

IN THE IOWA DISTRICT COURT FOR MARION COUNTY

STATE OF IOWA, ex rel., THOMAS J. MILLER, ATTORNEY GENERAL OF IOWA (99AG23112),)	CASE NO. _____
)	
Plaintiff,)	
)	
vs.)	PETITION IN EQUITY
)	
MCS COMMUNICATIONS, LLC,)	
)	
Defendant.)	
)	

COMES NOW Plaintiff State of Iowa, ex rel., Thomas J. Miller, Attorney General of Iowa, and for its claim against Defendant MCS Communications, LLC, as follows:

Introduction

1. The State of Iowa seeks the assessment of civil penalties and injunctive relief against Defendant MCS Communications, LLC (“MCS”), for violations of the “Iowa One Call” statute, Iowa Code chapter 480. MCS has repeatedly failed to use due care when excavating in marked areas to avoid damaging underground facilities in Pella, Iowa in 2020. During several of the excavations, MCS’s equipment hit and damaged natural gas pipelines and telecommunications lines and during one excavation, MCS’s equipment hit an electrical line, leading to the death to two employees.

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 MCS Communications is a North Carolina limited liability company that engaged in multiple excavations in Marion, County Iowa in 2020, and has an office at 4241 Stough Rd Unit 2 Concord, NC 28027.

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

16. 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).

17. Iowa Code section 480.6(1)(b) provides that a person who violates 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).

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

Intersection of Main Street and Lincoln Avenue

20. On or about August 1, 2020, MCS conducted excavations to install fiber optic cable near the intersection of Main Street and Lincoln Avenue, Pella, Iowa.

21. MCS had an active locate request for the excavation, and underground utilities had been located and marked.

22. The City of Pella owns a 12.70 kV primary electric transmission line that is encased in concrete in the vicinity of the excavation.

23. During the August 1, 2020 excavation, MCS encountered concrete and asphalt at a depth of approximately ten (10) inches.

24. MCS' excavation crew, disregarding company policy, then proceeded to use a jackhammer to break apart the concrete, making contact with the electrical transmission line located within during the excavation.

25. Two (2) MCS crew members were electrocuted, suffering fatal injuries, and a third was briefly hospitalized.

26. Iowa Occupational Safety and Health Administration (“OSHA”) conducted an investigation of this incident. OSHA issued a number of citations to MCS, including a citation for failing to “advise employees of the location of energized electrical power circuits” in the vicinity of the excavation.

27. Digging to install fiber optic cable constitutes “excavation” as defined in Iowa Code section 480.1(4).

28. At all material times hereto, MCS was an “excavator” as defined in Iowa Code section 480.1(5).

29. A buried electrical line is an “underground facility” as defined in Iowa Code section 480.1(10).

30. Using a jackhammer to break apart concrete encasing an 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).

600 Elm Street

31. On or about June 26, 2020, MCS conducted excavations to install fiber optic cable at 600 Elm Street, Pella, Iowa.

32. MCS had an active locate request for the excavation, and underground utilities had been located and marked.

33. Alliant Energy Company (“AEC”) is the owner and operator of a 1-inch natural gas pipeline under 49 pounds per square inch (psi) of pressure, which runs underground in the vicinity of where the excavations occurred.

34. While MCS had potholed and exposed the pipeline, during the excavation, MCS damaged the pipeline when pulling back the boring head on its excavation equipment, failing to maintain adequate clearance to avoid damaging the pipeline during the excavation.

35. Natural gas is flammable and highly explosive.

36. Digging to install fiber optic cable constitutes “excavation” as defined in Iowa Code section 480.1(4).

37. At all material times hereto, MCS was an “excavator” as defined in Iowa Code section 480.1(5).

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

39. Failing to maintain clearance by damaging a pipeline when retracting excavation equipment 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).

1358 Main Street

40. On or about June 27, 2020, MCS conducted excavations to install fiber optic cable at 1358 Main Street, Pella, Iowa.

41. MCS had an active locate request for the excavation, and underground utilities had been located and marked.

42. AEC is the owner and operator of a 4-inch natural gas pipeline under 49 psi of pressure, which runs underground in the vicinity of where the excavations occurred.

43. MCS exposed an old gas pipeline by potholing, but MCS did not pothole down to the actual depth of the planned excavation.

