

1500 SW Arrowhead Road  
Topeka, KS 66604-4027



20240402104219  
Kansas Corporation  
Commission  
Phone: 785-271-3100  
Fax: 785-271-3354  
<http://kcc.ks.gov/>

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

Laura Kelly, Governor

**NOTICE OF PENALTY ORDER**  
24-DPAX-637-PEN

April 2, 2024

Mike Piller  
Johnson County Wastewater  
11811 S Sunset Drive Ste 2500  
Olathe, KS 66061

This is a notice of penalty assessment for violation(s) of the Kansas Underground Utility Damage Prevention Act (KUUDPA) and pipeline safety regulations adopted by the Kansas Corporation Commission. For a full description of the penalty please refer to the order attached to this notice.

**IF YOU ACCEPT THE PENALTY:** You have been assessed a \$1,000 penalty. You have twenty (20) days from the date of service of the Penalty Order to pay the fine amount. 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, and shall include a reference to the docket number (\$1,000) of this proceeding.

**IF YOU CONTEST THE PENALTY: You have the right to request a hearing.** A request for hearings must be made in writing, setting forth the specific grounds upon which relief is sought. You or an authorized representative from your Company, may electronically file its request for hearing within fifteen (15) days from the date of service of this 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(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 date of service of this 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/ Ahsan A. Latif  
Ahsan A. Latif, S. Ct. No. 24709  
Litigation Counsel  
Kansas Corporation Commission  
1500 SW Arrowhead Road  
Topeka, KS 66604-4027  
Phone: (785) 271-3118  
Email: a.latif@kcc.kansas.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 Johnson      )  
County Wastewater Regarding Violations of      )  
the Kansas Underground Utility Damage      ) Docket No. 24-DPAX-637-PEN  
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).      )

**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. REGULATORY FRAMEWORK**

1. The Commission is authorized to enforce multiple frameworks regarding underground utility damage and natural gas pipeline safety.<sup>1</sup>

**A. Kansas Underground Utility Damage Prevention Act**

2. 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.

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<sup>1</sup> See discussion *infra* I.A–B.

3. 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.

4. 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 \$25,000, for each day the violation persists, with a maximum civil penalty of \$1,000,000 for any related series of violations.<sup>2</sup>

## **II. JURISDICTION**

5. Johnson County Wastewater ("JCW") operates as a public utility pursuant to Commission-issued certificates of convenience and necessity.

6. JCW is a statutorily defined Operator who owns or leases underground Tier 1 or Tier 2 facilities, as defined in K.S.A. 66-1802(k), (q), and (r), respectively. Pursuant to K.S.A. 66-1813, which authorizes the Commission to administer and enforce KUUDPA, JCW is subject to the Commission's jurisdiction regarding compliance with KUUDPA's obligations (e.g., K.S.A. 66-1806), and may be subject to penalties issued pursuant to K.S.A. 66-1812.

## **III. ALLEGATIONS OF NONCOMPLIANCE**

7. Commission technical staff ("Staff") submitted to the Commission's Litigation Division Staff's Report and Recommendation (including all Exhibits to it, the "Staff's R&R"), attached as Attachment A and incorporated by reference, on March 14, 2024 recommending a civil penalty of \$1,000 to be assessed against JCW due to JCW's failure to provide locates at W. 91<sup>st</sup> in

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<sup>2</sup> See K.S.A. 66-1812; K.S.A. 66-1,151; K.A.R. 82-14-6.

Overland Park, Kansas (the “Excavation Site”) of their underground utilities within the time limits required pursuant to K.S.A. 66-1806.<sup>3</sup>

8. On December 6, 2023, Staff received a complaint due to JCW’s failure to provide locates within two working days. The complaint was reported seven days after the excavation start date.<sup>4</sup>

9. Staff subsequently issued JCW a notice of probable noncompliance (“PNC”) on December 8, 2023, notifying JCW of the investigation results.<sup>5</sup>

10. On January 23, 2024, Staff received a response from JCW agreeing with Staff’s findings.<sup>6</sup>

#### **IV. DISCUSSION OF ALLEGATIONS OF NONCOMPLIANCE**

##### **A. KUUDPA**

11. KUUDPA requires operators (i.e., public utilities) to provide excavators a “tolerance zone” of the operator’s underground facilities in the planned excavation area by marking, flagging or other acceptable method.<sup>7</sup> Within two working days, beginning after the day on which the excavator provided notice of its intent to excavate, an operator must inform an excavator of the tolerance zone.<sup>8</sup> If an operator has no facilities in the area of proposed excavation, the operator must notify the excavator no facilities are present before the excavation start date.<sup>9</sup>

12. By failing to provide locates within two working days, Johnson County Wastewater was in violation of K.S.A. 66-1806.

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<sup>3</sup> Staff’s R&R, p. 1 (Mar. 14, 2024).

