

IN THE IOWA DISTRICT COURT FOR CERRO GORDO COUNTY

STATE OF IOWA, ex rel., THOMAS J.)
 MILLER, ATTORNEY GENERAL OF)
 IOWA (99AG23112),)
)
 Plaintiff,)
)
 vs.)
)
 YOHN CO., d/b/a YOHN CO INC.,)
 CONCRETE & CONSTRUCTION and)
 YOHN READY MIX, INC.,)
)
 Defendants.)

LAW NO. _____

PETITION IN EQUITY

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

Introduction

1. The State of Iowa seeks the assessment of civil penalties and injunctive relief against Yohn Co., d/b/a Yohn Co Inc., Concrete & Construction, and Yohn Ready Mix, Inc. (hereafter collectively referred to as “Yohn Co.”), for violations of the “Iowa One Call” statute, Iowa Code chapter 480. Yohn Co. failed to provide 48-hours notice of a planned excavation on several occasions and, without any underground facilities having been timely located and marked, proceeded with the excavations. During several of the excavations, Yohn Co. failed to exercise due care when conducting excavations and the company’s equipment hit and damaged natural gas pipelines in the vicinity of the planned excavations. Yohn Co. failed to notify the owner or operator of the natural gas pipelines of the damage.

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 Yohn Co., is an Iowa corporation with a mailing address of 309 S. 20th Street, Clear Lake, Iowa 50428.

5. Defendant Yohn Ready Mix ., is an Iowa corporation with a mailing address of 309 S. 20th Street, Clear Lake, Iowa 50428.

Definitions

6. “Damage” means “any impact with, destruction, impairment, or penetration of, or removal of support from an underground facility, including damage to its protective coating, housing, or device.” Iowa Code § 480.1(2).

7. “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).

8. “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).

9. “Excavator” means “a person proposing to engage or engaging in excavation.” Iowa Code § 480.1(5).

10. “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).

11. “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

12. 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.

13. Iowa Code section 480.1A provides that a person shall not engage in any excavation unless the requirements of chapter 480 have been satisfied.

14. 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 either filing a ticket online at www.iowaonecall.com or calling the One Call Notification Center at 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).

15. Pursuant to Iowa Code section 480.4(1)(a), the notice of the excavation shall be valid for twenty calendar days from the date the notice was provided to the notification center.

16. 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).

17. Pursuant to Iowa Code section 480.4(3)(a)(1), an excavator shall use due care in excavating in a marked area to avoid damaging the underground facility.

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

19. 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.

20. 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).

21. Iowa Code section 480.6(1)(b) provides that a person who violations a provision of chapter 480 is subject to a civil penalty, when the violation is related to any other underground facility, in an amount not to exceed One Thousand Dollars (\$1,000.00) for each violation for each day the violation continues, up to a maximum of Twenty Thousand Dollars (\$20,000.00).

22. 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.

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

Facts

24. On or about September 27, 2018, Yohn Co. conducted an excavation to install a water main near the intersection of 12th Avenue South and South 3rd Street, in Clear Lake, Iowa 50428.

25. Yohn Co. had placed a locate request (Ticket No. 182331676) for the excavation on August 17, 2018, but the locate request expired on September 6, 2019. Yohn Co. failed to timely renew the locate request after it expired.

26. Alliant Energy Company (“AEC”) is the owner and operator of a 1/2-inch diameter natural gas pipeline under 60 pounds per square inch (psi) of pressure, which run underground in the vicinity of where the excavation occurred.

27. Natural gas is flammable and highly explosive.

28. On or about September 27, 2018, when conducting the excavation, Yohn Co. encountered and uncovered AEC’s pipeline. Yohn Co., allegedly believing the pipeline to be inactive, proceeded to sever the pipeline with a Sawzall, resulting in remediation costs to AEC and the loss of gas service to a customer.

29. On or about November 30, 2018, Yohn Co. conducted excavations to install a water main near 806 12th Avenue South, Clear Lake, Iowa.

30. AEC is the owner and operator of a 2-inch diameter natural gas pipeline under 60 psi of pressure, which ran underground in the vicinity of where the excavation occurred.

