

1500 SW Arrowhead Road  
Topeka, KS 66604-4027



Phone: 785-271-3100  
Fax: 785-271-3354  
<http://kcc.ks.gov/>

Pat Apple, Chairman  
Shari Feist Albrecht, Commissioner  
Jay Scott Emmler, Commissioner

Sam Brownback, Governor

**NOTICE OF PENALTY ASSESSMENT**  
**18-DPAX-202-PEN**

November 21, 2017

Anthony David  
New Image Concrete Design, LLC  
14000 W 107th St  
Lenexa, Kansas 66215

This is a notice of penalty assessment against New Image Concrete Design, LLC for violation of the Kansas Underground Utility Damage Prevention Act (KUUDPA) discovered during an investigation conducted on August 9, 2017, by Kansas Corporation Commission Staff. For a full description of the violation and penalty please refer to the Order that is attached to this notice.

**IF YOU ACCEPT THE PENALTY:**

You have been assessed a \$500 penalty. You have twenty (20) days from the date of service of the Penalty Order to pay the fine amount. Checks should be payable to the Kansas Corporation Commission. Payments shall be mailed to the Fiscal Section of the Kansas Corporation Commission, 1500 SW Arrowhead Road, Topeka, Kansas 66604, and shall include a reference to the docket number (18-DPAX-202-PEN) of this proceeding.

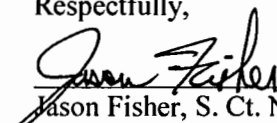
**IF YOU CONTEST THE PENALTY:**

**You have the right to request a hearing.** Requests for hearings must be made in writing, setting forth the specific grounds upon which relief is sought. The company may electronically file its request for hearing at <https://puc.kcc.ks.gov/e-filing/e-express/> within fifteen (15) days from the date of service of this Penalty Order, and e-mail or mail a copy of the request for hearing to the Litigation Counsel listed below. If the company does not have access to the internet, it must submit an original and seven copies of the request for hearing to the Commission's Secretary at 1500 SW Arrowhead Road, Topeka, Kansas 66604, within fifteen (15) days from the date of service of this Penalty Order, and provide a copy to the Litigation Counsel listed below.

**IF YOU FAIL TO ACT:**

Pursuant to K.A.R. 82-14-6(j), failure to pay or provide a written request for a hearing within fifteen (15) days or, in the alternative, to pay the civil assessment in twenty (20) days from service of the Penalty Order, will be considered an admission of noncompliance and result in the Penalty Order becoming a final order and the Commission may order further sanctions.

Respectfully,

  
\_\_\_\_\_  
Jason Fisher, S. Ct. No. 19908  
Litigation Counsel  
(785)271-3186

Before Commissioners: Pat Apple, Chairman  
Shari Feist Albrecht  
Jay Scott Emler

In the Matter of the Investigation of New  
**Image Concrete Design, LLC, of Lenexa,**  
**Kansas,** Regarding Violation(s) of the Kansas  
Underground Utility Damage Prevention Act  
(KUUDPA) (K.S.A. 66-1801, *et seq.*, and  
K.A.R. 82-14-1 through 82-14-6), and the  
Commission's Authority to Impose Penalties  
and/or Sanctions (K.S.A. 66-1,151).

Docket No. 18-DPAX-202-PEN

## PENALTY ORDER

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission). The Commission, being duly advised in the premises, and after having examined its files and records, finds and concludes as follows:

## I. JURISDICTION AND BACKGROUND

1. The Commission has jurisdiction and authority to administer and enforce the Kansas Underground Utility Damage Prevention Act (KUUDPA), as provided in K.S.A. 66-1801 *et seq.* Likewise, K.S.A. 2016 Supp. 66-1815 grants the Commission full power and authority to adopt all necessary rules and regulations for carrying out the provisions of K.S.A. 66-1801 through 66-1814, *et seq.*

2. In its enforcement of KUUDPA, pursuant to K.A.R. 82-14-6, as amended, the Commission may investigate an entity under the Commission's jurisdiction and order a hearing on the Commission's own motion when the Commission believes the entity is in violation of the law or any order of the Commission.

3. The Commission shall impose civil penalties and injunctive actions against any person or entity subject to and found in violation of the provisions of KUUDPA, or any rule and regulation, or any order of the Commission. Each violation is subject to a civil penalty, not to exceed \$25,000, for each day that the violation persists, with a maximum civil penalty of \$1,000,000 for any related series of violations. K.S.A. 66-1812, 66-1,151 and amendments thereto; and, K.A.R. 82-14-6.

## **II. ALLEGATIONS OF NONCOMPLIANCE**

4. Pursuant to the above authority, on August 9, 2017 Commission Staff (Staff) investigated the activities and operations of New Image Concrete Design, LLC (Respondent). See Report and Recommendation of Staff dated November 9, 2017, a copy of which is attached hereto as Attachment "A". As a result of this investigation, Staff reports the following:

- a. On August 9, 2017, Staff performed an onsite inspection at 11008 W 164th St in Olathe, Kansas. Staff's investigation discovered the Respondent caused damage to an Atmos Energy  $\frac{3}{4}$  inch PE gas service line while excavating with a mini excavator. No injuries or additional property damage occurred.
- b. Staff learned during its independent investigation that Respondent had not provided Atmos Energy with a notice of intent to excavate and Kansas One Call had not been called.
- c. On August 15, 2017, Staff mailed a Notice of Probable Noncompliance notifying Respondent of the investigation results. The letter instructed Respondent to respond within thirty (30) days and to indicate whether Respondent accepted or disagreed with the findings of Staff's investigation.

