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IN THE IOWA DISTRICT COURT FOR POLK COUNTY

STATE OF IOWA, ex rel., BRENNA BIRD, ATTORNEY GENERAL OF IOWA (99AG23112) Plaintiff, v. WOOD DUCK LANDSCAPES, INC., Defendant.	Case No. EQCE092495 PETITION IN EQUITY

COMES NOW Plaintiff State of Iowa, ex rel., Brenna Bird, Attorney General of Iowa, and for its claim against Defendant Wood Duck Landscapes, Inc., states as follows:

Introduction

1. The State of Iowa seeks the assessment of civil penalties and injunctive relief against Defendant Wood Duck Landscapes, Inc. ("WDL"), for violations of the "Iowa One Call" statute, Iowa Code chapter 480. WDL failed to provide notice of the planned excavation occurring after a forty-eight-hour period in Grimes, Iowa, and without any underground facilities having been located and marked, proceeded with the excavation. During the excavation, WDL's equipment hit and damaged a 1/2-inch natural gas service line. After damaging the service line, WDL failed to notify the operator and appropriate authorities of the damage.

Parties

2. The State of Iowa is a sovereign state of the United States of America.

3. Brenna Bird is the duly elected Attorney General for the State of Iowa.

4. Defendant Wood Duck Landscapes, Inc., is an Iowa corporation with an office at 1589 HWY 4, Yale, IA 50277.

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. "Forty-eight-hour period" means "a period of forty-eight consecutive hours beginning at 6:00a.m. the next business day from the day the notification center receives a notice and excludes Saturdays, Sundays, and legal holidays."

9. "[H]orizontal location of any underground facility" is defined as "including an area eighteen inches on either side of the underground facility." Iowa Code § 480.4(3)(c).

10. "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(10).

11. "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(12).

Jurisdiction

12. 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.

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

14. 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 occurring after a forty-eight-hour period. 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 inside of 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).

The Notice 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, 911 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)(c)(1)-(8).

15. 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 the forty-eight-hour period, unless otherwise agreed by the operator and the excavator. Iowa Code § 480.4(3)(a)(1).

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

17. 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(1).

18. If the damage results in an emergency, the excavator shall take all reasonable actions to alleviate the emergency including but not limited to the evacuation of the affected area. The excavator shall leave all equipment situated where the equipment was at the time the emergency was created and immediately contact the operator and appropriate authorities and necessary emergency response agencies. *Id*. at § 480.5(2).

19. 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).

20. Iowa Code section 480.6(1)(b) provides that a person who violations 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).

21. 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.

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

Facts

23. On or about October 10, 2024, WDL conducted an excavation to grade for landscaping at 1157 NW 29th Court, Grimes, Iowa 50111.

24. WDL placed a locate request for the excavation (Ticket No. 242832137) on October 9, 2024, at 2:27 p.m., with a notification that locate markings must be completed by October 14, 2024, at 6:00 a.m.

25. Black Hills Energy ("BHE") is the owner and operator of a 1/2-inch diameter natural gas service line operating under 50 pounds per square inch (psi) of pressure, which ran underground in the vicinity of where the excavation occurred.

26. When BHE showed up to mark their underground facility on October 10, 2024, WDL had already commenced the excavation.

27. WDL proceeded with the excavation on October 10, 2024, despite the presence of a nearby, clearly visible, above-ground pipeline meter for the residence and hit and damaged the natural gas service line.

28. WDL failed to contact the operator, appropriate authorities, and necessary emergency response agencies to notify them of the damage.

29. Believing the natural gas line was an irrigation line, WDL continued with the excavation after damaging the line.

30. Digging to grade for landscaping constitutes an "excavation" as defined in Iowa Code section 480.1(4).

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

32. A buried natural gas service line is an "underground facility" as defined in Iowa Code section 480.1(12).

33. At all material times hereto, there was no "emergency," as defined in Iowa Code section 480.1(3), that would exempt WDL from the requirement that it contact the statewide notification center to provide notice of the planned excavation occurring after a forty-eight-hour period.

Violations

34. On or about October 10, 2024, WDL conducted an excavation to grade for landscaping at 1157 NW 29th Court, Grimes, Iowa, without providing notice of the planned excavation occurring after a forty-eight-hour period, in violation of Iowa Code sections 480.1A, 480.4(1)(a) and 480.4(1)(b)(1)-(8).

35. On or about October 10, 2024, WDL damaged a natural gas service line at 1157 NW 29th Court, Grimes, Iowa, and failed to contact the operator, appropriate authorities, and necessary emergency response agencies to notify them of the damage, in violation of Iowa Code section 480.5.

36. On or about October 10, 2024, WDL damaged a natural gas service line at 1157 NW 29th Court, Grimes, Iowa, and failed to leave all equipment situated where the equipment was at the time the emergency was created, in violation of Iowa Code section 480.5(2).

Prayer for Relief

WHEREFORE, Plaintiff State of Iowa, ex rel., Brenna Bird, Attorney General of Iowa, requests that the Court:

a. assess a civil penalty against Defendant Wood Duck Landscapes, Inc., pursuant to Iowa Code section 480.6(1)(a) for each day of violation of Iowa Code sections 480.1A, 480.4(1)(a), 480.4(1)(b)(1)-(8), and 480.5(1) and (2), involving natural gas pipelines, not to exceed Ten Thousand Dollars ($10,000.00) for each day of each such violation, and not to exceed One Thousand Dollars ($1,000.00) for each day of such violation for all other underground facilities;

b. issue a permanent injunction enjoining Defendant Wood Duck Landscapes, Inc., 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), without providing notice of the planned excavation occurring after a forty-eight-hour period, 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; and

c. issue a permanent injunction enjoining Defendant Wood Duck Landscapes, 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,

BRENNA BIRD
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., 2nd Floor
Des Moines, Iowa 50319
Phone: (515) 281-5341
Fax: (515) 281-4209
E-mail: jacob.larson@ag.iowa.gov

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ATTORNEYS FOR PLAINTIFF