E-FILED 2026 JAN 27 10:35 AM BOONE - CLERK OF DISTRICT COURT

IN THE IOWA DISTRICT COURT FOR BOONE COUNTY

STATE OF IOWA, ex rel., BRENNA BIRD, ATTORNEY GENERAL OF IOWA (99AG23112) Plaintiff, v. KELLER EXCAVATING, INC., Defendant.	Case No. EQCV043209 PETITION IN EQUITY

COMES NOW Plaintiff State of Iowa, ex rel., Brenna Bird, Attorney General of Iowa, and for its claim against Defendant Keller Excavating, Inc., states as follows:

Introduction

1. The State of Iowa seeks the assessment of civil penalties and injunctive relief against Defendant Keller Excavating, Inc. ("Keller"), for violations of the "Iowa One Call" statute, Iowa Code chapter 480. Keller failed to use due care when excavating in a marked area to avoid damaging underground facilities in Madrid, Iowa. During the excavation, Keller's equipment hit and damaged a 1/2-inch diameter natural gas pipeline under 50 pounds per square inch of pressure.

Parties

2. The State of Iowa is a sovereign state of the United States of America.

3. Brenna Bird is the duly elected Attorney General for the State of Iowa.

4. Defendant Keller Excavating, Inc., is an Iowa corporation with an office at 1133 155th St., Boone, Iowa 50036.

Definitions

5. "Emergency" means "a condition where there is clear and immediate danger to life or health, or essential services, or a potentially significant loss of property." Iowa Code § 480.1(3).

6. "Excavation" means "an operation in which a structure or earth, rock, or other material in or on the ground is moved, removed, or compressed, or otherwise displaced by means of any tools, equipment, or explosives and includes, but is not limited to, grading, trenching, tiling, digging, ditching, drilling, augering, tunneling, scraping, cable or pipe plowing, driving, and demolition of structures." Iowa Code § 480.1(4).

7. "Excavator" means "a person proposing to engage or engaging in excavation." Iowa Code § 480.1(5).

8. "Forty-eight-hour period" means "a period of forty-eight consecutive hours beginning at 6:00a.m. the next business day from the day the notification center receives a notice and excludes Saturdays, Sundays, and legal holidays."

9. "[H]orizontal location of any underground facility" is defined as "including an area eighteen inches on either side of the underground facility." Iowa Code § 480.4(3)(c).

10. "Operator" means "a person owning or operating an underground facility including, but not limited to, public, private, and municipal utilities. An operator does not include a person who owns or otherwise lawfully occupies real property where an underground facility is located only for the use and benefit of the owner or occupant on the property." Iowa Code § 480.1(10).

11. "Underground facility" means an "item of personal property owned or leased by the operator which is buried or placed below ground for use in connection with the storage or

conveyance of, or the provision of services supplying water, sewage, electronic, telephonic, or telegraphic communications, electric energy, hazardous liquids, or petroleum products including natural gas or other substances, and includes, but is not limited to, pipes, sewers, conduits, cables, valves, lines, wires, manholes, and attachments to such property but does not include sanitary sewer laterals, storm sewer laterals, and water service lines providing service to abutting private properties." Iowa Code § 480.1(12).

Jurisdiction

12. Iowa Code chapter 480, commonly referred to as the "Iowa One Call" statute, establishes a statewide notification center to receive, document and process notices of excavations. The statute also creates certain duties for excavators and owners and operators of underground facilities.

13. Iowa Code section 480.1A provides that a person shall not engage in any excavation unless the requirements of chapter 480 have been satisfied.

14. Iowa Code section 480.4(1)(a) provides that, prior to any excavation, an excavator shall contact the statewide notification center and provide notice of the planned excavation occurring after a forty-eight-hour period. Notice is provided by either filing a ticket online at www.iowaonecall.com or calling the One Call Notification Center at 1-800-292-8989 or 811. The notice for a location inside of a city shall include:

1. the street address or block and lot numbers, or both, of the proposed area of excavation;
2. the name and address of the excavator;
3. the excavator's telephone number;
4. the type and extent of the proposed excavation;
5. whether the discharge of explosives is anticipated;

6. the date and time when excavation is scheduled to begin;

7. approximate location of the excavation on the property; and

8. if known, the name of the housing development and property owner.

Iowa Code §§ 480.4(1)(b)(1)-(8).

The Notice The notice for a location outside of a city shall include:

1. the name of the county, township, range, and section;

2. the name and address of the excavator;

3. the excavator's telephone number;

4. the type and extent of the proposed excavation;

5. whether the discharge of explosives is anticipated;

6. the date and time when excavation is scheduled to begin;

7. approximate location of the excavation on the property; and

8. if known, the quarter section, 911 address and global positioning system coordinate, name of property owner, name of housing development with street address or block and lot numbers, or both.

Iowa Code §§ 480.4(1)(c)(1)-(8).

15. Notices received by the Statewide Notification Center shall be valid for twenty-five calendar days beginning on the day the forty-eight-hour period concludes. Iowa Code § 480.4(1)(a).

16. Pursuant to Iowa Code section 480.4(2), the notification center, upon receiving notice from an excavator, must then immediately transmit the information contained in the notice to each operator of underground facilities in the area of the proposed excavation and provide the names of all operators in that area to the excavator. Operators of underground facilities receiving notice must then mark the horizontal location of their underground facilities within the forty-

eight-hour period, unless otherwise agreed by the operator and the excavator. Iowa Code § 480.4(3)(a)(1).

