

ground Facility Protection Act, N.J.S.A. 48:2-73 et seq., in accordance with N.J.S.A. 48:2-86 through 89.

(b) The Board may impose a civil penalty by means of a Notice of Probable Violation (NOPV) followed by a Final Order of Penalty Assessment (FOPA); through an Administrative Order and Notice of Civil Administrative Penalty Assessment (AONOCAPA); through a Superior Court Action; or as otherwise permissible by law.

(c) This subchapter shall also govern the procedures for issuing NOPVs and AONOCAPAs, requesting an informal conference and requesting an adjudicatory hearing on an AONOCAPA.

(d) If statutory amendments are enacted after October 15, 2007, which authorize additional or increased penalties or remedies for violation of this chapter, the Board shall have the authority to apply such penalties or remedies upon the effective date of the statutory amendment.

(e) Any civil penalty imposed pursuant to this section may be compromised by the Board. In determining the amount agreed upon in compromise, the Board shall consider the factors set forth at N.J.A.C. 14:2-6.2(c).

(f) Once a penalty becomes due and owing in accordance with this subchapter, the penalty may be deducted from any sums owing by the State to the person charged, or may be recovered, if necessary, in accordance with "the Penalty Enforcement Law of 1999" (N.J.S.A. 2A:58-10 et seq.).

(g) Pursuit of any remedy specified in this subchapter shall not preclude the pursuit of any other remedy, including any civil remedy for damage to an operator's underground facilities or for damage to a person's property, provided by any other law. Administrative and judicial remedies provided in this section may be pursued simultaneously.

Amended by R.2002 d.107, effective April 1, 2002.  
See: 33 N.J.R. 2606(a), 34 N.J.R. 1458(a).

In (a), added 3.

Repeal and New Rule, R.2007 d.298, effective October 15, 2007.

See: 39 N.J.R. 1232(a), 39 N.J.R. 4422(b).

Section was "General Requirements".

Recodified in part from N.J.A.C. 14:2-6.2 and amended by R.2009 d.250, effective August 17, 2009.

See: 40 N.J.R. 6928(a), 41 N.J.R. 3096(a).

Rewrote (a) and (b); added new (c); recodified former (c) as (d); recodified former N.J.A.C. 14:2-6.2(f) through (h) as (e) through (g); and rewrote (e) and (f).

#### 14:2-6.2 Penalty amounts

(a) Except as provided under (b) below, an underground facility operator, an excavator, or the One-Call System operator, that violates any provision of this chapter, the Underground Facility Protection Act, or an order adopted pursuant thereto, shall be liable to a penalty of not less than \$1,000 and not more than \$2,500 per day for each day the violation continues, except that the maximum civil penalty shall not exceed \$25,000 for any related series of violations.

(b) Notwithstanding any provision of this chapter or of N.J.S.A. 48:2-88 to the contrary, a person who is determined by the Board, after notice and opportunity to be heard, to have violated any provision of this chapter, the Underground Facility Protection Act, or an order adopted pursuant thereto, with respect to a natural gas underground pipeline or distribution facility or a hazardous liquid underground pipeline or distribution facility, shall be liable to a civil penalty in the amount set forth in the Board's natural gas pipeline safety rules at N.J.A.C. 14:7-2.6.

(c) In determining the amount of the penalty assessed, or an amount agreed upon in compromise, the Board shall consider:

1. The nature, circumstances and gravity of the violation(s);
2. The degree of the violator's culpability;
3. Any history of prior violations;
4. The prospective effect of the penalty upon the ability of the violator to conduct business;
5. Any good faith effort by the violator to achieve compliance;
6. The violator's ability to pay the penalty; and
7. Any other factors justice may require.

(d) Neither the assessment of a penalty nor the payment of a penalty shall be deemed to affect the availability of any other enforcement provision provided for by law, in connection with the violation for which the assessment is levied or any other violation.

(e) All civil penalties recovered pursuant to this chapter shall be paid into the General Fund.

Amended by R.2002 d.107, effective April 1, 2002.  
See: 33 N.J.R. 2606(a), 34 N.J.R. 1458(a).

In (a)2, inserted "department or" preceding "agency operator".  
Repeal and New Rule, R.2007 d.298, effective October 15, 2007.  
See: 39 N.J.R. 1232(a), 39 N.J.R. 4422(b).

Section was "Markout exemptions".

New Rule, R.2009 d.250, effective August 17, 2009.

See: 40 N.J.R. 6928(a), 41 N.J.R. 3096(a).

Section was "Injunction, civil penalties". Deleted former (a) through (e); and recodified former (f) through (h) as N.J.A.C. 14:2-6.1(e) through (g).

#### 14:2-6.3 Notice failure, prima facie evidence of negligence

Evidence that an excavation or demolition that results in any damage to an underground facility was performed without providing the notice required pursuant to this chapter shall be prima facie evidence in any civil or administrative proceeding that the damage was caused by the negligence of the excavator or responsible contractor, as applicable, that performed the excavation or demolition.

