

**NOTICE OF PENALTY ORDER**  
25-DPAX-280-PEN

February 4, 2025

Amino Brothers Co., Inc.  
Ken Ashmore, Utility Damage Prevention Coordinator  
P.O. Box 11277  
8110 Kaw Drive  
Kansas City, Kansas 66111

This is a notice of a penalty assessment against Amino Brothers Co., Inc. (“Amino Brothers”), for a violation of the Kansas Underground Utility Damage Prevention Act (“KUUDPA”) and pipeline safety regulations adopted by the Kansas Corporation Commission. Amino Brothers 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-254-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 Amino Brothers, 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/ Ahsan A. Latif*

Ahsan A. Latif, S. Ct. No. 24709  
Litigation Counsel  
(785) 271-3118  
[ahsan.latif@ks.gov](mailto:ahsan.latif@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 **Amino Brothers Co., Inc.**, 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). )  
Docket No. 25-DPAX-280-PEN

**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.” Amino Brothers Co., Inc. (“Amino Brothers”) operates where earth, rock, or other materials below the surface is moved

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

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

or otherwise displaced by any means and therefore is an excavator in Kansas as defined by K.S.A. 66-1802.<sup>3</sup> Therefore, Amino Brothers 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 October 15, 2024, Commission Staff (“Staff”) conducted an onsite investigation of the excavation operations of Amino Brothers at the excavation site of 5812 Monrovia Street in Shawnee, Kansas.

4. On October 23, 2024, Staff subsequently issued a PNC to Amino Brothers notifying Amino Brothers that it violated K.S.A. 66-1809(a) when it failed to exercise such reasonable care as may be necessary for the protection of any underground facility in and near the construction area when working in close proximity to any such underground facility.

5. Staff determined in its investigation that Amino Brothers failed to use nonintrusive means while doing road construction near marked facilities in the tolerance zone on October 15, 2024, in violation of K.S.A. 6-1809(a).<sup>4</sup> The PNC notes “one acceptable means of reasonable care is to spot the marked utility via pothole prior to excavation.” Staff determined that Amino Brothers damaged a Kansas Gas Service 3/4” natural gas service line while conducting this excavation, but it could not determine the estimated cost of damage.

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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.S.A. 66-1809(a) states “... an excavator shall exercise such reasonable care as may be necessary for the protection of any underground facility in and near the construction area when working in close proximity to any such underground facility”.

6. On October 23, 2024, Staff received a response from Amino Brothers that did not dispute Staff’s findings, stating that while they had potholed on the east side of the street they did not pothole to expose the facility after crossing to the west side of the street.<sup>5</sup>

7. On December 19, 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 Amino Brothers was directly responsible for its actions in failing to excavate in a careful and prudent manner when working within the tolerance zone as required by K.S.A. 66-1809(a).<sup>7</sup> Staff’s R&R recommended a civil penalty of \$500 be assessed against Amino Brothers for its failure to exercise reasonable care on October 15, 2024, in violation of K.S.A. 66-1809(a).<sup>8</sup>

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

8. 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.

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

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

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<sup>5</sup> . Staff’s Report and Recommendation, Utilities Division (Dec. 19, 2024), Attachment 1 (“Staff’s R&R” or “R&R”).

<sup>6</sup> *Id.*

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

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

11. The Commission finds that Amino Brothers did not exercise reasonable care or use nonintrusive means to assure there was not a conflict between underground facilities and excavation activity in the tolerance zone near 5812 Monrovia St., Shawnee, Kansas.

