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IN THE IOWA DISTRICT COURT FOR WOODBURY COUNTY

STATE OF IOWA, ex rel., BRENNA BIRD, ATTORNEY GENERAL OF IOWA (99AG23112) Plaintiff, v. RP CONSTRUCTORS, LLC, Defendant.	Case No. EQCV227477 PETITION IN EQUITY

COMES NOW Plaintiff State of Iowa, ex rel., Brenna Bird, Attorney General of Iowa, and for its claim against Defendant RP Constructors, LLC, states as follows:

Introduction

1. The State of Iowa seeks the assessment of civil penalties and injunctive relief against Defendant RP Constructors, LLC ("RP Constructors"), for violations of the "Iowa One Call" statute, Iowa Code chapter 480. RP Constructor failed to provide notice of the planned excavation occurring after a forty-eight-hour period in rural Woodbury County, Iowa, and without all underground facilities having been located and marked, proceeded with the excavation. The excavation occurred within the vicinity of a large high pressure pipeline containing refined product. RP Constructors also failed to have a representative of the pipeline present for the excavation since it occurred within 25 feet of the pipeline.

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 RP Constructors, is South Dakota limited liability company authorized to do business in the State of Iowa with an office at 1270 S. Derby Lane, North Sioux City, SD 57049.

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. Notices received by the Statewide Notification Center shall be valid for twenty-five calendar days beginning on the day the forty-eight-hour period concludes. Iowa Code § 480.4(1)(a).

16. 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).

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

18. Unless otherwise agreed by the operator and excavator in writing, no excavation shall be performed within twenty-five feet of an underground pipeline operating at one hundred fifty pounds per square inch or greater and that is equal to or greater than two inches in diameter unless a representative of the operator of the underground pipeline is present at the planned excavation area. Iowa Code § 480.4(3)(a)(3).

19. 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).

20. 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).

21. 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).

22. 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).

23. 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.

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

Facts

25. On or about December 13-15, 2023, RP Constructors conducted excavations to install a structural concrete flume near the intersection of Glen Ellen Road and US Highway 20 east of Sioux City, Iowa.

26. Magellan Pipeline Company (“Magellan”) is the owner and operator of a high pressure 12-inch pipeline operating under 350-500 pounds per square inch (psi) of pressure and containing refined product, which runs underground in the vicinity of where the excavation occurred.

27. Although RP Constructors placed a locate request (Ticket No. 233420926) for the excavation, the geographic location RP Constructors marked on the ticket using electronic white-lining was narrower than the written description in the "[a]rea to be marked" section of the ticket. As a result, Magellan did not receive notice of the planned excavation and did not locate and mark its gas pipeline prior to the excavation.

28. RP Constructors thereby, failed to provide the required notice of the planned excavation occurring after a forty-eight-hour period to all operators of underground facilities who may be affected by the excavation.

29. In addition, there was an above-ground marker for the pipeline with Magellan's name on it in the vicinity of the excavation and visible to RP Constructor employees during the excavation.

30. RP Constructors proceeded with the excavation despite the absence of any locate markings near or around the above-ground pipeline marker, and during the excavations, RP Constructors' equipment came within at least twenty-five feet of the pipeline.

31. Digging to install a structural concrete flume constitutes an "excavation" as defined in Iowa Code section 480.1(4).

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

33. A buried pipeline containing refined product is an "underground facility" as defined in Iowa Code section 480.1(12).

34. At all material times hereto, there was no "emergency," as defined in Iowa Code section 480.1(3), that would exempt RP Constructors 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

35. On or about December 13-15, 2023, RP Constructors conducted an excavation to install a structural concrete flume near the intersection of Glen Ellen Road and US Highway 20 east of Sioux City, Iowa, without providing the proper 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).

36. On or about December 13-15, 2023, RP Constructors conducted an excavation within 25 feet of an underground pipeline operating at one hundred fifty pounds per square inch or greater and that is equal to or greater than two inches in diameter near the intersection of Glen Ellen Road and US Highway 20 east of Sioux City, Iowa, without having a representative of the pipeline operator present, in violation of Iowa Code sections 480.1A and 480.4(3)(a)(3).

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 RP Constructors, LLC, 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 480.4(3)(a)(3), involving natural gas and hazardous liquid pipelines, not to exceed Ten Thousand Dollars ($10,000.00) for each day of each such violation;

b. issue a permanent injunction enjoining Defendant RP Constructors, LLC, 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 RP Constructors, LLC, from conducting excavations within 25 feet of an underground pipeline operating at one hundred fifty pounds per square inch or greater and that is equal to or greater than two inches in diameter without having a representative of the pipeline operator present, unless otherwise agreed to by the operator and excavator, as required by Iowa Code section 480.4(3)(a)(3).

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

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