



1500 SW Arrowhead Road
Topeka, KS 66604-4027

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

Dwight D. Keen, Chair
Shari Feist Albrecht, Commissioner
Susan K. Duffy, Commissioner

Laura Kelly, Governor

NOTICE OF PENALTY ASSESSMENT

20-DPAX-153-PEN

October 10, 2019

Christopher Mansel
Mansel Concrete Construction, Inc.
408 N West Street
St. John, Kansas 67576

This is a notice of penalty assessment against Mansel Concrete Construction, Inc. for violation of the Kansas Underground Utility Damage Prevention Act (KUUDPA) discovered during an investigation conducted on August 6, 2019, 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 Division of the Kansas Corporation Commission, 1500 S.W. Arrowhead Road, Topeka, Kansas 66604, and shall include a reference to the docket number (20-DPAX-153-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 within fifteen (15) days from the date of service of this Penalty Order. The company must also 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 Executive Director 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(i) and (j), failure to submit a written request for a hearing within fifteen (15) days or, in the alternative, to pay the civil assessment in twenty (20) days from the date of service of this Penalty Order, will be considered an admission of noncompliance and result in the Penalty Order becoming a Final Order. Failing to request a hearing or pay the civil assessment may result in the Commission ordering further sanctions.

Respectfully,

Carly R. Masenthin, S. Ct. No. 27944
Litigation Counsel
(785)271-3361
c.masenthin@kcc.ks.gov

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. *See* 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 6, 2019 Commission Staff (Staff) investigated the activities and operations of Mansel Concrete Construction, Inc. (Respondent). See Report and Recommendation of Staff dated September 30, 2019, a copy of which is attached hereto as Attachment "A". As a result of this investigation, Staff reports the following:

- a. On August 6, 2019, Staff performed an onsite inspection at 914 Maple Street in Pratt, Kansas. Staff's investigation discovered the Respondent caused damage to an AT&T service wire while replacing a curb and driveway. No injuries or additional property damage occurred.
- b. Staff learned during its independent investigation that Respondent had not provided AT&T with a notice of intent to excavate and Kansas One Call had not been called to obtain locate marks.
- c. On August 12, 2019, 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, including identification of any errors in the Notice of Probable Noncompliance. The violation cited is as follows:

K.S.A. 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. On August 18, 2019, 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. 2018 Supp. 66-1802(c) and (d). Additionally, based upon the available facts, Staff recommends the Commission find Respondent failed to obtain a valid locate ticket and 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 Mansel Concrete Construction, Inc. failed to comply with this requirement of law warrants the assessment of a civil penalty.

7. Staff recommends the Commission issue Mansel Concrete Construction, Inc. 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. 66-1813, 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(d) and (e). Accordingly, the Commission finds it has jurisdiction over Respondent to enforce the KUUDPA.

10. The Commission concludes 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 obtain a locate ticket and failing to provide a notice of intent of excavation. As a result of this failure, Respondent damaged underground facilities of AT&T.

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.

12. The Commission finds and concludes Respondent shall be afforded an opportunity to request a hearing on the assessment of this civil penalty. Pursuant to K.A.R. 82-14-6(j), the Commission finds and concludes Respondent shall have 15 days from the date of service of this Penalty Order to request a hearing on the matter. A request for hearing must comply with the provisions of K.A.R. 82-1-232(b). Hearings shall be conducted in accordance with K.A.R. 82-1-230.

13. Pursuant to K.A.R. 82-14-6(i), and (j), the Commission finds and concludes Respondent's failure to pay the assessed civil penalty within 20 days, or in the alternative request a hearing within 15 days from the date of service of this Penalty Order, shall be considered an admission of the noncompliance allegations contained herein.

THE COMMISSION THEREFORE ORDERS THAT:

A. Mansel Concrete Construction, Inc., of St. John, Kansas, is hereby assessed a \$500 civil penalty for the violation of the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 through -1816.

B. Pursuant to K.A.R. 82-14-6(j) and amendments thereto, any party may request a hearing by electronically filing its request 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. 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 Executive Director 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 the noncompliance allegations contained herein and result in a waiver of Respondent's right to a hearing. A request for hearing must comply with the provisions of K.S.A. 82-1-232(b). Hearings shall be conducted in accordance with K.A.R. 82-1-230. Furthermore, if a request for hearing is not filed, 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. *See* K.A.R. 82-1-228(d)(2); K.A.R. 82-1-202(a).

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 the date of service of this Order. Checks shall be payable to the Kansas Corporation Commission. Payments shall be mailed to the Fiscal Division 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 (20-DPAX-153-PEN) of this proceeding.

