

1500 SW Arrowhead Road
Topeka, KS 66604-4027



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

Shari Feist Albrecht, Chair
Jay Scott Emler, Commissioner
Pat Apple, Commissioner

Sam Brownback, Governor

VIA CERTIFIED MAIL

NOTICE OF PENALTY ORDER
16-DPAX-054-PEN

August 4, 2015

Cole Andersen
Bettis Asphalt & Construction, Inc.
PO Box 1694
Topeka KS 66618

This is a notice of penalty assessment for violation of the Kansas Underground Utility Damage Prevention Act (KUUDPA) discovered during an investigation conducted on June 15, 2015, 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 service of the Penalty Order to pay the fine amount. Checks or Money Orders 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 of this proceeding. Credit card payments may be made by calling the Fiscal Office at 785-271-3113.

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 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 Notice of Probable Noncompliance and Proposed Penalty Order.

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, will be considered an admission of noncompliance and result in the Penalty Order becoming a final order.

Respectfully,

Andrew French, #24680
Litigation Counsel
(785)271-3361

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

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

In the Matter of the Investigation of **Bettis**)
Asphalt & Construction, Inc., of Topeka,)
Kansas, Regarding Violation(s) of the Kansas)
Underground Utility Damage Prevention Act) Docket No. 16-DPAX-054-PEN
(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).)

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, Kansas law grants the Commission full power and authority to do all things necessary and convenient in its exercise of its authority and jurisdiction pursuant to K.S.A. 2014 Supp. 66-1815 and amendments thereto.

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 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 penalty, not to exceed \$25,000, for each day the violation persists, with a maximum civil penalty of \$500,000 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 June 15, 2015 Commission Staff (Staff) investigated the activity and operations of Bettis Asphalt & Construction, Inc. (Respondent). See Report and Recommendation of Staff dated 7/24/2015, a copy attached hereto as Attachment "A". As a result of this investigation, Staff reports the following:

- a. On June 15, 2015, Kansas Gas Service notified Staff that Respondent was conducting excavation activities at 2744 SW Villa West Drive in Topeka, Kansas and in the process of installing a ditch/drain, the excavator caused damage to an underground Kansas Gas service natural gas 3/4-inch service line.
- b. Upon notification of the damage, Staff arrived on-site at 2744 SW Villa West Drive, and began an investigation. Staff learned from crew on-site that Respondent had called Kansas One Call to inform them of the intent to dig and to obtain a locate ticket. However, the ticket (#15272561) was not due for work to begin until June 17, 2015. Thus, Kansas Gas Service was not given the required amount of time to fulfill this request.

- c. On June 15, 2015, 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:

- i. Failure of an excavator to serve notice of intent of excavation at least two (2) full working days, but not more than fifteen (15) calendar days before the scheduled excavation start date, on each operator having underground facilities located in the proposed area of excavation. This failure is a violation of K.S.A. 2014 Supp. 66-1804.

- d. On July 13, 2015, Staff received a written response from Respondent to the Notice of Probable Noncompliance. In its response, Respondent agreed with the information contained in the Notice of Probable Noncompliance and as a result, also agreed with Staff's finding of fault.

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. 2014 Supp. 66-1802(c) and (d).

6. Staff also recommends the Commission issue a civil penalty of \$500 for the violation of the Kansas Underground Utility Damage Prevention Act as alleged.

III. CONCLUSIONS OF LAW

7. The Commission finds it has jurisdiction over Bettis Asphalt & Construction, Inc. (Respondent) because it is an excavator as defined in K.S.A. 2014 Supp. 66-1802.

8. The Commission finds Respondent violated Kansas law governing underground utilities, including various provisions of the Kansas Underground Utility Damage Prevention Act, and is therefore subject to sanctions or fines imposed by the Commission.

9. Respondent is hereby assessed a \$500 penalty for violation of the Kansas Underground Utility Damage Prevention Act.

THE COMMISSION THEREFORE ORDERS THAT:

A. Bettis Asphalt & Construction, Inc., of Topeka, KS 66618, 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. 2014 Supp. 77-529, K.S.A. 66-118b, K.A.R. 82-1-215 and amendments thereto, any party may request a hearing on the above issues by submitting a written request, consisting of an original and seven (7) copies, setting forth the specific grounds upon which relief is sought, to the Commission's Secretary, at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604 within fifteen (15) days from the date of service of this Order. If service is by certified mail, service is complete upon the date delivered shown on the Domestic Return Receipt. *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. 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). For civil penalties of \$500 or less, a corporation may appear by a duly authorized representative of the corporation. K.S.A. 2014 Supp. 66-1,142b(e) and amendments thereto.

D. 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 date of service of this Order. Checks and Money Orders shall be payable to the Kansas Corporation Commission. For credit card payments, include type of card (Visa, MasterCard, Discover, or American Express), account number and expiration date. 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 of this proceeding.

