

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

Before Commissioners: Susan K. Duffy, Chair  
Dwight D. Keen  
Andrew J. French

In the Matter of the Investigation of J & J Lawn )  
Care, LLC of Wichita, Kansas, Regarding )  
Violation(s) of the Kansas Underground Utility )  
Damage Prevention Act (KUUDPA) (K.S.A. ) Docket No. 20-DPAX-322-PEN  
66-1801, et seq., and K.A.R. 82-14-1 through )  
82-14-6), and the Commission's Authority to )  
Impose Penalties and/or Sanctions (K.S.A. 66- )  
1,151). )

**ORDER**

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed its pleadings and records, the Commission makes the following findings and conclusions:

1. The Commission has jurisdiction and authority to administer and enforce the Kansas Underground Utility Damage Prevention Act (KUUDPA), 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. In its enforcement of the KUUDPA, 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.<sup>1</sup>

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 the KUUDPA, or any rule

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<sup>1</sup> See K.A.R. 82-14-6.

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.<sup>2</sup>

4. On August 14, 2019, Commission Staff (Staff) initiated an investigation of the operation of J & J Lawn Care, LLC (Respondent). Staff performed an onsite inspection at 7618 E Donegal Street in Wichita, Kansas. Staff discovered the Respondent caused damage to a Kansas Gas Service (KGS) 2" PE main line while performing irrigation work.<sup>3</sup> No injuries or additional property damage occurred.<sup>4</sup> Staff learned Respondent did not provide KGS with a notice of intent to excavate. Staff also discovered Respondent did not contact Kansas One Call to obtain locate marks prior to investigation.<sup>5</sup>

5. On August 15, 2019, Staff sent a Notice of Probable Noncompliance (PNC) to Respondent and a follow-up letter on September 24, 2019, via certified mail. The PNC notified Respondent of possible KUUDPA violations. The PNC also notified Respondent of its duty to make a written response to the PNC pursuant to K.A.R. 82-14-6 and that failure to respond to the PNC within 30 days "shall constitute an admission to all factual allegations made by the Commission staff and may be used against the respondent in future proceedings."<sup>6</sup>

6. Respondent failed to respond to the PNC.<sup>7</sup>

7. On February 4, 2020, the Commission issued a Penalty Order and Notice of Penalty Assessment against Respondent. The Commission assessed a \$500 penalty against

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

<sup>3</sup> See Penalty Order, Attachment A (Feb. 4, 2020).

<sup>4</sup> Penalty Order, ¶ 4.

<sup>5</sup> *Id.*; Attachment A.

<sup>6</sup> Attachment A.

<sup>7</sup> See R&R, ¶ D.

respondent for violating K.S.A. 66-1804(a) and (e) by failing to obtain a locate ticket with Kansas One Call and failing to provide a notice of intent of excavation.<sup>8</sup>

8. On February 24, 2020, Mr. Jeffrey Krier submitted a Letter Requesting a Hearing (Letter) on behalf of the Respondent.<sup>9</sup> Mr. Krier admitted to hitting the gas line and stated Respondent did not have the gas lines marked prior to excavation. Mr. Krier stated, “We usually do have lines marked, but this leak was spewing water and needed immediate attention.” Mr. Krier further explained, “We have never hit a gas line in our history of digging and have taken great care to not hit cable, electrical or other communication lines through the years.” Mr. Krier said a penalty “will not help the situation by making [Respondent] more aware of underground lines or the need to call them in.” Finally, Mr. Krier explained how Respondent attempted to remedy the situation after the fact, specifically focusing on financial factors, which Mr. Krier asked the Commission to consider.<sup>10</sup>

9. Staff filed a Motion for Leave to File Response Out-of-Time on March 18, 2020.<sup>11</sup>

10. On June 4, 2020, the Commission granted Staff’s Motion and accepted Staff’s Response to Respondent’s Letter. In the Response, Staff states Respondent “already admitted to the violation by not responding to the PNC,” per K.A.R. 82-14-6.<sup>12</sup> Staff further contends, “The facts of this Docket have remained the same throughout. Respondent did not provide KGS with a notice of intent to excavate and Kansas One Call had not been called to obtain locate marks. This is a violation of K.S.A. 66-41804(a) & (e) and Respondent does not dispute this fact.”<sup>13</sup> The

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<sup>8</sup> See Penalty Order, ¶ 10.

<sup>9</sup> See Letter Requesting Hearing (Feb. 24, 2020). The Commission notes the Letter is dated February 20, 2020. The Letter states, “If a hearing is necessary, I would prefer a hearing by phone so I don’t have to travel to Topeka.” Although not a specific request for a hearing, the Commission has treated this letter as a request for hearing.

<sup>10</sup> *Id.*

<sup>11</sup> Motion for Leave to File Response Out-of-Time (Mar. 18, 2020).

