

(c) If the Board issues an FOPA, including one or more violations that were set forth in the NOPV, the Board may assess the maximum penalty authorized by law for these violations without further prior notice to the violator and without further opportunity for the violator to contest the penalty.

(d) In determining the appropriate amount of a civil administrative penalty after a default, the Board shall not be bound by any compromise or settlement offer made to the alleged violator by staff, and shall apply the standards in N.J.A.C. 14:2-6.2.

(e) Payment of a civil administrative penalty assessed under this section is due on the 10th day following service upon the alleged violator of the Board's FOPA or as otherwise specified by the Board.

New Rule, R.2009 d.250, effective August 17, 2009.  
See: 40 N.J.R. 6928(a), 41 N.J.R. 3096(a).

#### **14:2-6.7 Notice of Administrative Order and Civil Administrative Penalty Assessment (AONOCAPA)**

(a) In addition to the Notice of Probable Violation, which can be issued by Board staff under N.J.A.C. 14:2-6.4, the Board may at any time issue an Administrative Order and Notice of Civil Administrative Penalty Assessment.

(b) The Board shall serve an AONOCAPA in accordance with the Administrative Procedure Rules at N.J.A.C. 1:1-7.2.

(c) The Board may, in its discretion, assess a civil penalty for more than one offense in a single Administrative Order and Notice of Civil Administrative Penalty Assessment or in multiple Administrative Orders and Notices of Civil Administrative Penalty Assessment.

(d) An Administrative Order and Notice of Civil Administrative Penalty Assessment shall:

1. Identify the provision of the law, rule, regulation or order alleged to have been violated;
2. Concisely state the facts, which constitute the alleged violation;
3. Order such alleged violation to cease;
4. Specify the amount of the civil administrative penalty to be imposed; and
5. Notify the alleged violator of the right to request an adjudicatory hearing pursuant to the procedures in N.J.A.C. 14:2-6.8. If no hearing is requested, the penalty set forth in the AONOCAPA will be due and owing on the 21st day following service on the alleged violator, without further notice.

(e) If no hearing is requested on an AONOCAPA pursuant to N.J.A.C. 14:2-6.8, an Administrative Order and Notice of Civil Administrative Penalty Assessment (AONOCAPA)

shall become a Final Order, and the penalty in the AONOCAPA shall become due and owing, on the 21st day following service of the Administrative Order and Notice of Civil Administrative Penalty Assessment on the violator.

(f) If a hearing is requested but the Board denies the hearing request pursuant to N.J.A.C. 14:2-6.8, an Administrative Order and Notice of Civil Administrative Penalty Assessment shall become a Final Order, and the penalty in the AONOCAPA shall become due and owing, upon service on the violator of notice of the hearing request denial.

(g) If an adjudicatory hearing is requested and conducted, an Administrative Order and Notice of Civil Administrative Penalty Assessment shall become a Final Order upon service on the violator of a Final Order in the contested case.

New Rule, R.2009 d.250, effective August 17, 2009.  
See: 40 N.J.R. 6928(a), 41 N.J.R. 3096(a).

#### **14:2-6.8 Adjudicatory hearings**

(a) To request an adjudicatory hearing to contest an Administrative Order and Notice of Civil Administrative Penalty Assessment issued pursuant to this subchapter, the alleged violator shall submit the following information in writing to the Secretary of the Board, Attention: Adjudicatory Hearing Request/One-Call, Board of Public Utilities, Two Gateway Center, Newark, New Jersey 07102:

1. The name, address and telephone number of the alleged violator and its authorized representative;
2. The alleged violator's defenses, stated in short and plain terms, to each of the Board's preliminary findings of fact contained in the Administrative Order and Notice of Civil Administrative Penalty Assessment;
3. An admission or denial of each of the Board's preliminary findings of fact contained in the Administrative Order and Notice of Civil Administrative Penalty Assessment. If the alleged violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the alleged violator shall so state and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings denied. When the alleged violator intends, in good faith, to deny only a part of or qualify a finding, the alleged violator shall specify so much of it as true and material and deny only the remainder. The alleged violator may not generally deny all of the findings but shall make all denials as specific denials of designated findings. For each finding denied, the alleged violator shall allege the fact or facts as the alleged violator believes it or them to be;
4. Information supporting the request and specific reference to or copies of other written documents relied upon to support the request;
5. An estimate of the time required for the hearing (in days and/or hours); and

6. A request, if necessary, for a barrier-free hearing location to accommodate physically disabled persons.

(b) If the Board does not receive the hearing request within 20 days after service on the violator of the Administrative Order and Notice of Civil Administrative Penalty Assessment being challenged, the Board shall deny the hearing request.

(c) If the alleged violator fails to include all the information required under (a) above or if upon review of the submission, the Board determines that there is no dispute of material facts, the Board may deny the hearing request.

(d) All adjudicatory hearings shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and N.J.S.A. 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

New Rule, R.2009 d.250, effective August 17, 2009.  
See: 40 N.J.R. 6928(a), 41 N.J.R. 3096(a).

#### 14:2-6.9 Actions in Superior Court

(a) The Board may institute an action or proceeding in the Superior Court for a violation of any provision of this chapter, the Underground Facility Protection Act, or an order adopted pursuant thereto and the court may proceed in a summary manner.

(b) The Board may bring a Superior Court action for one or more of the following remedies:

1. A temporary or permanent injunction, pursuant to N.J.S.A. 48:2-86(b);

2. A civil penalty;

3. Costs incurred by the Board as a result of any investigation, inspection, monitoring or survey that led to the Board's determination that the violation had occurred; and/or

4. The reasonable costs of preparing, pursuing and litigating the case against the violator.

(c) An affected underground facility operator may institute an action in the Superior Court for an injunction against a violator whose repeated failure to comply with the Underground Facilities Protection Act constitutes a threat to public safety.

(d) The institution of an action or proceeding in Superior Court by any party shall not limit the Board's authority to seek the administrative remedies provided for in this subchapter.

New Rule, R.2009 d.250, effective August 17, 2009.  
See: 40 N.J.R. 6928(a), 41 N.J.R. 3096(a).

#### 14:2-6.10 Criminal prosecution

A person that knowingly engages in certain activities in violation of this chapter may be subject to criminal prosecution in accordance with N.J.S.A. 48:2-87.

New Rule, R.2009 d.250, effective August 17, 2009.  
See: 40 N.J.R. 6928(a), 41 N.J.R. 3096(a).