

1500 SW Arrowhead Road
Topeka, KS 66604-4027



20250603104059
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
25-DPAX-392-PEN

June 3, 2025

Dana Neal Groundworks
FRS, LLC 211 SE 150 Hwy
Lee's Summit, MO 54082

This is a notice of a penalty assessment against Groundworks FRS, LLC ("Groundworks") for a violation 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 Penalty Order attached to this notice.

IF YOU ACCEPT THE PENALTY: Groundworks has been assessed a civil penalty in the amount of \$1,500. You have twenty (20) days from the date of service of the Penalty Order to pay the penalty. Payments shall be 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-392-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 Groundworks, 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 date of service of the 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/ 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)
Groundworks FRS, LLC, Regarding)
Violations of the Kansas Underground Utility)
Damage Prevention Act (KUUDPA) (K.S.A.) Docket No. 25-DPAX-392-PEN
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 (the “Commission”) on hearing of allegations against Groundworks FRS, LLC (“Groundworks”) of violating the Kansas Underground Utility Damage Prevention Act (“KUUDPA”) and pipeline safety regulations adopted by the Commission. Having examined its files and records and being otherwise duly advised in the premises, the Commission makes findings of fact and conclusions of law as follows:

I. FINDINGS OF FACT

1. Commission technical staff (“Staff”) submitted to the Commission’s Litigation Division Staff’s Report and Recommendation (including all Exhibits to it, the “R&R”), attached as **Attachment A** and incorporated by reference, on March 19, 2025, recommending a civil penalty of \$1,500 to be assessed against Groundworks due to Groundworks’ failure to exercise such reasonable care as may be necessary for the protection of any underground facility, when working

in close proximity to any such facility, near 12908 Garnett Lane in Overland Park, Kansas, (“Excavation Site 1”), and 18651 West 164th Street in Olathe, Kansas (“Excavation Site 2”).¹

2. On December 2, 2024, Staff conducted an onsite investigation of the excavation operations of Groundworks at Excavation Site 1.

3. Staff subsequently issued Groundworks a notice of probable noncompliance (“PNC”) on December 3, 2024, notifying Groundworks of the investigation results.²

4. On December 26, 2024, Staff conducted an onsite investigation of the excavation operations of Groundworks at Excavation Site 2.

5. Staff subsequently issued Groundworks a notice of probable noncompliance (“PNC”) on January 2, 2025, notifying Groundworks of the investigation results.³

6. Staff have not received responses from Groundworks to the PNCs.⁴

7. The Commission finds that the penalty amount recommended by Staff is necessary to correct Groundworks’ violation.

II. CONCLUSIONS OF LAW

8. The Commission 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 KUUDPA.

9. The Commission has authority under K.A.R. 82-14-6(a) to 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.

10. Further, K.S.A. 66-1812, in part, states as follows:

Any person to whom [KUUDPA] applies, who violates any of the provisions contained in [KUUDPA], shall be subject to civil penalties...as set out in K.S.A.

¹ K.S.A. 66-1809(a) and K.A.R. 82-14-2(j)(7).

² See Exhibit 1 to the R&R.

³ *Id.*

⁴ R&R, p. 1.

66-1,151...and any remedies established in rules and regulations promulgated by the [Commission] in support of [KUUDPA].

11. Under K.S.A. 66-1,151, “[a]ny person who violates any rule or regulation adopted pursuant to [KUUDPA], or any rule and regulation adopted by the [C]ommission...shall be subject to a civil penalty not to exceed \$25,000 for each violation for each day that the violation persists.”

12. Groundworks was operating as an excavator, as defined in K.S.A. 66-1802(e), during the incident at issue.

13. By failing to use nonintrusive means, specifically using a track hoe while repairing foundations near Atmos gas facilities, Groundworks did not exercise reasonable care while excavating at the Excavation Site 1 and Excavation Site 2, Groundworks, in violation of K.S.A. 66-1809.

14. Under K.A.R. 82-14-6(a), Staff was authorized to serve PNCs on Groundworks after Staff conducted their investigations regarding the damaged gas facilities.

15. Groundworks was required under K.A.R. 82-14-6 to respond by mail to the PNC or execute a consent agreement with Staff within thirty (30) days after receipt of the PNC, and, absent good cause, Groundworks’ failure to do either within thirty (30) days constitutes an admission to all factual allegations made by Staff and may be used against Groundworks in future proceedings.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. A civil penalty in the amount of \$1,500 is assessed against Groundworks FRS, LLC, 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.*

B. Pursuant to K.A.R. 82-14-6(j), Groundworks FRS, LLC, may request a hearing to challenge the allegations set forth in this Penalty Order by electronically filing its request for

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 result in a waiver of Groundworks FRS, LLC's 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(i), if Groundworks FRS, LLC, 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-392-PEN.

D. Unless a hearing is requested, failure to pay the \$1,500 civil penalty within twenty (20) days from the date of service of this Penalty Order will result in enforcement action against Groundworks FRS, LLC, 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: 06/03/2025



Celeste Chaney-Tucker
Executive Director

BWB

ATTACHMENT “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: March 19, 2025

SUBJECT: Docket Number:
In the Matter of the Investigation of Groundworks FRS, 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 AR-24-OC-1148 and Case Number AR-24-OC-1162, Staff recommends that a civil penalty in the amount of \$1,500 be assessed to Groundworks FRS, LLC, (Groundworks) for violation(s) of the Kansas Underground Utility Damage Prevention Act (KUUDPA). Groundworks failed to exercise such reasonable care as may be necessary for the protection of any underground facility, when working in close proximity to any such facility, near 12908 Garnett Lane in Overland Park, Kansas and 18651 West 164th Street in Olathe, Kansas. Failure to exercise reasonable care while excavating is a violation of K.S.A. 66-1809. Staff recommends a penalty of \$500 be assessed for each violation of K.S.A. 66-1809. Staff issued Notices of Probable Noncompliance (PNC) to Groundworks on December 4, 2024 and January 16, 2025. Follow-up PNCs were sent via registered mail on February 7, 2025. Groundworks did not respond to the PNCs, as required by K.A.R. 82-14-6 (c). Staff recommends a penalty of \$250 be assessed for each violation of not responding to PNC. The PNCs are included as Attachment 1.

