

## Larson, Jacob [AG]

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**From:** Larson, Jacob [AG]  
**Sent:** Tuesday, December 04, 2018 8:51 AM  
**To:** 'gavin@wicksconstruction.com'  
**Subject:** RE: Wicks Construction - Utility Damage Claim

Gavin,

Thank you for reaching out to the Attorney General's Office concerning your situation.

You are correct that you conducted an excavation without placing a locate request in violation of the law. As a result, underground facilities on the property were not located and marked prior to the excavations and your equipment damaged a communication line. 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 or first responders.

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 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](http://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.

The Iowa One Call statute must be strictly complied with. Failure to comply may result in judicial enforcement proceedings initiated by our office pursuant to Iowa Code sections 480.6 and 480.7.

As for your request for inquiry about who is responsible or liable for paying for the damaged communication line, that is a question about a private legal matter, and our Office cannot provide you any legal advice. You should consult with your legal counsel concerning your rights and responsibilities in this matter.

Please let me know if you have any additional questions. Thanks.

Jake



### Jacob Larson

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**NOTE: Attorney email address changed effective 11/10/17**

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reply email or telephone. Any unintended transmission of this email message does not constitute a waiver of any applicable privilege or protection. Thank you.

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**From:** Gavin Wicks <gavin@wicksconstruction.com>  
**Sent:** Friday, November 30, 2018 10:23 AM  
**To:** Larson, Jacob [AG] <Jacob.Larson@ag.iowa.gov>  
**Subject:** Wicks Construction - Utility Damage Claim

Jacob,

I left you a message on your voicemail at your office, but I wanted to go ahead and explain my situation and see if you could help provide me some answers or clarification.

Wicks Construction Inc is a concrete contractor and we hit a buried underground communication line. We did not have a proper locate called in when we performed the work. We understand and know that we should have had a locate called in prior to starting our work. We did not think we would hit a line as we were not digging but only driving concrete form pins into the ground about 12", either way we know we violated that law in this situation. The real reason I am contacting you is about the claim the utility company is trying to have us repay them for.

I have done some research and found out that the line or lines we hit were installed in 1974 as stated by the utility company. We hit these lines in one location on a construction site where the road was being replaced by Wicks and the sidewalk area was to be replaced as well. The damage occurred outside of the road and in the location of the sidewalk that had been removed for reconstruction. What I am getting at is that Wicks construction feels that we should be liable for the cost of splicing the lines at the location of damage and cost for placing some new line for extra slack as well as a possible sidewalk vault to access the splices. We feel this should be sufficient to make the utility company whole again for the damage we cause to their lines that were 43 years old at the time. The utility company proceeded with splicing the lines after the incident, but then went ahead and placed new lines from one existing manhole vault to another existing manhole vault in the road way, in the months following the incident. The first vault was located at an intersection about a half city block away from the damage, but the second vault was across a 200' long bridge and another half city block to the next intersection. We believe that the utility company is trying to get us to pay for an upgrade to their system or network and is trying to take advantage of a situation where a small business feels pressure in an unknown situation. Are there any laws or cases that could help me in this situation or are we liable to pay them for upgrading their aged and depreciated system?

Any help is appreciated. If you would like more information I would gladly send it over.

Thank you and hope you have a good day,

**Gavin Wicks**  
**Wicks Construction Inc.**  
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