

IN THE IOWA DISTRICT COURT FOR LEE COUNTY  
AT FORT MADISON

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|---|---|---------------------------|
| STATE OF IOWA, ex rel., THOMAS J. MILLER, ATTORNEY GENERAL OF IOWA (99AG23112), | ) | LAW NO. _____             |
|   | ) |                           |
| Plaintiff,  | ) |                           |
|   | ) | <b>PETITION IN EQUITY</b> |
| vs.   | ) |                           |
|   | ) |                           |
| DELONG CONSTRUCTION, INC.,  | ) |                           |
|   | ) |                           |
| Defendant.  | ) |                           |

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

**Introduction**

1. The State of Iowa seeks the assessment of civil penalties and injunctive relief against DeLong Construction, Inc. (“DeLong Construction”), for violations of the “Iowa One Call” statute, Iowa Code chapter 480. DeLong Construction failed to provide 48-hours notice of a planned excavation and, without any underground facilities having been located and marked, proceeded with the excavation remove sediment from a canal. During the excavation, DeLong Construction’s equipment hit and damaged a 12-inch diameter natural gas transmission line under 856 pounds per square inch of pressure.

**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 DeLong Construction is an Iowa corporation with a mailing address of 1320 N. 8<sup>th</sup> Ave., Washington, IA 52353.

### 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. “Transmission line” means “a pipeline, other than a gathering line, that: (1) Transports gas from a gathering line or storage facility to a distribution center, storage facility, or large volume customer that is not down-stream from a distribution center; (2) operates at a hoop stress of 20 percent or more of SMYS; or (3) transports gas within a storage field.” 9 C.F.R. § 192.3 (2015).

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 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).

14. 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).

15. Iowa Code section 480.4(3)(a)(3) provides that no excavation shall be performed within twenty-five (25) feet of an underground natural gas transmission line as defined in 49 C.F.R. section 192.3 unless a representative of the operator of the underground natural gas transmission line is present at the planned excavation area.

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(2) authorizes the Attorney General, upon the receipt of a complaint, to institute legal proceedings necessary to enforce the penalty provisions of chapter 480.

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

### **Facts**

20. On or about January 25-28, 2016, DeLong Construction conducted excavations for ditch cleaning in rural Lee County (near the intersection of 190<sup>th</sup> Street and 335<sup>th</sup> Ave.).

21. DeLong Construction began the excavations 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.

22. TransCanada is the owner and operator of a 12-inch diameter natural gas pipeline under 856 pounds per square inch (psi) of pressure, which runs underground in the vicinity of where the excavation occurred.

23. Natural gas is flammable and highly explosive.

24. During the excavation, DeLong Construction hit and damaged the natural gas pipeline. The damage resulted in substantial remediation costs to TransCanada.

25. DeLong Construction excavated within twenty-five (25) feet of an underground natural gas transmission line without having a representative of the operator of the transmission line present.

26. Digging with excavation equipment to clean out a ditch constitutes an “excavation” as defined in Iowa Code section 480.1(4).

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

28. A buried natural gas pipeline is an “underground facility” as defined in Iowa Code section 480.1(10).

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

#### **Violations**

30. On or about January 25-28, 2016, Defendant DeLong Construction engaged in an excavation in rural Lee County (near the intersection of 190<sup>th</sup> Street and 335<sup>th</sup> Ave.), 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)(c)(1)-(8).

31. On or about January 25-28, 2016, Defendant DeLong Construction engaged in an excavation in rural Lee County (near the intersection of 190<sup>th</sup> Street and 335<sup>th</sup> Ave.), within twenty-five (25) feet of an underground natural gas transmission line without having a representative of the operator of the transmission line 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., Thomas J. Miller, Attorney General of Iowa, requests that the Court:

- a. assess a civil penalty against Defendant DeLong Construction, Inc., 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)(c)(1)-(8), and 480.4(3)(a)(3) involving natural gas 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 DeLong Construction, Inc., 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); enjoining the defendant from commencing any excavation within twenty-five (25) feet of an underground natural gas transmission line without having a representative of the operator of the transmission line present as required by Iowa Code section 480.4(3)(a)(3); 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*

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