

**NOTICE OF PENALTY ORDER**  
25-DPAX-240-PEN

December 24, 2024

MSE Hardscapes, LLC  
Anthony A. Stein, Registered Agent  
4310 Madison Ave., Suite 113  
Kansas City, MO 64111

Brett Owen  
[bowen@msehardscapes.com](mailto:bowen@msehardscapes.com)

This is a notice of a penalty assessment against MSE Hardscapes, LLC (“MSE”), for a violation of the Kansas Underground Utility Damage Prevention Act (“KUUDPA”) and pipeline safety regulations adopted by the Kansas Corporation Commission. MSE 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-240-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 MSE, 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/ Brett W. Berry*

Brett W. Berry, S. Ct. No. 15026  
Litigation Counsel  
(785) 271-3287  
[brett.berry@ks.gov](mailto:brett.berry@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 MSE    )  
Hardscapes, 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).    )

Docket No. 25-DPAX-240-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. REGULATORY FRAMEWORK**

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.* K.S.A. 66-1815 grants the Commission full power and authority to adopt all necessary rules and regulations for carrying out the provisions of K.S.A. 66-1801 through 66-1814.

2.        Pursuant to K.A.R. 82-14-6, 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 is authorized to impose civil penalties and injunctive actions against any person or entity subject to and found in violation of KUUDPA, or any rule and regulation, or any order of the Commission. Each violation is subject to a civil penalty, not to

exceed \$200,000, for each day the violation persists, with a maximum civil penalty of \$2,000,000 for any related series of violations.<sup>1</sup>

4. Pursuant to K.A.R. 82-1-237, the Commission has the authority to investigate a party under its jurisdiction and order a hearing on its own motion when the Commission believes the party is in violation of the law or any order of the Commission. K.A.R. 82-11-6(m) provides that a show cause hearing may be held by the Commission when all other reasonable measures have failed to produce operator compliance, or when non-compliance presents an imminent danger to persons or property.

## **II. JURISDICTION**

5. MSE Hardscapes, LLC (“MSE”) operates as an excavator as defined by K.S.A. 66-1802.

6. MSE is a statutorily defined excavator that engages directly in excavation activities within the state of Kansas. 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.” Pursuant to K.S.A. 66-1813, which authorizes the Commission to administer and enforce the KUUDPA, MSE is subject to the Commission’s jurisdiction regarding compliance with KUUDPA’s obligations (e.g., K.S.A. 66-1803), and may be subject to penalties issued pursuant to K.S.A. 66-1812.

## **III. NONCOMPLIANCE**

7. On July 17, 2024, Commission Staff (“Staff”) conducted an onsite investigation of the excavation operations of MSE at the excavation site of 14004 Ballentine Street, Overland Park, Kansas.

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<sup>1</sup> See K.S.A. 66-1812; K.A.R. 82-14-6.

8. Staff subsequently issued MSE a notice of probable noncompliance (“PNC”) on July 30, 2024, notifying MSE of the investigation results.<sup>2</sup>

9. Staff concluded that MSE excavated in an area after a previous such locate request had expired. This resulted in damage to an Atmos PE 3/4” gas service line at or near 14004 Ballentine Street, Overland Park, Kansas.

10. On August 21, 2024, Staff received a response from MSE agreeing with Staff’s findings.<sup>3</sup>

11. Staff found MSE was directly liable for its actions in failing to provide a notice of intent before excavating as required K.S.A. 66-1804.

12. On December 5, 2025, 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 **Exhibit A**. Staff’s R&R recommends a civil penalty of \$500 to be assessed against MSE for failure to take precautions to conduct an excavation in a careful and prudent manner causing damage to an Atmos PE 3/4” gas service line with hand tools while installing a retaining wall for landscaping.<sup>4</sup>

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

13. 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.

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

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<sup>2</sup> Staff’s Report and Recommendation (Dec. 5, 2024), p. 1 (“Staff’s R&R” or “R&R”)

<sup>3</sup> See Attachment 1 of the R&R.

<sup>4</sup> *Id.*

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

16. The Commission finds that by failing to provide a notice of intent to excavate prior to excavating at the Excavation Site, MSE violated K.S.A. 66-1804.

17. The Commissions finds that MSE 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.

18. The Commission concludes that MSE violated K.S.A. 66-1804 and that Staff's recommendation the excavator be assessed a \$500 civil penalty is reasonable.

**IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:**

A. A civil penalty in the amount of \$500 is assessed against MSE 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), MSE 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 MSE'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 MSE 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-240-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 MSE, 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: 12/24/2024



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Lynn M. Retz  
Executive Director

BWB

**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 5, 2024

**SUBJECT: Docket Number:**  
In the Matter of the Investigation of MSC Hardscapes, 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-1047, Staff recommends that a civil penalty in the amount of \$500 be assessed to MSC Hardscapes, LLC (MSC) for violation(s) of the Kansas Underground Utility Damage Prevention Act (KUUDPA). MSC failed to update locates of underground facilities prior to excavation at 14004 Ballentine Drive, in Overland Park, Kansas. Failure to update the locate request before excavating is a violation of K.S.A. 66-1804. Staff issued a Notice of Probable Noncompliance (PNC) to MSC on July 30, 2024. MSC did not dispute Staff's allegation in their response to the PNC on August 21, 2024. The response is included as Attachment 1.

**ANALYSIS:**

**Rationale for Penalties:**

A. **Gravity of noncompliance:**

Excavating without a One-Call ticket is considered a high-risk activity with the potential for significant consequences to public safety. This excavator was excavating for a retaining

wall with a trackhoe in the near vicinity of an Atmos PE service line. Because MSC did not update locates prior to excavating, the utility operator was unable to provide the location at which MSC would be required to carefully excavate to avoid damage to an underground facility at any depth. MSC failed to comply with the law and warrants the assessment of a civil penalty.

B. Culpability:

MSC is directly liable for its actions in failing to provide a notice of intent before excavating as required by Kansas law.

C. History of noncompliance:

Staff has not issued any Notices of Probable Noncompliance for violations of KUUDPA to MSC.

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. MSC agreed with Staff's findings. MSC acknowledged that they did not have an updated locate ticket in the company's name at the time of excavation. Though MSC has requested locates for this address, that ticket had expired by over four months. A locate request is only valid for 20 days.

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 MSC Hardscapes in the amount of \$500 for violating K.S.A. 66-1804.

Attachment



## Attachment 1

**From:** [Paul Owings \[KCC\]](#)  
**To:** [Suzanne Balandran \[KCC\]](#)  
**Subject:** FW: MSE Response to KCC Investigation#: AE-24-OC-1047  
**Date:** Thursday, August 22, 2024 1:04:26 PM  
**Attachments:** [Outlook-v0dheuzs.png](#)  
[14004 locate ticket.pdf](#)  
[KCC INV. 14004 Ballentine.pdf](#)

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See attached and below.

Paul Owings, P.E.  
Deputy Chief Engineer  
Kansas Corporation Commission  
(785) 271-3141

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**From:** Brett Owen <bowen@msehardscapes.com>  
**Sent:** Wednesday, August 21, 2024 5:10 PM  
**To:** Paul Owings [KCC] <Paul.Owings@ks.gov>  
**Cc:** JennyDiederich <accounting@msehardscapes.com>  
**Subject:** MSE Response to KCC Investigation#: AE-24-OC-1047

**EXTERNAL:** This email originated from outside of the organization. Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Mr. Owings

I wanted to inform you that during our work on 7/17/24, we accidentally struck a gas line. After investigating the incident, we at MSE have confirmed that we had a locate ticket in our system (Ticket #24091222); however, we did not realize that the ticket had expired and had not been refreshed in our system before the crew was dispatched.

We acknowledge that this oversight led to the incident, and we deeply regret any inconvenience or danger it may have caused. We are taking immediate steps to review and improve our internal processes to prevent this from happening again in the future.

Please let us know how we can assist with any necessary next steps, and we are fully committed to cooperating in resolving this matter as quickly and safely as possible.

I have attached both copies of the investigation and the previous locate ticket to this email.

Thank you for your understanding.

Respectfully,

Brett Owen

Operations Manager

Office: (816) 318-8599

Cell: (816) 768-2041

Email: [bowen@msehardscapes.com](mailto:bowen@msehardscapes.com)



**CERTIFICATE OF SERVICE**

25-DPAX-240-PEN

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of electronic service on 12/24/2024.

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

Brett Owen, OPERATIONS MANAGER  
MSE HARDSCAPES, LLC  
1521 SADDLEBROOK RD  
RAYMORE, MO 64083  
bowen@msehardscapes.com

/S/ KCC Docket Room  
KCC Docket Room