

IN THE IOWA DISTRICT COURT FOR DELAWARE COUNTY

STATE OF IOWA, ex rel., THOMAS J.)
 MILLER, ATTORNEY GENERAL OF)
 IOWA (99AG23112),)
)
 Plaintiff,)
)
 vs.)
)
 DOUG KLIMA,)
 d/b/a KLIMA DRAINAGE,)
)
 Defendant.)

CASE NO. _____

PETITION IN EQUITY

COMES NOW Plaintiff State of Iowa, ex rel., Thomas J. Miller, Attorney General of Iowa, and for its claim against Defendant Doug Klima, d/b/a Klima Drainage states as follows:

Introduction

1. The State of Iowa seeks the assessment of civil penalties and injunctive relief against Defendant Doug Klima, d/b/a Klima Drainage (“Klima”) for violations of the “Iowa One Call” statute, Iowa Code chapter 480. Klima failed to provide 48-hours notice of excavations and proceeded with the excavations without any underground facilities having been located and marked, including a 3-inch diameter natural gas pipeline under 858 pounds per square inch of pressure on the property.

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 Doug Klima is the owner and operator of Klima Drainage, an Iowa business, with an office at 4994 Fairchild Road, Center Point, Iowa 52213.

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.

Past Enforcement Actions

18. On July 28, 2000, the Iowa District Court in Jones County (Case No. LACV002024) assessed Klima a civil penalty of \$5,000.00 for conducting excavations without providing 48-hours notice of the planned excavation to the owners and operators of underground facilities its violations of Iowa's One Call statute and permanently enjoined Klima from further violations of Iowa's One Call statute. On January 4, 2002, the Iowa District Court in Jones County (Case No. LACV002024) found Klima in contempt of court for violating the terms of the permanent injunction and fined Klima \$500.00 for additional violations of Iowa's One Call statute.

Facts

19. On or about April 8, 2015, Klima conducted multiple excavations in rural Delaware County, near the intersection of 310th Street and 150th Avenue, to install drainage tile.

20. Klima began excavating on April 8, 2015, 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.

21. Klima placed a locate request for the excavation on April 7, 2015, with a notification that the excavation was to commence on April 9, 2015.

22. Northern Natural Gas ("NNG") is the owner and operator of a 3-inch diameter natural gas pipeline under 858 pounds per square inch (psi) of pressure, which runs underground in the vicinity of where the excavation occurred.

23. NNG pipeline staff provided a positive response to the locate request on April 7, 2015, indicating that it would mark the pipeline and indicated that a pipeline representative must be present during all excavations within 25 feet of the pipeline. When the pipeline staff arrived

on April 8, 2015, they observed that Klima had already commenced the excavation. Pipeline staff observed multiple excavations within the vicinity of the pipeline, including one that likely came within 30 feet of the pipeline.

24. Natural gas is flammable and highly explosive.

25. Digging with a tiling plow or track-hoe to install drainage tile constitutes “excavation” as defined in Iowa Code section 480.1(4).

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

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

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

Violations

29. On or about April 8, 2015, Defendant Doug Klima, d/b/a Klima Drainage engaged in excavations in rural Delaware County, near the intersection of 310th Street and 150th Avenue, 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).

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 Doug Klima, d/b/a Klima Drainage, 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 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 Doug Klima, d/b/a Klima Drainage, 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

/s/ Jacob J. Larson

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