Nebraska Underground Safety Committee

Penalty Schedule

for violations of NEB§ 76-2301-76-2332

Nebraska One Call Act and Title 155 Chapter 2 & 3

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Purpose of this Document

This is a document to assist the Nebraska Underground Safety Committee in penalties under NEB§ 76-2301 – 76-2333 (Nebraska 811 Law). It provides general principles for recommending penalties. However, it is not meant to hinder case-by-case decision- making by the Safety Committee based on specific facts of a case.

The Nebraska 811 Law requires the Nebraska State Fire Marshal Agency to make investigate complaints findings of violations and present the findings of that investigation to the Underground Excavations Safety Committee (Herein "the Committee"). The Underground Excavations Safety Committee reviews those findings and makes a penalty determination.

Guiding Principles for Penalty Schedule

- The objective of this schedule is to ensure public safety.
- The focus will be to educate parties and encourage compliance, rather than being punitive.
- Penalties should be imposed in steps, with each step more severe.
- Each step should have a set penalty recommendation, with the Committee having the ability to consider a variety of factors that could increase or decrease the penalty.
- The penalty level will be reset after a 365 day timeframe, in order to credit the excavator for going a certain period of time without violations.
- The 12- month period used in the schedule is based on when the violation occurred, not when it was reported or when the matter was referred to the Committee.

The Enforcement Process

- The enforcement process begins with a complaint of a violation of the Nebraska 811 Law. When a complaint is received by the State Fire Marshal Agency, it will send a letter to both parties to request more information if needed. Once 30 days has passed from the date of the information request letter, the SFM will continue to investigate the incident to find whether a violation of the Nebraska 811 Law has occurred.

- If the Agency finds a violation, a separate letter, along with SFM report and all evidence will be sent requesting enforcement, to the Underground Excavations Safety Committee for enforcement. The Committee reviews the evidence and findings of violation, then determines the appropriate penalty recommendation in accordance with this penalty schedule.
- In addition to any fines determined to be appropriate by the Committee, the State Fire Marshal Agency may also add all administrative costs associated with the investigation and handling of the case, with the exception of cases with a singular penalty of training within 90 days. If a case has training and fines assigned, then the associated administrative cost may be added.
- The Agency will send the respondent a Notice of Judgement letter to inform them of the penalty and provide information about the respondent's right to request a hearing. The respondent has a 30 day period from the date of receiving the letter to request a hearing to contest the finding of violation and penalty; but must notify the SFM to make the request.
- If the respondent does not request a hearing, the judgement notification letter will stand and the respondent will have 60 days after the end of the appeal period to submit the listed fines and fees as well as complete any required educational classes.
- If the fines and penalties are not satisfied after the 60 days, a total of a 10% late fee will be applied to the total amount of all fines and administrative fees pending. For every 30 days past the due date, an additional 10% will be added to the total fine amount. * The singular exception to this is for training that has reverted to a $5,000.00 fine. Late penalties will not accrue to the reverted fine for 30 days.
    - Maximum amount of late fees for Occupant Excavators: $5,000.00.
    - Maximum amount of late fees for Professional Excavators: $10,000.00.
    - Maximum amount of late fees for Operators: $10,000.00.
- If the total amount owed between fines and late fees has met or will exceed $500,000.00, the case will be referred to the Nebraska State Attorney General.

Definitions

Ticket – A "ticket", "dig ticket", "811 ticket", or "locate request" is created when a person contacts Nebraska 811 to provide notice of the person's intent to excavate.

Occupant Excavator – An occupant excavator, as determined by the Committee, typically means an individual working as a homeowner, a volunteer for a non-profit entity, or a tenant.

Person -- Person means an individual, partnership, limited liability company, association, municipality, state, county, political subdivision, utility, joint venture, or corporation and shall include the employer, employee, or contractor of an individual.

Professional Excavator – Excavator shall mean a person who engages in excavation in this state that is listed with the Department of Labor.

