

NOTICE OF PENALTY ORDER
25-DPAX-238-PEN

December 19, 2024

Kevin Perkins
Midtown Home Improvements
4420 East 142nd Street
Grandview, MO 64030

This is a notice of a penalty assessment against Midtown Home Improvements (“Midtown”) for a violation of the Kansas Underground Utility Damage Prevention Act (“KUUDPA”) and pipeline safety regulations adopted by the Kansas Corporation Commission. Midtown has been assessed a civil penalty in the amount of \$500. For a full description of the penalty please refer to the Penalty Order attached to this notice.

IF YOU ACCEPT THE PENALTY: 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-238-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 MIDTOWN, 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/ Ahsan A. Latif

Ahsan A. Latif, S. Ct. No. 24709
Litigation Counsel
(785) 271-3118
ahsan.latif@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 Midtown)
Home Improvements, 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).)

Docket No. 25-DPAX-238-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. REGULATORY FRAMEWORK

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.* 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. 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.

3. 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 \$200,000, for each day the violation persists, with a maximum civil penalty of \$2,000,000 for any related series of violations.¹

4. Pursuant to K.A.R. 82-1-237, the Commission has the authority to investigate a party under its jurisdiction and order a hearing on its own motion when the Commission believes the party is in violation of the law or any order of the Commission. K.A.R. 82-1-6(m) provides a show cause hearing may be held by the Commission when all other reasonable measures have failed to produce operator compliance, or when non-compliance presents an imminent danger to persons or property.

II. JURISDICTION

5. Midtown Home Improvements (“Midtown”) operates as an excavator as defined by K.S.A. 66-1802.

6. Midtown is a statutorily defined excavator that engages directly in excavation activities within the state of Kansas. K.S.A. 66-1802 defines excavation as “any operation in which earth, rock or other material below the surface is moved or otherwise displaced by any means.” Pursuant to K.S.A. 66-1813, which authorizes the Commission to administer and enforce the KUUDPA, Midtown is subject to the Commission’s jurisdiction regarding compliance with KUUDPA’s obligations (e.g., K.S.A. 66-1803), and may be subject to penalties issued pursuant to K.S.A. 66-1812.

III. NONCOMPLIANCE

7. On July 12, 2024, Staff conducted an onsite investigation of the excavation operations of Midtown at the excavation site of 1427 Easy Mart-Way Circle, Olathe, Kansas.

¹ See K.S.A. 66-1812; K.A.R. 82-14-6.

8. Staff subsequently issued Midtown a notice of probable noncompliance (“PNC”) on August 13, 2024, notifying Midtown of the investigation results, and a follow-up letter on April 26, 2024.²

9. On September 5, 2024, Staff received a response from Midtown agreeing with Staff’s findings.³

10. Staff concluded that Midtown failed to request locates of underground facilities prior to excavation at 1427 E. Mart-Way Circle in Olathe, Kansas and damaged an Atmos 1” PE gas service line with hand tools while doing home improvements for a resident..

11. Staff found Midtown Home is directly liable for its actions in failing to provide a notice of intent before excavating as required K.S.A. 66-1804.

12. 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 December 5, 2024, recommending a civil penalty of \$500 to be assessed against Midtown due to Midtown’s failure to take precautions to conduct an excavation in a careful and prudent manner causing damage to an Atmos 1” PE gas service line with hand tools while doing home improvements for the resident.⁴

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

13. The Commission finds it 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.

14. The Commission finds that Midtown was operating as an excavator, as defined in K.S.A. 66-1802, during the incident at issue.

² See Exhibit 1 of the R&R.

³ See Exhibit 2 of the R&R.

⁴ Staff’s Report and Recommendation, p. 1 (Dec. 5, 2024).

15. The Commission finds that, pursuant to K.A.R. 82-14-6(a), Staff was authorized to serve a PNC on Midtown after Staff conducted their investigation regarding the damaged gas main.

16. The Commission finds that by failing to provide a notice of intent to excavate prior to excavating at the Excavation Site, Midtown violated K.S.A. 66-1804.

17. The Commissions finds that Midtown responded to the PNC within thirty (30) days as required by K.A.R. 82-14-6(a) and did not dispute Staff's findings.

18. The Commission concludes that Midtown violated K.S.A. 66-1804 and that Staff's recommendation the excavator be assessed a \$500 civil penalty is reasonable.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. A civil penalty in the amount of \$500 is assessed against Midtown Home Improvements 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), Midtown Home Improvements 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 Midtown Home Improvements' 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 Midtown Home Improvements 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-238-PEN.

