

NE Penalty Clause	CO Penalty Clause	MT Penalty Clause	ID Penalty Clause	UT Penalty Clause	SD Penalty Clause	WY Penalty Clause
<p>76-2325 Any person 1) For a violation related to a gas or hazardous liquid underground pipeline facility, an amount not to exceed \$10,000 for each violation for each day the violation persists, up to a maximum of \$500,000; and</p> <p>2) For a violation related to any other underground facility, an amount not to exceed \$500 for each day the violation persists, up to a maximum of five thousand dollars.</p> <p>----- NOTE difference in penalty based on type of facility</p>	<p>9-1.5-104.5. Civil Penalties—applicability. Summary: Any owner or operator who does not join the Notification Association or any person who fails to notify the Notification Association or the affected owner or operator and a facility is NOT damaged as a result, is subject to a civil penalty in the amount of \$200.</p> <p>Penalties to excavators for not requesting locates & Penalties to owner/operators for not belonging to the Utility Notification Center of Colorado.</p> <p>If a facility is damaged as a result, penalties are as follows:</p> <ul style="list-style-type: none"> • \$5,000 for the first offense • Up to \$25,000 for each subsequent event in a 12-month period • Up to \$75,000 for more than three in a 12-month period 	<p>69-4-505 (1) (a) <i>If any underground facility is damaged by an excavator who has failed to obtain information as to its location as provided in 69-4-503, then the excavator is liable to the owner of the underground facility for the entire cost of the repair of the facility. The excavator is also liable to the underground facility owner that is a member of a one-call notification center pursuant to 69-4-502(2)(a) for a damage fee. Damage fees must be assessed as follows:</i></p> <p><i>(i) 25% of the total cost of repairing the underground facility not to exceed \$125 for the first incident;</i></p> <p><i>(ii) 50% of the total cost of repairing the underground facility not to exceed \$500 for the second incident; and</i></p> <p><i>(iii) \$1,000 for the third and each subsequent incident.</i></p> <p><i>(b) An underground facility owner may levy only one fee for each incident.</i></p> <p><i>(c) If there is more than one underground facility affected by an incident, then each underground facility owner that is a member of a one-call notification center pursuant to 69-4-502(2)(a) may levy one damage fee for that incident.</i></p>	<p>Title 55, Chapter 22; 55-2209. Civil Penalties—applicability Summary: Penalty for any person (other than excavator's failure to provide notice) resulting in damage to underground facility subject to not more than \$1,000 for each violation If a facility is damaged as a result of an excavator's failure to provide notice</p> <ul style="list-style-type: none"> • First offense during any consecutive 12 months > excavator shall receive a written warning from the underground facility owner and shall be liable for actual costs of repairing the facility • Second offense during any consecutive 12 months > the court may increase the civil penalty in an amount up to \$5,000. • Third offense during any consecutive 12 months > the court may increase the civil penalty in an amount up to \$10,000. <p>55-2209 (4) <i>Any excavator who damages an underground facility on a third or subsequent violation pursuant to subsection (2) of this section may be liable for treble the costs incurred in repairing or relocating the facility.</i></p>	<p>54-8a-8 (2) <i>A civil penalty under this section may be imposed on:</i></p> <p><i>(a) any person who violates this chapter in an amount no greater than \$2,500 for each violation with a maximum civil penalty of \$100,000 per excavation; or</i></p> <p><i>(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).</i></p> <p><i>(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.</i></p>	<p>49-7A-18 and 49-7A-19 Penalties—applicability Summary: Any person who violates law/rule may be assessed a penalty of up to \$1,000 for the first violation and up to \$5,000 for each subsequent violation that occurs within twelve months of the initial violation.</p> <p>Any person who <u>intentionally</u> violates law/rule may be assessed a penalty of up to \$5,000 for the first violation and up to \$10,000 for each subsequent violation that occurs within twelve months of the initial violation.</p> <p>49-7A-20 <i>In the case of a continuing violation, each day that the violation continues constitutes a separate violation.</i></p>	<p>§ 37-12-302(j) <i>Any person who causes damage to any underground facility by knowingly and willfully violating any provision of this act is subject to a civil penalty of an amount not to exceed five thousand dollars (\$5,000.00).</i></p> <p>----- NOTE: The words knowingly and willfully are not found in the other surrounding states one call statutes</p>