The notice also requested Respondent to provide written explanation of the actions taken by Respondent to prevent future KUUDPA violations. In the alternative, the Respondent could provide documentation explaining why Respondent disagreed with the findings to include identification of any errors in the Notice of Probable Noncompliance. The violation cited is as follows:

66-1804(a) & (e)

**66-1804. 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 no 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.

- d. Staff has not received a written response from Respondent in violation of K.A.R. 82-14-6. Pursuant to K.A.R. 82-14-6(e), failure to respond to the Notice of Probable Noncompliance within 30 days shall constitute an admission to all factual allegations made by the Commission Staff and may be used against the Respondent in future proceedings.

5. Based upon the available facts, Staff recommends the Commission find that at the time of the damage alleged herein, Respondent was an excavator conducting excavation activities as defined in K.S.A. 2016 Supp. 66-1802(c) and (d). Additionally, based upon the available facts, Staff recommends the Commission find Respondent failed to serve notice of intent of excavation as Kansas law requires.

6. Excavating without locates and without ascertaining the location of all underground facilities is considered a high-risk activity with the potential for significant consequences to public safety. KUUDPA requires the excavator to serve notice of intent of excavation at least two full working days before the scheduled excavation start date. Because providing proper and timely notice of intent and waiting the required amount of time is the most fundamental preventative measure an excavator takes, the fact that New Image Concrete Design, LLC failed to comply with this requirement of law warrants the assessment of a civil penalty.

7. Staff recommends the Commission issue New Image Concrete Design, LLC a civil penalty of \$500 for the violation of the Kansas Underground Utility Damage Prevention Act as alleged.

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

8. Pursuant to K.S.A. 66-1801 *et seq.*, the Commission has jurisdiction and authority to administer and enforce the KUUDPA.

9. The Commission finds during the incident described in Staff's Report and Recommendation, Respondent was an excavator conducting excavation activities as defined in K.S.A. 66-1802(c) and (d). Accordingly, the Commission finds it has jurisdiction over Respondent to enforce the KUUDPA.

10. The Commission finds Respondent violated Kansas law governing underground utilities, including various provisions of KUUDPA, and is therefore subject to sanctions or fines imposed by the Commission. Specifically, the Commission finds Respondent violated K.S.A. 66-1804(a) & (e) by failing to provide a notice of intent of excavation. As a result of this failure, Respondent damaged underground facilities of Atmos Energy.

11. The Commission concludes Respondent shall be assessed a civil penalty, pursuant to K.S.A. 66-1812, in the amount of \$500 for violation of the Kansas Underground Utility Damage Prevention Act.

**THE COMMISSION THEREFORE ORDERS THAT:**

A. New Image Concrete Design, LLC, of Lenexa, Kansas, is hereby assessed a \$500 civil penalty for the violation of the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 *et. seq.*

B. Pursuant to K.S.A. 2016 Supp. 77-529, K.S.A. 66-118b, K.A.R. 82-1-215 and amendments thereto, any party may request a hearing by electronically filing its request at <https://puc.kcc.ks.gov/e-filing/e-express/> within fifteen (15) days from the date of service of this Penalty Order, and e-mail or mail a copy of the request for hearing to the Litigation Counsel listed on the Notice of Penalty Assessment. If the company does not have access to the internet, it must submit an original and seven copies of the request for hearing to the Commission's Secretary at 1500 SW Arrowhead Road, Topeka, Kansas 66604, within fifteen (15) days from the date of service of this Penalty Order, and provide a copy to Litigation Counsel. *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 Respondent's right to a hearing. Furthermore, this Penalty Order will become a Final Order assessing a \$500 civil penalty against Respondent.

C. On November 21, 2017, this Penalty Order was mailed via certified mail, return receipt number 70161970000105742802. Service of this Order is complete upon the date delivered shown on the Domestic Return Receipt.

D. Attorneys for all parties shall enter their appearances in Commission proceedings by giving their names and addresses for the record. For civil penalties exceeding \$500, a

corporation shall appear before the Commission by its attorney, unless waived by the Commission for good cause shown and a determination that such waiver is in the public interest. K.S.A. 77-515(c); K.A.R. 82-1-228(d)(2); K.A.R. 82-1-202(a).

E. Pursuant to K.A.R. 82-14-6, if you do not request a hearing, the payment of the civil penalty is due in twenty (20) days from the date of service of this Order. Checks shall be payable to the Kansas Corporation Commission. Payments shall be mailed to the Fiscal Section of the Kansas Corporation Commission, 1500 S.W. Arrowhead Road, Topeka, Kansas 66604. Credit card payments can be made by calling the Fiscal Office at 785-271-3351. The payment shall include a reference to the docket number (18-DPAX-202-PEN) of this proceeding.

