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ATTORNEY GENERAL



IOWA DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL
Environmental Law Division

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December 28, 2018

Dain Mann
Treasurer
NISS EXCAVATION, INC.
3609 South Federal Avenue
Mason City, Iowa 50401

RE: One Call Violations – Cerro Gordo County

Dear Mr. Mann:

It has come to our attention that on or about April 28, 2017, NISS Excavation, Inc., d/b/a North Iowa Septic Solutions (“NISS Excavation”) conducted excavations in Cerro Gordo County, near the intersection of Main Ave. and I-35, using a bulldozer to grade dirt without providing 48-hours notice of the planned excavation to the owners and operators of underground facilities. As a result, underground facilities on the property, potentially including fiber optic cable lines, telephone lines, electrical lines, and natural gas transmission lines, were not located and marked prior to the excavations. Your equipment came within twenty (20) feet of a twelve (12) inch pipeline containing refined product. As I am sure you are well aware, striking and damaging underground facilities can have tragic results. You are fortunate that this incident did not result in injury, or worse, to any of your employees, pipeline employees, or first responders.

According to the complaint filed with the Attorney General’s Office, the NISS Excavation employee operating the bulldozer indicated that they did not need to place a locate request because he was only “grad[ing] loose dirt he was hauling in.” “Excavation” is defined very broadly, with limited exceptions, and includes any “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...” Iowa Code section 480.1(4). Using a bulldozer to move any earth or dirt, even where it has been hauled in, constitutes an excavation, and notice must be provided in compliance with Iowa’s One Call law (chapter 480).

Failure to provide 48-hours notice of the excavation constitutes violation of Iowa Code sections 480.1A, 480.4(1)(a), and 480.4(1)(c)(1)-(8). Iowa Code section 480.6(1)(a) authorizes the Attorney General to seek civil penalties up to a maximum of Ten Thousand Dollars (\$10,000) per day of each such violation involving natural gas or hazardous liquids pipelines. Iowa Code section 480.6(1)(b) authorizes the Attorney General to seek civil penalties up to a

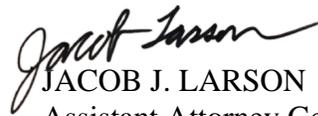
maximum of One Thousand Dollars (\$1,000) per day of each such violation to all other underground facilities. Injunctive relief is also authorized pursuant to Iowa Code section 480.7.

Notice of a planned excavation must be given by either filing a ticket online at www.iowaonecall.com or calling the One Call Notification Center at 1-800-292-8989 or 811 at least 48 hours prior to the excavation.

While our office appreciates NISS Excavation's efforts to new protocols to avoid future non-compliance, as well as the company's past compliance with Iowa's One Call requirements, the purpose of this letter is to advise that the Iowa One Call statute must be strictly complied with. Notwithstanding NISS Excavation's past compliance, failure to comply in the future may result in judicial enforcement proceedings initiated by our office pursuant to Iowa Code sections 480.6 and 480.7.

Thank you for your attention to this matter.

Sincerely,



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