12. The Commissions finds that Amino Brothers responded to the PNC within thirty (30) days as required by K.A.R. 82-14-6(a) and did not dispute Staff's findings.<sup>9</sup>

13. The Commission finds that the penalty amount recommended by Staff is necessary to correct Amino Brothers' violation.

14. The Commission finds that Amino Brothers violated 66-1809(a) and should be assessed a \$500 civil penalty. The Commission concludes Amino Brothers' assessed 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 Amino Brothers 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), Amino Brothers 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

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

Amino Brothers'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 Amino Brothers 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-280-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 Amino Brothers, 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: 02/04/2025



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Abigail D. Emery  
Acting Secretary to the Commission

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# **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 19, 2024

**SUBJECT: Docket Number: 25-DPAX-280-PEN**  
In the Matter of the Investigation of Amino Brothers Co., Inc. 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-1112, Staff recommends that a civil penalty in the amount of \$500 be assessed to Amino Brothers Co., Inc. (Amino Brothers) for violation(s) of the Kansas Underground Utility Damage Prevention Act (KUUDPA). Amino Brothers violated K.S.A. 66-1809 by failing to exercise such reasonable care as may be necessary for the protection of any underground facilities, when excavating in close proximity to any such facility, near 5812 Monrovia St., in Shawnee, Kansas. Staff issued a Notice of Probable Noncompliance (PNC) to Amino Brothers on October 23, 2024. Amino Brothers responded to the PNC on October 23, 2024, as required by K.A.R. 82-14-6 (c). The response to the PNC is included as Exhibit 1.

**ANALYSIS:**

**Rationale for Penalties:**

A. **Gravity of noncompliance:**

If an excavator does not take precautions necessary to excavate in a careful and prudent manner when working within the tolerance zone, then damage can occur. Kansas



regulations state that excavating with reasonable care shall include using nonintrusive means to assure there is not a conflict between underground facilities and excavation activity in the tolerance zone. Staff contends the excavator must also expose the facility at intervals as often as necessary throughout excavation as a fundamental means of providing reasonable care while excavating. This excavator damaged a Kansas Gas Service (KGS) natural gas service line with a trackhoe while excavating for road construction. Because Amino Brothers did not use nonintrusive means while working near marked facilities in the tolerance zone to assure that there would not be a conflict with the facility, Amino Brothers failed to use reasonable care as required by the law, and therefore warrants a civil penalty.

B. Culpability:

Amino Brothers is directly liable for its actions in failing to use exercise reasonable care while excavating as required by Kansas law.

C. History of noncompliance:

Staff has issued two Notices of Probable Noncompliance for violations of KUUDPA to Amino Brothers in the last two years.

D. Response of excavator regarding noncompliance(s):

Response to the PNC as required by K.A.R. 82-14- 6(c) was received by Staff. Amino Brothers acknowledged that though they had potholed on the east side of the street they did not pothole to expose the facility after crossing to the west side of the street.

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 Amino Brothers in the amount of \$500 for violating K.S.A. 66-1809.

Attachment

## **Exhibit 1**

PROBABLE NONCOMPLIANCE

Investigation: AR-24-OC-1112

Company: Amino Brothers Co., Inc.

Division:

Regulation:

66-1809 (a) Excavator's duty to exercise reasonable care.

(a) Upon receiving information as provided in K.S.A. 2001 Supp. 68-1806, and amendments thereto, an excavator shall exercise such reasonable care as may be necessary for the protection of any underground facility in and near the construction area when working in close proximity to any such underground facility.

PROBABLE NONCOMPLIANCE DESCRIPTION:

On 10/24/2024, KCC Staff was notified of excavation work resulting in a damage that occurred to a Kansas Gas Service natural gas service line at 5812 Monrovia Street. KCC alleges Amino Brothers Co, Inc damaged a KGS 3/4" natural gas service line with a trackhoe while doing road reconstruction. There was a valid One-Call ticket #24514789 with a due date of 10/05/2024. Locate marks were present and within tolerance. One acceptable method of reasonable care is to spot the marked utility via pothole prior to excavation.

