

IN THE IOWA DISTRICT COURT FOR BLACK HAWK COUNTY

STATE OF IOWA, ex rel., THOMAS J. )  
 MILLER, ATTORNEY GENERAL OF )  
 IOWA (99AG23112), )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 ARENDS & SONS CONSTRUCTION, )  
 LLC, and ARENDS EXCAVATING, LLC, )  
 )  
 Defendants. )

LAW NO. \_\_\_\_\_

**PETITION IN EQUITY**

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

**Introduction**

1. The State of Iowa seeks the assessment of civil penalties and injunctive relief against Arends & Sons Construction, LLC, and Arends Excavating, LLC (hereafter collectively referred to as “Arends”), for violations of the “Iowa One Call” statute, Iowa Code chapter 480. Arends failed to provide 48-hours notice of a planned excavation on several occasions and, without any underground facilities having been timely located and marked, proceeded with the excavations to install water or sewer lines or removing/replacing concrete driveways or sidewalks. During one of the excavations, Arends equipment hit and damaged a 4-inch water main.

**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 Arends & Sons Construction, LLC, is an Iowa limited liability with a mailing address of 2406 Cottage Row Road, Cedar Falls, Iowa 50613.

5. Defendant Arends Excavating, LLC, is an Iowa limited liability with a mailing address of 2406 Cottage Row Road, Cedar Falls, Iowa 50613.

### **Definitions**

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(1)(a), the notice of the excavation shall be valid for twenty calendar days from the date the notice was provided to the notification center.

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 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).

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

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(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).

19. 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.

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

### **Facts**

21. On or about December 11, 2017, Arends conducted an excavation at 3316 Skyview Drive, Cedar Falls, Iowa 50613.

22. Michael Arends, a member and/or employee of Arends, observed flags on the property indicating underground facilities had been located and marked and began conducting excavations.

23. The flags on the property were in response to a locate request for a planned excavation for a different excavator than Arends and were likely at least 1-week old at the time Arends conducted its excavations.

24. It is not clear that the area included in the earlier locate request to be located and marked covered the same area where Arends planned to conduct excavations on the property.

25. As a result, Arends conducted excavations on December 11, 2017, prior to having any underground facilities located and marked and, thereby, failed to provide 48-hours notice to operators of underground facilities whose facilities may be affected by the excavation.

26. On or about July 30, 2018, Arends conducted excavations to install foundations for a basement and sewer service to a home at 214 N. Francis Street, Cedar Falls, Iowa 50613.

27. Arends began excavating on July 30, 2018, prior to having any underground facilities located and marked and, thereby, failed to provide 48-hours notice to operators of underground facilities whose facilities may be affected by the excavation.

28. Arends placed a locate request (Ticket No. 182002040) on July 19, 2018, for the installation of the foundation at 214 N. Francis Street. The locate request indicated installation of the foundation was the sole purpose of the excavation.

29. Although utilities were located and marked, Arends conducted excavations beyond the area where underground utilities had been located and marked by digging a trench towards the middle of N. Francis Street to install a sewer line and connect to the City of Cedar Falls' main sewer line.

30. Cedar Falls Utilities is the owner and operator of a 2-inch diameter natural gas pipeline under 5 pounds per square inch (psi) of pressure and a 4-inch diameter water main, which both run underground in the vicinity of where the excavation for the sewer trench occurred.

31. During the July 30<sup>th</sup> excavation, Arends hit and damaged the water main. The damage resulted in a loss of water service to 33 residences for approximately five (5) hours and remediation costs to Cedar Falls Utilities. The damage to the water main also resulted in contamination to the water system.

32. Arends subsequently called in a locate request for the July 30, 2018 excavation to install the sewer line on August 1, 2018 (Ticket No. 182130603).

33. On or about November 7, 2018, Arends conducted excavations to remove/replace a concrete driveway and sidewalk at 824 Main Street, Cedar Falls, Iowa, Iowa 50613.

34. Arends began excavating on November 7, 2018, prior to having any underground facilities located and marked and, thereby, failed to provide 48-hours notice to operators of underground facilities whose facilities may be affected by the excavation.

35. Arends admitted to working off of old locates from an earlier locate request placed by a separate excavator for a planned excavation, and the locates had expired three weeks earlier. Any marks from the earlier locate request that remained visible would likely have been approximately five (5) weeks old at the time of the excavation.

36. It is not clear that the area included in the earlier locate request to be located and marked covered the same area where Arends planned to conduct excavations on the property.

37. Underground utilities in the area of Arends' planned excavation included a 1 and 1/4-inch diameter natural gas pipeline under 5 psi of pressure, a fiber optic line, and several electrical lines.

38. The expired markings for underground facilities in the area of Arends' excavation activities also did not include conduit for an electric service line that had been installed after the prior locate request had been made.

39. Arends subsequently called in a locate request for the November 7, 2018 excavation later in the day on November 7, 2018 (Ticket No. 183110691).

40. Digging with equipment to install sewer or water service or remove/replace concrete driveways and sidewalks constitute "excavations" as defined in Iowa Code section 480.1(4).

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

42. A buried water main is an “underground facility” as defined in Iowa Code section 480.1(10).

43. At all material times hereto, there was no “emergency,” as defined in Iowa Code section 480.1(3), that would exempt Arends from the requirement that it contact the statewide notification center provide 48-hours notice of the planned excavation.

### **Violations**

44. On or about December 11, 2017, Defendant Arends engaged in excavations at 3316 Skyview Drive, Cedar Falls, Iowa 50613, without providing 48-hours notice of the planned excavation, in violation of Iowa Code sections 480.1A, 480.4(1)(a) and 480.4(1)(b)(1)-(8).

45. On or about July 30, 2018, Defendant Arends engaged in excavations at 214 N. Francis Street, Cedar Falls, Iowa 50613, without providing 48-hours notice of the planned excavation, in violation of Iowa Code sections 480.1A, 480.4(1)(a) and 480.4(1)(b)(1)-(8).

46. On or about November 7, 2018, Defendant Arends engaged in excavations at 824 Main Street, Cedar Falls, Iowa, Iowa 50613, without providing 48-hours notice of the planned excavation, in violation of Iowa Code sections 480.1A, 480.4(1)(a) and 480.4(1)(b)(1)-(8).

### **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 Defendants, pursuant to Iowa Code section 480.6(1)(a) and (b), for each day of violation of Iowa Code sections 480.1A, 480.4(1)(a) and 480.4(1)(b)(1)-(8), 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; and
- b. issue a permanent injunction enjoining Defendants 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.

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 Street, 2<sup>nd</sup> Floor  
Des Moines, Iowa 50319  
Phone: (515) 281-5341  
Fax: (515) 281-6771  
E-mail: [jacob.larson@ag.iowa.gov](mailto:jacob.larson@ag.iowa.gov)  
ATTORNEYS FOR PLAINTIFF