

1500 SW Arrowhead Road
Topeka, KS 66604-4027

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



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

Sam Brownback, Governor

VIA CERTIFIED MAIL

NOTICE OF PENALTY ORDER
14-DPAX-465-PEN

April 17, 2014

Eric Thies
d/b/a Midwest Pools
16349 Young Rd
Pleasanton KS 66075

This is a notice of penalty assessment for violation of the Kansas Underground Utility Damage Prevention Act (KUUDPA) discovered during an investigation conducted on February 26, 2014, 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 Executive Director 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,

Robert A. Fox, #10260
Litigation Counsel
(785)271-3118

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

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

In the Matter of the Investigation of Eric)
Thies, d/b/a Midwest Pools, of Pleasanton,)
Kansas, Regarding the Violation of the Kansas)
Underground Utility Damage Prevention Act,)
and the Commission's Authority to Impose)
Penalties and/or Sanctions.)

Docket No. 14-DPAX-465-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. 2013 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 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 penalty, not to exceed \$25,000, for each day the violation persists, with a maximum civil penalty of \$500,000 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 February 26, 2014 Commission Staff (Staff) investigated the activity and operations of Eric Thies, d/b/a Midwest Pools (Respondent). See Report and Recommendation of Staff dated 4/9/2014, a copy attached hereto as Attachment "A". As a result of this investigation, Staff reports the following:

- a. On February 26, 2014, a KGS dispatcher notified Staff that Respondent was conducting excavation activities at 3800 Eastvale Dr in Fairway, Kansas and in the process of installing secondary electric service with a mini excavator, the excavator caused damage to an underground Kansas Gas Service (KGS) 3/4-inc PE natural gas service line, resulting in blowing gas.
- b. Upon notification of the damage, Staff arrived on-site at 3800 Eastvale Dr, and began an investigation. Staff learned from KGS crew on-site that Respondent had not called Kansas One Call to inform them of the intent to dig and to obtain a locate ticket.
- c. On March 17, 2014, 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. 2013 Supp. 66-1804.

d. On March 20, 2014, 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. 2013 Supp. 66-1802(c) and (d).

6. Staff also 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

7. The Commission finds it has jurisdiction over Eric Thies, d/b/a Midwest Pools (Respondent) because it is an excavator as defined in K.S.A. 2013 Supp. 66-1802.

8. 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.

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

THE COMMISSION THEREFORE ORDERS THAT:

A. Eric Thies, d/b/a Midwest Pools, of Pleasanton, KS 66075, 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. 2013 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 Executive Director, 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. A corporation shall not be permitted to enter an appearance, except by its attorney.

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.

Albrecht, Chair; Emler, Com.; Apple Com.

Dated: APR 17 2014


ORDER MAILED APR 18 2014

Kim Christiansen
Executive Director

RAF

ATTACHMENT “A”

**REPORT AND RECOMMENDATION
UTILITIES DIVISION**

TO: Chair Shari Feist Albrecht
Commissioner Thomas E. Wright
Commissioner Jay Scott Emler

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

DATE: April 9, 2014

DATE SUBMITTED TO LEGAL: 4/10/14

DATE SUBMITTED TO COMMISSIONERS: 4/17/14

SUBJECT: Docket Number: 14-DPAX-465-PEN
In the Matter of the Investigation of Midwest Pools of Pleasanton, 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 Midwest Pools (Midwest) in the amount of \$500 for violation(s) of KUUDPA. The penalty is based on results of a Staff investigation following damage to a Kansas Gas Service (KGS) natural gas service line in Fairway, Kansas. There was no current notice of intent to excavate provided to KGS and Kansas One-Call had not been notified. Failure to provide notice before excavating is a violation of K.S.A. 66-1803 and 66-1804(a).

BACKGROUND:

On February 26, 2014, Midwest damaged a KGS 3/4-inch PE natural gas service line at 3800 Eastvale Drive in Fairway, Kansas, while excavating to install secondary electric service with a mini excavator. The damage resulted in one outage of service at the above address and no injuries. A brief timeline of events is attached (Attachment I). A Notice of Probable Noncompliance was issued to Midwest on March 17, 2014 (Attachment II). On March 20, 2014, Midwest responded to the Notice of Probable Noncompliance as required by K.A.R. 82-14-6(c).

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. Because providing proper and timely notice of intent to excavate is the most fundamental preventative measure an excavator takes, the fact that Midwest failed to comply with this requirement of the law warrants the assessment of a civil penalty.