ANALYSIS:

Rationale for Penalties:

A. **Gravity of noncompliance:**

If an excavator does not take precautions necessary to excavate in a careful and prudent manner when working within the tolerance zone, then damage can occur. Kansas regulations state that excavating with reasonable care shall include using nonintrusive means to assure there is not a conflict between underground facilities and excavation activity in the tolerance zone. Staff contends the excavator must also maintain the visibility of the locate marks throughout excavation as a fundamental means of providing reasonable care while excavating. This excavator damaged a Atmos gas facilities with a track hoe while repairing foundations. Because Groundworks did not use nonintrusive means while working near marked facilities in the tolerance zone, Groundworks failed to use reasonable care as required by the law and therefore warrants a civil penalty.

B. **Culpability:**

Groundworks 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 Groundworks.

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

A response to the PNC as required by K.A.R. 82-14-6(c) was not received by Staff. The “failure of a party to submit a timely response to a Notice of Probable Noncompliance shall constitute an admission to all factual allegations made by the commission staff” as per K.A.R. 82-14-6(e).

E. **Aggravating/Mitigating Circumstances:**

Staff has not determined there to be any circumstances that would cause modification of the \$1500 recommended penalty amount.

RECOMMENDATION:

Staff recommends a civil penalty be assessed to Groundworks in the amount of \$1,500 for violating K.S.A. 66-1809 and K.A.R. 82-14-6(e).

Attachment

ATTACHMENT 1

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

Laura Kelly, Governor

**Dana Neal
Groundworks FRS, LLC
211 SE 150 Hwy
Lees Summit, MO 64082**

December 03, 2024

KCC Investigation #: AR-24-OC-1148

Subject: Pipeline Investigation

Dear Dana Neal:

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 2, 2024, 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 Groundworks FRS, LLC. 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.

kccsafetyresponse@ks.gov

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

Please feel free to contact me directly if you have questions or concerns.

Sincerely,

**Paul Owings /s/
Chief Engineer
(785) 271-3141
paul.owings@ks.gov**

Company: Groundworks FRS, LLC

Division:

Regulation:**66-1809 (a) Excavator's duty to exercise reasonable care.**

(a) Upon receiving information as provided in K.S.A. 2001 Supp. 68-1806, and amendments thereto, an excavator shall exercise such reasonable care as may be necessary for the protection of any underground facility in and near the construction area when working in close proximity to any such underground facility.

PROBABLE NONCOMPLIANCE DESCRIPTION:

On 12/02/2024, KCC Staff was notified of excavation work resulting in a damage to an Atmos gas line at 18651 West 164th Street in Olathe, Kansas. The KCC alleges Groundworks FRS, LLC damaged an Atmos natural gas riser with a trackhoe while doing a foundation repair. There was a valid One-Call ticket #24613230 with a due date of 11/28/2024. Marks were present and within tolerance of where the riser was hit. One example of reasonable care is to use hand tools within the tolerance zone of marked 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 Inquiry/Complaint

Date Inspected: 12/02/2024

Inspected By: AR

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



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

**Dana Neal
Groundworks FRS, LLC
211 SE 150 Hwy
Lees Summit, MO 64082**

January 02, 2025

KCC Investigation #: AR-24-OC-1162

Subject: Pipeline Investigation

Dear Dana Neal:

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 26, 2024, 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 Groundworks FRS, LLC. 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.

kccsafetyresponse@ks.gov

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

Please feel free to contact me directly if you have questions or concerns.

Sincerely,

**Paul Owings /s/
Chief Engineer
(785) 271-3141
paul.owings@ks.gov**

Company: Groundworks FRS, LLC

Division:

Regulation:**66-1809 (a) Excavator's duty to exercise reasonable care.**

(a) Upon receiving information as provided in K.S.A. 2001 Supp. 68-1806, and amendments thereto, an excavator shall exercise such reasonable care as may be necessary for the protection of any underground facility in and near the construction area when working in close proximity to any such underground facility.

PROBABLE NONCOMPLIANCE DESCRIPTION:

On 12/26/2024, KCC Staff was notified of excavation work resulting in a damage to an Atmos gas line at 12908 Garnett Lane in Overland Park, Kansas. The KCC alleges Groundworks FRS, LLC damaged an Atmos 3/4" natural gas service line with a trackhoe while doing a foundation repair. There was a valid One-Call ticket #24648492 with a due date of 12/21/2024. Marks were present and within tolerance of where the service line was hit. One example of reasonable care is to use hand tools within the tolerance zone of marked 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 Inquiry/Complaint

Date Inspected: 12/26/2024

Inspected By: AR

CERTIFICATE OF SERVICE

25-DPAX-392-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 06/03/2025.

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

Dana Neal, OWNER
Groundworks FRS, LLC
211 SE 150 Hwy
Lees Summit, MO 64082

/S/ KCC Docket Room
KCC Docket Room