

IN THE IOWA DISTRICT COURT FOR CERRO GORDO COUNTY

---

STATE OF IOWA, ex rel., THOMAS J. MILLER, ATTORNEY GENERAL OF IOWA (99AG23112),	)	CASE NO. _____
	)	
Plaintiff,	)	
	)	
vs.	)	<b>PETITION IN EQUITY</b>
	)	
MUSCATINE UTILITY SERVICES, INC.,	)	
	)	
Defendant.	)	
	)	

---

COMES NOW Plaintiff State of Iowa, ex rel., Thomas J. Miller, Attorney General of Iowa, and for its claim against Defendant Muscatine Utility Services, Inc., states as follows:

**Introduction**

1. The State of Iowa seeks the assessment of civil penalties and injunctive relief against Defendant Muscatine Utility Services, Inc. (“Muscatine Utility”), for violations of the “Iowa One Call” statute, Iowa Code chapter 480. Muscatine Utility conducted excavations to install cable/internet service, but during the excavations, Muscatine Utility’s equipment hit and damaged three separate 1/2-inch diameter natural gas pipelines under 60 pounds per square inch of pressure on the property. Muscatine Utility then failed to notify the owner or operator of the natural gas pipeline of the damage for at least two (2) of the hits, and attempted to repair one of the gas lines themselves.

**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 Muscatine Utility is an Iowa corporation with an office at 1843 Pike Run Lane, Nichols, Iowa 52766.

### **Definitions**

5. “Damage” means “any impact with, destruction, impairment, or penetration of, or removal of support from an underground facility, including damage to its protective coating, housing, or device.” Iowa Code § 480.1(2).

6. “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).

7. “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).

8. “Excavator” means “a person proposing to engage or engaging in excavation.” Iowa Code § 480.1(5).

9. “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).

10. “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**

11. 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.

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

13. 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](http://www.iowaonecall.com) or calling the One Call Notification Center at 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).

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. 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.

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 or about March 31, 2019, Muscatine Utility conducted excavations to install cable/internet service at 2340 and 2348 Ping Court, Mason City, Iowa.

21. Muscatine Utility placed a locate request for the excavations, and all utilities were accurately located and marked prior the commencement of the excavation.

22. Alliant Energy Company (“AEC”) is the owner and operator of two 1/2-inch diameter natural gas pipelines under 60 psi of pressure, which run underground in the vicinity of where the excavation occurred.

23. Natural gas is flammable and highly explosive.

24. During the excavations, Muscatine Utility hit and damaged both of the natural gas pipelines. The damage resulted in a loss of service for some customers and remediation costs to AEC.

25. Muscatine Utility’s employee failed to notify AEC of the damaged natural gas pipelines. Instead, for one of the pipelines, the employee attempted to make his own repair to the gas line and backfilled over the damage. For the other pipeline, the damage was not discovered until the following day when another contractor smelt gas and reported it to AEC.

26. On or about October 26, 2019, Muscatine Utility conducted excavations to install cable/internet service at 914 N. Federal, Mason City, Iowa.

27. Muscatine Utility placed a locate request for the excavation, and all utilities were accurately located and marked prior the commencement of the excavation.

28. AEC is the owner and operator of a 1/2-inch diameter natural gas pipeline under 60 psi of pressure, which runs underground in the vicinity of where the excavation occurred.

29. Although Muscatine Utility had placed locate requests, prior to commencing the excavation, the company failed to verify the location of the pipeline by digging test holes. Muscatine Utility then used heavy equipment (a mini-excavator) within the “tolerance zone” of a marked underground natural gas pipeline, hitting and damaging the pipeline. Iowa One Call’s “Excavators Manual” provides that:

Excavators should observe this tolerance zone and take precautionary measures to avoid encountering underground facilities when excavating near or within this area. When excavations take place within the tolerance zone, excavators should hand-dig test holes to determine the location of the underground facilities. No equipment or machinery, other than accepted procedures, such as vacuum excavation, should be used for exposing underground facilities within the tolerance zone. (Available at <http://iowaonecall.com/wp-content/uploads/2018/08/IowaExcavatorManual-web.pdf>, p. 29).

30. Digging to install cable or internet service constitutes “excavation” as defined in Iowa Code section 480.1(4).

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

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

33. At all material times hereto, there was no “emergency,” as defined in Iowa Code section 480.1(3), that would exempt Muscatine Utility from the requirement that it exercise due

care when excavating in a marked area or contact the owner or operator of the pipelines to report the damage.

### **Violations**

34. On or about March 31, 2016, Defendant Muscatine Utility and/or its employee damaged natural gas pipelines at 2340 and 2348 Ping Court, Mason City, Iowa, and failed to notify the operator of the damaged pipeline of the damage in violation of Iowa Code sections 480.1A and 480.5.

35. On or about October 26, 2019, Muscatine Utility failed to exercise due care when engaging in excavations at 914 N. Federal, Mason City, Iowa, to avoid damaging marked 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 Muscatine Utility Service, Inc., pursuant to Iowa Code section 480.6(1)(a) for each day of violation of Iowa Code sections 480.1A and 480.5 involving natural gas pipelines, not to exceed Ten Thousand Dollars (\$10,000.00) for each day of each such violation;
- b. issue a permanent injunction enjoining Defendant Muscatine Utility Service, Inc., from commencing any non-emergency excavation in the State of Iowa, without first contacting the statewide notification center by either filing a ticket online ([www.iowaonecall.com](http://www.iowaonecall.com)) or calling the One Call Notification Center (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 enjoining the defendant from commencing any excavation except under the schedule and pursuant to the terms of each such notification;

- c. issue a permanent injunction enjoining Defendant 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); and
- d. issue a permanent injunction enjoining Defendant Muscatine Utility Service, Inc., from failing to promptly notify owners and operators of underground facilities which have been damaged, as required by Iowa Code section 480.5.

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

JACOB J. LARSON  
Assistant Attorney General  
Office of Iowa Attorney General  
Hoover State Office Building  
1305 E. Walnut St., 2<sup>nd</sup> Floor  
Des Moines, Iowa 50319  
Phone: (515) 281-5341  
Fax: (515) 281-4209  
E-mail: [jacob.larson@ag.iowa.gov](mailto:jacob.larson@ag.iowa.gov)  
ATTORNEYS FOR PLAINTIFF