

1500 SW Arrowhead Road  
Topeka, KS 66604-4027

Andrew J. French, Chairperson  
Dwight D. Keen, Commissioner  
Annie Kuether, Commissioner



20250123134705  
Kansas Corporation  
Commission  
Phone: 785-271-3100  
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<http://kcc.ks.gov/>

Laura Kelly, Governor

**NOTICE OF PENALTY ORDER**  
25-DPAX-255-PEN

January 23, 2025

MYR Construction, LLC  
Michael K. McVey, Registered Agent  
15621 W. 87th Street #352  
Lenexa, Kansas 66219

This is a notice of a penalty assessment against MYR Construction, LLC (“MYR”), for a violation of the Kansas Underground Utility Damage Prevention Act (“KUUDPA”) and pipeline safety regulations adopted by the Kansas Corporation Commission. MYR has been assessed a civil penalty in the amount of \$500. For a full description of the penalty please refer to the Penalty Order attached to this notice.

**IF YOU ACCEPT THE PENALTY:** You have twenty (20) days from the date of service of the Penalty Order to pay the penalty. Payments shall be payable to the Kansas Corporation Commission and mailed to the Fiscal Division of the Kansas Corporation Commission, 1500 S.W. Arrowhead Road, Topeka, Kansas 66604, and shall include a reference to Docket Number 25-DPAX-255-PEN.

**IF YOU CONTEST THE PENALTY:** You have the right to request a hearing to challenge the Penalty Order. A request for hearing must be made in writing, setting forth the specific grounds upon which relief is sought. You or an authorized representative of MYR, may electronically file its request for hearing within fifteen (15) days from the date of service of the Penalty Order. A copy of the request for hearing must be provided to the Litigation Counsel listed below.

**IF YOU FAIL TO ACT:** Pursuant to K.A.R. 82-14-6(j), failure to submit a written request for a hearing within fifteen (15) days from date of service of the Penalty Order will be considered an admission of noncompliance. **Failing to request a hearing or pay the civil assessment may result in further penalties.**

Respectfully,

*/s/ Madisen K. Hane*

Madisen K. Hane, S. Ct. No. 30292  
Litigation Counsel  
(785) 271-3288  
[Madisen.Hane@ks.gov](mailto:Madisen.Hane@ks.gov)

**THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS**

Before Commissioners:     Andrew J. French, Chairperson  
                                  Dwight D. Keen  
                                  Annie Kuether

In the Matter of the Investigation of MYR     )  
Construction, LLC. Regarding Violations of     )  
the Kansas Underground Utility Damage     )  
Prevention Act (KUUDPA) (K.S.A. 66-1801,     )     Docket No. 25-DPAX-255-PEN  
et seq., and K.A.R. 82-14-1 through 82-14-5),     )  
and the Commission’s Authority to Impose     )  
Penalties and/or Sanctions (K.S.A. 66-1,151).     )

**PENALTY ORDER**

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (“Commission”) for consideration and determination. Having examined its files and records, the Commission finds and concludes:

**I. JURISDICTION**

1. The Commission has jurisdiction to administer and enforce the Kansas Underground Utility Damage Prevention Act (“KUUDPA”), as provided in K.S.A. 66-1801, *et seq.*<sup>1</sup> The Commission has full power and authority to adopt all necessary rules and regulations for carrying out the provisions of KUUDPA, including imposing civil penalties and injunctive relief against any person or entity subject to and found in violation of KUUDPA, or any rule, regulation, or order of the Commission.<sup>2</sup>

2. K.S.A. 66-1802 defines excavation as “any operation in which earth, rock or other material below the surface is moved or otherwise displaced by any means.” MYR Construction, LLC (“MYR”) operates where earth, rock, or other materials below the surface is moved or

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<sup>1</sup> See K.S.A. 66-1813.

<sup>2</sup> See K.S.A. 66-1812 and K.S.A. 66-1815.

otherwise displaced by any means and therefore is an excavator in Kansas as defined by K.S.A. 66-1802.<sup>3</sup> Therefore, MYR is subject to the Commission’s jurisdiction regarding compliance with KUUDPA’s obligations and may be subject to civil penalties and injunctive relief.

### III. NONCOMPLIANCE

3. On June 4, 2024, Commission Staff (“Staff”) conducted an onsite investigation of the excavation operations of MYR at the excavation site of 1635 North 55<sup>th</sup> Street in Kansas City, Kansas.

4. On June 12, 2024, Staff subsequently issued a PNC to MYR notifying MYR of the results of Staff’s investigation.<sup>4</sup>

5. On June 18, 2024, the PNC was sent to MYR via registered mail.<sup>5</sup> Staff’s PNC notified MYR that it violated K.S.A. 66-1804(a) and (e) when it failed to provide a notice of intent before excavating.

