

1500 SW Arrowhead Road
Topeka, KS 66604-4027

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



20250415102415
Kansas Corporation
Commission
Phone: 785-271-3100
Fax: 785-271-3354
<http://kcc.ks.gov/>

Laura Kelly, Governor

NOTICE OF PENALTY ORDER
25-DPAX-354-PEN

April 15, 2025

Brian Epley
Artistic Properties, LLC
1308 South Pattie Street
Wichita, Kansas 67211

This is a notice of a penalty assessment against Artistic Properties for a violation of the Kansas Underground Utility Damage Prevention Act ("KUUDPA") and pipeline safety regulations adopted by the Kansas Corporation Commission. Artistic Properties has been assessed a civil penalty in the amount of \$500.00. 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 made 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-354-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 Artistic Properties, LLC, 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 the date of service of the Penalty Order will be considered an admission of noncompliance. **Failing to request a hearing or to 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

**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 Artistic)
Properties LLC. Regarding Violations of the)
Kansas Underground Utility Damage)
Prevention Act (KUUDPA) (K.S.A. 66-1801,) Docket No. 25-DPAX-354-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 the KUUDPA, including imposing civil penalties and injunctive relief against any person or entity subject to and found in violation of the KUUDPA, or any rule, regulation, or order of the Commission.²

2. K.S.A. 66-1802(d) defines ‘excavation’ as “any operation in which earth, rock, or other material below the surface is moved or otherwise displaced by any means.” Artistic Properties, LLC, (“Artistic Properties”) operated where earth, rock, or other materials below the

¹ See K.S.A. 66-1813.

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

surface were moved or otherwise displaced by any means and therefore acted as an excavator within the state of Kansas as defined by K.S.A. 66-1802(e). Therefore, Artistic Properties is subject to the Commission's jurisdiction regarding compliance with KUUDPA's obligations and may be subject to civil penalties and injunctive relief.

II. NONCOMPLIANCE

3. On December 30, 2024, Commission Pipeline Safety Staff ("Staff") conducted an onsite investigation of the excavation operations of Artistic Properties at the excavation site of 1847 South Hiram Street in Wichita, Kansas.

4. On December 31, 2024, Staff subsequently issued a Notice of Probable Noncompliance ("PNC") to Brian Epley, owner of Artistic Properties, notifying Artistic Properties of the result of Staff's investigation. Staff notified Artistic Properties that it violated K.S.A. 66-1804(a) when it failed to serve notice of intent of excavation at least two full working days but not more than 20 calendar days before the scheduled excavation start date, on each operator having underground tier 1 facilities located in the proposed area of excavation.

5. Artistic Properties responded to Staff's PNC on January 6, 2025, within 30 days as required by K.A.R. 82-14-6(c). Brian Epley, registered agent and owner of Artistic Properties, indicated that Artistic Properties drove stakes into the ground and hit the gas line with one of the stakes. Further, Brian Epley did not realize Artistic Properties needed to call to get utilities marked before putting stakes in the ground.

6. On March 11, 2025, Staff submitted its Report and Recommendation ("R&R") regarding the above-captioned docket, which is incorporated herein by reference and attached hereto as **Exhibit A**. Staff ultimately recommended that the Commission find that Artistic

Properties violated K.S.A. 66-1804(a) on December 30, 2024, when it failed to timely serve notice of intent to excavate prior to excavating and assess a civil penalty of \$500.00.³

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

7. 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 the KUUDPA.

8. The Commission finds that Artistic Properties was operating as an excavator, as defined in K.S.A. 66-1802(e), during the incident at issue.

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

10. The Commission finds that by failing to serve notice of intent of excavation at least two full working days but not more than 20 calendar days before the scheduled excavation start date, on each operator having underground tier 1 facilities located in the proposed area of excavation, Artistic Properties violated K.S.A. 66-1804(a).

11. The Commission finds that the penalty amount recommended by Staff is necessary to correct Artistic Properties violation.

12. The Commission concludes that Artistic Properties violated K.S.A. 66-1804(a) and that Artistic Properties 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 Artistic Properties 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.*

³ Report and Recommendation, Utilities Division, Docket No. 25-DPAX-354-PEN, p. 2 (March 11, 2025) ("Staff's R&R" or "R&R").

