S T A T E O F N E W Y O R K

3761

2009-2010 Regular Sessions

I N S E N A T E

March 31, 2009

Introduced by Sen. ADAMS -- (at request of the Department of Public Service) -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law and the public service law, in relation to the protection and excavation of underground facilities and penalties for gas safety violations

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Paragraphs a and b of subdivision 1 of section 765 of the general business law, as amended by chapter 685 of the laws of 1994, are amended to read as follows:

a. Failure to comply with any provision of this article shall subject an excavator or an operator to a civil penalty of up to [one] TWO thousand FIVE HUNDRED dollars for the first violation and up to an additional [seven] TEN thousand [five hundred] dollars for each succeeding violation [which] THAT occurs [in connection with the entire self-same excavation or demolition activity] within a [two] TWELVE month period.

b. The penalties provided for by this article shall not apply to an excavator who damages an underground facility due to the failure of the operator to comply with any of the provisions of this article nor shall in such instance the excavator be liable for repairs as prescribed in subdivision [five] FOUR of this section.

S 2. Subdivision 3 of section 25 of the public service law, as added by chapter 665 of the laws of 1980 and paragraph (a) as amended by chapter 375 of the laws of 1986, is amended to read as follows:

3. (A) Notwithstanding the provisions of subdivision two of this section, any such public utility company, corporation or person and the officers, agents and employees thereof that knowingly fails or neglects to obey or comply with a provision of this chapter, or an order or regulation adopted under the authority of this chapter, adopted specifically for the protection of human safety OR PREVENTION OF SIGNIFICANT DAMAGE

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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TO REAL PROPERTY, including but not limited to the commission's code of gas safety regulations shall, if it is determined by the commission that such safety violation caused or constituted a contributing factor in bringing about: (I) a death or personal injury; (II) DAMAGE IN EXCESS OF FIFTY THOUSAND DOLLARS TO REAL PROPERTY; OR (III) A REPEATED GAS PIPELINE SAFETY VIOLATION WITHIN TWENTY-FOUR MONTHS, forfeit to the state of New York a sum not to exceed the greater of:

[(a) two] (A) FIVE hundred [and fifty] thousand dollars constituting a civil penalty for each separate and distinct offense[; provided, however, that for], EXCEPT THAT THE MAXIMUM PENALTY FOR A REPEATED GAS PIPELINE SAFETY VIOLATION WITHIN A TWENTY-FOUR MONTH PERIOD SHALL BE ONE MILLION DOLLARS. FOR purposes of this paragraph each day of a continuing violation shall not be deemed a separate and distinct offense. The total period of a continuing violation, as well as every distinct violation, shall be similarly treated as a separate and distinct offense for purposes of this paragraph; or

[(b)] (B) the maximum forfeiture determined in accordance with subdivision two of this section.

(B) FOR PURPOSES OF THIS SUBDIVISION, A "REPEATED GAS PIPELINE SAFETY VIOLATION" SHALL MEAN A SECOND OR SUBSEQUENT VIOLATION, WITHIN TWENTY-FOUR MONTHS, OF AN ORDER OR REGULATION RELATING TO CATHODIC PROTECTION OF PIPELINE FACILITIES, UPGRADES TO OR MAXIMUM ALLOWABLE SYSTEM OPERATING PRESSURE, GAS ODORIZATION, SYSTEM OVERPRESSURE PROTECTION, PERIODIC LEAK SURVEYS, PIPELINE VALVE INSPECTIONS, MAINTENANCE AND REPLACEMENT OF PIPELINES, OR GAS LEAK INVESTIGATIONS, CLASSIFICATION, SURVEILLANCE AND REPAIR.

S 3. This act shall take effect immediately and shall apply to all violations occurring on or after such effective date.