1. The Standard Penalty Schedule is Applied to the Following:

Violations:

Code	Description
NEB §76-2321(1)	Failure to provide notice of excavation (i.e., obtain a ticket/or maintain an active ticket).
NEB §76-2321	Performing excavation or demolition prior to two working days from the ticket request date without all affected operators clearing or marking area.
Title 155 Chapter 2.005.03	Performing excavation or demolition after the expiration of the ticket 17 days on a normal ticket. 14 days on a refresh.
NEB § 76-2321	Performing excavation outside of the requested locate area described in th normal ticket.
Title 155 Chapter 2 005.04	Failure to maintain clearance of tolerance zone with mechanized equipment.
NEB § 76-2323	Failure to dig within the 17day time frame for a normal ticket or 14 day tim frame on a refresh ticket.
NEB § 76-2326	Failure to report damage to the center. The excavator shall not attempt to conceal or repair the damaged utility.
NEB § 76-2331	No excavation shall be performed within twenty-five feet of an underground natural gas line as defined in 49 C.F.R 192.3 without representation from the pipeline operator or an agreement with that operato that must be in writing.

1.2 Standard Penalty Schedule for Professional Excavators

First violation	Training (converts to a $5,000.00 civil penalty if training is not completed within 90 days from the date of receiving the Committee's Notice of Judgement).
Second violation Also known as the "reset level"	$1,500.00 civil penalty with the option to complete training within 90 days from the date of notification of the Committee's Judgement.
Third violation	$3,000.00 civil penalty.
Four or more violations	Civil penalties escalate by $500.00 for every instance of damage up to $10,000.00 for gas and fiber. All other utilities up to $5,000.00.

- If a penalty for a violation is escalated, the next penalty will start at the next level higher than the previous penalty. For example, if the first penalty is escalated to the second penalty level, the second penalty will be treated as a third penalty.

1.3 Penalty for Having No Ticket NEB §76-2321(1)

Any professional excavator that does not have an active ticket during excavation will be subject to the penalty schedule below.

First violation	Training (converts to a $5,000.00 civil penalty if training is not completed within 90 days from the date of the Committee's Notice of Judgement).
Subsequent Violations	Follows the Standard Penalty Schedule, plus an additional $1,000 civil penalty for having no ticket.

1.4 Aggravating Factors Considered in Escalating Penalties for Violations by Professional Excavators- NEB §76-2326.

The Committee may recommend in addition to the standard penalties for aggravating circumstances:

Failure to complete training in previous case	Add $1,500.00 to standard penalty with chance to mitigate $1,500 if the excavator completes training.
Self-repair	Add $1,500.00 to standard penalty.
Concealment	1st concealment: Add training plus $1,500to standard penalty. 2nd concealment: Add additional $5,000 to standard penalty. 3rd concealment: Add additional $5,000 for all other utilities. **Penalties may be increased up to $10,000 for gas and fiber.

In addition to the foregoing factors, the Committee considers other factors that might warrant more severe penalties:

- Failure to report the damage to Nebraska 811;
- Failure to report release of gas or hazardous liquid to Nebraska 811 and local police and fire departments having jurisdiction (911);
- Attempts to temporarily repair the damage or stop the flow of gas or hazardous liquid;
- Physical injury;
- Property damage of over $10,000.00;
- Failure to pay previous civil penalties;
- Level of culpability;
- Amount of damage or threat caused by noncompliance;
- Other factors the Committee deems appropriate;

Penalties may be escalated, or training may be added, to the standard penalties, based on certain company factors as well:

- How many violations the excavator previously committed;
- How many previous violations occurred recently;
- The types of violations;
- How recently the company has undergone training;
- Specific actions or inactions by the excavator that do not follow best excavation practices.

1.5 Mitigating Factors That the Committee Considers When Reducing Penalties for Professional Excavators

The Committee may consider whatever factors it deems appropriate to reduce penalties. Generally, penalties will not be reduced simply because the respondents have already completed voluntary training. However, voluntary training is encouraged to increase safety and reduce future violations and associated penalties.

1.6 "Resetting" The Schedule for Professional Excavators

If a violation occurs more than 365 days after the previous violation, the schedule drops back to the second violation level, also known as the "reset level". The schedule will not reset for an excavator that has failed to complete previously ordered training and/or has failed to pay previously ordered civil penalties. If an excavator has failed to complete a previously ordered training and/or pay a previously ordered civil penalty, ; the excavator must complete the previously ordered training and/or pay the previously ordered civil penalty before becoming eligible for reduced penalties.

1.6A If the level of the violation being reset is below the "reset level", then the violation level will reset to the first level of the applicable penalty level.

