

1500 SW Arrowhead Road
Topeka, KS 66604-4027



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

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

Sam Brownback, Governor

VIA CERTIFIED MAIL

NOTICE OF PENALTY ORDER
16-DPAX-500-PEN

May 10, 2016

Steve Miles, President
Miles Excavating, Inc.
PO Box 458
Basehor KS 66007

This is a notice of penalty assessment for violation of the Kansas Underground Utility Damage Prevention Act (KUUDPA) discovered during an investigation conducted on November 12, 2015, 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 785-271-3113.


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 Secretary 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 or 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,


Michael Neeley, #25027
Litigation Counsel
(785)271-3173

**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 **Miles**)
Excavating, Inc., of Basehor, Kansas,)
Regarding Violation(s) 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. 16-DPAX-500-PEN

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. 2015 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 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. 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 November 12, 2015 Commission Staff (Staff) investigated the activities and operations of Miles Excavating, Inc. (Respondent). See Report and Recommendation of Staff dated April 25, 2016, a copy attached hereto as Attachment "A". As a result of this investigation, Staff reports the following:

- a. On November 12, 2015, Staff was notified that Respondent was conducting excavation activities at West 143rd Street and Juniper Street in Leawood, Kansas installing storm drains. During the excavation, the excavator caused damage to a KGS 3/4-inch natural gas service line.
- b. Upon notification of the damage, Staff arrived on-site at West 143rd Street and Juniper Street, and began an investigation. Staff learned from crew on-site that Respondent had not provided a notice of intent to excavate to Kansas Gas Service and Kansas One Call had not been notified.
- c. On November 16, 2015, 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 to include identification of any errors in the Notice of Probable Noncompliance. The violation cited is 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. 2015 Supp. 66-1804.

d. On November 25, 2015, 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. 2015 Supp. 66-1802(c) and (d).

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 Miles Excavating, Inc. failed to comply with this requirement of law warrants the assessment of a civil penalty.

7. Staff recommends the Commission issue a civil penalty of \$500 for the violation of the Kansas Underground Utility Damage Prevention Act as alleged.

III. CONCLUSIONS OF LAW

8. The Commission finds it has jurisdiction over Miles Excavating, Inc. (Respondent) because it is an excavator as defined in K.S.A. 2015 Supp. 66-1802.

9. The Commission finds Respondent 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.

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

THE COMMISSION THEREFORE ORDERS THAT:

A. Miles Excavating, Inc., of Basehor, 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.S.A. 2015 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 Secretary, 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. 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). For civil penalties of \$500 or less, a corporation may appear by a duly authorized representative of the corporation. K.S.A. 2015 Supp. 66-1,142b(e) and amendments thereto.

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.

Emler, Chairman; Albrecht, Commissioner; Apple Commissioner

Dated: MAY 10 2016



Amy L. Green
Secretary to the Commission

MN/vj

ATTACHMENT “A”

**REPORT AND RECOMMENDATION
UTILITIES DIVISION**

TO: Chairman Jay Scott Emler
Commissioner Shari Feist Albrecht
Commissioner Pat Apple

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

DATE: April 25, 2016

SUBJECT: **Docket Number:** 116-DPA-X-500-PEN
In the Matter of the Investigation of Miles Excavating, Kansas, 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:

Staff is recommending a civil penalty be issued to Miles Excavating (Miles) in the amount of \$500 for violation(s) of KUUDPA. The penalty is based on results of a Staff investigation following a report of damage to a Kansas Gas Service (KGS) natural gas service pipeline in Leawood, Kansas. There was not a notice of intent to excavate provided to KGS and Kansas One-Call had not been notified. Failure to serve notice of intent of excavation at least two working days in advance of excavating is a violation of K.S.A. 66-1804(a).

BACKGROUND:

On November 12, 2015, Miles hit and damaged a KGS 3/4-inch natural gas service line at West 143rd Street & Juniper Street in Leawood, Kansas, while excavating with a trackhoe while installing storm drains. A brief timeline of events is attached (Attachment I). A Notice of Probable Noncompliance was issued to Miles on November 16, 2015, and the response to the Notice of Probable Noncompliance was received as required by K.A.R. 82-14-6(c) on November 25, 2015 (Attachment II).

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. 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 Miles failed to comply with this requirement of the law warrants the assessment of a civil penalty.

B. Culpability:

Miles is directly responsible for its actions in failing to serve notice of intent of excavation as Kansas law requires.

C. History of noncompliance:

Staff has issued three other KUUDPA Notices of Probable Noncompliance to Miles in the past two years for reasonable care issues.

D. Response of excavator regarding noncompliance(s):

Miles responded to the current Notice of Probable Noncompliance and agreed with Staff's findings. In its response, Miles states that the description of events included in Staff's notice is accurate.

