

IN THE IOWA DISTRICT COURT FOR MILLS COUNTY

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STATE OF IOWA, ex rel., THOMAS J. )  
MILLER, ATTORNEY GENERAL OF )  
IOWA (99AG23112), )

Plaintiff, )

vs. )

DAVID DREYER, d/b/a DREYER AG, )

Defendant. )

LAW NO. \_\_\_\_\_

**PETITION AT LAW**

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COMES NOW Plaintiff, State of Iowa, ex rel., Thomas J. Miller, Attorney General of Iowa, and for claim against Defendant David Dreyer, d/b/a Dreyer AG, states as follows:

**Introduction**

1. The State of Iowa seeks the assessment of civil penalties and injunctive relief against David Dreyer, d/b/a Dreyer AG, for violations of the "Iowa One Call" statute, Iowa Code chapter 480. The defendant failed to provide 48-hours notice of the excavations and proceeded with the excavations without any underground facilities having been located and marked. During the excavations, the defendant's trenching equipment crossed directly over a 26-inch diameter natural gas pipeline and a 36-inch diameter natural pipeline, both under 425 pounds per square inch (psi) pressure. The defendant's trenching equipment hit and damaged the latter pipeline.

**Parties**

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

3. Thomas J. Miller is the duly elected Attorney General for the State of Iowa.

4. Defendant David Dreyer, d/b/a Dreyer AG, resides at 1101 South Fremont, Shenandoah, Iowa 51601.

### **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. "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(8).

9. "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(10).

### **Jurisdiction**

10. 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.

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

12. 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. The notice must be given at least 48 hours prior to the commencement of the excavation, excluding weekends and legal holidays. Notice is provided by calling the notification center at its toll-free number (1-800-292-8989 or 811). 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, E911 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).

13. 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 48 hours after receiving the notice, excluding weekends and legal holidays, unless otherwise agreed by the operator and the excavator. Iowa Code § 480.4(3)(a)(1).

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

15. An excavator shall as soon as practical notify the operator when damage occurs to an underground facility as a result of an excavation, including the type of facility damaged and the extent of the damage. Iowa Code § 480.5.

16. If damage occurs during an excavation, the excavator shall refrain from backfilling in the immediate area of the underground facilities until the damage has been investigated by the operator, unless the operator authorizes otherwise. Iowa Code § 480.5.

17. 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).

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

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

### **Facts**

20. On and before October 27, 2009, the defendant conducted excavations with a bulldozer and trenching equipment to install terraces and drainage tile in Section 10, T72N, R41W in rural Mills County, Iowa, without providing 48-hours notice of the excavation to operators of underground facilities whose facilities may be affected by the excavation and without any underground facilities having been located and marked on the property.

21. Natural Gas Pipeline Company of America (NGPL) is the owner of a 26-inch diameter natural gas pipeline and a 36-inch diameter natural gas pipeline, both under 425 psi, which runs underground in the vicinity of where the excavations occurred. The pipelines are operated by Kinder Morgan, Inc.

22. Natural gas is explosive and highly flammable.

23. On October 26, 2009, at 10:56 a.m., the defendant contacted the One Call Notification Center regarding a planned excavation to begin 48-hours later.

24. On October 27, 2009, a Kinder Morgan pipeline technician responded to the One Call locate request and went to the site where he observed the defendant bulldozing in the area of the pipelines. The pipeline technician also observed that drainage tile lines had already been installed across both NGPL natural gas pipelines and then backfilled. The lines were subsequently excavated and it was determined that NGPL Line #3, the 36-inch diameter natural gas pipeline, had been hit and damaged by the defendant's trenching equipment, including several gouges requiring repairs.

25. Digging with a bulldozer and trenching equipment constitutes "excavation" as defined in Iowa Code section 480.1(4).

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

27. A buried natural gas pipeline is an "underground facility" as defined in Iowa Code section 480.1(10).

28. At all material times hereto, there was no "emergency," as defined in Iowa Code section 480.1(3), that would exempt defendant from the requirement that he contact the statewide notification center prior to the excavations and, thereby, provide notice to owners and operators of underground facilities whose facilities may be affected by the excavations.

### **Violations**

29. On and before October 27, 2009, Defendant David Dreyer, d/b/a Dreyer AG, engaged in excavations in Section 10, T72N, R41W within Mills County, Iowa, without first contacting the statewide notification center and providing 48-hours notice, in violation of Iowa Code sections 480.1A, 480.4(1)(a), and 480.4(1)(c)(1)-(8).

30. During the excavations, Defendant David Dreyer, d/b/a Dreyer AG, damaged a natural gas pipeline, backfilled over the damaged pipeline, and failed to notify the operator as soon as practical of the damage in violation of Iowa Code sections 480.1A and 480.5.

### **Prayer for Relief**

WHEREFORE, Plaintiff State of Iowa, ex rel., Thomas J. Miller, Attorney General of Iowa, requests that the Court:

a. assess a civil penalty against Defendant David Dreyer, d/b/a Dreyer AG, pursuant to Iowa Code section 480.6(1)(a) for each day of violation of Iowa Code sections 480.1A, 480.4(1)(a), 480.4(1)(c)(1)-(8), and 480.5 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 David Dreyer, d/b/a Dreyer AG, from commencing any non-emergency excavation in the State of Iowa, without first contacting the statewide notification center at its toll-free number (1-800-292-8989 or 811), at least 48 hours prior to the planned excavation, excluding weekends and legal holidays, as required by Iowa Code sections 480.1A and 480.4(1)(a), and providing the information required by Iowa Code sections 480.4(1)(b)(1)-(8) and 480.4(1)(c)(1)-(8); and further enjoining the defendant from commencing any excavation except under the schedule and pursuant to the terms of each such notification; and further enjoining the defendant from violations of Iowa Code section 480.5 and, in the event of damage, requiring the defendant to notify the operator of the damaged underground facility as soon as practical of the damage, type of damaged facility, and the extent of the damage; and further enjoining the defendant from backfilling in the immediate area of the damaged underground facilities until the damage has been investigated by the operator, unless the operator authorizes otherwise.

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,

THOMAS J. MILLER  
Attorney General of Iowa

A handwritten signature in black ink, appearing to read "David R. Sheridan". The signature is written in a cursive style with a long horizontal flourish extending to the right.

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