B. Culpability:

Midwest is directly responsible for its actions in failing to provide notice of intent to excavate as Kansas law requires.

C. History of noncompliance:

Staff has issued no other KUUDPA Notices of Probable Noncompliance to Midwest in the past two years.

D. Response of excavator regarding noncompliance(s):

Midwest accepts the Notice of Probable Noncompliance and declares that in the future Midwest will not be digging unless a call is made to Kansas One Call to obtain a ticket under their company name. Staff concludes that there are no extenuating circumstances in this case to mitigate the recommended penalty for failure to provide notice of intent to excavate.

E. Aggravating/Mitigating Circumstances:

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

RECOMMENDATION:

Staff recommends a civil penalty be issued to Midwest Pools 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:

- 2/26/2014 At approximately 1:38 p.m., Staff received an email notification from KGS dispatcher, indicating a damaged line at 3800 Eastvale Drive in Fairway, Kansas.
- Staff arrived on-site at approximately 2:12 p.m. and subsequently conducted an on-site investigation of the excavation site described above. Staff learned from conversations on-site with Midwest, 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 that there was, in fact, no Kansas One Call ticket obtained by Midwest at this address prior to excavating.
- Upon completion of the investigation and research, Staff determined that Midwest had been excavating without a valid locate request and had violated KUUDPA.
- 3/17/2014 Staff issued Midwest a Notice of Probable Noncompliance for violating KUUDPA as stated above.
- 3/20/2014 Staff received Midwest's response to the Notice of Probable Noncompliance as required by K.A.R. 82-14-6(c).

ATTACHMENT II

PROBABLE NONCOMPLIANCE

KCC Investigation#: 6872

COMPANY: Midwest Pools

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.

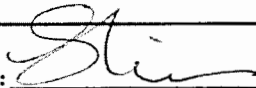
(e) The notice of intent of excavation shall contain the name, address and telephone number of the person filing the notice of intent, the name of the excavator, the date the excavation activity is to commence and the type of excavation being planned. The notice shall also contain the specific location of the excavation.

PROBABLE NONCOMPLIANCE DESCRIPTION:

On 2/26/2014, Midwest Pools damaged a KGS 3/4" PE gas service line with a mini excavator while installing secondary electric at 3800 Eastvale Dr in Fairway, Kansas. There was no current One-Call ticket found in the One-Call database prior to the damage for this excavator. 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. (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.

OPERATOR'S RESPONSE: (Attach verification if needed)

Operator's authorized signature:



Date:

3-18-14

PIPELINE SAFETY USE ONLY

Date Reviewed: _____ Date Reviewed: _____
Supervisor: _____ Inspector: _____

Inspected by: Knight

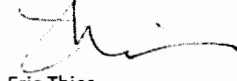
Date inspected: 2/26/2014

Inspection type: No Locates- Excavator

March 20, 2014

Superior Electric asked that we dig a secondary electrical line. I informed them that I was not available to get to this until a much later date. I did not call any locates in because I turned down the work. Several weeks later, on a rain out day, I was notified by Superior Electric that if I had time there was a locate that was done and I could dig the electric line because they really needed to get this work done. I got to the job, noticed the flags for the locate and proceeded to dig the secondary electrical line. While digging the line, we got into the small gas line. We notified Kansas Gas, they came out and fixed the line within 15 minutes. Under any other circumstances, we have always called in our own locates. I felt pressured by Superior and went ahead and dug the line. I won't be digging in the future unless my company calls in the locate. If you have any additional questions, please contact me at 913-915-1823.

Thank You



Eric Thies

Midwest Pools

PLEASE FORWARD THE ATTACHED DOCUMENT (S) ISSUED IN THE ABOVE-REFERENCED DOCKET
TO THE FOLLOWING:

NAME AND ADDRESS	NO. CERT. COPIES	NO. PLAIN COPIES
ERIC THIES, OWNER D/B/A MIDWEST POOLS 16349 YOUNG RD PLEASANTON, KS 66075		
ROBERT A. FOX, SENIOR LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604-4027 ***Hand Delivered***		

ORDER MAILED APR 18 2014

The Docket Room hereby certified that on this ____ day of _____, 20____, it caused a true and correct copy of the attached ORDER to be deposited in the United States Mail, postage prepaid, and addressed to the above persons.