NE Action brought by: Penalty awarded to:	CO Action brought by: Penalty awarded to:	MT Action brought by: Penalty awarded to:	ID Action brought by: Penalty awarded to:	UT Action brought by: Penalty awarded to:	SD Action brought by: Penalty awarded to:	WY Action brought by: Penalty awarded to:
<p>76-2325 An action to recover a civil penalty shall be brought by the Attorney General of a prosecuting attorney on behalf of the State of Nebraska in any court of competent jurisdiction of this state. (see also, explanation under Other)</p> <p>Penalty deposited in Public School fund</p>	<p>9-1.5-104.5. (3)(a) AN ACTION TO RECOVER A CIVIL PENALTY UNDER THIS SECTION MAY BE BROUGHT BY AN OWNER OR OPERATOR, EXCAVATOR, AGGRIEVED PARTY, DISTRICT ATTORNEY, OR THE ATTORNEY GENERAL. (b) ANY CIVIL PENALTY IMPOSED PURSUANT TO THIS SECTION, INCLUDING REASONABLE ATTORNEY FEES, SHALL BE PAID TO THE PREVAILING PARTY. (c) THE PENALTIES PROVIDED IN THIS ARTICLE ARE IN ADDITION TO ANY OTHER REMEDY AT LAW OR EQUITY AVAILABLE TO AN EXCAVATOR OR TO THE OWNER OR OPERATOR OF A DAMAGED UNDERGROUND FACILITY.</p> <p>Penalty awarded to prevailing party.</p>	<p>69-4-505 (2) Payment of costs and fees described in this section is due within 30 days of billing by the owner of the underground facility. The underground facility owner may enforce collection in a court of competent jurisdiction.</p> <p>69-4-513 damage fees collected by owners of underground facilities must be distributed to the appropriate one-call notification center. The damage fee must be used to fund training and educational programs and materials for excavators and the general public regarding the one-call notification system.</p>	<p>55-2209 (3) (a) An action to recover a civil penalty under this section may be brought by a prosecuting attorney. <u>If the prosecuting attorney does not file an action for such civil penalty within sixty (60) days from the date of a request for such action by the owner of an underground facility, the underground facility owner may file such action.</u> Venue for such an action shall be proper in the judicial district for the county in which the damaged underground facility is located or the county in which the excavator resides or maintains a principal place of business in this state. <u>The prevailing party in such action shall be entitled to recover its costs and reasonable attorney's fees incurred in such action.</u></p> <p>55-2209 (3)(d) Any civil penalty imposed pursuant to this section shall be deposited in the state general fund.</p>	<p>54-8a-12 (1) (a) The attorney general may bring an action in the district court located in the county in which the excavation is located to enforce this chapter. (b) The right of any person to bring a civil action for damage arising from an excavator's or operator's actions or conduct relating to underground facilities is not affected by: (i) a proceeding commenced by the attorney general under this chapter; or (ii) the imposition of a civil penalty under this chapter. (c) <u>If the attorney general does not bring an action under Subsection (1)(a), the operator or excavator may pursue any remedy, including a civil penalty.</u></p> <p>54-8a-12 (2) Any civil penalty imposed and collected under this chapter shall be deposited into the General Fund.</p>	<p>49-7A-17 Summary: Any person with a complaint against a party who violates law/rule may apply to the (One Call) board for relief.</p> <p>49-7A-21 Summary: A complaint alleging a violation of any statute or rule of the Statewide One-Call Notification Board shall be brought within ninety days of the alleged violation. Any complaint alleging a violation of § 49-7A-12 notification to operator of damage to an underground facility, shall be brought within one year of discovery of the alleged violation.</p> <p>Penalty is paid to the One Call Board. (cannot be used to offset member Fees; can be used to fund the enforcement process.)</p>	<p>§ 37-12-302(j) An action may be brought by <u>the attorney general, district attorney or county attorney</u> for enforcement</p> <p>§ 37-12-302(j) Any civil penalty received under this section shall be deposited into the county public school fund of the county in which the violation occurred.</p>

