

54-8a-8 Civil penalty for damage -- Exceptions -- Other remedies.

- (1) A civil penalty may be imposed for a violation of this chapter as provided in this section.
- (2) A civil penalty under this section may be imposed on:
 - (a) any person who violates this chapter in an amount no greater than \$5,000 for each violation with a maximum civil penalty of \$100,000 per excavation; or
 - (b) an excavator who fails to provide notice of an excavation in accordance with Section 54-8a-4 in an amount no greater than \$500 in addition to the amount under Subsection (2)(a).
- (3) Notwithstanding Subsection (2)(a), a penalty under this chapter may not be imposed on an excavator or operator unless the excavator or operator fails to comply with this chapter and damages an underground facility.
- (4) The amount of a civil penalty under this section shall be made taking into consideration the following:
 - (a) the excavator's or operator's history of any prior violation or penalty;
 - (b) the seriousness of the violation;
 - (c) any discharge or pollution resulting from the damage;
 - (d) the hazard to the health or safety of the public;
 - (e) the degree of culpability and willfulness of the violation;
 - (f) any good faith of the excavator or operator; and
 - (g) any other factor considered relevant, including the number of past excavations conducted by the excavator, the number of location requests made by the excavator and the number of location markings made for the excavator or by the operator.
- (5) "Good faith," as used in Subsection (4)(f), includes actions taken before the filing of an action for civil penalty under this section to:
 - (a) remedy, in whole or in part, a violation of this chapter; or
 - (b) mitigate the consequences and damages resulting from a violation of this chapter.
- (6)
 - (a) A civil penalty may not be imposed on an excavator if the damage to an underground facility results from an operator's:
 - (i) failure to mark; or
 - (ii) inaccurate marking or locating of the operator's underground facilities.
 - (b) In addition to or in lieu of part of or all of a civil penalty, the excavator or operator may be required to undertake actions that are designed to prevent future violations of this chapter, including attending safety and compliance training, improving internal monitoring and compliance processes and procedures, or any other action that may result in compliance with this chapter.
- (7) Subsection (1) does not apply to an excavation made:
 - (a) during an emergency, if reasonable precautions are taken to protect any underground facility;
 - (b) in agricultural operations;
 - (c) for the purpose of finding or extracting natural resources; or
 - (d) with hand tools on property owned or occupied by the excavator.
- (8)
 - (a) A civil penalty under this section is in addition to any damages that an operator or an excavator may seek to recover.
 - (b) In an action brought under this section, the prevailing party shall be awarded its costs and attorney fees as determined by the court.

Amended by Chapter 426, 2011 General Session