

IN THE IOWA DISTRICT COURT FOR LINN COUNTY

STATE OF IOWA, ex rel., THOMAS J. )  
 MILLER, ATTORNEY GENERAL OF )  
 IOWA (99AG23112), )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 JEREMY ERIE d/b/a PROFORMER )  
 CONCRETE, )  
 )  
 Defendant. )

CASE NO. \_\_\_\_\_

**PETITION IN EQUITY**

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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 Jeremy Erie d/b/a Proformer Concrete, states as follows:

**Introduction**

1. The State of Iowa seeks the assessment of civil penalties and injunctive relief against Defendant Jeremy Erie d/b/a Proformer Concrete, (“Proformer Concrete”) for violations of the “Iowa One Call” statute, Iowa Code chapter 480. Proformer Concrete failed to provide 48-hours notice of a planned excavation and, without any underground facilities having been located and marked, proceeded with the excavation to install footings for a deck. During the excavation, Proformer Concrete’s equipment hit and damaged a 1-inch diameter natural gas pipeline under 20 pounds per square inch of pressure, resulting in remediation costs to the pipeline company, evacuation of approximately 20 people from nearby homes and businesses, and an emergency response by Alliant Energy, and Mount Vernon and Lisbon Fire Departments.

**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 Jeremy Erie d/b/a Proformer Concrete is an Iowa business located at 2091 200<sup>th</sup> Ave, Mechanicsville, IA 52306.

### **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 within a city shall include:

1. the street address or block and lot numbers, or both, of the proposed area of excavation;
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 name of the housing development and property owner.

Iowa Code §§ 480.4(1)(b)(1)-(8).

13. Notices provided in compliance with Iowa Code section 480.4(1)(a) “shall be valid for twenty calendar days from the date the notice was provide to the notification center.”

Iowa Code § 480.4(1)(a).

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

16. 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).

17. 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.

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

### **Facts**

19. On May 19, 2015, Proformer Concrete placed a One Call locate request for an excavation at 105 1<sup>st</sup> Street W, Mount Vernon, Linn County, Iowa 52314, to install footings for a deck.

20. Alliant Energy Company (“AEC”) is the owner and operator of a 1-inch diameter natural gas pipeline under 20 pounds per square inch (psi) of pressure, which runs underground in the vicinity of where the excavation occurred.

21. On May 28, 2015, AEC placed a One Call locate request in anticipation of replacing and relocating the natural gas pipeline located in the vicinity of where the excavation was planned. On June 4, 2015, AEC completed the replacement and relocation of the natural gas pipeline.

22. Proformer Concrete’s original One Call locate request expired on June 8, 2015. Iowa Code § 480.4(1)(a).

23. On June 9, 2015, Proformer Concrete began excavating 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.

24. During the excavation, Proformer Concrete hit and damaged AEC’s relocated natural gas pipeline. The damage resulted in resulting in the evacuation of approximately 20

people from nearby homes and businesses, remediation costs to AEC, and an emergency response by AEC, and Mount Vernon and Lisbon Fire Departments.

25. Natural gas is flammable and highly explosive.

26. Digging with excavation equipment to install footings for a deck constitutes “excavation” as defined in Iowa Code section 480.1(4).

27. At all material times hereto, Proformer Concrete 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 Proformer Concrete from the requirement that it contact the statewide notification center provide 48-hours notice of the planned excavation.

### **Violations**

30. On or about June 9, 2015, Defendant Jeremy Erie d/b/a Proformer Concrete, engaged in an excavation at 105 1<sup>st</sup> Street W, Mount Vernon, Linn County, Iowa 52314, 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)(b)(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 Jeremy Erie d/b/a Proformer Concrete, 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)(b)(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 Jeremy Erie d/b/a Proformer Concrete, 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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