<sup>12</sup> Response to J & J Lawn Care LLC’S Letter Requesting Hearing, ¶¶ 5-6 (Jun. 4, 2020).

<sup>13</sup> *Id.* at ¶ 7.



Commission informed Respondent it “has 10 days after service of this order to file a reply to Staff’s response.”<sup>14</sup>

11. Respondent failed to file a reply.

12. On July 14, 2020, the Office of General Counsel sent Mr. Krier a letter inquiring as to whether Mr. Krier remained interested in a hearing on the penalty assessment, among other things. The letter was sent via certified mail to the address identified as the registered office with the Kansas Secretary of State.<sup>15</sup> The Office of General Counsel did not receive the certified mail return receipt.

13. On July 24, 2020, the Office of General Counsel submitted a second letter to Mr. Krier via certified mail to the address where Staff sent the Notice of Penalty Assessment.<sup>16</sup> The letter instructed Mr. Krier, that if his request for a hearing remained, his attorney needed to file an entry of appearance. The letter further stated, that if Mr. Krier did not have an attorney, he was to “file a notarized affidavit stating [Mr. Krier is] a duly authorized representative who may represent J & J Lawn Care, LLC in this matter before the Commission and may participate in the hearing on behalf of the LLC.”<sup>17</sup> The letter also informed Mr. Krier that “[f]ailure to respond in writing to this letter within 20 days of service may be considered a withdrawal of the hearing request, resulting in the Penalty Order becoming a Final Order.”<sup>18</sup>

14. Mr. Krier received the July 24 letter on July 29, 2020.<sup>19</sup>

15. Mr. Krier did not respond to the July 24 letter, he did not file an affidavit stating he was a duly authorized representative, and no attorney entered an appearance on Respondent’s

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<sup>14</sup> Order Granting Staff’s Motion for Leave to File Response Out-of-Time (Jun. 6, 2020).

<sup>15</sup> A copy of the July 14, 2020 letter and the certified mail receipt are attached as Exhibit A, to this Order.

<sup>16</sup> A copy of the July 24, 2020 letter, the certified mail receipt, and the return receipt are attached as Exhibit B.

<sup>17</sup> Exhibit B. *See* K.A.R. 82-1-228(d).

<sup>18</sup> Exhibit B.

<sup>19</sup> *See* Exhibit B.

behalf. As a result of Mr. Krier's failure to respond, the Commission finds Mr. Krier's lack of response to be a withdrawal of the hearing request.

16. The Commission concludes the February 4, 2020 Penalty Order is a Final Order. 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 KUUDPA.


**THEREFORE, THE COMMISSION ORDERS:**

- A. The February 4, 2020 Penalty Order is a Final Order.
- B. J & J Lawn Care, LLC of Wichita, Kansas is hereby assessed a \$500 civil penalty for violation of the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 through K.S.A. 66-1816.
- C. Failure to pay the \$500 civil penalty within 20 days from the date of service of this Order will result in enforcement action against Respondent.

**BY THE COMMISSION IT IS SO ORDERED.**

Duffy, Chair; Keen, Commissioner; French, Commissioner

Dated: 08/27/2020

  
\_\_\_\_\_  
Lynn M. Retz  
Executive Director

LEL

# EXHIBIT A



1500 SW Arrowhead Road  
Topeka, KS 66604-4027

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

Susan K. Duffy, Chair  
Dwight D. Keen, Commissioner  
Andrew J. French, Commissioner

Laura Kelly, Governor

July 14, 2020

Mr. Jeffrey M. Krier  
1341 N Cardington  
Wichita, KS 67212

RE: Docket No. 20-DPAX-322-PEN; Notice of Penalty Assessment against J & J Lawn Care, LLC

Mr. Krier:

On February 4, 2020, the Kansas Corporation Commission (Commission) issued a Notice of Penalty Assessment against J & J Lawn Care, LLC for a violation of the Kansas Underground Utility Damage Prevention Act (KUUDPA) discovered during an investigation conducted on August 14, 2019, by Commission Staff. The penalty assessed against J & J Lawn Care, LLC is in the amount of \$500.

The Commission received your letter dated February 20, 2020, requesting a hearing by telephone. On June 4, 2020 the Commission issued an order accepting Staff's report for filing and advised you that you had 10 days to file a reply to Staff's response. Since you have yet to reply to Staff's response, I am inquiring as to whether you remain interested in a hearing on the \$500 penalty assessment.

If so, please have your attorney file an entry of appearance. If you do not have an attorney, please file a notarized affidavit stating that you are a duly authorized representative who may represent J & J Lawn Care, LLC in this matter before the Commission and may participate in the hearing on behalf of the LLC.

If you no longer want a hearing on the matter, please contact me, Lauren Laushman, Assistant General Counsel, in writing by either U.S. mail or e-mail (e-mail address is below).