<sup>4</sup> See Exhibit 1 of Staff’s R&R.

<sup>5</sup> *Id.*

<sup>6</sup> See Exhibit 2 of Staff’s R&R.

<sup>7</sup> See K.S.A. 66-1806(a).

<sup>8</sup> See K.S.A. 66-1806(a).

<sup>9</sup> See K.S.A. 66-1806(d)(1).

## V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

13. The Commission finds it has jurisdiction over Johnson County Wastewater because it is an entity subject to the requirements of the Kansas Underground Utility Damage Prevention Act, which the Commission is required to administer and enforce pursuant to K.S.A. 66-1813. Specifically, the Commission finds Johnson County Wastewater to be acting as an operator who operates Tier 2 facilities as defined in K.S.A. 66-1802.

14. The Commission finds Johnson County Wastewater violated Kansas law governing underground utilities, including provisions of the KUUDPA, as described above, and is therefore subject to sanctions or fines imposed by the Commission. Specifically, the Commission finds Johnson County Wastewater failed to comply with K.S.A. 66-1806 for the above listed incident.

15. The Commission finds a civil penalty is warranted due to Johnson County Wastewater's violation of KUUDPA. Specifically, the Commission finds Johnson County Wastewater shall be assessed a \$1,000 civil penalty.

16. The Commission finds and concludes Johnson County Wastewater shall be afforded an opportunity to request a hearing on the assessment of this civil penalty. Because 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, the Commission finds the hearing procedure adopted in the Commission's KUUDPA and procedural regulations shall control any subsequent hearings in this matter. Specifically, pursuant to K.A.R. 82-14-6(j), the Commission finds and concludes Johnson County Wastewater 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.

17. Pursuant to K.A.R. 82-14-6(i), and (j), Johnson County Wastewater'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.

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

A. Johnson County Wastewater is hereby assessed a \$1,000 civil penalty for violating the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801, *et. seq.*

B. Pursuant to K.A.R. 82-14-6(j), Johnson County Wastewater may request a hearing by electronically filing its request for hearing 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 allegations contained herein and result in a waiver of Johnson County Wastewater's right to a hearing. 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.

C. Pursuant to K.A.R. 82-14-6, if Johnson County Wastewater does 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 made 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. The payment shall include a reference to the docket number (24-DPAX-637-PEN) of this proceeding.

D. Unless a hearing is requested, failure to pay the \$1,000 civil penalty within twenty (20) days from the date of service of this Penalty Order will result in enforcement action against Johnson County Wastewater, 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: 04/02/2024



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Lynn M. Retz  
Executive Director

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# **ATTACHMENT “A”**



**REPORT AND RECOMMENDATION  
UTILITIES DIVISION**

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

**FROM:** Suzanne M. Balandran, Assistant Supervisor of Pipeline Safety  
Leo Haynos, Chief of Pipeline Safety  
Jeff McClanahan, Director of Utilities

**DATE:** March 14, 2024

**SUBJECT: Docket Number:** 24-DPAX-637-PEN  
In the Matter of the Investigation of Johnson County Waste Water 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 Staff's Case Number CK-23-UN-1187, Staff recommends that a civil penalty in the amount of \$1,000 be assessed to Johnson County Waste Water (JCW) for violation(s) of the Kansas Underground Utility Damage Prevention Act (KUUDPA). JCW failed to provide locates of its underground facilities within the time limits required by K.S.A. 66-1806 at W. 91<sup>st</sup> in Overland Park, Kansas. Failure to provide locates of their underground utilities within two working days is a violation of K.S.A. 66-1806. Staff issued a Notice of Probable Noncompliance (PNC) to JCW on December 8, 2023, attached hereto as Exhibit 1. JCW responded to the PNC on January 23, 2024, as required by K.A.R. 82-14-6 (c), attached hereto as Exhibit 2.

## **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. JCW did not provide the location at which the excavator could carefully excavate to avoid damage to an underground facility at any depth. JCW failed to comply with the law and warrants the assessment of a civil penalty.