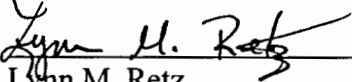
F. Failure to pay the \$500 civil penalty within twenty (20) days from the date of service of this Penalty Order will result in enforcement action against Respondent, including all sanctions, requirements, and penalties described above being enforceable without further action by the Commission.

G. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further order or orders as it may deem necessary.

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

Apple, Chairman; Albrecht, Commissioner; Emler, Commissioner

Dated: NOV 21 2017

  
Lynn M. Retz  
Secretary to the Commission

JF/vj

Order Mailed Date  
NOV 22 2017

## **ATTACHMENT “A”**

**REPORT AND RECOMMENDATION  
UTILITIES DIVISION**

**TO:** Chairman Pat Apple  
Commissioner Shari Feist Albrecht  
Commissioner Jay Scott Emler

**FROM:** Christie Knight, Damage Prevention Special Investigator  
Leo Haynos, Chief of Pipeline Safety  
Jeff McClanahan, Director of Utilities

**DATE:** November 9, 2017

**SUBJECT:** **Docket Number:** \_\_\_\_\_  
In the Matter of the Investigation of New Image Concrete Design, 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:**

Staff is recommending a civil penalty be issued to New Image Concrete Design, LLC (New Image) in the amount of \$500 for violation of KUUDPA. New Image did not provide a notice of intent to excavate prior to excavating. A brief timeline of events is attached (Attachment I). Failure to provide proper notice of intent before excavating is a violation of K.S.A. 66-1804. A Probable Noncompliance (PNC) was issued to New Image on August 15, 2017. New Image did not respond to the PNC within 30 days as required by K.A.R. 82-14-6 (c). A copy of the PNC description is included as Attachment II.

**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. Because providing proper and timely notice of intent is the most fundamental preventative measure an excavator takes, the fact

that New Image failed to comply with this requirement of the law warrants the assessment of a civil penalty.

B. Culpability:

New Image is directly responsible for its actions in failing to acquire a One-Call ticket as Kansas law requires.

C. History of noncompliance:

Staff has issued no other KUUDPA Probable Noncompliance(s) to New Image in the past two years.

D. Response of excavator regarding noncompliance(s):

Response to the Notice of Probable Noncompliance as required by K.A.R. 82-14- 6 (c) has not been received by Staff.

E. Aggravating/Mitigating Circumstances:

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

**RECOMMENDATION:**

Staff recommends a civil penalty be issued to New Image Concrete Design, LLC in the amount of \$500 for violation(s) of K.S.A. 66-1804.

Attachments

## **ATTACHMENT I**

### **Timeline:**

- 8/9/2017                      At approximately 14:07, Staff received an email notification from an Atmos dispatcher indicating an excavator had damaged its natural gas line at 11008 W 164<sup>th</sup> Street in Olathe, Kansas.
- Staff arrived onsite at approximately 14:42 and subsequently conducted an on-site investigation. Staff learned from conversations on-site with Atmos personnel that no notification was made to Kansas One-Call for a ticket prior to excavating. This was later confirmed through research of the Kansas One-Call database.
- Upon completion of the investigation and research, Staff determined that New Image had been excavating without a valid Kansas One-Call ticket and had violated KUUDPA.
- 8/15/2017                      Staff issued New Image a Notice of Probable Noncompliance for violating KUUDPA as stated above.
- 9/17/2017                      Staff has not received New Image's response to the Notice of Probable Noncompliance as required by K.A.R. 82-14-6(c).

## ATTACHMENT II

### PROBABLE NONCOMPLIANCE

Investigation: CK-17-QC-1102

Company: New Image Concrete Design, LLC

Division:

#### Regulation:

66-1004 (a) & (c) 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/shift not more than 13 calendar days before the scheduled excavation start date, on each operator having underground tier 1 facilities located in the proposed area of excavation.

(c) 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 8/9/2017, New Image Concrete Design LLC did not call One-Call prior to excavating at 11001 W 164th St in Overland Park, Kansas. New Image Concrete damaged an Atmos 3/4" PE gas service line with a mini excavator while excavating. 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: \_\_\_\_\_

PRERELEASE SAFETY USE ONLY:

Date reviewed: \_\_\_\_\_

Date returned: \_\_\_\_\_

Chief: \_\_\_\_\_

Inspector: \_\_\_\_\_

Inspection Type: One Call Inquiry/Compliance

Date Inspected: 08/09/2017

Inspected By: CK

**CERTIFICATE OF SERVICE**

18-DPAX-202-PEN

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of  
first class mail/hand delivered on NOV 21 2017.

JAKE FISHER, LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604-4027  
Fax: 785-271-3354  
j.fisher@kcc.ks.gov

ANTHONY DAVID, MANAGING MEMBER  
NEW IMAGE CONCRETE DESIGN, LLC  
14000 W 107TH STREET  
LENEXA, KS 66215

/s/ DeeAnn Shupe  
DeeAnn Shupe

Order Mailed Date  
NOV 22 2017