Division of Reliability and Security
Bureau of Underground Damage Prevention and Meter Testing

One Call Damage Offer of Settlement Penalty Guide Update

Bureau of Underground Damage Prevention
Justification of Penalty Guide Offer of Settlement Update

- **Public Safety** is the driving force in the increase of settlement offers.
- New Jersey is the **most densely populated** State in the Nation (source https://www.census.gov/quickfacts/fact/table/NJ/PST045223). Any damage to underground facilities places public safety at risk and NJ is unique in our population density.
- **Education**: Staff will be adding education sessions throughout the year and moving this to an online forum. Education and settlement offers that include education will increase awareness of the law and reduce the number of violations that threaten the safety of the public.
- Settlement offers that include an analysis of the percentage of violations over the previous 12 months compared to the number of tickets called in to ITIC will more **accurately identify repeat offenders** that place public safety at risk.

Bureau of Underground Damage Prevention
Justification of Penalty Guide Offer of Settlement Update (cont'd)

- Settlement offers that escalate based upon the root cause will more accurately increase fines on the **worst offenders**. An example of this is when an excavator does not call for a mark out and causes damage. This is a serious offense that is very dangerous to the public.
- The Underground Facility Protection Act ("UFPA") allows for increase settlement offers based upon historical violations. Looking back 12 months will not **overly punish violators that have come into compliance**.
- **Nothing** in the updated settlement guide **will prevent staff from compromising settlement** offers based upon the ability to pay. No settlement is final until it is approved by the Board.
- Offers of Settlement have not increased since 2000. $3,000 when calculated for CPI is now $5,590. The initial settlement offer increase is slightly below the CPI increase calculation.
- The only change to the Initial Offer to violators of non gas damages is the addition of education in settlement offers.

Board of Public Utilities Authority
L.1994, c.118, s.1

- 48:2-74. Findings, declarations, determinations 2. The Legislature finds and declares that damage to underground facilities caused by excavation and the discharge of explosives **poses a significant risk to the public safety**; that such damage to underground natural gas facilities poses a **substantial risk to the public safety**; and that the implementation of a comprehensive One-Call Damage Prevention System can substantially reduce the frequency of damage caused by these activities.
- The Legislature therefore determines that it is in the public interest for the State to require all operators of underground facilities to participate in a One-Call Damage Prevention System and to require all excavators to notify the One-Call Damage Prevention System prior to excavation or demolition.
- The Legislature further determines that the **Board of Public Utilities is the appropriate State agency to designate the operator of, and provide policy oversight to, the One-Call Damage Prevention System and enforce the provisions of this act.**

Penalty for Non Gas Violation
L.1994, c.118, s.1

- 48:2-88. Penalty for operator violations
- 16. a. An operator or excavator, or the person who operates the One-Call Damage Prevention System, who violates any provision of this act or any rule or regulation or order adopted pursuant thereto shall be liable to a civil 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 may not exceed **$25,000** for any related series of violations.

  b. Any civil action pursuant to subsection a. of this section may be brought in a court of this State by the board or by an affected operator. Nothing in this act shall affect any civil remedy for damage to an operator's underground facility or for actual damage to any person's property.

Penalty for Gas Violation
L.1994, c.118, s.1

- 48:2-86 Violation of act; injunction; civil penalties
- c. The provisions of section 16 of P.L.1994, c.118 (C.48:2-88) to the contrary notwithstanding, a person who is determined by the board, after notice and opportunity to be heard, to have violated any provision of P.L.1994, c.118 (C.48:2-73 et al.) or any rule, regulation, or 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 **not to exceed $200,000** for each violation for **each day** the violation continues, except that the **maximum civil penalty may not exceed $2,000,000 for any related series of violations.**

Penalty Compromise Not Changed

- 48:2-86 Violation of act; injunction; civil penalties
- Any civil penalty imposed pursuant to this subsection **may be compromised by the board.** In determining the amount of the penalty, or the amount agreed upon in compromise, the board shall consider the nature, circumstances, and **gravity of the violation; the degree of the violator's culpability; any history of prior violations**; the prospective effect of the penalty on the ability of the violator to conduct business; any good faith effort on the part of the violator in attempting to achieve compliance; the violator's ability to pay the penalty; and other factors the board determines to be appropriate.

One Call Settlements involving incidents are on a case by case basis.

- "One-Call incident" means any of the following, if it involves an underground facility and results from excavation or demolition:
- 1. The death of a person;
- 2. A serious disabling or incapacitating injuries to one or more persons, including employees or contractors of an excavator or underground facility operator;
- 3. The evacuation of a building that normally is occupied by more than 25 people;
- 4. The evacuation of a school, hospital, public transit station, or similar public building;
- 5. Damage to the property estimated at more than $ 122,000;
- 6. Damage to the property of the underground facility operator, which materially affects electric, gas, water or wastewater service to the public;
- 7. A major disruption of traffic, business, media operations, transportation, or any other vital communication or public service;
- 8. A significant environmental impact;
- 9. An event that attracts the presence of media personnel at the event, or that attracts telephone or other contact from media personnel at the time of the event; or
- 10. Any other occurrence similar to those at 1 through 9 above, which has a significant impact on community or public safety functions.
- Source N.J.A.C.14:2-1.2

Non Gas Damage Settlement Offer

Offenses in the past 12 months	First Offense	Second Offense	More than 8 Offenses
811 called never in the system	Warning	$2,500 + Education	$2,500 *
811 called not first offense	$1,000	$2,500 + Education	$2,500 *
811 not called	$2,500	$2,500 + Education	$2,500 *
Operator Mismark	$2,500	$2,500	$2,500 *

*** An analysis of tickets called in to damages will take place for potential further action based upon high hit ratios.**

Gas Violation Settlement Offer

Gas Damage	**First Offense**	**Second Offense**	**More than 8 ***
811 called	$4,000	$5,000	$10,000 *
811 not called	$5,000 + Education	$7,500 + Re-Education	$20,000 *
Hand digging Caused	$4,000	$5,000 + Education	$10,000 *
Mechanized digging	$5,000	$7,500 + Education	$20,000 *
Did not call 911	$20,000 + Education	$50,000	
Operator Mismark	$4,000	$5,000	

*** An analysis of the ratio of tickets called in to damages will occur. The fine will not increase for those with a high number of tickets called in in relationship to the damages that occur.**

January 2025

- The updated Settlement Guide offers will go into effect January 1, 2025. The lookback will only be from that date going forward.
- Education will be conducted through the contracted One Call Operator. Staff is working to increase sessions and allow for remote attendance on demand.
- Staff is available to answer questions regarding this roll out and welcomes feedback that will reduce violations as well as efforts that make the industry safer.
- A **Combined Effort** is needed to reduce damages and increase compliance with the UFPA. Although zero violations may be difficult to achieve this is our goal. Increasing awareness, increasing education and penalties that are settled on matching the violation will help achieve the goal.