17. The only exception to the requirements of Iowa Code section 480.4 is "when an emergency exists." Iowa Code § 480.4(6).

18. When placing locate markings for an underground facility, the flag used for marking must "includes the name of the operator and a contact phone number." Iowa Code § 480.4(3)(a)(2)(b).

19. Excavators shall use due care when excavating in a marked area to avoid damaging the underground facility. Iowa Code § 480.4(3)(a)(1).

20. When damage occurs to an underground facility as a result of an excavation, the excavator shall as soon as practical notify the operator of the type of facility damaged and the extent of the damage. Iowa Code § 480.5(1).

21. If the damage results in an emergency, the excavator shall take all reasonable actions to alleviate the emergency including but not limited to the evacuation of the affected area. The excavator shall leave all equipment situated where the equipment was at the time the emergency was created and immediately contact the operator and appropriate authorities and necessary emergency response agencies. *Id*. at § 480.5(2).

22. Iowa Code section 480.6(1)(a) provides that a person who violates a provision of chapter 480 is subject to a civil penalty, when the violation is related to natural gas and hazardous liquid pipelines, in an amount not to exceed Ten Thousand Dollars ($10,000.00) for each violation for each day the violation continues, up to a maximum of Five Hundred Thousand Dollars ($500,000.00).

23. Iowa Code section 480.6(1)(b) provides that a person who violations a provision of chapter 480 is subject to a civil penalty, when the violation is related to any other underground facility, in an amount not to exceed One Thousand Dollars ($1,000.00) for each violation for each day the violation continues, up to a maximum of Twenty Thousand Dollars ($20,000.00).

24. Iowa Code section 480.6(2)(a) authorizes the Attorney General, upon the receipt of a complaint, to institute legal proceedings necessary to enforce the penalty provisions of chapter 480.

25. Iowa Code section 480.7 authorizes injunctive relief from any violation of Iowa Code chapter 480.

Facts

26. On or about November 12, 2024, Keller conducted an excavation to install a water line at 1599 334th Road, Madrid, Iowa 50156.

27. Keller had an active locate request for the excavation (Ticket No. 243020529), and underground utilities had been timely and accurately located and marked.

28. Black Hills Energy ("BHE") is the owner and operator of a 1/2-inch diameter natural gas pipeline under 50 pounds per square inch (psi) of pressure, which runs underground in the vicinity of where the excavation occurred.

29. Keller's planned excavation crossed directly over the pipeline, and locate markings were visible.

30. The most recent version of Iowa One Call's Excavator Manual provides that, when an excavation is set to occur within the "tolerance zone" of a marked underground facility—the area eighteen (18) inches horizontally on either side of the facility—excavators should hand-dig test holes to determine the location of the underground facilities.

31. During the excavation, Keller did not hand-dig any test holes to identify the precise location of the pipeline along the planned excavation path.

32. During the excavation, Keller's equipment hit and damaged the pipeline.

33. After damaging the pipeline, Keller's equipment continued to excavate for an addition forty to fifty feet.

34. Instead of contacting the owner or operator of the gas pipeline using the phone number listed on the flags used for the locate markings to notify them of the damage, Keller placed a "Dig In" locate request to notify the Iowa One Call notification center of the damage but identified "Dig-In of Water" on the ticket, thereby depriving BHE of notice of the damage.

35. While in the process of placing the "Dig In" locate request, Keller flagged down BHE staff that happened to be passing by to notify BHE of the damage.

36. Natural gas is flammable and highly explosive.

37. Digging to install a water line constitutes an "excavation" as defined in Iowa Code section 480.1(4).

38. At all material times hereto, Keller was an "excavator" as defined in Iowa Code section 480.1(5).

39. A buried natural gas service line is an "underground facility" as defined in Iowa Code section 480.1(12).

40. Digging in the tolerance zone of a marked underground facility without hand-digging a test hole to identify the precise locating of the underground facility does not meet the minimum standard of exercising "due care" when excavating in a marked area to avoid damaging the underground facility as required in Iowa Code section 480.4(3)(a)(1).

Violations

41. On or about November 12, 2024, Keller conducted excavations to install a water line near 1599 334th Road in Madrid, Iowa, and failed to exercise "due care" when excavating in a marked area to avoid damaging the underground facility in violation of Iowa Code sections 480.1A and 480.4(3)(a)(1).

Prayer for Relief

WHEREFORE, Plaintiff State of Iowa, ex rel., Brenna Bird, Attorney General of Iowa, requests that the Court:

a. assess a civil penalty against Defendant Keller Excavating, Inc., pursuant to Iowa Code section 480.6(1)(a) for each day of violation of Iowa Code sections 480.1A and 480.4(3)(a)(1), involving natural gas pipelines, not to exceed Ten Thousand Dollars ($10,000.00) for each day of each such violation; and

b. issue a permanent injunction enjoining Defendant Keller Excavating, Inc., from failing to exercise due care when conducting excavations in a marked area to avoid damage to marked underground facilities, as required by Iowa Code section 480.4(3)(a)(1).

Plaintiff further requests that the Court tax the costs of this action to the defendant and provide such other relief as the Court may deem just and proper.

Respectfully submitted,

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E-FILED 2026 JAN 27 10:35 AM BOONE - CLERK OF DISTRICT COURT

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