name)* C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number
*(Transfer from service label)* 7011 3500 0001 0594 2466

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

7011 3500 0001 0594 2466

*Georgia Public Service Commission*
GUFPA Department
244 Washington Street
Atlanta, GA 30334

| | |
|---|---|
| Postage | $ FILED |
| Certified Fee | |
| Return Receipt Fee (Endorsement Required) | FEB 16 2022 |
| Restricted Delivery Fee (Endorsement Required) | |
| Total Postage & Fees | $ EXECUTIVE SECRETARY G.P.S.C. |

Sent To: Crystal Garin, registered agent c/o
Earth's Products, L.L.C.
Street, Apt. No., or PO Box No.: 7601 Sprouts Springs Road
City, State, ZIP+4: Buford, GA 30519
46-2-91 20-17062 *3/30/22

PS Form 3800, Au

IXIE 326 D0 1 0002/25/22

RETURN TO SENDER
NOT DELIVERABLE AS ADDRESSED
UNABLE TO FORWARD

C: 30334570199 2247N057030-01409

RECEIVED
MAR 09 2022
GUFPA UNIT
GPSC

RECEIVED
MAR 09 2022
GUFPA UNIT
GPSC

FAILURE TO RESPOND [illegible] RESULT
IN PENALTIES UP TO $15,000