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<p>76-2325 <i>The trial shall be before the court, which shall consider the nature, circumstances, and gravity of the violation and, with respect to the person found to have committed the violation, the degree of culpability, the absence or existence of prior violations, whether the violation was a willful act, any good faith attempt to achieve compliance, and such other matters as justice may require in determining the amount of penalty imposed. All penalties shall be handled and distributed pursuant to Article VII, section 5, of the Constitution of Nebraska.</i></p>	<p>9-1.5-104.5. (5) <i>IN DETERMINING THE LIABILITY FOR OR THE AMOUNT OF ANY DAMAGES OR CIVIL PENALTY PURSUANT TO THIS ARTICLE, A COURT OR ARBITRATOR SHALL CONSIDER THE NATURE, CIRCUMSTANCES, AND GRAVITY OF THE ALLEGED VIOLATION AND THE ALLEGED VIOLATOR'S DEGREE OF CULPABILITY, HISTORY OF PRIOR VIOLATIONS, AND LEVEL OR COOPERATION WITH THE REQUIREMENTS OF THIS ARTICLE.</i></p>		<p>55-2209 (3)(c) <i>The court shall consider, as a mitigating factor in determining the amount of civil penalty to be imposed, evidence showing by a preponderance of the evidence that the violation occurred solely as a proximate result of the excavator or underground facility owner's reasonable response to an emergency beyond the control of the offending party.</i></p>	<p>54-8a-8 (4) <i>The amount of a civil penalty under this section shall be made taking into consideration the following:</i> <i>(a) the excavator's or operator's history of any prior violation or penalty;</i> <i>(b) the seriousness of the violation;</i> <i>(c) any discharge or pollution resulting from the damage;</i> <i>(d) the hazard to the health or safety of the public;</i> <i>(e) the degree of culpability and willfulness of the violation;</i> <i>(f) any good faith of the excavator or operator; and</i> <i>(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.</i></p>	<p>49-7A-22 <i>Upon the initiation of a complaint pursuant to § 49-7A-17,, a panel of three or five members of the Statewide One-Call Notification Board shall be appointed by the chair for the purpose of determining whether there is probable cause to believe there has been a violation of any statute or rule of the board. A determination of whether there is probable cause to believe there has been a violation shall be determined by a majority vote of the panel. The panel shall then recommend to the board that the complaint be dismissed for lack of probable cause, or recommend to the board that there is probable cause to believe that there has been a violation and recommend what penalty, if any, should be imposed pursuant to the provisions of § 49-7A-18 or 49-7A-19.</i> 49-7A-26 <i>The amount of recommended penalty shall be determined by a majority vote of the panel. Factors to be considered in determining the amount of the penalty shall be:</i> <i>(1) The amount of damage, degree of threat to the public safety, and inconvenience caused;</i> <i>(2) The respondent's plans and procedures to insure future compliance with statute and rules;</i> <i>(3) Any history of previous violations;</i> <i>(4) Other matters as justice requires.</i></p>	

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<p>"From the Nov 2006 Nebraska Diggers Hotline Newsletter: <i>The Attorney General's Office enforces violations of the One-Call Notification Act. Since the Attorney General's Office began widening efforts to enforce the Act in 2003, our office has received numerous complaints regarding possible violations of the Act. Most complaints have been regarding a failure to call the Digger's Hotline prior to excavation or a failure to wait 2 business days prior to excavation. Several complaints, however, have been for a failure to notify the One-Call Center of damage to underground lines, and for a failure to observe safe digging practices. In other words, it is not enough to call the Digger's Hotline to get lines located, if a contractor does not observe care in excavation once the underground lines are marked. Under the law, our office does not file civil penalty actions for failing to observe safe digging practices once the lines are marked. However, a contractor who does not observe the appropriate safeguards during excavation may still be liable to the underground facility operator for damages. While the Attorney General's office does not file civil penalty actions in those cases, our office does believe that it is extremely important to take the steps necessary to avoid damage to underground lines while excavating. The underlying purpose of the law is to avoid injury to persons or loss of services due to damage of underground facilities. Therefore, it is as important to take care while digging as it is to call the Digger's Hotline in the first instance. Our office does file civil penalty actions for failing to notify the Digger's Hotline of damages to an underground facility or for attempting to conceal damage to such facility. Obviously, the purpose of the law in this regard is to notify the underground line operator of such damage, so that it may be repaired. The penalties for a violation of this kind are the same as for any violation of the Act, up to \$500.00 to \$10,000.00 per occurrence, per day, depending on the type of underground facility affected.