

1500 SW Arrowhead Road
Topeka, KS 66604-4027



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

Mark Sievers, Chairman
Thomas E. Wright, Commissioner
Shari Feist Albrecht, Commissioner

Sam Brownback, Governor

VIA CERTIFIED MAIL

NOTICE OF PENALTY ORDER
14-DPAX-082-PEN

August 8, 2013

Curtis Large
d/b/a Backhoe Service
133 W Dennis Ave
Olathe KS 66061

This is a notice of penalty assessment for violation of the Kansas Underground Utility Damage Prevention Act (KUUDPA) discovered during an investigation conducted on May 10, 2013, 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 785-271-3351.

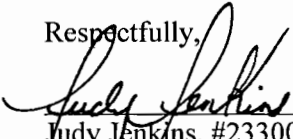
IF YOU CONTEST THE PENALTY:

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 Executive Director 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 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,


Judy Jenkins, #23300
Litigation Counsel
(785)271-3110

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

Before Commissioners: Mark Sievers, Chairman
Thomas E. Wright, Commissioner
Shari Feist Albrecht, Commissioner

In the Matter of the Investigation of **Curtis**)
Large, d/b/a Backhoe Service, of Olathe,)
Kansas, Regarding the Violation of the Kansas) Docket No. 14-DPAX-082-PEN
Underground Utility Damage Prevention Act,)
and the Commission's Authority to Impose)
Penalties and/or Sanctions.)

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. 2012 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 May 10, 2013 Commission Staff (Staff) investigated the activity and operations of Curtis Large, d/b/a Backhoe Service (Respondent). See Report and Recommendation of Staff dated 7/29/2013, a copy attached hereto as Attachment "A". As a result of this investigation, Staff reports the following:

- a. On May 10, 2013, Atmos Energy notified Staff that Respondent began excavating at 16367 W 172nd Street in Olathe, Kansas and damaged an underground Atmos Energy 2-inch PE natural gas main line, resulting in blowing gas.
- b. Staff arrived on-site at 16367 W 172nd Street, and immediately began an investigation. Staff learned from Atmos Energy crew on-site that Respondent had not called Kansas One Call to inform them of the intent to dig and to obtain a locate ticket.
- c. On May 15, 2013, Staff mailed a Notice of Probable Noncompliance notifying Respondent of the investigation results. The letter instructed Respondent to respond, in writing, within thirty (30) days of receipt and to indicate if the Respondent accepted the findings of the investigation and to provide Staff with details of actions taken by Respondent to prevent future violations. In the alternative, Respondent could provide documentation

explaining why Respondent disagreed with the findings, to include the identification of errors in the Notice of Probable Noncompliance. The violation in the Notice of Probable Non-Compliance is cited 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 2012 Supp. 66-1804.

d. As of August 1, 2013, Staff has not received a written response from Respondent in violation of K.A.R. 82-14-6.

5. Based upon the available facts, Staff recommends a civil penalty of \$500 for the violation of the Kansas Underground Utility Damage Prevention Act.

III. CONCLUSIONS OF LAW

6. Based on the foregoing, the Commission finds it has jurisdiction over Curtis Large, d/b/a Backhoe Service (Respondent) because it is an excavator as defined in K.S.A. 2012 Supp. 66-1802.

7. The Commission also finds Respondent has 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.

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

THE COMMISSION THEREFORE ORDERS THAT:

A. Curtis Large, d/b/a Backhoe Service, of Olathe, KS 66061, 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. 2012 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 Executive Director, 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. A corporation shall not be permitted to enter an appearance, except by its attorney.

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.

Sievers, Chmn.; Wright, Com.; Albrecht, Com.

Dated: AUG 08 2013


ORDER MAILED AUG 09 2013

Kim Christiansen
Executive Director

JJ

ATTACHMENT “A”

1500 SW Arrowhead Road
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Mark Sievers, Chairman
Thomas E. Wright, Commissioner
Shari Feist Albrecht, Commissioner

Sam Brownback, Governor

REPORT AND RECOMMENDATION UTILITIES DIVISION

TO: Chairman Mark Sievers
Commissioner Thomas E. Wright
Commissioner Shari Feist Albrecht

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

DATE: July 29, 2013

DATE SUBMITTED TO LEGAL: JUL 3 6 2013

DATE SUBMITTED TO COMMISSIONERS:

SUBJECT: Docket Number: 14-DPAX-082-PEN
In the Matter of the Investigation of Curtis Large Backhoe Service of Olathe, Kansas
Regarding the Violation 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 Curtis Large Backhoe Service (Curtis Large) in the amount of \$500 for violation(s) of KUUDPA. The penalty is based on results of a Staff investigation following damage to an Atmos Energy (Atmos) natural gas main line in Olathe, Kansas. There was no notice of intent to excavate provided to Atmos and Kansas One-Call had not been notified. Failure to provide notice before excavating is a violation of K.S.A. 66-1803 and 66-1804(a).

