

IN THE IOWA DISTRICT COURT FOR BUCHANAN COUNTY

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STATE OF IOWA, ex rel., THOMAS J. )  
MILLER, ATTORNEY GENERAL OF )  
IOWA (99AG23112), )

Plaintiff, )

vs. )

DAVID W. RECKER EXCAVATING, )  
L.L.C., )

Defendant. )

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

**PETITION AT LAW**

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COMES NOW Plaintiff State of Iowa, ex rel., Thomas J. Miller, Attorney General of Iowa, and for claim against Defendant David W. Recker Excavating, L.L.C., states as follows:

**Introduction**

1. The State of Iowa seeks the assessment of civil penalties and injunctive relief against David W. Recker Excavating, L.L.C. for violations of the "Iowa One Call" statute, Iowa Code chapter 480. The defendant failed to provide 48-hours notice of the excavations and proceeded with the excavations without any underground facilities having been located and marked. During the excavations, the defendant's bulldozer crossed directly over a 36-inch diameter natural gas pipeline under 1926 pounds per square inch (psi) pressure, and within 50 feet of a 12-inch diameter hazardous liquids pipeline carrying propane under 600 psi.

**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 David W. Recker Excavating, L.L.C. is a limited liability company, located at 1455 Buchanan Delaware Avenue, Lamont, IA 50650.

### **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. “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).

9. “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**

10. 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.

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

12. 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 calling the notification center at its toll-free number (1-800-292-8989 or 811). 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, E911 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).

13. 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).

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

15. 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).

16. 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.

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

### **Facts**

18. On or before Tuesday, December 1, 2009, the defendant conducted excavations with a bulldozer to reshape a waterway in Section 11, T90N, R8W in rural Buchanan County, Iowa, without providing 48-hours notice of the excavation to operators of underground facilities whose facilities may be affected by the excavation and without any underground facilities having been located and marked on the property.

19. Alliance Pipeline is the owner and operator of a 36-inch diameter natural gas pipeline under 1926 psi, which runs underground in the vicinity of where the excavations occurred.

20. Kinder Morgan is the owner and operator of a 12-inch diameter hazardous liquids pipeline carrying propane under 600 psi, which runs underground in the vicinity of where the excavations occurred.

21. Natural gas and propane are explosive and highly flammable.

22. On Friday, November 27, 2009, the defendant notified the One Call Notification Center of a planned excavation. Alliance Pipeline responded to the notification by contacting the defendant and arranging to meet and then locate and mark the pipeline on Tuesday, December 1, 2009, before expiration of the 48-hour notice period (weekends are excluded).

23. When the Alliance pipeline technician arrived at the agreed time, he discovered that the defendant had already commenced the excavation and that the defendant's bulldozer had crossed directly over the Alliance natural gas pipeline, removing approximately eight to ten inches of cover, and within fifty (50) feet of the Kinder Morgan hazardous liquids pipeline.

24. Digging with a bulldozer constitutes “excavation” as defined in Iowa Code section 480.1(4).

25. At all material times hereto, defendant was an “excavator” as defined in Iowa Code section 480.1(5).

26. A buried natural gas pipeline and a buried hazardous liquids pipeline are each an “underground facility” as defined in Iowa Code section 480.1(10).

27. At all material times hereto, there was no “emergency,” as defined in Iowa Code section 480.1(3), that would exempt defendant from the requirement that he contact the statewide notification center prior to the excavations and, thereby, provide notice to owners and operators of underground facilities whose facilities may be affected by the excavations.

#### **Violations**

28. On or before December 1, 2009, Defendant David W. Recker Excavating, L.L.C., engaged in excavations in Section 11, T90N, R8W within Buchanan County, Iowa, without first contacting the statewide notification center and providing notice, in violation of Iowa Code sections 480.1A, 480.4(1)(a), and 480.4(1)(c)(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 Defendant David W. Recker Excavating, L.L.C., pursuant to Iowa Code section 480.6(1)(a) for each day of violation of Iowa Code sections 480.1A, 480.4(1)(a), and 480.4(1)(c)(1)-(8), involving natural gas or hazardous liquids pipelines, not to exceed Ten Thousand Dollars (\$10,000.00) for each day of each such violation; and

b. issue a permanent injunction enjoining Defendant David W. Recker Excavating, L.L.C., 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), 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 further 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



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