E. 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 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.

Keen, Chair; Albrecht, Commissioner; Duffy, Commissioner

Dated: 10/10/2019



Lynn M. Retz
Executive Director

CRM/vj

ATTACHMENT “A”

**REPORT AND RECOMMENDATION
UTILITIES DIVISION**

TO: Chair Dwight D. Keen
Commissioner Shari Feist Albrecht
Commissioner Susan K. Duffy

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

DATE: September 30, 2019

SUBJECT: **Docket Number:** 20-DPAX-153-PEN
In the Matter of the Investigation of Mansel Concrete Construction 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) / JW-19-OC-1170

EXECUTIVE SUMMARY:

Staff is recommending a civil penalty be issued to Mansel Concrete Construction (Mansel) in the amount of \$500 for violation of KUUDPA. Mansel did not provide a notice of intent to excavate prior to excavating on August 06, 2019, in Pratt, Kansas. Failure to provide proper notice of intent before excavating is a violation of K.S.A. 66-1804. A Notice of Probable Noncompliance (PNC) was issued to Mansel on August 12, 2019. Mansel responded to the PNC within 30 days as required by K.A.R. 82-14-6 (c). A copy of the PNC and the response is included as Attachment I.

ANALYSIS:

Rationale for Penalties:

A. Gravity of noncompliance:

Excavating without a valid One-Call ticket is considered a high-risk activity with the potential for significant consequences to public safety. Mansel was performing concrete work at 914 Maple St. and damaged an ATT service wire. Because Mansel never

requested locates, the utility operator was unable to provide the location at which Mansel would be required to carefully excavate to avoid damage to an underground facility at any depth. Mansel failed to comply with this requirement of the law and warrants the assessment of a civil penalty.

B. Culpability:

Mansel 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 Mansel in the past 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 on August 23, 2019. In its response, Mansel admitted to not obtaining a One-Call ticket prior to excavating. Staff researched the One-Call database and did not find a One-Call ticket for Mansel nor did Staff find any One-Call tickets for this location from any excavator in 2019.

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 Mansel Concrete Construction in the amount of \$500 for violation(s) of K.S.A. 66-1804.

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



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

Dwight D. Keen, Chair
Shari Feist Albrecht, Commissioner
Susan K. Duffy, Commissioner

Laura Kelly, Governor

Chris Mansel
Mansel Concrete Construction
408 N West St
St. John, KS 67576

August 12, 2019

KCC Investigation #: JW-19-OC-1170

Subject: Pipeline Investigation

Dear Chris Mansel:

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 8, 2019, 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 Mansel Concrete Construction. 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(c), 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.

Kansas Corporation Commission
Pipeline Safety Section
1500 SW Arrowhead Road
Topeka, KS 66604-4027
kccsafetyresponse@kcc.ks.gov

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

Sincerely,

Leo Haynos /s/
Chief Engineer
(785) 271-3278
l.haynos@kcc.ks.gov

PROBABLE NONCOMPLIANCE

Investigation: JW-19-OC-1170

Company: Mansel Concrete Construction

Division:

Regulation:

66-1804 (a) & (e) 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, 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.

(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.

PROBABLE NONCOMPLIANCE DESCRIPTION:

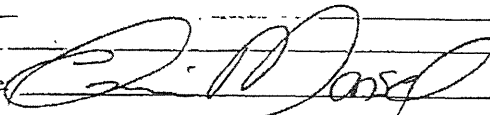
On 08/06/2019, Mansel Concrete Construction did not notify One-Call prior to excavating at 914 Maple St. in Pratt, Kansas. Mansel Concrete Construction damaged a ATT service wire while replacing a curb and driveway. After performing a search in the One-Call database no ticket was found for this area by this contractor during this time frame for the work that was being performed prior to the damage.

Guilty

OPERATOR'S RESPONSE: (Attach verification if needed)

Please see attached sheet

Operator's Authorized Signature



Date: *8-18-19*

PIPELINE SAFETY USE ONLY:

Date reviewed: _____

Date reviewed: _____

Chief: _____

Inspector: _____

Inspection Type: One Call Inquiry/Complaint

Date Inspected: 08/08/2019

Inspected By: JW

KCC Investigation # JW-14-02-1110

KCC
pipeline Safety Section

To: Leo Haynos or whom it may concern,

At this time I am not denying the claims made by the investigation.

~~My basis for digging was the customer~~
had previously called 811 and knew there was a phone line there and its location.

We commenced digging carefully, by shovel to find the phone line ^{before} any equipment was to begin. At much to our surprise, we found and cut the single line cable at a mere 2" below grade (top of existing ground).

The cable was going to need to be lengthened no matter the outcome regardless, as it was running through the middle of where the concrete was going to be placed.

over →

All of the description is the best of my Knowledge.

In general I do call dig safe before starting a job that involves digging. I have to admit that I was unaware that it was the Law. However, I am not a law breaking citizen in general, and now know that it is my duty anytime breaking ground.

I have no intension of being in noncompliance ever again, as my eyes have been lifted.

Your mercy and understanding is appreciated.

If you have any further questions please Call 820-786-7095.

Thank You

A handwritten signature in cursive script, appearing to read "Chris Mose".

8-18-19

CERTIFICATE OF SERVICE

20-DPAX-153-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/hand delivered on 10/11/2019.

CARLY MASENTHIN, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
Fax: 785-271-3354
c.masenthin@kcc.ks.gov

CHRISTOPHER MANSEL, PRESIDENT
MANSEL CONCRETE CONSTRUCTION, INC.
408 N WEST STREET
ST. JOHN, KS 67576

/S/ DeeAnn Shupe

DeeAnn Shupe