

NOTICE OF PENALTY ORDER
25-DPAX-254-PEN

January 30, 2025

MD Tec Services LLC
Matthew Thomas, Registered Agent
1337 Dry Hollow Road
Monterey, TN 38574

This is a notice of a penalty assessment against MD Tec Services LLC (“MD Tec”), for a violation of the Kansas Underground Utility Damage Prevention Act (“KUUDPA”) and pipeline safety regulations adopted by the Kansas Corporation Commission. MD Tec 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 MD Tec, 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

**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 MD Tec)
Services LLC, Regarding Violations of the)
Kansas Underground Utility Damage)
Prevention Act (KUUDPA) (K.S.A. 66-1801,) Docket No. 25-DPAX-254-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.*¹ 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.²

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.” MD Tec Services LLC (“MD Tec”) operates where earth, rock, or other materials below the surface is moved or otherwise

¹ See K.S.A. 66-1813.

² See K.S.A. 66-1812 and K.S.A. 66-1815.

displaced by any means and therefore is an excavator in Kansas as defined by K.S.A. 66-1802.³ Therefore, MD Tec 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 August 14, 2024, Commission Staff ("Staff") conducted an onsite investigation of the excavation operations of MD Tec at the excavation site of 9010 Rosehill Road in Lenexa, Kansas.

4. On August 16, 2024, Staff subsequently issued a PNC to MD Tec notifying MD Tec of the results of Staff's investigation.⁴

5. On August 19, 2024, the PNC was sent to MD Tec via registered mail.⁵ Staff's PNC notified MD Tec 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 MD Tec failed to use nonintrusive means while directional drilling near marked facilities in the tolerance zone on August 14, 2024, in violation of K.S.A. 6-1809(a)⁶ and K.A.R. 82-14-1(n)(2). The PNC notes "one acceptable means of reasonable care is to pothole prior to excavating." Staff determined that MD Tec damaged a Kansas Gas Service 1.25" PE gas service line while conducting this excavation, but it could not determine the estimated cost of damage.

³ 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."

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

⁵ *Id.*

⁶ 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".

7. On September 5, 2024, Staff received a response from MD Tec agreeing with Staff's findings, stating "we failed to pothole the service line while wrapping up for the day."⁷

8. On December 18, 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**.⁸ Staff found that MD Tec 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 and defined in K.A.R. 82-14-1(n)(2).⁹ Staff's R&R recommended a civil penalty of \$500 be assessed against MD Tec for its failure to exercise reasonable care on June 4, 2024, in violation of K.S.A. 66-1809 and K.A.R. 82-14-1(n)(2).¹⁰

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 MD Tec 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 MD Tec after Staff conducted an investigation regarding damage to a gas service line.

12. The Commission finds that by failing to exercise reasonable care at the Excavation Site, MD Tec violated K.S.A. 66-1809 and K.A.R. 82-14-1(n)(2).

⁷ *Id.*

⁸ Staff's Report and Recommendation, Utilities Division (Dec. 16, 2024), Attachment 1 ("Staff's R&R" or "R&R").

⁹ *Id.*

¹⁰ *Id.*

13. The Commission finds that MD Tec 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.¹¹

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

15. The Commission concludes that MD Tec violated 66-1809 and K.A.R. 82-14-1(n)(2) 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 MD Tec 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), MD Tec 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 MD Tec'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 MD Tec 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

¹¹ K.A.R. 82-14-6(e).

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

The payment shall include a reference to Docket Number 25-DPAX-254-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 MD Tec, 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: 01/30/2025



Lynn M. Retz
Executive Director

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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 18, 2024

SUBJECT: Docket Number: 25-DPAX-254-PEN
In the Matter of the Investigation of MD Tec Services 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-1069, Staff recommends that a civil penalty in the amount of \$500 be assessed to MD Tec Services, LLC (MD Tec) for violation(s) of the Kansas Underground Utility Damage Prevention Act (KUUDPA). MD Tec violated K.A.R. 82-14-1 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 9010 Rosehill Road, in Lenexa, Kansas. Staff issued a Notice of Probable Noncompliance (PNC) to MD Tec on August 19, 2024. MD Tec responded to the PNC on August 29, 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) PE gas service line while directional drilling. Because MD Tec did not use nonintrusive means while working near marked facilities in the tolerance zone, MD Tec failed to use reasonable care as required by the law, and therefore warrants a civil penalty.

