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

October 14, 2019

Edwin Borntreger
BK Construction
3072 HWY J46
Seymour, Iowa 52590

RE: One Call Violations – Wayne County

Dear Mr. Borntreger:

It has come to our attention that on or about May 13, 2019, BK Construction conducted excavations at 508 N Central Avenue, Allerton, Iowa, by using a backhoe to remove concrete, without providing 48-hours notice of the planned excavation to the owners and operators of underground facilities. As a result, underground facilities, including a 1-inch diameter natural gas pipeline under 30 pounds per square inch of pressure (psi), were not located and marked prior to the excavations. 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.

BK Construction indicated in a response to the Iowa Utilities Board (“IUB”) that it did not do any digging but simply removed concrete. “Excavation” is defined very broadly, with limited exceptions, and includes “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...” Iowa Code section 480.1(4). Removing existing concrete using a backhoe necessarily involves at least some displacement of earth and/or rock directly in or on the ground beneath the concrete, and therefore qualifies as an “excavation.” *See Quality Saw and Seal, Inc., v. Illinois Commerce Com'n*, 871 N.E.2d 260, 267 (Ill. Ct. App. 2007) (court held that concrete sawing constituted an "excavation" under Illinois' One Call statute, which is very similar to Iowa's law).

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)(b)(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 or calling the One Call Notification Center at 1-800-292-8989 or 811 at least 48 hours prior to the excavation.

The purpose of this letter is to advise that 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.

Thank you for your attention to this matter.

Sincerely,



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