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 issued to Miles Excavating 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

ATTACHMENT I

Timeline:

11/12/2015

At approximately 8:26 a.m., Staff received an email notification from a KGS dispatcher and the Johnson County Emergency Management System indicating an excavator had damaged its natural gas service line at West 143rd Street & Juniper Street in Leawood, Kansas.

Staff subsequently conducted an on-site investigation of the excavation site described above. Staff learned from conversations on-site with Miles personnel that no notification was made to Kansas One-Call for a ticket prior to excavating. This was later confirmed through research of the Kansas One-Call database.

Upon completion of the investigation and research, Staff determined that Miles had been excavating without a valid Kansas One-Call ticket and had violated KUUDPA.

Staff issued Miles a Notice of Probable Noncompliance for violating KUUDPA as stated above.

1/7/2016

Staff received Miles' response to the Notice of Probable Noncompliance as required by K.S.A. 82-14-6(c).

ATTACHMENT II

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



Phone: 785-271-3165
Fax: 785-271-3357
<http://kcc.ks.gov/>

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

Sam Brownback, Governor

**STEVE MILES
MILES EXCAVATING
PO BOX 458
BASEHOR, KS 66007**

143-21

November 16, 2015

Subject: No Locates- Excavator Investigation

KCC Investigation #: 7257

Dear Steve Miles:

Pursuant to K.S.A. 66-1801 *et. seq.*, (and amendments thereto) the Kansas Corporation Commission has jurisdiction and authority to investigate and to issue civil penalties for all violations of the Kansas Underground Utility Damage Prevention Act (KUUDPA).

On 11/12/2015, the Kansas Corporation Commission's Pipeline Safety staff (Staff) conducted an investigation into excavation activities as allowed by KUUDPA. As a result of our investigation, Staff has identified probable noncompliance(s) with KUUDPA committed by your company. The description of the probable noncompliance(s) is on the attached form(s).

Kansas law requires a written response to any Notice of Probable Noncompliance (K.A.R. 82-14-6(c)). After you have reviewed our findings, please respond in at least one of the following ways:

- 1.) Submit written explanations, a statement of general denial, or other materials contesting the allegations;
- 2.) Submit a signed acknowledgment 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.

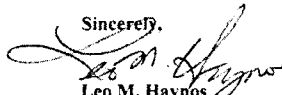
Please feel free to include any supporting documentation with your responses and return the signed and dated evaluation form(s) with the requested information within thirty (30) days of receipt of this report to:

Kansas Corporation Commission, Attn. Pipeline Safety
1500 SW Arrowhead Road
Topeka, Kansas 66604-4027
Fax: (785) 271-3357

Pursuant to K.A.R 82-14-6(e), failure to respond within 30 days to the 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.*

If you have any questions, please call me at the number listed below.

Sincerely,



Leo M. Haynos
Chief of Pipeline Safety
(785) 271-3278

PROBABLE NONCOMPLIANCE

KCC Investigation#: 7257

COMPANY: Miles Excavating

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.

PROBABLE NONCOMPLIANCE DESCRIPTION:

On 11/12/2015, Miles Excavating damaged a KGS 3/4" PE gas service line with a trackhoe while installing storm drains at W 143rd St & Juniper St in Leawood, Kansas. There was no One-Call ticket prior to the damage. 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.

OPERATOR'S RESPONSE: (Attach verification if needed)

Please see attached

Operator's authorized signature: _____

Date: _____

PIPELINE SAFETY USE ONLY

Date Reviewed: _____ Date Reviewed: _____

Supervisor: _____ Inspector: _____

Inspected by: Knight

Date inspected: 11/12/2015

Inspection type: No Locates- Excavator



Kansas Corporate Commission
Attn: Pipeline Safety
1500 SW Arrowhead Road
Topeka, KS 66604-4027

Dear Mr. Haynos,

This was an unfortunate oversight and miscommunication between the Superintendent onsite and his crew working in the area. Miles typically makes certain that the locates are called in and are marked before any construction occurs. It is definitely NOT common procedure for our crew to move forward with any construction activities before beginning the work on the project.

We certainly accept that in this particular situation, Miles was at-fault with our processes.

Sincerely,

A handwritten signature in cursive script that reads "Steve Miles".

Miles Excavating, Inc. P.O. Box 458, Basehor, Kansas 66007
724-1934 Fax 724-2512
cheryl@milesexcavating.com
An Equal Opportunity Employer

CERTIFICATE OF SERVICE

16-DPAX-500-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 **MAY 11 2016**.

MICHAEL NEELEY, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604-4027
Fax: 785-271-3167
m.neeley@kcc.ks.gov

STEVEN M. MILES, PRESIDENT
MILES EXCAVATING, INC.
PO BOX 458
BASEHOR, KS 66007

/S/ DeeAnn Shupe

DeeAnn Shupe

Order Mailed Date

MAY 11 2016