B. Pursuant to K.A.R. 82-14-6(j), Artistic Properties may request a hearing to challenge the allegations set forth in this Penalty Order by electronically filing its request for a 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 will result in a waiver of Artistic Properties' 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(j), if Artistic Properties 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-354-PEN.

A. 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 Artistic Properties, 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: 04/15/2025

A handwritten signature in blue ink, appearing to read 'Celeste Chaney-Tucker', positioned above a horizontal line.

Celeste Chaney-Tucker
Executive Director

BWB

EXHIBIT “A”

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

Laura Kelly, Governor

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: February 11, 2025

SUBJECT: Docket Number:
In the Matter of the Investigation of Artistic Properties, 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 JW-24-OC-1136, Staff recommends that a civil penalty in the amount of \$500 be assessed to Artistic Properties, LLC (Artistic) for violation(s) of the Kansas Underground Utility Damage Prevention Act (KUUDPA). Artistic Properties, LLC is owned by Brian Epley. Artistic failed to request locates of underground facilities prior to excavation at 1847 S. Hiram St. in Wichita, Kansas. Failure to provide a notice of intent before excavating is a violation of K.S.A. 66-1804. Staff issued a Notice of Probable Noncompliance (PNC) to Artistic on December 31, 2024. Artistic responded to the PNC, as required by K.A.R. 82-14-6 (c). 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 in the near vicinity of a Kansas Gas Service PE service line. Because Artistic did not request locates prior to excavating, the utility operator was unable to provide the location at which Artistic

would be required to carefully excavate to avoid damage to an underground facility at any depth. Artistic failed to comply with the law and warrants the assessment of a civil penalty.

B. Culpability:

Artistic 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 Artistic.

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. Artistic agreed with Staff's findings as is documented in Attachment 1.

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 Artistic Properties, LLC in the amount of \$500 for violating K.S.A. 66-1804.

Attachment

Suzanne Balandran [KCC]

From: Brian Epley <brianjepley@gmail.com>
Sent: Monday, January 6, 2025 1:06 PM
To: KCC SafetyResponse
Subject: Re: JW-24-OC-1136 - NPV Investigation Letter - Artistic Properties, LLC - 2024W - Artistic Properties - KGS - Wichita - 12/30 - 1251

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.

Hello thus is Brian Epley, I am responding to the notice I received about the violations of the Kansas Underground Utility Damage Prevention Act (KUUDPA).

I appologize, I did not realize we needed to call to get utilities marked before we put stakes in the ground. So yes, we did accidentally hit the gas line with one of our wooden stakes. we only put it in the ground 18", I, and the guys working with me, thought that the gas lines were put at a depth of 30". I always have utilities marked anytime I'm doing any digging for things such as a fence or footings. I just didn't even think about it at this point, because all we were doing was putting some stakes in the ground for supports.

Brian Epley
316-640-7476
1/06/25

On Thu, Jan 2, 2025, 4:00 PM Suzanne Balandran <kccsafetyresponse@kcc.ks.gov> wrote:

On 12/30/2024, the Kansas Corporation Commission's Pipeline Safety conducted an investigation into excavation activities which are believed to involve your company. As a result of this investigation, Staff has identified possible violations of the Kansas Underground Utility Damage Prevention Act (KUUDPA). The findings of this investigation are described in the attached letter. 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. Please return the evaluation form(s) with any supporting documentation within thirty (30) days of receipt of this email to the address or email below. All email responses must be electronically signed and dated. Kansas Corporation Commission Pipeline Safety Section [1500 SW Arrowhead Road Topeka, KS 66604-4027](mailto:kccsafetyresponse@kcc.ks.gov)
kccsafetyresponse@kcc.ks.gov

CERTIFICATE OF SERVICE

25-DPAX-354-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 04/15/2025.

BRETT W. BERRY, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
brett.berry@ks.gov

Brian Epley, OWNER
Artistics Properties LLC
1308 S Pattie
Wichita, KS 67211
brianjepley@gmail.com

/S/ KCC Docket Room
KCC Docket Room