

STATE OF KANSAS

CORPORATION COMMISSION  
1500 SW ARROWHEAD ROAD  
TOPEKA, KS 66604-4027



PHONE: 785-271-3100  
FAX: 785-271-3354  
<http://kcc.ks.gov/>

GOVERNOR JEFF COLYER, M.D.

SHARI FEIST ALBRECHT, CHAIR | JAY SCOTT EMLER, COMMISSIONER | PAT APPLE, COMMISSIONER

NOTICE OF PENALTY ASSESSMENT

March 13, 2018

18-DPAX-377-PEN

Jeffrey Piotrowski  
Aquarius-Greenbelt, Inc.  
125 N Park  
Maize, Kansas 67101

This is a notice of penalty assessment against Aquarius-Greenbelt, Inc. for violation of the Kansas Underground Utility Damage Prevention Act (KUUDPA) discovered during an investigation conducted on January 10, 2018, 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 Section of the Kansas Corporation Commission, 1500 S.W. Arrowhead Road, Topeka, Kansas 66604, and shall include a reference to the docket number (18-DPAX-377-PEN) of this proceeding.

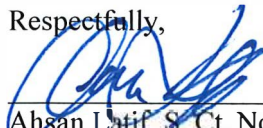
IF YOU CONTEST THE PENALTY:

**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, and 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 Commission's Secretary 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 and the Commission may order further sanctions.

Respectfully,

  
Ahsan Latif, S. Ct. No. 24709  
Litigation Counsel  
(785)271-3118  
[a.latif@kcc.ks.gov](mailto:a.latif@kcc.ks.gov)

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

Before Commissioners:                      Shari Feist Albrecht, Chair  
   Jay Scott Emler  
   Pat Apple

In the Matter of the Investigation of <b>Aquarius-</b>	)	
<b>Greenbelt, Inc., of Maize, Kansas</b> , Regarding	)	
Violation(s) of the Kansas Underground	)	
Utility Damage Prevention Act (KUUDPA)	)	Docket No. 18-DPAX-377-PEN
(K.S.A. 66-1801, <i>et seq.</i> , and K.A.R. 82-14-1,	)	
<i>et seq.</i> ), 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). 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, 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 66-1816, *et seq.*

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 January 10, 2018 Commission Staff (Staff) investigated the activities and operations of Aquarius-Greenbelt, Inc. (Respondent). See Report and Recommendation of Staff dated February 28, 2018, a copy of which is attached hereto as Attachment "A". As a result of this investigation, Staff reports the following:

- a. On January 10, 2018, Staff performed an onsite inspection at 611 W Slate St in Andover, Kansas. Staff's investigation discovered the Respondent caused damage to an AT&T fiber optic service line. 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.
- c. On January 18, 2018, 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 January 22, 2018, 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. 2016 Supp. 66-1802(c) and (d). Additionally, based upon the available facts, Staff recommends the Commission find Respondent 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 Aquarius-Greenbelt, Inc. failed to comply with this requirement of law warrants the assessment of a civil penalty.

7. Staff recommends the Commission issue Aquarius-Greenbelt, 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. 66-1801 *et seq.*, 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(c) and (d). 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 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. 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. 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 request a hearing within 15 days from the date of service of this Penalty Order shall be considered an admission of noncompliance. To ensure uniformity and consistency among Commission proceedings, the Commission finds and concludes any hearing on this matter before the Commission shall be conducted in a manner consistent with the Kansas Administrative Procedure Act, K.S.A. 77-501 *et seq.*

**THE COMMISSION THEREFORE ORDERS THAT:**

A. Aquarius-Greenbelt, Inc., of Maize, Kansas, 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.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-mail or mail 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 Commission's Secretary to the Commission 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 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. Any hearing on this matter before the Commission shall be conducted in a manner consistent with the Kansas Administrative Procedure Act, K.S.A. 77-501, *et seq.*

C. On March 13, 2018, this Penalty Order was mailed via certified mail, return receipt number 70161970000105744028. Service of this Order is complete upon the date delivered shown on the Domestic Return Receipt.

D. 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. K.S.A. 77-515(c); K.A.R. 82-1-228(d)(2); K.A.R. 82-1-202(a).

E. 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 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 (18-DPAX-377-PEN) of this proceeding.

F. 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.

G. 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.**

Albrecht, Chair; Emler, Commissioner; Apple, Commissioner

Dated: 03/13/2018

A handwritten signature in cursive script, reading "Lynn M. Retz". The signature is written in dark ink and is positioned above a horizontal line.

