

IN THE IOWA DISTRICT COURT FOR LINN COUNTY

STATE OF IOWA, ex rel., BRENNA)
 BIRD, ATTORNEY GENERAL OF IOWA)
 (99AG23112),)
)
 Plaintiff,)
)
 vs.)
)
 DOUG KLIMA,)
 d/b/a KLIMA DRAINAGE,)
)
 Defendant.)

CASE NO. EQCV105471

PETITION IN EQUITY

COMES NOW Plaintiff State of Iowa, ex rel., Brenna Bird, Attorney General of Iowa, and for its claim against Defendant Doug Klima, d/b/a Klima Drainage states as follows:

Introduction

1. The State of Iowa seeks the assessment of civil penalties and injunctive relief against Defendant Doug Klima, d/b/a Klima Drainage (“Klima”) for violations of the “Iowa One Call” statute, Iowa Code chapter 480. Klima failed have a representative of the owner or operator of a nearby 4-inch steel natural gas transmission line, operating under 400 pounds per square inch of pressure, present during several excavations.

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 Doug Klima is the owner and operator of Klima Drainage, an Iowa business, with an office at 4994 Fairchild Road, Center Point, Iowa 52213.

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 outside of a city shall include:

1. the name of the county, township, range, and section;
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 quarter section, E911 address and global positioning system coordinate, name of property owner, name of housing development with

street address or block and lot numbers, or both.

Iowa Code §§ 480.4(1)(c)(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. Unless agreed to otherwise between the operator and the excavator, an excavation shall not take place within twenty-five feet of an underground natural gas transmission line as defined in 49 C.F.R. §192.3 unless a representative of the operator of the underground natural gas transmission line is present at the planned excavation area. Iowa Code § 480.4(3)(a)(3).

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.

Past Enforcement Actions

19. On July 28, 2000, the Iowa District Court in Jones County (Case No. LACV002024) assessed Klima a civil penalty of \$5,000.00 for conducting excavations without providing 48-hours notice of the planned excavation to the owners and operators of underground facilities its violations of Iowa's One Call statute and permanently enjoined Klima from further violations of Iowa's One Call statute. On January 4, 2002, the Iowa District Court in Jones County (Case No. LACV002024) found Klima in contempt of court for violating the terms of the permanent injunction and fined Klima \$500.00 for additional violations of Iowa's One Call statute.

20. On January 11, 2016, the Iowa District Court in Delaware County (Case No. CVCV008131) assessed Klima a civil penalty of \$8,500.00 for conducting excavations without providing 48-hours' notice of the planned excavation to the owners and operators of underground facilities its violations of Iowa's One Call statute and permanently enjoined Klima from further violations of Iowa's One Call statute.

21. On November 10, 2022, the Iowa District Court in Linn County (Case No. EQCV008709) assessed Klima a civil penalty of \$12,500.00 for conducting excavations without providing 48-hours' notice of the planned excavation to the owners and operators of underground facilities its violations of Iowa's One Call statute and permanently enjoined Klima from further violations of Iowa's One Call statute.

Facts

22. On or about March 17, 2023 – March 20, 2023, Klima conducted excavations in rural Linn County, along Walker Road and Betty’s Grove Road, Grant Township, Linn County, Iowa, to install drainage tile.

23. Interstate Power and Light Company/Alliant Energy (“IPL”) is the owner and operator of a 4-inch diameter natural gas transmission line, operating under 400 pounds per square inch (psi) of pressure, which runs underground in the vicinity of where the excavations occurred.

24. Although Klima had placed a locate request (No. 230650241) for the planned excavations on March 6, 2023, Klima confirmed with IPL that they would not be excavating within twenty-five (25) feet of IPL’s natural gas transmission line.

25. On March 17, 2023, the location of Klima’s planned excavation purportedly changed, and Klima called in a locate request (No. 230760200) for the new location of the planned excavation.

26. On March 17, 2023, a representatives of IPL drove by the property to observe Klima’s excavating activity and observed that Klima had conducted an excavation approximately five (5) feet deep and within six (6) feet of IPL’s transmission line.

27. During the March 17, 2023 visit, IPL representatives observed two (2) additional locations where Klima had excavated within twenty-five (25) feet of the transmission line.

28. There is a visible, above-ground natural gas pipeline marker in the vicinity of Klima’s March 17, 2023 excavations.

29. IPL representatives located and marked the natural gas transmission line while onsite on March 17, 2023.

30. While IPL representatives were on site on March 17, 2023, the representatives directed Klima to cease digging until March 20, 2023, when the representatives would be on site to re-locate and mark the transmission line in response to the second locate request and be available for a standby for any excavations that were planned to occur within twenty-five (25) feet of the transmission line.

31. On March 20, 2023, IPL representatives arrived on site and observed that additional excavations had taken place over the weekend, after Klima had been directed to cease any excavations near the transmission line.

32. On March 20, 2023, IPL representatives observed that the original hole that had been excavated on or about March 17, 2023, had now been filled in, and the representatives observed a new trench that had been excavated within twenty-five (25) feet of the transmission line.

33. On both of Klima's locate tickets, the status line for Alliant's response stated "Stand by required/Marked."

34. The excavations observed on March 20, 2023, occurred within the vicinity of an above-ground, visible natural gas pipeline marker.

35. Natural gas is flammable and highly explosive.

36. Digging with a tiling plow or track-hoe to install drainage tile constitutes "excavation" as defined in Iowa Code section 480.1(4).

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

38. A buried natural gas pipeline is an “underground facility” as defined in Iowa Code section 480.1(10), and IPL’s gas pipeline is an “underground natural gas transmission line” as defined in 49 C.F.R. §192.3. *See* Iowa Code § 480.4(3)(a)(3).

Violations

39. On or about March 17, 2023 – March 20, 2023, Defendant Doug Klima, d/b/a Klima Drainage, engaged in multiple excavations in rural Linn County, along Walker Road and Betty’s Grove Road, Grant Township, Linn County, Iowa, without having a representative of the owner or operator of a natural gas transmission line present for an excavation that will occur within 25 feet of the transmission line, in violation of Iowa Code sections 480.4(3)(a)(3).

Prayer for Relief

WHEREFORE, Plaintiff State of Iowa, ex rel., Brenna Bird, Attorney General of Iowa, requests that the Court:

- a. assess a civil penalty against Defendant Doug Klima, d/b/a Klima Drainage, pursuant to Iowa Code section 480.6(1)(a) for each day of violation of Iowa Code section 480.4(3)(a)(3) 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 Doug Klima, d/b/a Klima Drainage, from conducting excavations within 25 feet of a natural gas transmission pipeline without having a representative of the pipeline operator present, unless otherwise agreed to by the operator and excavator, as required by Iowa Code section 480.4(3)(a)(3).

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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