1.7 Multiple Locations or Divisions

An entity with multiple locations and staff will be considered one entity for purposes of the penalty schedule. Entities will only be treated as separate if they can provide discrete federal ID numbers. If it is subsequently discovered that the entities do not have discrete federal ID numbers, then the entities that are currently treated as separate will be recombined and will continue at one step above the lowest penalty level the entity has incurred.

2. Occupant Excavators

An occupant excavator, as determined by the Committee, typically means an individual working as a homeowner, a tenant, or a volunteer for a non-profit entity.

2.1 Penalty Schedule for Occupant Excavators

Initial Violation:	Warning Letter- first time occupant excavators cannot be assessed a penalty of a monetary fine unless the violation "result(ed) in physical harm to a person."
Second and subsequent violation(s) within 12 months of the previous damage date:	$100.00, escalating by $100.00 for each occurrence, after considering mitigating and aggravating circumstances.

2.2 Aggravating Factors Considered in Escalating Penalties for Violations by Occupant Excavators-

The Committee may recommend additional penalties for aggravating circumstances:

- Recklessness;
- Physical injury;
- Property damage over $10,000.00;
- Failure to pay previous civil penalties or take required corrective action;
- Other factors the Committee deems appropriate.

2.3 Mitigating Factors the Committee Considers to Reduce Penalties for Violations by Occupant Excavators

The Committee may recommend a reduced penalty for the following circumstances:

- Level of culpability;
- Showing of good faith effort to comply after notice of violation;
- Amount of damage or threat caused by non-compliance;
- Ability to pay;
- Other factors the Committee deems appropriate.

2.4 "Resetting" the Schedule for Occupant Excavators

If a violation occurs more than 365 days after the previous violation, the schedule starts over (i.e. that violation is considered an initial violation for the purpose of calculating the penalty).

3. Operators

3.1 Penalties for Operators Who Mislocate or Fail to Follow Title 155 Chapter 2, and NEB §76-2323.

Initial Violation Mislocating or failure to respond electronically	$1,000 or lower, considering mitigating circumstances per violation.
Second or more violation for Mislocating or failure to respond electronically.	$1,000 + considering mitigating circumstances per violation.

3.2 Operators Who Fail to Locate NEB §76-2323.

Initial Violation for failure to Locate	$1,500 or lower, considering mitigating circumstances.
Second Violations for failure to Locate	$3,000 +considering mitigating circumstances
Third violations for failure to Locate	$5,000 max penalty per day violations exists.

3.3 Aggravating Factors the Committee May Considers Escalating Penalties for Violations by Operators

The Committee may recommend additional penalties in addition to the penalty for aggravating circumstances including:

- Recklessness
- Physical injury
- Property damage of over $10,000.00
- Failure to pay previous civil penalties or take required corrective action
- Other factors the Committee deems appropriate

3.4 Mitigating Factors That Considered When Reducing Penalties for Operators

- Overall level of company compliance
- Factors outside the operator's control or difficult to control, including:
- Broken tracer wire
- Blocked access to the property to be located
- Underground congestion (i.e. other types of underground facilities in vicinity)
- Weather
- Change in pipeline material
- Inserted lines (where plastic line is pushed through an old steel line)
- Depth of facility
- Pipeline facility has one or more drastic change of direction.
- Other factors the Committee deems appropriate.

3.5 Operators Who Fail to Join One Call System NEB § 76-2318

The civil penalty for failing to join the association (Nebraska 811) is below with different timelines and maximum penalties.

Initial violation	Warning Letter
Failure to join within 1 months of the due date in the warning letter	$500.00
Failure to join within 2 months of the due date in the warning letter	$5,000.00 for all except Gas and Fiber
Failure to join within 2 months of the due date in the warning letter	$10,000.00 Gas and fiber

4. Training

4.1 Mandated Training for Excavators

For the purposes of required training, to be "trained" means: (1) attending the instructor led training, and (2) successfully passing the examination at the end of the instructor led training. Only instructors and instructor led training approved by the State Fire Marshal will fulfill penalty requirements for penalties ordered by the Underground Safety Committee.

The employees to be trained must include at least one attendee that is a member of management or has a supervisory role; other employees including safety officers, excavators, or those responsible for calling in locates, scheduling work, managing the operations, or actual excavation. At least three (3) employees must be trained, unless the company has less than three (3) total employees on staff. In that case, all employees must be trained. Additional employees are encouraged to attend training, but it is not required. Respondents who utilize agents or outside contractors are encouraged to have a member of those entities attend.