Repeal and New Rule, R.2007 d.298, effective October 15, 2007.  
 See: 39 N.J.R. 1232(a), 39 N.J.R. 4422(b).  
 Section was "Interstate natural gas or hazardous liquid pipelines".

#### 14:2-6.4 Notices of probable violation

(a) Upon discovery of a probable violation, Board staff may issue a written Notice of Probable Violation (NOPV) to the alleged violator. The NOPV shall be served in accordance with the New Jersey Office of Administrative Law's procedural rules at N.J.A.C. 1:1-7.

(b) The Notice of Probable Violation shall:

1. State the facts, which constitute the probable violation;
2. Identify the provision of law, rule, regulation or order violated;
3. Identify the maximum permissible penalty for the violation;
4. Include a form of Answering Certification, to be completed and submitted by the alleged violator;
5. Notify the alleged violator of both of the following:
  - i. Failure of the alleged violator to submit the Answering Certification within the deadline in N.J.A.C. 14:2-6.5(a) may result in Board findings as to the violation(s) in the NOPV through issuance of a Final Order of Penalty Assessment (FOPA), which may include the maximum penalty permissible by law, without further prior notice to the alleged violator; and
  - ii. The alleged violator may contest the NOPV in accordance with N.J.A.C. 14:2-6.5(b). If an alleged violator contests the NOPV, the Board may issue an Administrative Order and Notice of Civil Administrative Penalty Assessment in accordance with N.J.A.C. 14:2-6.7, in which case the alleged violator may request a hearing in accordance with N.J.A.C. 14:2-6.8.

(c) The Notice of Probable Violation may include an offer of settlement or compromise.

(d) The Board or its staff may withdraw a Notice of Probable Violation at any time.

Amended by R.2002 d.107, effective April 1, 2002.  
 See: 33 N.J.R. 2606(a), 34 N.J.R. 1458(a).

Rewrote (b).  
 Repeal and New Rule, R.2007 d.298, effective October 15, 2007.  
 See: 39 N.J.R. 1232(a), 39 N.J.R. 4422(b).  
 Section was "Operator waivers".  
 Repeal and New Rule, R.2009 d.250, effective August 17, 2009.  
 See: 40 N.J.R. 6928(a), 41 N.J.R. 3096(a).  
 Section was "Civil penalties to the State".

#### 14:2-6.5 Response by alleged violator to Notice of Probable Violation

(a) The alleged violator shall respond to the Notice of Probable Violation (NOPV) by submitting the completed

Answering Certification to the Board's Division of Reliability and Security within 21 calendar days after receiving the Notice of Probable Violation and form of Answering Certification. The alleged violator shall submit the Answering Certification regardless of whether the alleged violator wishes to contest the NOPV.

(b) If the alleged violator wishes to contest the NOPV, the alleged violator shall indicate this on the Answering Certification. Board staff may hold an informal conference with the alleged violator.

(c) Following the alleged violator's submittal of the Answering Certification, the Notice of Probable Violation may be resolved informally; and/or the staff and the alleged violator may enter into a written settlement agreement, which shall be presented to the Board for approval.

(d) Nothing in this section or in N.J.A.C. 14:2-6.4 shall prevent the Board from issuing an Administrative Order and Notice of Civil Administrative Penalty Assessment pursuant to this subchapter at any time upon discovery of a probable violation, nor shall this section be deemed to affect the availability of any other enforcement provision provided for by law, in connection with the probable violation.

(e) If the NOPV is not resolved informally under this section, Board staff may present the matter to the Board for further action as determined by the Board, which may include, but shall not be limited to, the issuance of an AONOCAPA.

New Rule, R.2000 d.1, effective January 3, 2000.

See: 30 N.J.R. 4130(a), 32 N.J.R. 63(a).  
 Amended by R.2002 d.107, effective April 1, 2002.  
 See: 33 N.J.R. 2606(a), 34 N.J.R. 1458(a).

In (b), rewrote 4 and added 5; in (c), inserted "for" preceding "which there" and substituted "a 'reportable accident'" for "reportable accidents" in the first sentence and added the third sentence.  
 Repealed by R.2007 d.298, effective October 15, 2007.  
 See: 39 N.J.R. 1232(a), 39 N.J.R. 4422(b).  
 Section was "Reportable accidents".  
 New Rule, R.2009 d.250, effective August 17, 2009.  
 See: 40 N.J.R. 6928(a), 41 N.J.R. 3096(a).  
 Section was "(Reserved)".

#### 14:2-6.6 Failure of alleged violator to submit Answering Certification

(a) If the alleged violator fails to submit the Answering Certification within the deadline at N.J.A.C. 14:2-6.5(a), or fails to attend a hearing or conference as required under this subchapter, the alleged violator shall be deemed in default.

(b) If an alleged violator is in default, Board staff may present the Notice of Probable Violation (NOPV) to the Board for findings and issuance of a Final Order of Penalty Assessment (FOPA), without further notice to the alleged violator. Board staff shall also present proof that the NOPV was served upon the violator in accordance with the Administrative Procedure Rules at N.J.A.C. 1:1-7.2.