BACKGROUND:

On May 10, 2013, Curtis Large damaged an Atmos 2-inch PE natural gas main line at 16367 W 172nd Street in Olathe, Kansas. Curtis Large was excavating for a new sanitary sewer service. The damage resulted in blowing gas at the above address with no injuries or ignition. There were no customers without natural gas service. A brief timeline of events is attached (Attachment I). A Notice of Probable Noncompliance was issued to Curtis Large on May 15, 2013 (Attachment II). Curtis Large has not responded to the Notice of Probable Noncompliance as required by K.A.R. 82-14-6(c).

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. Because providing proper and timely notice of intent to excavate is the most fundamental preventative measure an excavator takes, the fact that Curtis Large failed to comply with this requirement of the law warrants the assessment of a civil penalty.

B. Culpability:

Curtis Large is directly responsible for its actions in failing to provide notice of intent to excavate as Kansas law requires.

C. History of noncompliance:

Staff has issued two other KUUDPA Notices of Probable Noncompliances to Curtis Large in the past two years, both for "Reasonable Care" issues.¹ Staff finds these past violations to be unrelated to the above captioned event and does not recommend their consideration in evaluating this case.

D. Show of good faith effort by the excavator in resolving noncompliance(s):

Staff believes that Curtis Large's lack of response to our Notice of Probable Noncompliance does not show a good faith effort in resolving the KUUDPA violation. Staff concludes that there is no extenuating circumstance in this case to mitigate the recommended penalty. Therefore, Staff recommends a civil penalty be issued due to the gravity of the noncompliance.

E. Aggravating Circumstances:

Staff has not determined any circumstances that would cause us to consider increasing the recommended penalty amount above \$500.

RECOMMENDATION:

Staff recommends a civil penalty be issued to Curtis Large Backhoe Service 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

¹ K.A.R. 82-14-1 (n) "Reasonable care" means the precautions taken by an excavator to conduct an excavation in a careful and prudent manner.

ATTACHMENT I

Timeline:

- 5/10/2013 At approximately 9:43 a.m., Staff received an email notification from the Johnson County Emergency Management System, as well as notification from an Atmos Dispatcher, indicating a damaged line at 16367 W 172nd Street in Olathe, Kansas.
- Staff arrived on-site at approximately 10:26 a.m. and subsequently conducted an on-site investigation of the excavation site described above. Staff learned from conversations on-site with Atmos' Damage Investigator that Curtis Large had not made notification to Kansas One Call for a ticket prior to excavating. This fact was later confirmed through research of the Kansas One Call database, proving that there was no Kansas One Call ticket obtained by Curtis Large at this address.
- Upon completion of the investigation and research, Staff determined that Curtis Large had been excavating without a valid locate request and had violated KUUDPA.
- 5/15/2013 Staff issued Curtis Large a Notice of Probable Noncompliance for violating KUUDPA as stated above.
- 7/26/2013 Staff has yet to receive Curtis Large's response to the Notice of Probable Noncompliances as required K.A.R. 82-14-6(c).

ATTACHMENT II

PROBABLE NONCOMPLIANCE

KCC Investigation# 6665

COMPANY: Curtis Large Backhoe Service

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 1 facilities located in the proposed area of excavation.

(b) An excavator may 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 of tier 2 facilities located in the proposed area of excavation.

PROBABLE NONCOMPLIANCE DESCRIPTION:

On 5/10/2013, Curtis Large Backhoe Service damaged an Atmos 2" PE gas main line with a backhoe while excavating to install a sanitary sewer service at 16387 W 172nd St in Olathe, Kansas. There was no One-Call ticket found in the One-Call database for this excavator at this address. This is a violation of the Statute K.S.A. 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 1 facilities located in the proposed area of excavation. (b) An excavator may 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 of tier 2 facilities located in the proposed area of excavation.

OPERATOR'S RESPONSE: (Attach verification if needed) _____

Operator's authorized signature: _____

Date: _____

PIPELINE SAFETY USE ONLY

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

Inspected by: Knight
Date inspected: 5/10/2013
Inspection type: No Locates- Excavator

IN RE: DOCKET NO. **14-DPAX-082-PEN**

DATE **AUG 08 2013**

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

NAME AND ADDRESS	NO. CERT. COPIES	NO. PLAIN COPIES
CURTIS LARGE, OWNER D/B/A BACKHOE SERVICE 133 W DENNIS AVE OLATHE, KS 66061		
JUDY JENKINS, LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604-4027 ***Hand Delivered***		

ORDER MAILED **AUG 09 2013**

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.