

3. Thomas J. Miller is the duly elected Attorney General for the State of Iowa.

4. Defendant Rain Pro, Inc. is an Iowa corporation with a home office located at 1076 S.E. 61st Street, Pleasant Hill, Iowa 50327.

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. a 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. 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. If damage occurs during an excavation, an excavator shall as soon as practical notify the operator of the underground facility of the type of facility damaged and the extent of the damage. An excavator shall refrain from backfilling in the immediate area of the underground facility until the damage has been investigated by the operator, unless the operator authorizes otherwise. Iowa Code § 480.5.

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

450 – 66th Court, West Des Moines, Iowa

19. On or about June 26, 2013, the defendant conducted an excavation to install an irrigation line at 450 - 66th Court, West Des Moines, Polk County, Iowa. The defendant did not contact the One Call Notification Center regarding this excavation and, thereby, failed to provide notices to operators of underground facilities whose facilities may be affected by the excavation. Instead, the defendant proceeded with the excavation without any underground facilities having been located and marked on the property.

20. MidAmerican Energy is the owner and operator of a 1/2-inch diameter natural gas pipeline under 60 pounds per square inch (psi) of pressure, which runs underground in the vicinity of where the excavation occurred.

21. Natural gas is flammable and highly explosive.

22. While conducting the excavation on June 26, 2013, the defendant's equipment hit and damaged the natural gas pipeline, causing natural gas to leak from the pipeline. The released natural gas did not explode. Rather than immediately notifying the pipeline company of the damage to the natural gas pipeline, the defendant instead attempted a crude but unsuccessful repair to the pipeline using two hose clamps. The pipeline was subsequently notified, investigated and repaired the damaged natural gas pipeline.

1106 N.E. Vicksburg Drive, Ankeny, Iowa

23. On or about August 20, 2013, the defendant conducted an excavation to install an irrigation line at 1106 N.E. Vicksburg Drive, Ankeny, Polk County, Iowa. The defendant did not

contact the One Call Notification Center regarding this excavation and, thereby, failed to provide notices to operators of underground facilities whose facilities may be affected by the excavation. Instead, the defendant proceeded with the excavation without any underground facilities having been located and marked on the property.

24. MidAmerican Energy is the owner and operator of a 1/2-inch diameter natural gas pipeline under 60 pounds per square inch (psi) of pressure, which runs underground in the vicinity of where the excavation occurred.

25. Natural gas is flammable and highly explosive.

26. While conducting the excavation on August 20, 2013, the defendant's equipment hit and damaged the natural gas pipeline, causing natural gas to leak from the pipeline. The released natural gas did not explode. The pipeline was subsequently notified, investigated and repaired the damaged natural gas pipeline.

1905 Normandy Drive, Carlisle, Iowa

27. On or about October 26, 2013, the defendant conducted an excavation to install a sprinkler system at 1905 Normandy Drive, Carlisle, Warren County, Iowa. The defendant did not contact the One Call Notification Center regarding this excavation and, thereby, failed to provide notices to operators of underground facilities whose facilities may be affected by the excavation. Instead, the defendant proceeded with the excavation without any underground facilities having been located and marked on the property.

28. MidAmerican Energy is the owner and operator of a 2-inch diameter natural gas pipeline under 60 pounds per square inch (psi) of pressure, which runs underground in the vicinity of where the excavation occurred.

29. Natural gas is flammable and highly explosive.

30. While conducting the excavation on October 26, 2013, the defendant's equipment hit and scuffed the natural gas pipeline, but no natural gas was released. The defendant's equipment also hit and severed a 240 volt electrical line, which was later repaired by MidAmerican Energy.

Violations

31. Digging to install an irrigation line or sprinkler system constitutes "excavation" as defined in Iowa Code section 480.1(4).

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

33. A buried natural gas pipeline and a buried electrical line are each an "underground facility" as defined in Iowa Code section 480.1(10).

34. At all material times hereto, there was no "emergency," as defined in Iowa Code section 480.1(3), that would exempt the defendant from the requirement that it 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.

35. On or about June 26, 2013, Defendant Rain Pro, Inc. engaged in an excavation at 450 - 66th Court, West Des Moines, Polk 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)(b)(1)-(8).

36. On or about June 26, 2013, Defendant Rain Pro, Inc., after damaging a natural gas pipeline during the excavation at 450 - 66th Court, West Des Moines, Polk County, Iowa, failed to notify the pipeline operator as soon as practical of the damaged natural gas pipeline and the extent of the damage, in violation of Iowa Code sections 480.1A and 480.5.

37. On or about August 20, 2013, Defendant Rain Pro, Inc. engaged in an excavation at 1106 N.E. Vicksburg Drive, Ankeny, Polk 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)(b)(1)-(8).

38. On or about October 26, 2013, Defendant Rain Pro, Inc. engaged in an excavation at 1905 Normandy Drive, Carlisle, Warren 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)(b)(1)-(8).

Prayer for Relief

WHEREFORE, Plaintiff State of Iowa, ex rel., Thomas J. Miller, Attorney General of Iowa, requests that the Court:

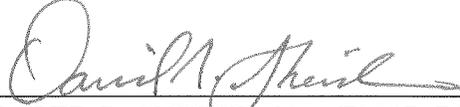
a. assess a civil penalty against Defendant Rain Pro, Inc., pursuant to Iowa Code section 480.6(1)(a) for each day of violation of Iowa Code sections 480.1A, 480.4(1)(a), and 480.4(1)(b)(1)-(8), involving natural gas pipelines, not to exceed Ten Thousand Dollars (\$10,000.00) for each day of each such violation; and

b. issue a permanent injunction enjoining Defendant Rain Pro, 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 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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