</i></p> <p>76-2324 <i>An excavator who fails to give notice of an excavation pursuant to section 76-2321 and who damages an underground facility by such excavation shall be strictly liable to the operator of the underground facility for the cost of all repairs to the underground facility. An excavator who gives the notice and who damages an underground facility shall be liable to the operator for the cost of all repairs to the underground facility unless the damage to the underground facility was due to the operator's failure to comply with section 76-2323. In addition to any liability provided in this section an operator of a damaged underground facility shall be entitled to any other remedies available at law or in equity provided by statute or otherwise.</i></p> <p>Any mention of Standard of Care 76-2329 <i>Sections 76-2321 and 76-2323 shall not apply to an excavation made under an emergency condition if all reasonable precautions are taken to protect the underground facilities.</i></p>	<p><u>Any mention of Standard of Care 9-1.5-104.5.</u> (1)(d)/(2)(d) Summary: If any underground facility is damaged as a result of the owner or operator's failure to belong to the Notification Association or failure to use reasonable care in the marking of the damage underground facility; or any person's failure to call for a locate or failure to exercise reasonable care in excavating; shall be presumably liable for: Any cost or damage together with reasonable costs and expenses of suit, including reasonable attorney fees.</p> <p>NOTE EXEMPTIONS: <i>Homeowner, rancher or farmer as defined in section 42-20-108.5, C.R.S., working on such Homeowner's, rancher's or farmer's property</i></p>	<p><u>Any mention of Standard of Care 69-4-505 (4)</u> <i>The act of obtaining information as required by this part does not excuse an excavator making any excavation from doing so in a careful and prudent manner, nor does it excuse the excavator from liability for any damage or injury resulting from the excavator's negligence.</i></p>	<p>55-2209 (5) <i>Unless expressly provided herein, nothing in this chapter eliminates, alters or otherwise impairs common law, statutory or other preexisting rights and duties of persons affected by the provisions of this chapter; nor does anything in this chapter, unless expressly so provided, eliminate, alter or otherwise impair other remedies, state or federal, including those at common law, of an underground facility owner whose facility is damaged; nor do the provisions of this chapter affect any civil remedies for personal injury or property damage except as expressly provided for herein.</i></p> <p>Any mention of Standard of Care 55-2202 (8) <i>"Locatable underground facility" means an underground facility which can be field-marked with reasonable accuracy.</i></p> <p>55-2205 (2) <i>An excavator shall use reasonable care to avoid damaging underground facilities.</i></p>	<p>54-8a-8 (8)(a) <i>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.</i></p> <p>Any mention of Standard of Care 54-8a-8 (7) <i>Subsection (1) does not apply to an excavation made: (a) during an emergency, if reasonable precautions are taken to protect any underground facility;</i></p>	<p><u>Any mention of Standard of Care 49-7A-10.</u> <i>Liability for damage to underground facility. Compliance with this chapter and the rules promulgated pursuant thereto does not excuse a person from acting in a careful and prudent manner nor does compliance with this chapter and the rules promulgated pursuant thereto affect any civil remedies otherwise provided by law for personal injury or for property damage except as specifically provided in this chapter. If information requested pursuant to statute or rule, is provided within the time specified and if the information provided sufficiently identifies the location of the underground facilities in accordance with § 49-7A-8 or any rule promulgated pursuant to § 49-7A-8, any excavator damaging or injuring the underground facilities is strictly liable for all damage proximately caused thereby.</i></p>	<p>§ 37-12-302(k) <i>Any person who shall make or begin excavation without complying with the provisions of this act and whose excavation causes injury or damage to an underground facility, shall be liable for all damages, including personal injury and property damages, caused by the excavation. This liability for damages is in addition to any penalty that may be imposed under subsection (j) of this section.</i></p> <p>Any mention of Standard of Care 37-12-302 (g) <i>Compliance with this section does not excuse a person from acting in a careful and prudent manner nor does compliance with this section excuse a person from liability for damage or injury for failure to so act.</i></p>