D. Unless a hearing is requested, failure to pay the \$500 civil penalty within twenty (20) days from the date of service of this Penalty Order will result in enforcement action against Midtown Home Improvements, 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: 12/19/2024



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, Public Service Administrator
Paul Owings, Chief of Pipeline Safety
Jeff McClanahan, Director of Utilities

DATE: December 5, 2024

SUBJECT: Docket Number:
In the Matter of the Investigation of Midtown Home Improvements. 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-1042, Staff recommends that a civil penalty in the amount of \$500 be assessed to Midtown Home Improvements (Midtown Home) for violation(s) of the Kansas Underground Utility Damage Prevention Act (KUUDPA). Midtown Home failed to request locates of underground facilities prior to excavation at 1427 East Mart-Way Circle in Olathe, Kansas. Failure to provide a notice of intent before excavating is a violation of K.S.A. 66-1804. Staff issued a Notice of Probable Noncompliance (PNC) to Midtown Home on August 13, 2024. Midtown Home did not dispute Staff's allegation in their response to the PNC on September 12, 2024, as required by K.A.R. 82-14-6 (c). The response is included as Exhibit 1.

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. This excavator was digging a hole for a deck in the near vicinity of an Atmos PE service line. Because Midtown Home did not request

locates prior to excavating, the utility operator was unable to provide the location at which Midtown Home would be required to carefully excavate to avoid damage to an underground facility at any depth. Midtown Home failed to comply with the law and warrants the assessment of a civil penalty.

B. Culpability:

Midtown Home 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 Midtown Home.

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. Midtown Home agreed with Staff's findings as is documented in Attachment 1. Midtown Home acknowledged that Midtown Home did not have a valid locate ticket in the company's name at the time of excavation.

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 assessed to Midtown Home Improvements in the amount of \$500 for violating K.S.A. 66-1804.

Attachment

EXHIBIT 1



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

Kevin Perkins
Midtown Home Improvements
4420 East 142nd Street
Grandview, MO 64030

August 13, 2024

KCC Investigation #: AR-24-OC-1042

Subject: Pipeline Investigation

Dear Kevin Perkins:

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 July 12, 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 Midtown Home Improvements. 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@kcc.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/
Deputy Chief Engineer
(785) 271-3141
p.owings@kcc.ks.gov

Company: Midtown Home Improvements

Division:

Regulation:

66-1804 (a) & (e) Notice of intent of excavation.

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 07/12/2024, Midtown Home Improvements did not notify One-Call prior to excavating at 1427 East Mart-Way Circle in Olathe, Kansas. Midtown Home Improvements damaged an Atmos 1" PE gas service line with hand tools while doing home improvements for the resident. After performing a search in the One-Call database no ticket was found for this area by this contractor during this time frame for the work that was being performed prior to the damage. Marks were not present at the job site and Midtown Home Improvements did not have a locate ticket.

OPERATOR'S RESPONSE: (Attach verification if needed)

Operator's Authorized Signature:

Edward Blake

Date:

9-5-2024

PIPELINE SAFETY USE ONLY:

Date reviewed:

Date reviewed:

Chief:

Inspector:

Inspection Type: One Call Inquiry/Complaint

Date Inspected: 07/12/2024

Inspected By: AR



(816) 246-8589
Fax: (816) 246-8759

4420 E 142nd Street
Grandview, MO 64030

www.midtownhi.com

To whom it may concern (Paul Owings) at Kansas Corporation Commission.

My name is Jarod Blade at Midtown Home Improvements in Grandview Mo. I am writing in as a response to KCC Investigation # AR-24-OC-1042

We mistakenly hit a gas line by digging a hole when building a small residential deck. My production admin mistakenly submitted the incorrect project address to have utility lines marked. We build a lot of decks in KC area and pride ourselves in doing things correctly and by the book. We always pull permits and have the property marked to avoid this type of situation. We have a Johnson Co. Ks. Contractor's license. Unfortunately, we made a mistake in the office and it resulted in this, for that I deeply apologize. But we did make the mistake. Even though it was only two holes being dug through an existing concrete patio the contractor should not have started digging. I personally had a sit-down meeting with my deck builders not to start digging if lines are not marked. We have adjusted our processes to prevent this from ever happening again in the future. We have an exceptionally clean work history here at Midtown Home Improvements dating back to 1990. So please accept my apologies regarding this event. We ended up losing the project and I know it was a headache to remedy the unfortunate situation. Let me know if there is anything else we can do moving forward.

Sincerely,

Jarod Blade

General Manager

A handwritten signature in blue ink that reads "Jarod Blade".

CERTIFICATE OF SERVICE

25-DPAX-238-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 12/19/2024.

Jarod Blade, GENERAL MANAGER
Midtown Home Improvements
4420 E 142nd Street
Grandview, MO 64030

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

/S/ KCC Docket Room
KCC Docket Room