31. Although Yohn Co. had placed a locate request, during the excavation, the company used heavy equipment (a track hoe) within the “tolerance zone” of a marked underground natural gas pipeline, hitting and damaging the natural gas pipeline by scraping the line with the “teeth” of a backhoe. Iowa One Call’s “Excavators Manual” provides that:

Excavators should observe this tolerance zone and take precautionary measures to avoid encountering underground facilities when excavating near or within this area. When excavations take place within the tolerance zone, excavators should hand-dig test holes to determine the location of the underground facilities. No equipment or machinery, other than accepted procedures, such as vacuum excavation, should be used for exposing underground facilities within the tolerance zone. (Available at <http://iowaonecall.com/wp-content/uploads/2018/08/IowaExcavatorManual-web.pdf>, p. 29).

32. AEC became aware of the damage when a Clear Lake Telephone Company employee observed Yohn Co. conducting the excavations near the gas line, and who then observed damage to AEC's gas line where there had been no damage previously. The employee then notified AEC of the damage after Yohn Co. failed to notify AEC.

33. Yohn Co. allegedly attempted to backfill over the damaged pipeline.

34. On or about October 22, 2019, Yohn Co. conducted excavations to remove concrete rubble at 1714 4th Ave. S, Clear Lake, Iowa.

35. Yohn Co. began excavating on October 22, 2019, 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.

36. Yohn Co. was using a front-end loader to scoop up concrete rubble from the ground, resulting in the periodic removal of some topsoil and reducing the cover over AEC's 1-inch diameter natural gas pipeline under 60 psi of pressure underneath the rubble pile.

37. During the excavation, Yohn Co. hit and damaged the natural gas pipeline. The damage resulted in remediation costs to AEC. Yohn Co. did not notify AEC of the damaged pipeline.

38. Digging with equipment to install a water main or remove concrete rubble with a front-end loader constitute "excavations" as defined in Iowa Code section 480.1(4).

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

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

41. At all material times hereto, there was no “emergency,” as defined in Iowa Code section 480.1(3), that would exempt Yohn Co. from the requirement that it; 1) contact the statewide notification center provide 48-hours notice of the planned excavation; 2) exercise due care when excavating in a marked area; or 3) timely notify the owner or operator of damage to an underground facility.

Violations

42. On or about September 27, 2018, Yohn Co. engaged in excavations near the intersection of 12th Avenue South and South 3rd Street, in Clear Lake, Iowa 50428, 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).

43. On or about November 30, 2018, Defendant Yohn Co. failed to exercise due care when engaging in excavations near 806 12th Avenue South, Clear Lake, Iowa, to avoid damaging marked underground facility and failed to timely notify the owner or operator of the underground facility of the damage, in violation of Iowa Code sections 480.1A, 480.4(3)(a)(1), and 480.5.

44. On or about October 22, 2019, Yohn Co. engaged in excavations at 1714 4th Ave. S, Clear Lake, Iowa, without providing 48-hours notice of the planned excavation, damaged a natural gas pipeline at that address and failed to timely notify the owner or operator of the underground facility, in violation of Iowa Code sections 480.1A, 480.4(1)(a), 480.4(1)(b)(1)-(8), and 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, pursuant to Iowa Code section 480.6(1)(a) and (b), for each day of violation of Iowa Code

sections 480.1A, 480.4(1)(a), 480.4(1)(b)(1)-(8), 480.4(3)(a)(1), and 480.5, involving natural gas pipelines, not to exceed Ten Thousand Dollars (\$10,000.00) for each day of each such violation, and not to exceed One Thousand Dollars (\$1,000.00) for each day of such violation for all other underground facilities;

- b. issue a permanent injunction enjoining Defendant from commencing any non-emergency excavation in the State of Iowa, without first contacting the statewide notification center by either filing a ticket online (www.iowaonecall.com) or calling the One Call Notification Center (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 enjoining the defendant from commencing any excavation except under the schedule and pursuant to the terms of each such notification;
- c. issue a permanent injunction enjoining Defendant from failing to exercise due care when conducting excavations in a marked area to avoid damage to marked underground facilities, as required by Iowa Code section 480.4(3)(a)(1); and
- d. issue a permanent injunction enjoining Defendant from failing to promptly notify owners and operators of underground facilities which have been damaged, 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

/s/ Jacob J. Larson

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