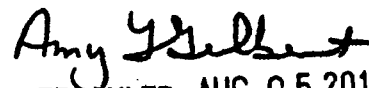
E. Failure to pay the \$500 civil penalty within twenty (20) days of the issuance of this Penalty Order will result in enforcement action against Respondent, including all sanctions, requirements, and penalties described above being enforceable without further action by the Commission.

F. 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.

Albrecht, Chair; Emler, Commissioner; Apple Commissioner

Dated: AUG 04 2015



ORDER MAILED AUG 05 2015

Amy L. Gilbert
Secretary to the Commission

AF

ATTACHMENT “A”

Utilities Division
1500 SW Arrowhead Road
Topeka, KS 66604-4027



Phone: 785-271-3220
Fax: 785-271-3357
<http://kcc.ks.gov/>

Shari Feist Albrecht, Chair
Jay Scott Emler, Commissioner
Pat Apple, Commissioner

Sam Brownback, Governor

REPORT AND RECOMMENDATION UTILITIES DIVISION

TO: Chair Shari Feist Albrecht
Commissioner Jay Scott Emler
Commissioner Pat Apple

FROM: Kristin Casarona, Natural Gas & Pipeline Operations Analyst
Leo Haynos, Chief of Energy Operations & Pipeline Safety
Jeff McClanahan, Director of Utilities

DATE: July 24, 2015

SUBJECT: **Docket Number:** 16-APAX-054-PEN
In the Matter of the Investigation of Bettis Asphalt and Construction, Inc.,
of Topeka, Kansas, 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 Bettis Asphalt and Construction, Inc. (Bettis Asphalt) in the amount of \$500 for violation(s) of KUUDPA. The penalty is based on results of a Staff investigation following a report of damage to a Kansas Gas Service (KGS) natural gas service pipeline in Topeka, Kansas. There was a notice of intent to excavate provided to KGS and Kansas One-Call had been notified, however, KGS was not given the required amount of time to fulfill this request. Failure to wait the required amount of time of two full working days after notification is made before excavating is a violation of K.S.A. 66-1803 and 66-1804(a).

BACKGROUND:

On June 15, 2015, Bettis Asphalt hit and damaged a KGS natural gas 3/4-inch service line at 2744 SW Villa West Drive in Topeka, Kansas, while excavating with a backhoe to install a ditch/drain. The damage resulted in an outage of six customers in an apartment building and no injuries. A brief timeline of events is attached (Attachment I). A Notice of Probable Noncompliance was issued to Bettis Asphalt on June 15, 2015, and the response to the Notice of Probable Noncompliance was received as required by K.A.R. 82-14-6(c) on July 13, 2015 (Attachment II).

ANALYSIS:

Rationale for Penalties:

A. Gravity of noncompliance:

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 wait until all notified utility operators have provided locates or until the scheduled excavation start date occurs, whichever is earlier. In this case, KGS had not completed locating its facilities when Bettis Asphalt began excavating- approximately two days before the excavation scheduled start date. Because providing proper and timely notice of intent and waiting the required amount of time before excavating is the most fundamental preventative measure an excavator takes, the fact that Bettis Asphalt failed to comply with this requirement of the law warrants the assessment of a civil penalty.

B. Culpability:

Bettis Asphalt is directly responsible for its actions in failing to wait the required amount of time prior to excavating as Kansas law requires.

C. History of noncompliance:

Staff has issued no other KUUDPA Notices of Probable Noncompliance to Bettis Asphalt in the past two years.

D. Response of excavator regarding noncompliance(s):

Bettis Asphalt responded to the current Notices of Probable Noncompliance and agreed with Staff's findings. In its response, Bettis Asphalt states it will take remedial action and issued a letter to all employees stating this requirement of the law as a preventative measure from reoccurrence.

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 issued to Bettis Asphalt in the amount of \$500 for violation(s) of KUUDPA:

- Failure of an excavator to properly serve notice of intent to excavate is a violation of K.S.A. 66-1804, Notice of intent of excavation.

Attachments

ATTACHMENT I

Timeline:

6/15/15

At approximately 9:06 a.m., Staff received an email notification from KGS indicating an excavator had damaged its natural gas service line at 2744 SW Villa West Drive in Topeka, Kansas.

Staff subsequently conducted an on-site investigation of the excavation site described above. Staff learned from conversations on-site with Bettis Asphalt personnel that notification was made to Kansas One Call for a ticket prior to excavating, however, the ticket (#15272561) was not due for work to begin until 6/17/2015. This was later confirmed through research of the Kansas One Call database. Additionally, there were no locate marks present as KGS had not yet been able to locate its facilities.

Upon completion of the investigation and research, Staff determined that Bettis Asphalt had been excavating without waiting the required two full working days after the notification was made and had violated KUUDPA.