B. Culpability:

MD Tec 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 not issued any Notices of Probable Noncompliance for violations of KUUDPA to MD Tec.

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. MD Tec agreed with Staff's findings as is documented in Attachment 1. MD Tec acknowledged that they did not pothole to expose the facility.

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 MD Tec in the amount of \$500 for violating K.A.R. 82-14-1.

Attachment

EXHIBIT 1

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



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

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

Laura Kelly, Governor

Matthew Thomas
MD Tec Services LLC
1337 Dry Hollow Road
Monterey, TN 38574

August 16, 2024

KCC Investigation #: AR-24-OC-1069

Subject: Pipeline Investigation

Dear Matthew Thomas:

Pursuant to K.S.A. 66-1801,et. Seq. the Kansas Corporation Commission (KCC) has jurisdiction and authority to investigate and to issue civil penalties for violations of the Kansas Underground Utility Damage Prevention Act (KUUDPA).

On August 14, 2024, the Kansas Corporation Commission's Pipeline Safety Staff conducted an investigation into excavation activities which are believed to involve your company. As a result of this investigation, Staff has identified possible violations committed by MD Tec Services LLC. The findings of this investigation are described on the attached form(s).

Kansas law, K.A.R. 82-14-6(c), requires the recipient of this notice to provide a written response to any Notice of Probable Noncompliance. After reviewing the findings, please respond in at least one of the following ways:

- 1) Submit written explanation, a statement of general denial, or other materials contesting the allegations;**
- 2) Submit a signed acknowledgement of Commission Staff's findings of noncompliance; or,**
- 3) Submit a signed proposal for the completion of any remedial action that addresses the Commission Staff's findings of noncompliance.**

Pursuant to K.A.R. 82-14-6(e), failure to respond within 30 days to this Notice of Probable Noncompliance shall constitute an admission to all factual allegations made by the Commission Staff and may be used against the respondent in future proceedings

Please return the evaluation form(s) with any supporting documentation within thirty (30) days of receipt of this report to the address or email below. Any response submitted by email must include an electronic signature and date.

kccsafetyresponse@kcc.ks.gov

Kansas Corporation Commission
Pipeline Safety Section
1500 SW Arrowhead Road
Topeka, KS 66604-4027

Please feel free to contact me directly if you have questions or concerns.

Sincerely,

**Paul Owings /s/
 Deputy Chief Engineer
 (785) 271-3141
p.owings@kcc.ks.gov**

Company: MD Tec Services LLC

Division:

Regulation:

82-14-1 (n) (2) Definitions

n) "Reasonable care" means the precautions taken by an excavator to conduct an excavation in a careful and prudent manner. Reasonable care shall include the following:

2. Using nonintrusive means, as necessary, to expose the existing facility in order to visually determine that there will be no conflict between the facility and the proposed excavation path when the path is within the tolerance zone of the existing facility;

PROBABLE NONCOMPLIANCE DESCRIPTION:

On 08/14/2024, KCC Staff was notified of excavation work resulting in a damage that occurred to a Kansas Gas Service natural gas service line located around the area of 9010 Rosehill Road in Lenexa, Kansas. The KCC alleges MD Tec Services damaged a Kansas Gas Service 1.25" PE gas service line while directional drilling for AT&T. There was a valid One-Call ticket #24410477 with a due date of 08/14/2024. Locate marks were present and within tolerance. One acceptable method of reasonable care is to pothole prior to excavating.

OPERATOR'S RESPONSE: (Attach verification if needed) KGS line was struck on 8/14/24, 2:14PM while boring driveway at 9010 Rosehill Rd. While attempting to cross under the aforementioned driveway and over KGS line at 1ft-1in, we hit rock that forced deeper and into the service line at 1ft-6in. After which, we failed to pothole the service line while wrapping up for the day.

Operator's Authorized Signature: Jim Tracy Date: 8-28-2024

PIPELINE SAFETY USE ONLY:

Date reviewed: _____ Date reviewed: _____

Chief: _____ Inspector: _____

Inspection Type: One Call Inquiry/Complaint
 Date Inspected: 08/14/2024
 Inspected By: AR

CERTIFICATE OF SERVICE

25-DPAX-254-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 01/30/2025.

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

Matthew Thomas, OWNER
MD Tec Services LLC
1337 Dry Hollow Road
Monterey, TN 38574

/S/ KCC Docket Room
KCC Docket Room
