

IN THE IOWA DISTRICT COURT FOR MARION COUNTY

STATE OF IOWA, ex rel., BRENNA)
 BIRD, ATTORNEY GENERAL OF IOWA)
 (99AG23112))
)
 Plaintiff,)
)
 vs.)
)
 VAN DEN BROEK CONCRETE, INC.,)
)
 Defendant.)
)

CASE NO. EQCV097578

PETITION IN EQUITY

COMES NOW Plaintiff State of Iowa, ex rel., Brenna Bird, Attorney General of Iowa, and for its claim against Defendant Van Den Broek Concrete, Inc., states as follows:

Introduction

1. The State of Iowa seeks the assessment of civil penalties and injunctive relief against Defendant Van Den Broek Concrete, Inc. (“Van Den Broek”), for violations of the “Iowa One Call” statute, Iowa Code chapter 480. Van Den Broek failed to provide 48-hours’ notice for several planned excavations, and without any underground facilities having been located and marked, proceeded with the excavations to remove and replace driveways. During several of the excavations, Van Den Broek’s equipment came near underground utilities, and in one instance, the equipment hit and damaged one of the utility lines.

Parties

- 2. The State of Iowa is a sovereign state of the United States of America.
- 3. Brenna Bird is the duly elected Attorney General for the State of Iowa.
- 4. Defendant Van Den Broek is an Iowa corporation with an office at 1444 Fisher Ave., New Sharon, Iowa, 50207.

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 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 inside of 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 received by the Statewide Notification Center shall be valid for 20 calendar days from the date the notice was provide to the 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. 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(1).

17. If the damage results in an emergency, the excavator shall take all reasonable actions to alleviate the emergency including but not limited to the evacuation of the affected area. The excavator shall leave all equipment situated where the equipment was at the time the emergency was created and immediately contact the operator and appropriate authorities and necessary emergency response agencies. *Id.* at § 480.5(2).

18. 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).

19. 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).

20. 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.

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

Past Enforcement Actions

22. On May 25, 2021, the Iowa District Court in Marion County (Case No. EQCV097578) assessed Van Den Broek a civil penalty of \$7,000.00 for conducting excavations on multiple occasions without providing 48-hours' notice of the planned excavations to the owners and operators of underground facilities in violations of Iowa's One Call statute and permanently enjoined Van Den Broek from further violations of Iowa's One Call statute.

Facts

Bos Landen Drive Incident

23. On or about August 8, 2022, Van Den Broek conducted excavations to remove and replace a driveway at 2912 Bos Landen Drive, Pella, Iowa.

24. Van Den Broek began excavating on August 8, 2022, prior to having all 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.

25. The City of Pella ("City") is the owner and operator of an electrical line carrying 120/240 volts, a telecommunications main line, and a service drop, which all run underground in the vicinity of where the excavation occurred.

26. During the August 8, 2022 excavation, Van Den Broek's equipment hit and damaged the City's underground utilities. The damage resulted in a loss of services and remediation costs to the City.

27. Digging to remove and replace concrete constitutes an "excavation" as defined in Iowa Code section 480.1(4).

28. At all material times hereto, Van Den Broek was an "excavator" as defined in Iowa Code section 480.1(5).

29. A buried service cable, telecommunications main line, and a service drop are all an "underground facility" as defined in Iowa Code section 480.1(10).

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

E 7th Street Incident

31. On or about July 27, 2022, Van Den Broek conducted excavations to remove and replace a driveway at 1322 E 7th Street, Pella, Iowa.

32. Van Den Broek placed a locate request for the excavation (Ticket No. 222060010) on July 25, 2022, at 8:00 a.m., with a notification that the excavation was to commence on July 27, 2022, at 8:00 a.m.

33. The City is the owner and operator of 7,200-volt underground electrical line, which ran underground in the vicinity of where the excavation occurred.

34. When the City showed up to mark their underground facilities before 8:00 a.m. on July 27, 2022, Van Den Broek had already commenced the excavation to remove the existing driveway and prep the ground for the new driveway.

35. Digging to remove and replace concrete constitutes an “excavation” as defined in Iowa Code section 480.1(4).

36. At all material times hereto, Van Den Broek was an “excavator” as defined in Iowa Code section 480.1(5).

37. A buried underground electrical line is an “underground facility” as defined in Iowa Code section 480.1(10).

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

Sunset Avenue Incident

39. On or about August 4, 2022, Van Den Broek conducted excavations to replace a driveway at 1117 Sunset Ave, Pella, Iowa.

40. Van Den Broek began excavating on August 4, 2022, 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.

41. Van Den Broek placed a locate request for the excavation (Ticket No. 222133371) on August 1, 2022, with a notification that the excavation was to commence on August 4, 2022.

42. The City of Pella is the owner and operator of a 7,200-volt underground electrical line, which ran underground in the vicinity of where the excavation occurred.

43. When the City showed up to mark their underground facilities before 8:00 a.m. on August 4, 2022, Van Den Broek had already commenced the excavation to replace the driveway.

44. Digging to replace a driveway constitutes an “excavation” as defined in Iowa Code section 480.1(4).

45. At all material times hereto, Van Den Broek was an “excavator” as defined in Iowa Code section 480.1(5).

46. Buried underground electrical lines are “underground facilities” as defined in Iowa Code section 480.1(10).

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

Violations

48. On or about August 8, 2022, Van Den Broek conducted excavations to remove and replace a driveway at 2912 Bos Landen Drive, Pella, Iowa, 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).

49. On or about July 27, 2022, Van Den Broek conducted excavations to remove and replace a driveway at 1322 E 7th Street, Pella, Iowa, 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).

50. On or about August 4, 2022, Van Den Broek conducted excavations to replace a driveway at 1322 E 7th Street, Pella, Iowa, 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 Van Den Broek Concrete, 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 not to exceed One Thousand Dollars (\$1,000.00) for each day of such violation for all other underground facilities; and
- b. issue a permanent injunction enjoining Defendant Van Den Broek Concrete, Inc., 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.

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,

BRENNA BIRD
Attorney General of Iowa

/s/ Jacob J. Larson

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