Staff issued Bettis Asphalt a Notice of Probable Noncompliance for violating KUUDPA as stated above.

7/13/15

Staff received Bettis Asphalt's response to the Notice of Probable Noncompliance as required by K.S.A. 82-14-6(c).

ATTACHMENT II

PROBABLE NONCOMPLIANCE

KCC Investigation #: 7148

COMPANY: Bettis Asphalt

DIVISION:

REGULATION:

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 not more than 15 calendar days before the scheduled excavation start date, on each operator having underground tier I facilities located in the proposed area of excavation.

(c) The notice of intent to excavate or any subsequent updates shall be valid for 15 calendar days after the excavation start date and such notice shall only describe an area in which the proposed excavation reasonably can be completed within the 15 calendar days.

PROBABLE NONCOMPLIANCE DESCRIPTION:

On 06/15/2015, Staff investigated a report of line damage. There was a One-Call ticket # 15272561 with a work to begin date of 06/17/2015. This ticket had not been located yet by the facilities, therefore, Bettis Asphalt Inc. was excavating prior to the due date and did not have a valid locate. This is a violation of the Statute K.S.A. 66-1804 Notice of intent of excavation, (a) and (c) as referenced above.

OPERATOR'S RESPONSE: (Attach verification if needed)

SEE Attached letter.

Operator's authorized signature: _____

Date: 7/9/15

PIPELINE SAFETY USE ONLY

Date Reviewed: _____ Date Reviewed: _____
Supervisor: _____ Inspector: _____

Inspected by: Bolinder

Date inspected: 6/15/2015

Inspection type: 2 Day Limit



**BETTIS
ASPHALT & CONSTRUCTION, INC.**

July 9, 2015

Mr. Leo M. Haynos
Chief of Pipeline Safety
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, Kansas 66604-4027

**Re Subject: 2 Day Limit Investigation
KCC Investigation#: 7148**

Mr. Haynos,

I am in receipt of the Kansas Corporation Commission (KCC) letter dated June 15, 2015 for the above-referenced matter and have been working to address and respond to the concerns raised in the letter. As a follow up to our review of the letter, Bettis Asphalt & Construction, Inc. ("BACI") would like to provide the following information and responses for your additional consideration:

1. Pete Quinlan, BACI Superintendent, called in locates on June 15, 2015. He communicated with a Foreman that locates had been called in. The Foreman assumed the One-Call ticket # 15272561 was good and that work could proceed. Therefore, the Foreman did not wait the two full working days to begin excavation work. This incident was a miscommunication on a BACI employee and will not happen again.
2. Bettis Asphalt takes safety seriously and is the upmost important value of the company. As a remedial action BACI sent out a letter to all employees regarding 811 Call before you dig! I have attached the Memo that went to all employees 6-15-15, the day of the incident.

BACI is confident that the additional considerations set forth above will resolve the KCC concerns and no further action will be needed. If there is anything else the KCC needs, or if BACI can be of further assistance, please do not hesitate to call.

Respectfully,

Cole Andersen
Environmental, Health, & Safety Manager
Bettis Asphalt & Construction, Inc.
785.235.8444

KANSAS CORPORATION COMMISSION

JUL 13 2015

UTILITIES DIVISION



BETTIS
ASPHALT & CONSTRUCTION, INC.

Memo

To: All Bettis Asphalt & Construction Inc. Employees
From: Cole Andersen
CC: Eric Bettis; File
Date: June 15, 2015
Re: 811 Call before you dig!

Before any kind of digging or excavating takes place on any Bettis Asphalt & Construction, Inc. (BACI) job your supervisor or foreman must first have a valid ticket and utilities marked. Any questions can be directed to Pete Quinlan. Pete or Cole can help coordinate and make sure all locates are up-to-date and accurate

Plan Ahead – If you have digging or excavating coming up in your job, make sure your call in locates ahead of time. It takes a few days for utilities to be marked after they have been called in.



Know what's below.
Call before you dig.

IN RE: DOCKET NO. **16-DPAX-054-PEN**

DATE **AUG 04 2015**

PLEASE FORWARD THE ATTACHED DOCUMENT (S) ISSUED IN THE ABOVE-REFERENCED DOCKET
TO THE FOLLOWING:

NAME AND ADDRESS	NO. CERT. COPIES	NO. PLAIN COPIES
COLE ANDERSEN, ENVIRONMENTAL, HEALTH, & SAFETY MANAGER BETTIS ASPHALT & CONSTRUCTION, INC. PO BOX 1694 TOPEKA, KS 66618		
ANDREW FRENCH, LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604-4027 ***Hand Delivered***		

ORDER MAILED AUG 05 2015

The Docket Room hereby certified that on this _____ day of _____, 20_____, it caused a true and correct copy of the attached ORDER to be deposited in the United States Mail, postage prepaid, and addressed to the above persons.