Failure to respond in writing to this letter within 20 days of service may be considered a withdrawal of the hearing request, resulting in the Penalty Order becoming a Final Order.

Sincerely,

Lauren E. Laushman  
Assistant General Counsel  
[l.laushman@kcc.ks.gov](mailto:l.laushman@kcc.ks.gov)

cc: Cole Bailey, Litigation Counsel

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**Jeffrey Kriek USE**

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☐ Adult Signature Required \$  
☐ Adult Signature Restricted Delivery \$

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# EXHIBIT B

1500 SW Arrowhead Road  
Topeka, KS 66604-4027



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

Susan K. Duffy, Chair  
Dwight D. Keen, Commissioner  
Andrew J. French, Commissioner

Laura Kelly, Governor

July 24, 2020

J & J Lawn Care, LLC  
Attn: Mr. Jeffrey M. Krier  
8515 W Meadow Park Ct.  
Wichita, KS 67205

RE: Docket No. 20-DPAX-322-PEN; Notice of Penalty Assessment against J & J Lawn Care, LLC

Mr. Krier:

This is the second letter sent regarding the above-captioned matter. The first letter was sent to the address identified as the registered office with the Kansas Secretary of State: 1341 N Cardington, Wichita, KS 67212. A copy of the first letter is enclosed.

On February 4, 2020, the Kansas Corporation Commission (Commission) issued a Notice of Penalty Assessment against J & J Lawn Care, LLC for a violation of the Kansas Underground Utility Damage Prevention Act (KUUDPA) discovered during an investigation conducted on August 14, 2019, by Commission Staff. The penalty assessed against J & J Lawn Care, LLC is in the amount of \$500.

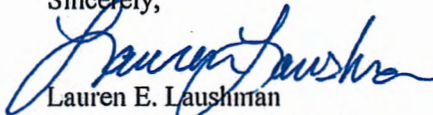
The Commission received your letter dated February 20, 2020, requesting a hearing by telephone. On June 4, 2020, the Commission issued an order accepting Staff's report for filing and advised you that you had 10 days to file a reply to Staff's response. Since you have yet to reply to Staff's response, I am inquiring as to whether you remain interested in a hearing on the \$500 penalty assessment.

If so, please have your attorney file an entry of appearance. If you do not have an attorney, please file a notarized affidavit stating that you are a duly authorized representative who may represent J & J Lawn Care, LLC in this matter before the Commission and may participate in the hearing on behalf of the LLC.

If you no longer want a hearing on the matter, please contact me, Lauren Laushman, Assistant General Counsel, in writing by either U.S. mail or e-mail (e-mail address is below).

Failure to respond in writing to this letter within 20 days of service may be considered a withdrawal of the hearing request, resulting in the Penalty Order becoming a Final Order.

Sincerely,



Lauren E. Laushman  
Assistant General Counsel  
[l.laushman@kcc.ks.gov](mailto:l.laushman@kcc.ks.gov)

cc: Cole Bailey, Litigation Counsel



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Sent To Jeffrey Krier  
 Street and Apt. No., or PO Box No. 8515 W. Meadow Park Ct.  
 City, State, ZIP+4® Wichita KS 67205  
 PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

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 KS 67205

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• Sender: Please print your name, address, and ZIP+4® in this box\*

Kansas Corporation Commission  
1500 SW Arrowhead Rd.  
Topeka, KS 66604

Attn: Lauren  
Laishman

USPS TRACKING#



07/29

701

**SENDER: COMPLETE THIS SECTION**

- Complete Items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Jeffrey Krier  
8515 W. Meadow Park Ct.  
Wichita, KS 67205



9590 9403 0604 5183 7675 49

Article Number (Transfer from sorting label)

5 1660 0001 1295 1317

**COMPLETE THIS SECTION ON DELIVERY**

Signature [Signature]

☐ Agent

B. Received by (Printed Name) [Signature]

C. Date of Delivery 7/29/2020

D. Is delivery address different from item 1? ☐ Yes  
 If YES, enter delivery address below: ☐ No

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- ☐ Registered Mail Restricted Delivery
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- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

## CERTIFICATE OF SERVICE

20-DPAX-322-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 08/27/2020.

JEFFREY M. KRIER, MANAGING MEMBER  
J & J LAWN CARE, LLC  
1341N Cardington  
WICHITA, KS 67212  
jeff@jjlawncares.com

COLE BAILEY, LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
Fax: 785-271-3354  
c.bailey@kcc.ks.gov

LAUREN LAUSHMAN, OFFICE OF GENERAL COUNSEL  
ATTORNEY  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
Fax: 785-271-3354  
l.laushman@kcc.ks.gov

/S/ DeeAnn Shupe  
DeeAnn Shupe

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