

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

DENNIS LOOPER)	
)	
_____)	CASE NO.
)	2021-00259
ALLEGED VIOLATION OF UNDERGROUND)	
FACILITY DAMAGE PREVENTION ACT)	

OPENING ORDER

Dennis Looper (Mr. Looper) has been named as a party to an investigation before the Kentucky Public Service Commission (Commission) for allegedly violating the Kentucky Underground Facility Damage Prevention Act (Act).¹

Pursuant to KRS 278.495(2), the Commission has jurisdiction to regulate the safety of natural gas facilities in Kentucky and to enforce minimum federal pipeline safety standards. Under the Act, the Commission has authority to investigate and assess civil penalties for any violation of the Act that results in excavation damage to an underground facility used to transport natural gas or hazardous liquid subject to federal pipeline safety laws, 49 U.S.C. § 60101, *et seq.* Any person who violates any provision of the Act is subject to assessment of a civil penalty in the amount of \$250 for the first offense, no more than \$1,000 for the second offense within one year, and no more than \$3,000 for the third and any subsequent offense. Additionally, any person whose violation of the Act results in damage to an underground facility containing any flammable, toxic, corrosive,

¹ KRS 367.4901 through KRS 367.4917.

or hazardous material or results in the release of any flammable, toxic, corrosive, or hazardous material is subject to an additional penalty of up to \$1,000.

Following receipt of a report of excavation damage to its underground gas pipeline from an operator, Commission Staff (Staff) conducted an investigation and prepared an Incident Report, a copy of which is attached to this Order as an Appendix. In its Incident Report, Staff cites Mr. Looper for violation of the following provision of the Act:

KRS 367.4911(1)(a) – Each excavator, or person responsible for an excavation, planning excavation or demolition work shall, not less than two (2) full working days nor more than ten (10) full working days prior to commencing work, notify each affected operator of the excavator's intended work and work schedule. Contacting the applicable protection notification centers shall satisfy this requirement.

Based on its review of the Incident Report and being otherwise sufficiently advised, the Commission finds prima facie evidence that Mr. Looper violated the Underground Facility Damage Prevention Act. The Commission further finds that a formal investigation into the excavation damage incident should be conducted.

IT IS THEREFORE ORDERED that:

1. Mr. Looper shall submit to the Commission, via email sent to PSCED@ky.gov with the case number of this proceeding in the subject line of the message, a written response to the allegations contained in the Staff Incident Report within 20 days of receipt of this Order.

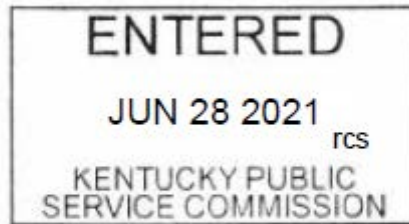
2. **Any partnership, corporation, or business entity (including a limited liability company) must be represented by an attorney licensed to practice law in Kentucky, and such representation includes the filing of papers with and appearances at hearings before the Commission.**

3. The Staff Incident Report 32132 in the Appendix to this Order is made a part of the record in this case.

4. **Please note that notice of a hearing to be held in this matter will be mailed to Mr. Looper once proof of service is received by the Commission. Parties who fail to appear after service will be subject to entry of a default judgment against them.**

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By the Commission



ATTEST:


Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2021-00259 DATED JUN 28 2021

EIGHT PAGES TO FOLLOW

PIPELINE DAMAGE INVESTIGATION REPORT

Investigation Information

KY PSC Investigator(s) Eric V. Tout Incident Date 10/9/2019 9:30:00 AM	Incident ID 32132 Report Submitted 10/15/2019 10:55:37 AM
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OPERATOR INFORMATION

Operator Benton Gas System City of Benton Phone (270) 527-3717 Incident Location George Clark Rd S 1501 George Clark Rd S Benton, KY 42025 Marshall	Reported By Brittany Canup Email bcanup@bentongas.org Locate Ticket Number
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EXCAVATOR INFORMATION

Name of Excavator Looper, Dennis Phone 270-251-2600 Excavator Address 205 E North St Mayfield, KY 42066	Organization ID Land Survey Email Locate Ticket Number
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INCIDENT

The Operator reports that the Excavator damaged a 2" main driving a survey pin and failed to contact the Protection Notification Center (811).

The Damage Report is include as Attachment 1.

Excavation Summary

Excavation Within 18" (Approximate Location)	Type Of Equipment Used	Cost of Damage (Per Operator)	Amount Billed (Excavator)
No call to 811	Non-mechanized	\$150.00	\$150.00

INVESTIGATION

On 06/30/20 the Excavator, Dennis Looper (270-559-3539), stated that no call to 811 was made and he has difficulty in getting the Operators to respond to his requests. Mr. Looper stated that he would need to research this incident and would call right back.