OPERATOR'S RESPONSE: (Attach verification if needed)

PLEASE SEE ATTACHED

Operator's Authorized Signature:

*[Handwritten Signature]*

Date:

10/23/2024

PIPELINE SAFETY USE ONLY:

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

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

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

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

Inspection Type: One Call Inquiry/Complaint

Date Inspected: 10/15/2024

Inspected By: AR

# AMINO BROTHERS Co., INC.

Heavy & Highway  
Construction

A Certified DBE/WBE Company

October 23, 2024

Mr. Paul Owings  
Deputy Chief Engineer  
Kansas Corporation Commission  
Utilities Division  
1500 SW Arrowhead Road  
Topeka, Ks 66604-4027

Re: KCC Investigation # AR-24-OC-1112

Mr. Owings:

Please accept this letter as the Operator's Response regarding the above investigation.

Our storm sewer crew had potholed this line on the east side of the street and found the line to be seven feet deep. We were able to install the storm sewer on the east side of the road over the top of the gas service line without conflict.

When our crew moved to the west side of the street to remove an existing storm sewer pipe and inlet approximately 25 feet from where they had potholed the line, they assumed the line would remain at approximately seven feet deep. Instead, the line had raised in elevation and they struck the line at three feet deep.

Prior to the start of construction on this project, Kansas Gas Service was given a set of plans and were instructed to relocate all gas service along this street so they would not be in conflict with construction. Kansas Gas Service hired Northern Pipeline to complete these relocations.

For this service line, they had started at seven feet deep on the east side to avoid conflict with the new storm sewer, but for some reason, they raised the gas line on the west side of the street to three feet deep and went over the top of the storm sewer line that was to be removed instead of maintaining the seven foot depth and going under the existing storm sewer line.

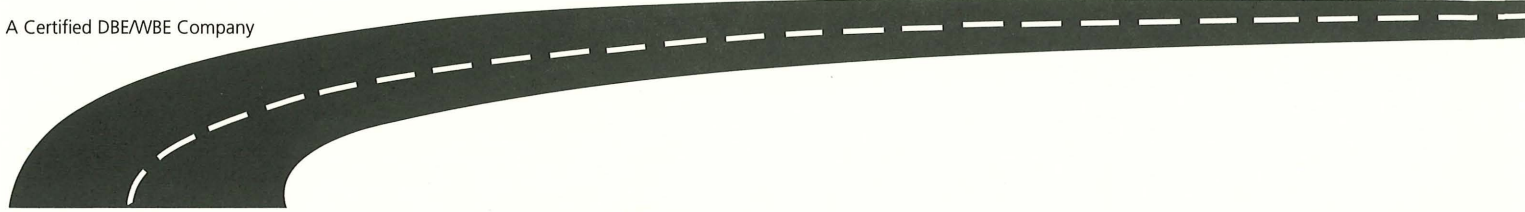
P.O. Box 11277 • 8110 Kaw Drive • Kansas City, Kansas 66111  
913-334-2330 • Fax 913-334-0144

members: national associated general contractors • kansas contractors association • heavy constructors association

# AMINO BROTHERS Co., INC.

Heavy & Highway  
Construction

A Certified DBE/WBE Company



Amino Brothers could not expect that the gas service line would raise four feet in elevation within 25 feet of where we potholed for the line.

Respectfully submitted,  
Amino Brothers Co., Inc.

Ken Ashmore  
Utility Damage Prevention Coordinator

P.O. Box 11277 • 8110 Kaw Drive • Kansas City, Kansas 66111  
913-334-2330 • Fax 913-334-0144

members: national associated general contractors • kansas contractors association • heavy constructors association

**CERTIFICATE OF SERVICE**

25-DPAX-280-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 02/04/2025.

Ken Ashmore, UTILITY DAMAGE PREVENTION  
COORDINATOR  
Amino Brothers Co., Inc.  
PO Box 11277  
Kansas City, KS 66111

BRETT W. BERRY, LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
brett.berry@ks.gov

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

/S/ KCC Docket Room  
KCC Docket Room