

IN THE IOWA DISTRICT COURT FOR WOODBURY COUNTY

STATE OF IOWA, ex rel., THOMAS J.)
MILLER, ATTORNEY GENERAL OF)
IOWA (99AG23112),)
)
Plaintiff,)
)
vs.)
)
SINDY PEREZ, d/b/a PEREZ)
CONSTRUCTION,)
)
Defendant.)

LAW NO. _____

PETITION AT LAW

COMES NOW Plaintiff State of Iowa, ex rel., Thomas J. Miller, Attorney General of Iowa, and for claim against Defendant Sindy Perez d/b/a Perez Construction, state as follows:

Introduction

1. The State of Iowa seeks the assessment of civil penalties and injunctive relief against Sindy Perez d/b/a Perez Construction for violations of the "Iowa One Call" statute, Iowa Code chapter 480. During an excavation to install a fence, the defendant and/or her employee damaged a natural gas pipeline, failed to notify the operator of the damaged pipeline, attempted to repair the pipeline by attaching a mechanical coupling and wrapping the pipeline with duct tape, and then backfilled over the damaged pipeline.

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 Sindy Perez owns and operates a business called Perez Construction with offices located at 409 B Street, Sergeant Bluff, Iowa 51054.

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).

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. When damage occurs to an underground facility as a result of an excavation, the excavator shall as soon as practical notify the operator of the type of facility damaged and the extent of the damage. Iowa Code § 480.5.

16. If damage occurs during an excavation, the excavator shall refrain from backfilling in the immediate area of the underground facilities until the damage has been investigated by the operator, unless the operator authorizes otherwise. Iowa Code § 480.5.

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 June 1, 2012, the defendant submitted to the One Call Notification Center a request for locates of underground facilities in the vicinity of the defendant's planned excavation to commence on June 5, 2012, for installation of a fence at 3104 Jones Street, Sioux City, Iowa. The One Call Notification Center immediately issued One Call Locate Request Ticket No. 121530899, notifying operators of underground facilities in the area of the excavation, including MidAmerican Energy Company.

21. MidAmerican Energy Company is the owner of a 1-inch diameter natural gas pipeline under 25 pounds per square (psi) pressure, providing natural gas to the nearby residences at 801 and 809 - 31st Street, Sioux City, Iowa.

22. In response to the locate request, MidAmerican Energy Company timely had its natural gas pipeline located and marked.

23. During the subsequent excavation, the defendant and/or her employee hit and damaged the natural gas pipeline.

24. The defendant and/or her employee failed to notify MidAmerican Energy Company of the damaged natural gas pipeline. Instead, the defendant and/or her employee attempted a crude repair to the pipeline by attaching a mechanical coupling, wrapping the pipeline with duct tape, and then pouring cement over the damaged pipeline. The defendant and/or her employee then backfilled over the damaged pipeline.

25. Natural gas is flammable and highly explosive.

26. On March 7, 2014, a citizen who resided near the defendant's excavation site reported to MidAmerican Energy Company that he had observed a strong natural gas odor for about a month. MidAmerican Energy Company investigated the leaking gas report and determined that the leak was coming from the natural gas pipeline serving the nearby residences at 801 and 809 - 31st Street, Sioux City, Iowa. After removing soil cover from the damaged pipeline, MidAmerican Energy Company determined that the pipeline had previously been damaged during fence installation and that the excavator had attempted crude repairs by attaching a mechanical coupling, wrapping the pipeline with duct tape, and then pouring cement over the damaged pipeline.

27. MidAmerican Energy Company repaired the damaged pipeline by turning off the gas flow, cutting out the damaged portion of the pipeline and then attaching a replacement segment of pipeline.

28. Digging to install a fence constitutes "excavation" as defined in Iowa Code section 480.1(4).

29. At all material times hereto, the defendant and/or her employee were an "excavator" as defined in Iowa Code section 480.1(5).

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

Violations

31. On or about June 5, 2012, Defendant Sindy Perez d/b/a Perez Construction and/or her employee damaged a natural gas pipeline but failed at any time since to notify the operator of the damaged pipeline of the damage in violation of Iowa Code section 480.5.

32. On or about June 5, 2012, Defendant Sindy Perez d/b/a Perez Construction and/or her employee damaged a natural gas pipeline and backfilled over the damaged pipeline in violation of Iowa Code section 480.5.

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 Sindy Perez d/b/a Perez Construction pursuant to Iowa Code section 480.6(1)(a) for each day of each violation of Iowa Code sections 480.1A and 480.5, 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 Sindy Perez d/b/a Perez Construction from failing to promptly notify of operators of underground facilities which have been damaged, and further enjoining the defendant from backfilling over any damaged underground facilities, as required by Iowa Code section 480.5.

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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