Lynn M. Retz  
Secretary to the Commission

AAL/vj



## **ATTACHMENT “A”**

## REPORT AND RECOMMENDATION

### UTILITIES DIVISION

**TO:** Chair Shari Feist Albrecht  
Commissioner Jay Scott Emler  
Commissioner Pat Apple

**FROM:** Robert Jackson, Damage Prevention Special Investigator  
Leo Haynos, Chief of Pipeline Safety  
Jeff McClanahan, Director of Utilities

**DATE:** February 28, 2018

**SUBJECT:** Docket Number: 18-DPAx-377-PEN

In the Matter of Investigation of Aquarius Greenbelt, Regarding a 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 Aquarius Greenbelt (Aquarius) in the amount of \$500.00 for a violation of KUUDPA. On January 10, 2018, Aquarius did not provide a notice of intent to excavate prior to excavating that resulted in loss of service to customer(s). Aquarius failed to obtain a valid Onecall ticket as required. This is a violation of K.S.A. 66-1804. A Notice of Probable Noncompliance (PNC) was issued to Aquarius on January 18, 2018. Aquarius responded to the PNC on February 21, 2018, as required by K.A.R. 82-14-6(c). The response from Aquarius is attached (Attachment I).

### ANALYSIS:

#### Rationale for Penalties:

##### A. Gravity of noncompliance:

Excavating without a Onecall ticket is considered a high-risk activity with the potential for significant consequences to public safety. Aquarius hit an ATT service drop with a trencher. There were no locate marks present nor was there a valid One Call ticket when the line was hit. Because providing proper and timely notice of intent to excavate is the fundamental preventative measure an excavator takes, the fact that Aquarius failed to

comply with this requirement of the law warrants the assessment of a civil penalty in the amount of \$500.00.

B. Culpability:

Aquarius is directly responsible for its actions in failing to provide accurate locates as Kansas law requires.

C. History of noncompliance:

Staff has issued no KUUDPA PNCs to Aquarius in the past two years.

D. Response of the excavator regarding noncompliance(s):

Aquarius responded to the PNC and agreed with Staff's findings that locates had not been requested prior to excavation. Aquarius has stated there was no excuse for what they did. They made a mistake by getting in a hurry to beat the snow.

E. Aggravating/Mitigating Circumstances:

Staff has not determined any circumstances that would cause modification of the recommended penalty amount of \$500.

**RECOMMENDATION:**

Staff recommends a civil penalty be issued to Aquarius in the amount of \$500 for violation(s) of K.S.A. 66-1806.

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



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

Pat Apple, Chairman  
Shari Feist Albrecht, Commissioner  
Jay Scott Emler, Commissioner

Sam Brownback, Governor

**JEFF PIOTROWSKI**  
**Aquarius-Greenbelt, Inc**  
**125 N PARK PO BOX 399**  
**MAIZE, KS 67101**

**January 11, 2018**

**KCC Investigation #: RJ-18-OC-1004**

**Subject: Pipeline Investigation**

**Dear JEFF PIOTROWSKI:**

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 January 10, 2018, 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 Aquarius Greenbelt. 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.

**Kansas Corporation Commission**  
**Pipeline Safety Section**  
**1500 SW Arrowhead Road**  
**Topeka, KS 66604-4027**  
**[kccsafetyresponse@kcc.ks.gov](mailto: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](mailto:l.haynos@kcc.ks.gov)**

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 1/10/18, KCC Staff investigated an AT&T fiber optic service line damaged at 611 W. Slate St. in Andover, Kansas. The line damaged belonged to 617 W. Slate Street in Andover next door. Aquarius Green/Belt (Aquarius) hit the service drop installing a new irrigation system with a trencher. Aquarius did not have a valid One Call ticket for the work. The line damaged did not have any locate marks present when it was hit. Aquarius failed to obtain a valid One Call ticket as required. This is a violation of 66-1804 (a) & (e) above.

OPERATOR'S RESPONSE: (Attach verification if needed)

There is no excuse for what  
we did. We made a huge mistake by getting in a hurry  
to beat the snow.

Operator's Authorized Signature: \_\_\_\_\_

Date: 1-22-18

Jeff Potowski

PIPELINE SAFETY USE ONLY:

Date reviewed: \_\_\_\_\_

Date reviewed: \_\_\_\_\_

Chief: \_\_\_\_\_

Inspector: \_\_\_\_\_

Inspection Type: One Call Inquiry/Complaint

Date Inspected: 01/10/2018

Inspected By: RJ

**CERTIFICATE OF SERVICE**

18-DPAX-377-PEN

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of first class mail/hand delivered on 03/14/2018.

JEFFREY PIOTROWSKI, PRESIDENT  
AQUARIUS-GREENBELT, INC.  
125 N PARK  
MAIZE, KS 67101

AHSAN LATIF, LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604-4027  
Fax: 785-271-3354  
a.latif@kcc.ks.gov

/S/ DeeAnn Shupe  
\_\_\_\_\_  
DeeAnn Shupe