6. Staff determined in its investigation that MYR failed to notify One-Call and make the requisite locates request prior to clearing out 6 feet of embankment with a skid steer for a new driveway on June 4, 2024, in violation of K.S.A. 66-1804. Staff determined that MYR damaged an Atmos above the ground riser while conducting this excavation, but it could not determine the estimated cost of damage.

7. As required by K.A.R. 82-16-6(e), MYR was required to mail a response to Staff’s June 18, 2024, PNC on or before July 18, 2024. MYR failed to timely mail a response to Staff’s PNC and ultimately did not respond to Staff’s PNC.

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<sup>3</sup> K.S.A. 66-1802(e) provides: “‘Excavator’ means any person who engages directly in excavation activities within the state of Kansas but shall not include any occupant of a dwelling who: (1) Uses such dwelling as a primary residence; and (2) excavates on the premises of such dwelling.”

<sup>4</sup> K.A.R. 82-14-6(a); and *See* Exhibit 1 of Attachment A to this Order.

<sup>5</sup> *Id.*

8. On December 16, 2024, Staff submitted to the Commission’s Litigation Division a Report and Recommendation (“R&R”) including attachments which is made a part hereof and incorporated by reference as **Attachment A**.<sup>6</sup> Staff found that MYR was directly responsible for its actions in failing to provide a notice of intent before excavating as required by K.S.A. 66-1804.<sup>7</sup> Staff’s R&R recommended a civil penalty of \$500 be assessed against MYR for its failure to provide notice of its intent to excavate before excavating on June 4, 2024, in violation of K.S.A. 66-1804(a) and (e).<sup>8</sup>

### III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

9. The Commission finds it has full power and authority under K.S.A. 66-1815(a) to adopt all necessary rules and regulations for carrying out the provisions of KUUDPA.

10. The Commission finds that MYR was operating as an excavator, as defined in K.S.A. 66-1802, during the incident at issue.

11. The Commission finds that, pursuant to K.A.R. 82-14-6(a), Staff was authorized to serve a PNC on MYR after Staff conducted an investigation regarding damage to a gas service line.

12. The Commission finds that by failing to provide a notice of intent to excavate prior to excavating at the Excavation Site, MYR violated K.S.A. 66-1804(a) and (e).

13. The Commissions finds that MYR failed to respond to the the PNC within thirty (30) days as required by K.A.R. 82-14-6(c) and therefore this failure to submit a timely response constitutes an admission of the factual allegations contained in the PNC.<sup>9</sup>

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<sup>6</sup> Staff’s Report and Recommendation, Utilities Division (Dec. 16, 2024), Attachment 1 (“Staff’s R&R” or “R&R”).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> K.A.R. 82-14-6(e).

14. The Commission finds that the penalty amount recommended by Staff is necessary to correct MYR's violation.

15. The Commission concludes that MYR violated K.S.A. 66-1804(a) and (e) and that Staff's recommendation the excavator be assessed a \$500 civil penalty is just and reasonable.

**IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:**

A. A civil penalty in the amount of \$500 is assessed against MYR Hardscapes, LLC, for violating the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 *et seq.*, and the Commission's pipeline safety regulations adopted pursuant to K.S.A. 66-1,150 *et seq.*

B. Pursuant to K.A.R. 82-14-6(j), MYR may request a hearing to challenge the allegations set forth in this Penalty Order by electronically filing its request for hearing with the Commission within fifteen (15) days from the date of service of this Penalty Order, and e-mailing or mailing a copy of the request for hearing to the Litigation Counsel listed on the Notice of Penalty Assessment. Hearings will be scheduled only upon written request. Failure to timely request a hearing shall be considered an admission of noncompliance and result in a waiver of MYR's right to a hearing. A request for hearing must comply with the provisions of K.A.R. 82-1-232(b).

C. Pursuant to K.A.R. 82-14-6(i), if MYR does not request a hearing, payment of the civil penalty is due within twenty (20) days from the date of service of this Penalty Order. Payments shall be made payable to the Kansas Corporation Commission and mailed to the following address:

Fiscal Division  
Kansas Corporation Commission  
1500 S.W. Arrowhead Road  
Topeka, Kansas 66604

The payment shall include a reference to Docket Number 25-DPAX-255-PEN.

D. Unless a hearing is requested, failure to pay the \$500 civil penalty within twenty (20) days from the date of service of this Penalty Order will result in enforcement action against MYR, including all sanctions, requirements, and penalties described above being enforceable without further action by the Commission.