On 07/01/20 Mr. Looper stated that no call to 811 was made due to Benton Gas not showing up in the past. Mr. Looper stated that the gas main was 14 inches deep. Mr. Looper stated that he would forward the Demand Letter to Attorney Hartgrove and seek advice within the 30 day penalty payment due date.

On 07/01/20 Atty. Hartgrove (270-247-8522) left a message to call him.

On 07/02/20 an attempt contact Mr. Hartgrove resulted in a message being left.

On 07/02/20 811, Kristin Reed, stated, via email, that 811 has no record Mr. Looper made locate requests from 10/09/18 to 10/09/19. 811 has no record Benton Gas providing positive responses before May 8th, 2020 due to Benton Gas not participating in the electronic positive response system up to that date, indicating 811 has no record Benton Gas failed to meet the two day response period.

811 response is include as Attachment 2.

VIOLATION

KRS 367.4911(1) (a)

Each excavator, or person responsible for an excavation, planning excavation or demolition work shall, not less than two (2) full working days nor more than ten (10) full working days prior to commencing work, notify each affected operator of the excavator's intended work and work schedule. Contacting the applicable protection notification centers shall satisfy this requirement.

367.4903 (6)

(6) "Excavation" means any activity that results in the movement, placement, probing, boring, or removal of earth, rock, or other material in or on the ground by the use of any tools or equipment, by the discharge of explosives, or by the harvesting of timber using mechanized equipment. Forms of excavating include but are not limited to auguring,

backfilling, digging, ditching, drilling, driving, grading, piling, pulling-in, ripping, scraping, trenching, and tunneling. Driving wooden stakes by use of hand tools to a depth of six (6) inches or less below existing grade shall not constitute excavation.

of Offences
(Including this incident)

Excavator	Last Offence Incident #	Last Offence Incident Date	Last Offence Resolved Date
1 st	N/A	N/A	N/A

Attachment 1

Gas Excavation Damage Report

Benton Gas System City of Benton

Submitted 10/15/2019 Incident ID 32132

[Set back to Edit](#)[Staff Edit](#)[Print \(PDFForm.aspx?Rpt=GasInvestigation&IG=32132\)](#)

Reported By:

Name	Brittany Canup
Phone	(270) 527-3717
Email	bcanup@bentongas.org

Gas Line Incident Occured:

Date	10/9/2019
Time	9:30 AM

Details:

Reported Date	10/15/2019 10:55 AM
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Incident Location Address:

Location	George Clark Rd S
Address	1501 George Clark Rd S
City	Benton
State	KY
County	Marshall
Zip	42025
Confirm Code	Y

Number of Customers out	0
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Was gas or hazardous liquids contained in the underground facility?	<input type="checkbox"/>
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Was gas or hazardous liquids released into the atmosphere?	<input type="checkbox"/>	*
		3/2020

Locate Request Ticket No.

Excavator	Contractor
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Excavator Address:

First Name	Dennis
Last Name	Looper
Organization ID	Land Survey
Company	
Phone	270-251-2600
Email	

Address	205 E North St
City	Mayfield
State	KY
Zip	42066
Confirm Code	Y
Excavation Damage	Other

Description of Incident Drove survey pin through 2" main

Summary Information

10/15/2019

Full details such as the cause	Drove survey pin through 2" gas main. No bud ticket called in.
Extent of the damage	Drove a survey pin through 2" gas main. It was fixed within 2 hours with 1-2" long lyco
Cost of the damage	\$150.00
Steps taken to prevent re-occurrence	Call 811 to locate
Amount billed to excavator	\$150.00

Attachment 2

Tout, Eric V (PSC)

From: Ticket Research <ticketresearch2@usa811.org>
Sent: Thursday, July 2, 2020 8:21 AM
To: Tout, Eric V (PSC)
Subject: Re: 32132

Good morning Eric,

It was a pleasure speaking with you today. As we discussed, we are not showing any locate requests during that time period for Mr. Looper. Also, we show that Benton Gas signed up for our electronic Positive Response system on May 8th, 2020, so we would not have any information concerning their responses prior to that date. If you have any further questions, please don't hesitate to contact us and we will be happy to assist you.

Thank you,
Kristin Reed
Member Services
P: 317-893-1419
F: 317-386-7820



On Thu, Jul 2, 2020 at 7:18 AM Tout, Eric V (PSC) <ericv.tout@ky.gov> wrote:

Hello Carly,

Is possible to provide the number of tickets Dennis Looper Land Surveyor obtained from 10/09/18 to 10/09/19? And the number of tickets Benton Gas System, City of Benton, did not meet the two day requirement to locate within the same time period?

Thanks,

Eric V. Tout

Kentucky Public Services Commission

Division of Inspections / Damage Prevention

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