

IN THE IOWA DISTRICT COURT FOR MITCHELL COUNTY

STATE OF IOWA, ex rel., THOMAS J. )  
MILLER, ATTORNEY GENERAL OF )  
IOWA (99AG23112), )  
) )  
Plaintiff, )  
) )  
vs. )  
) )  
MALMIN, L.L.C., )  
) )  
Defendant. )

CASE NO. EQCV015448

**PETITION IN EQUITY**

COMES NOW Plaintiff State of Iowa, ex rel., Thomas J. Miller, Attorney General of Iowa, and for its claim against Defendant Malmin, L.L.C., states as follows:

**Introduction**

1. The State of Iowa seeks the assessment of civil penalties and injunctive relief against Malmin, L.L.C. (“Malmin”) for violations of the “Iowa One Call” statute, Iowa Code chapter 480. Malmin failed to provide 48-hours notice of excavations and proceeded with the excavations without any underground facilities having been located and marked. During the excavations, the defendant’s equipment likely came to within 18-24 inches of a 2-inch diameter natural gas pipeline under 20 pounds per square inch of pressure (psi) and 10 feet of 1-inch diameter natural gas pipeline under 20 psi.

**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 Malmin, L.L.C. is an Iowa corporation with an office at 429 North 3<sup>rd</sup> Street, Osage, Iowa 50461.

**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 within 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).

13. A notice that is received after 5:00 p.m. shall be processed as if received at 8:00 a.m. the next business day. Iowa Code § 480.4(1)(a).

14. 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).

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

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

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

**Facts**

19. On or about May 8, 2015, Malmin conducted excavations at 405 Poplar Street, Osage, Mitchell County, Iowa 50461, to remove cement. Malmin would use a backhoe to bang on the cement to break it up and scoop the broken cement off the ground.

20. Malmin began excavating on May 8, 2015, prior to having any underground facilities located and marked and, thereby, failed to provide 48-hours notice to operators of underground facilities whose facilities may be affected by the excavation.

21. Osage Municipal Utilities is the owner and operator of a 2-inch diameter natural gas pipeline under 20 pounds per square inch (psi) of pressure, which runs underground in the vicinity of where the excavation occurred. During the excavations, Malmin likely came within 18-24 inches of the pipeline.

22. On May 8, 2015, Malmin was advised by Osage Municipal Utilities of the need to place a locate request for the excavation.

23. On or about May 11, 2015, Malmin conducted an excavation at 609 Oak Street, Osage, Mitchell County, Iowa 50461. Malmin drove stakes into the ground approximately 4-6 inches deep to set footings in anticipation of pouring new cement.

24. Malmin began excavating on May 11, 2015, prior to having any underground facilities located and marked and, thereby, failed to provide 48-hours notice to operators of underground facilities whose facilities may be affected by the excavation.

25. Osage Municipal Utilities is the owner and operator of a 1-inch diameter natural gas pipeline under 20 psi, which runs underground in the vicinity of where the excavation occurred. During the excavation, Malmin likely came within 10 feet of the pipeline.

26. On May 11, 2015, Malmin was advised by Osage Municipal Utilities of the need to place a locate request for the excavation.

27. Natural gas is flammable and highly explosive.

28. Using a backhoe to bang on cement to break it up and scoop the broken cement off the ground and driving stakes into the ground approximately 4-6 inches deep to set footings in anticipation of pouring new cement both constitute an “excavation” as defined in Iowa Code section 480.1(4).

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

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

31. At all material times hereto, there was no “emergency,” as defined in Iowa Code section 480.1(3), that would exempt Malmin from the requirement that it contact the statewide notification center provide 48-hours notice of the planned excavation.

### **Violations**

32. On or about May 8, 2015, Defendant Malmin, L.L.C. engaged in excavations at 405 Poplar Street, Osage, Mitchell County, Iowa 50461, without providing 48-hours notice of the planned excavation, in violation of Iowa Code sections 480.1A, 480.4(1)(a), and 480.4(1)(b)(1)-(8).

33. On or about May 11, 2015, Defendant Malmin, L.L.C. engaged in excavations at 609 Oak Street, Osage, Mitchell County, Iowa 50461, without providing 48-hours notice of the planned excavation, in violation of Iowa Code sections 480.1A, 480.4(1)(a), and 480.4(1)(b)(1)-(8).

**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 Malmin, L.L.C. pursuant to Iowa Code section 480.6(1)(a) for each day of violation of Iowa Code sections 480.1A, 480.4(1)(a) and 480.4(1)(b)(1)-(8) 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 Malmin, L.L.C. 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.

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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