**BY THE COMMISSION IT IS SO ORDERED.**

French, Chairperson; Keen, Commissioner; Kuether, Commissioner

Dated: 01/23/2025



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Lynn M. Retz  
Executive Director

MKH

# **ATTACHMENT “A”**

**REPORT AND RECOMMENDATION  
UTILITIES DIVISION**

**TO:** Andrew J. French, Chairperson  
Dwight D. Keen, Commissioner  
Annie Kuether, Commissioner

**FROM:** Suzanne M. Balandran, Public Service Administrator  
Paul Owings, Chief of Pipeline Safety  
Jeff McClanahan, Director of Utilities

**DATE:** December 17, 2024

**SUBJECT: Docket Number:**  
In the Matter of the Investigation of MYR Construction LLC. Regarding Violations of the Kansas Underground Utility Damage Prevention Act (KUUDPA) (K.S.A. 66-1801, *et seq.*, and K.A.R. 82-14-1 through 82-14-5) and the Commission's Authority to Impose Penalties and/or Sanctions (K.S.A. 66-1,151).

**EXECUTIVE SUMMARY:**

As a result of the investigation in Case Number AR-24-OC-1019, Staff recommends that a civil penalty in the amount of \$500 be assessed to MYR Construction LLC. (MYR) for violation(s) of the Kansas Underground Utility Damage Prevention Act (KUUDPA). MYR failed to request locates of underground facilities prior to excavation at 1635 North 55<sup>th</sup> St. in Kansas City, Kansas. Failure to provide a notice of intent before excavating is a violation of K.S.A. 66-1804. Staff issued a Notice of Probable Noncompliance (PNC) to MYR on June 12, 2024. The PNC was sent via registered mail on June 18, 2024. MYR did not respond to the PNC, as required by K.A.R. 82-14-6 (c). The PNC is included as Exhibit 1.

**ANALYSIS:**

**Rationale for Penalties:**

A. **Gravity of noncompliance:**

Excavating without a One-Call ticket is considered a high-risk activity with the potential for significant consequences to public safety. This excavator was excavating in the near vicinity of an Atmos facility. Because MYR did not request locates prior to clearing out an embankment with a skid steer, the utility operator was unable to provide the location at



which MYR would be required to carefully excavate to avoid damage to an underground facility at any depth. MYR failed to comply with the law and warrants the assessment of a civil penalty.

B. Culpability:

MYR is directly liable for its actions in failing to provide a notice of intent before excavating as required by Kansas law.

C. History of noncompliance:

Staff has not issued any Notices of Probable Noncompliance for violations of KUUDPA to MYR.

D. Response of excavator regarding noncompliance(s):

Response to the PNC as required by K.A.R. 82-14-6(c) was not received by Staff. The failure of a party to submit a timely response within 30 days to a Notice of Probable Noncompliance constitutes an admission to all factual allegations made by the commission staff, as per K.A.R. 82-14-6(e).

E. Aggravating/Mitigating Circumstances:

Staff has not determined there to be any circumstances that would cause modification of the \$500 recommended penalty amount.

**RECOMMENDATION:**

Staff recommends a civil penalty be assessed to MYR in the amount of \$500 for violating K.S.A. 66-1804.

Attachment

# **EXHIBIT 1**

Company: MYR Construction LLC

Division:

Regulation:

66-1804 (a) & (e) Notice of intent of excavation.

Notice of intent of excavation.

(a) Except in the case of an emergency, an excavator shall serve notice of intent of excavation at least two full working days, but not more than 15 calendar days before the scheduled excavation start date, on each operator having underground tier 1 facilities located in the proposed area of excavation .

(e) The notice of intent of excavation shall contain the name, address and telephone number of the person filing the notice of intent, the name of the excavator, the date the excavation activity is to commence and the type of excavation being planned. The notice shall also contain the specific location of the excavation.

PROBABLE NONCOMPLIANCE DESCRIPTION:

On 06/04/2024, MYR Construction LLC did not notify One-Call prior to excavating at 1635 North 55th Street in Kansas City, Kansas. MYR Construction LLC damaged an Atmos above ground riser with a skid steer while clearing out 6ft of embankment for a new driveway. After performing a search in the One-Call database no ticket was found for this area by this contractor during this time frame for the work that was being performed prior to the damage.

OPERATOR'S RESPONSE: (Attach verification if needed)

Operator's Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

PIPELINE SAFETY USE ONLY:	
Date reviewed: _____	Date reviewed: _____
Chief: _____	Inspector: _____

Inspection Type: One Call Inquiry/Complaint  
Date Inspected: 06/04/2024  
Inspected By: AR

**CERTIFICATE OF SERVICE**

25-DPAX-255-PEN

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of first class mail and electronic service on 01/23/2025.

AHSAN LATIF, LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
ahsan.latif@ks.gov

Michael McVey, RESIDENT AGENT  
MYR Construction LLC  
15621 West 87th Street  
#352  
Lenexa, KS 66219

/S/ KCC Docket Room  
KCC Docket Room