

IN THE IOWA DISTRICT COURT FOR LEE COUNTY

STATE OF IOWA, ex rel., BRENNA)
 BIRD, ATTORNEY GENERAL OF IOWA)
 (99AG23112),)
)
 Plaintiff,)
)
 vs.)
)
 ERIC FORTUNE, JR.,)
)
 Defendant.)
)

CASE NO. EQQ007716

PETITION IN EQUITY

COMES NOW Plaintiff State of Iowa, ex rel., Brenna Bird, Attorney General of Iowa, and for its claim against Defendant Eric Fortune Jr., states as follows:

Introduction

1. The State of Iowa seeks the assessment of civil penalties and injunctive relief against Defendant Eric Fortune Jr. (“Fortune”), for violations of the “Iowa One Call” statute, Iowa Code chapter 480. Fortune failed to provide 48-hours’ notice for a planned excavation at 2812 Avenue 0, Fort Madison, Iowa, and without any underground facilities having been located and marked, proceeded with the excavation to dig a trench. During the excavation, Fortune’s equipment hit and damaged a 1-inch natural gas service line. After damaging the service line, Fortune failed to notify the operator and appropriate authorities of the damage, and instead attempted to repair the gas line.

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 Fortune is an Iowa resident who conducted excavations at 2812 Avenue O, Fort Madison, Iowa 52627.

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 provided 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.

Facts

22. On or about February 18, 2023, Fortune conducted an excavation to dig a trench at 2812 Avenue O, Fort Madison, Iowa 52627.

23. Fortune began excavating on or about February 18, 2023, 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. MidAmerican Energy Company ("MidAmerican") is the owner and operator of a 1-inch natural gas service line, which runs underground in the vicinity of where the excavation occurred.

25. During the February 18, 2023 excavation, Fortune's equipment hit and damaged the natural gas service line.

26. Fortune failed to contact the operator, appropriate authorities, and necessary emergency response agencies to notify them of the damage, and, instead, attempted to repair the gas line.

27. Digging a trench constitutes an “excavation” as defined in Iowa Code section 480.1(4).

28. At all material times hereto, Fortune was an “excavator” as defined in Iowa Code section 480.1(5).

29. A buried natural gas service line is 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 Fortune from the requirement that it contact the statewide notification center to provide 48-hours’ notice of the planned excavation.

Violations

31. On or about February 18, 2023, Fortune conducted an excavation to dig a trench at 2812 Avenue O, Fort Madison, 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).

32. On or about February 18, 2023, Fortune damaged a natural gas service line at 2812 Avenue O, Fort Madison, Iowa, and failed to contact the operator, appropriate authorities, and necessary emergency response agencies to notify them of the damage, in violation of Iowa Code section 480.5(1).

33. On or about February 18, 2023, Fortune damaged a natural gas service line at 2812 Avenue O, Fort Madison, Iowa, and failed to leave all equipment situated where the

equipment was at the time the emergency was created, in violation of Iowa Code section 480.5(2). Instead, Fortune conducted improper repairs on the has line.

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 Eric Fortune Jr., pursuant to Iowa Code section 480.6(1)(a) for each day of violation of Iowa Code sections 480.1A, 480.4(1)(a), 480.4(1)(b)(1)-(8), and 480.5(1) and (2), 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 Eric Fortune Jr. 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; and
- c. issue a permanent injunction enjoining Defendant Eric Fortune Jr. 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,

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Attorney General of Iowa

/s/ Jacob J. Larson

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