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ATTORNEY GENERAL



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

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January 9, 2020

Efrain Ponce Hernandez d/b/a
D&Y CONSTRUCTION SERVICES, LLC
1123 Clinton Avenue
Des Moines, Iowa 50313

RE: One Call Violations – Marion County

Dear Efrain Ponce Hernandez:

The Attorney General's Office ("Office") previously sent you a letter, dated November 22, 2019, alleging that on or about June 5, 2018, D&Y Construction Services, LLC ("D&Y Construction"), conducted excavations with a backhoe to dig footings at 213 E. Montgomery, Knoxville, Iowa, without providing 48-hours notice of the planned excavation to the owners and operators of underground facilities, and, as a result, D&Y Construction's equipment hit and a 1/2-inch diameter natural gas pipeline under 35 pounds per square inch of pressure (psi) during the excavation. The letter further indicated that the Office was prepared to file suit for the excavation conducted in violation of Iowa's One Call law.

After you received the letter, you called the Office, and we spoke on November 27, 2019, about the letter and alleged violations. You indicated that when D&Y Construction conducted excavations on June 5, 2018, flags were present in the area of the excavation, marking the presence of underground facilities in the area. You had assumed a one call locate request had been placed for the excavation. After we spoke, the Office conducted an additional investigation and determined that there had been several locate requests placed for that location prior to D&Y Construction's planned excavation, including one placed the day before, on June 4, 2018.

Please be aware that, while the area may have been located by a general contractor or someone else for separate excavations, those locate requests would not have been valid for D&Y Construction's excavation; the company/person conducting the actual excavation must place the locate request. As I am sure you are well aware, striking and damaging underground facilities can have tragic results. D&Y Construction is fortunate that this incident did not result in injury, or worse, to any of its employees, underground facility employees, or first responders.

You are reminded that failure to provide 48-hours notice of the excavation constitutes a 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. This letter concludes this matter based upon the information know to the Office at this time.

Thank you for your attention to this matter.

Sincerely,



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