44. During the excavation, MCS damaged AEC's active pipeline, which was located below the old pipeline.

45. Natural gas is flammable and highly explosive.

46. Digging to install fiber optic cable constitutes "excavation" as defined in Iowa Code section 480.1(4).

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

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

49. Failing to pothole to the depth of a planned excavation 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).

1001 Broadway Street

50. On or about August 21, 2020, MCS conducted excavations to install fiber optic cable at 1001 Broadway Street, Pella, Iowa.

51. MCS had an active locate request for the excavation, and underground utilities had been located and marked.

52. AEC is the owner and operator of a 1-inch natural gas pipeline under 49 psi of pressure, which runs underground in the vicinity of where the excavations occurred.

53. MCS did not pothole or otherwise expose AEC's gas line, and during the excavation, MCS damaged AEC's pipeline.

54. Natural gas is flammable and highly explosive.

55. Digging to install fiber optic cable constitutes “excavation” as defined in Iowa Code section 480.1(4).

56. At all material times hereto, MCS was an “excavator” as defined in Iowa Code section 480.1(5).

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

58. Failing to pothole or expose a marked underground facility that is located in the vicinity of a planned excavation 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).

805 Columbus Street

59. On or about August 25, 2020, MCS conducted excavations to install fiber optic cable at 805 Columbus Street, Pella, Iowa.

60. MCS had an active locate request for the excavation, and underground utilities had been located and marked.

61. AEC is the owner and operator of a 1-inch natural gas pipeline under 49 psi of pressure, which runs underground in the vicinity of where the excavations occurred.

62. MCS exposed an old gas pipeline by potholing, but MCS did not pothole down to the actual depth of the planned excavation.

63. During the excavation, MCS damaged AEC’s active pipeline, which was located below the old pipeline.

64. Natural gas is flammable and highly explosive.

65. Digging to install fiber optic cable constitutes “excavation” as defined in Iowa Code section 480.1(4).

66. At all material times hereto, MCS was an “excavator” as defined in Iowa Code section 480.1(5).

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

68. Failing to pothole to the depth of a planned excavation 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).

212 Franklin Street

69. On or about October 30, 2020, MCS conducted excavations to install fiber optic cable at 212 Franklin Street, Pella, Iowa.

70. MCS had an active locate request for the excavation, and underground utilities had been located and marked.

71. Windstream Communications (“Windstream”) is the owner and operator of a 1200 pair telecommunications line, which runs underground in the vicinity of where the excavations occurred.

72. MCS did not pothole or otherwise expose Windstream’s telecommunications line, and during the excavation, MCS damaged the line.

73. Damaging telecommunications lines can lead to interruptions to voice and data services, including 911 service and internet access.

74. Digging to install fiber optic cable constitutes “excavation” as defined in Iowa Code section 480.1(4).

75. At all material times hereto, MCS was an “excavator” as defined in Iowa Code section 480.1(5).

76. A buried telecommunications line is an “underground facility” as defined in Iowa Code section 480.1(10).

77. Failing to pothole or expose a marked underground facility that is located in the vicinity of a planned excavation 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

78. On or about August 1, 2020, MCS conducted excavations to install fiber optic cable near the intersection of Main Street and Lincoln Avenue, Pella, 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).

79. On or about June 26, 2020, MCS conducted excavations to install fiber optic cable at 600 Elm Street, Pella, 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).

80. On or about June 27, 2020, MCS conducted excavations to install fiber optic cable at 1358 Main Street, Pella, 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).

81. On or about August 21, 2020, MCS conducted excavations to install fiber optic cable at 1001 Broadway Street, Pella, 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).

82. On or about August 25, 2020, MCS conducted excavations to install fiber optic cable at 805 Columbus Street, Pella, 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).

83. On or about October 30, 2020, MCS conducted excavations to install fiber optic cable at 212 Franklin Street, Pella, 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., Thomas J. Miller, Attorney General of Iowa, requests that the Court:

- a. assess a civil penalty against Defendant MCS Communications, LLC, 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;
- b. assess a civil penalty against Defendant MCS Communications, LLC, pursuant to Iowa Code section 480.6(1)(b) for each day of violation of Iowa Code sections 480.1A, and 480.4(3)(a)(1), involving underground facilities other than natural gas or hazardous liquid pipelines, not to exceed One Thousand Dollars (\$1,000.00) for each day of each such violation; and
- c. issue a permanent injunction enjoining Defendant MCS Communications, LLC, 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,

THOMAS J. MILLER
Attorney General of Iowa

/s/ Jacob J. Larson

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