

Sec. 16-345-9. Assessment of civil penalties

(a) Any person, excavator, public agency, public utility or the central clearinghouse which the Authority finds to have violated any provision of Chapter 293 of the Connecticut General Statutes, or any regulations promulgated thereunder, may be fined, after notice and opportunity for a hearing as provided in section 16-345-8 of the Regulations of Connecticut State Agencies. In such case, such person, excavator, public agency, public utility or the central clearinghouse shall forfeit and pay to the state a civil penalty in accordance with the following schedule of penalties:

(1) For violations which do not involve personal injury, death or property damage:

(A) A minimum civil penalty of two hundred dollars (\$200) for a first violation; and

(B) A civil penalty of not more than five thousand dollars (\$5,000) for a second violation and up to the statutory maximum thereafter;

(2) For violations which result in property damage:

(A) Where the amount of property damage sustained is not greater than three thousand dollars (\$3,000), a civil penalty not to exceed twelve thousand dollars (\$12,000);

(B) Where the amount of property damage sustained is greater than three thousand dollars (\$3,000), but not more than twenty thousand dollars (\$20,000), a civil penalty not to exceed twenty thousand dollars (\$20,000); and

(C) Where the amount of property damage sustained is greater than twenty thousand dollars (\$20,000), a civil penalty not to exceed the maximum civil penalty allowed under Chapter 293 of the Connecticut General Statutes;

(3) For a violation which results in personal injury or death, a civil penalty not to exceed the maximum civil penalty allowed under Chapter 293 of the Connecticut General Statutes;

(4) For any violation where a person, excavator, public agency or public utility knowingly comes in contact with an underground public utility facility during the course of an excavation or demolition and fails to notify the owner of the public utility facility as soon as possible thereafter, or tampers with or attempts an unauthorized repair of a damaged utility facility, a civil penalty not to exceed the maximum civil penalty allowed under Chapter 293 of the Connecticut General Statutes; and

(5) Notwithstanding subdivisions (1) to (4), inclusive, of this subsection, the Authority may assess a civil penalty of up to the maximum civil penalty allowed under Chapter 293 of the Connecticut General Statutes based upon the degree of threat to the public safety, the degree of public inconvenience caused as a result of the violation, or the past history of the violator.

(b) In determining whether to assess a civil penalty and the amount of civil penalty to be assessed, the Authority shall take into account the following criteria by way of aggravating and mitigating factors:

(1) The number and nature of past violations as well as any previous decisions of the Authority regarding prior violations;

(2) The degree of compliance with other requirements of Chapter 293 of the Connecticut General Statutes, and any regulations promulgated thereunder, especially notification to the utility in the event of damage. In particular, the Authority shall consider whether or not the violator has notified the utility pursuant to the provisions of sections 16-345-4(a)(1) to 16-345-4(a)(2), inclusive, and section 16-345-4(f) of the Regulations of Connecticut State

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(3) The good faith efforts of the violator to have complied with the statutes and regulations;

(4) The plans and procedures to ensure compliance with the statutes and regulations in the future;

(5) The amount of damage caused to underground facilities;

(6) The nature and severity of the violation, the degree of threat to the public safety, and degree of public inconvenience caused as a result of the violation;

(7) Whether the activity was performed in the course of business by a person, excavator, public agency or public utility regularly engaged in such activity;

(8) Circumstances beyond the control of the violator, including, but not limited to, weather and, for violations based on the failure to timely mark the approximate location of an underground utility facility, lack of timely access to the site; and

(9) Such other factors as are in the public interest.

(c) Where the Authority has issued a penalty after a hearing, the Authority shall specify the factors used in determining the penalty by way of mitigation or aggravation.

(Effective October 25, 1988; Amended August 23, 2000; Amended February 1, 2006; Amended August 2, 2016)