B. **Culpability:**

JCW 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 issued three Notices of Probable Noncompliance for violations of KUUDPA to JCW 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. JCW agreed with Staff's findings. JCW acknowledged that the line was not marked by its contract locator in the timeframe required by KUUDPA.

E. **Aggravating/Mitigating Circumstances:**

Staff has not determined there to be any circumstances that would cause modification of the \$1,000 recommended penalty amount.

## **RECOMMENDATION:**

Staff recommends a civil penalty be assessed to Johnson County Waste Water in the amount of \$1,000 for violating K.S.A. 66-1806.

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



EXHIBIT 1

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

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

Laura Kelly, Governor

**Raul Romero**  
**Johnson County Waste Water**  
**4800 Nall Ave**

**December 08, 2023**

**KCC Investigation #: CK-23-UN-1187**

**Mission, KS 66202**

**Subject: Pipeline Investigation**

**Dear Raul Romero:**

**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 December 6, 2023, 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 Johnson County Waste Water. 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)**

Company: Johnson County Waste Water

Division:

Regulation:

**66-1806 (a) Identification of location of facilities; duties of operator;**

66-1806 Identification of location of facilities; duties of operator;

(a) Within two working days, beginning on the later of the first working day after the excavator has filed notice of intent to excavate or the first day after the excavator has whitelined the excavation site, an operator served with notice, unless otherwise agreed between the parties, shall inform the excavator of the tolerance zone of the underground facilities of the operator in the area of the planned excavation by marking, flagging or other acceptable method.

PROBABLE NONCOMPLIANCE DESCRIPTION:

On 12/6/2023, KCC received a complaint for ticket #23644610 due for work to begin 11/30/2023. This ticket was reported 7 days and 9 hours and 46 minutes after the excavation start date for the Metcalf Ave street rehab project from W 91st St to W 99th St in Overland Park, Kansas. Prior to the excavation start date, the Operator failed to provide locates for underground facilities.

**OPERATOR'S RESPONSE: (Attach verification if needed)** \_\_\_\_\_

\_\_\_\_\_

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

PIPELINE SAFETY USE ONLY:

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

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

Inspection Type: One Call Compliance Inspection

Date Inspected: 12/06/2023

Inspected By: CK

## Wastewater

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January 23, 2024

Pipeline Safety Section  
Kansas Corporation Commission  
1500 SW Arrowhead Road  
Topeka, KS 66604-4027

RE: KCC Investigation # CK-23-UN-1187

Pipeline Safety Section,

Johnson County Wastewater (JCW) received a letter from the Kansas Corporation Commission (KCC) dated December 8, 2023, regarding a probable violation of the Kansas Underground Utility Damage Prevention Act (KUUDPA) for a failure to locate utilities. The letter cited ticket #23644610 which was either late or non-responsive. JCW has investigated this matter and agrees with KCC staff that the tickets were not marked with a positive response in the timeframe required by the KUUDPA. There was no damage as a result of the late tickets and the locations were marked following the complaint from the excavating contractor.

JCW hired USIC Locate Service in November 2019 through a Request for Proposal process. USIC receives the tickets directly from One-Call and is to mark JCW's assets per the requirements of the KUUDPA. Upon receiving the letter of noncompliance, JCW asked USIC to investigate KCC's concern. USIC's findings are attached to this letter. In short, they acknowledge that the tickets were late in being marked and provided additional explanation in the attached letter.

In order to avoid this series of events from happening again, USIC opened a line of communication with the contractor and met on site to handle the situation. USIC stayed in contact with the contractor and managed this project through communication back and forth. JCW expects the additional coaching, training, and increased communication to keep USIC within compliance on locates and will monitor their performance.

Please contact me at 913-715-8537 if you have questions or would like to discuss this further.

Sincerely,

Mike Piller  
Collections Program Manager

Enclosures: Probable Non-Compliance Signature Page  
USIC Response Memorandum

cc: Jose Leon, Director of Operations and Maintenance, JCW  
Shannon Parks, Managing Engineer, Existing Infrastructure, JCW  
Raul Romero, Collections System Manager, JCW  
Aaron Witt, Chief Engineer, JCW  
Patrick Denning, Engineering Manager – Existing Infrastructure, JCW  
Billy Lyons – USIC

**CERTIFICATE OF SERVICE**

24-DPAX-637-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 04/02/2024.

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

MIKE PILLER, SENIOR ENGINEERING TECHNICIAN  
JOHNSON COUNTY WASTEWATER  
4800 NALL AVE.  
MISSION, KS 66202

/S/ KCC Docket Room  
KCC Docket Room