



RESPONSE TO A NOTICE OF PROBABLE VIOLATION

Case Number: C232120002

Name: Horusicky Construction Inc.

The provisions of California Code of Regulations, Title 19, Division 4, Chapter 3, governs the Notice of Probable Violation (Notice) proceeding before the California Underground Safety Board (Board). Specifically, 19 CCR section 4252 provides your response options upon the receipt of a Notice.

Be advised that all material submitted by you in response to a Notice are subject to public disclosure.

Please select from one of the response options listed below. You have 30 business days to submit your written response to the Underground Safety Board. Failure to submit a written response will be considered by the Board as a "No Contest" response. Please attach this form with your selection to your response. If you choose "Contest in Writing" or "Contest in Writing and Request Informal Hearing," please also include your written explanation and documents that may be referenced in your written explanation or informal hearing. For all options, Board investigators may present the basis for your probable violation on the date of the public meeting as provided in your Notice, and the Board will review your case and vote to determine whether a probable violation exist and whether the corrective action and/or penalty proposed by the Board staff is appropriate at the meeting.

Response Options

___ No Contest

You do not contest the violations or the penalty. If you choose to not contest the violations or the penalty, you will waive your right to request the Board to reconsider its decision or recommendation issued.

___ Contest in Writing

You wish to contest either the violation, the penalty, or both by providing the Board with written explanations and other records supporting the explanation. You will submit the written explanations and records, if any, with your written response within 30 business days of receiving this Notice. Your response must not exceed 10 pages (excluding exhibits) in length and must be on 8.5" x 11" white paper, double-spaced, and in a font size no smaller than 11-point. You must submit the original and 12 physical copies of the written explanation and records to the address below or submit one (1) copy electronically to enforcement.dig@energysafety.ca.gov. You may request an extension to the page limit by submitting a request to the Board staff within 5 days of receiving this Notice. The Board staff will notify you of its determination with respect to the page

limit extension request within 10 days of you submitting the request. The Board will review and vote on your case on the date of the public meeting provided in the Notice.

Contest in Writing and Request Informal Hearing

You wish to contest either the violation, the penalty, or both with oral argument at an informal hearing during a public Board meeting. You will submit with your written response, written explanations, information, or other materials you wish to reference in your oral hearing. Your response must not exceed 10 pages (excluding exhibits) in length and must be on 8.5" x 11" white paper, double-spaced, and in a font size no smaller than 11-point. You must submit the original and 12 physical copies of the written explanation and records to the address below or submit one (1) copy electronically to enforcement.dig@energysafety.ca.gov.

Your hearing would be during the public meeting noted in the Notice, on **November 9, 2026**, at 1:00 p.m., and the location of the meeting will be in Sacramento, California.

California Natural Resources Agency Building
Auditorium -First Floor
715 P Street
Sacramento, California 95814

Please note that your oral hearing may not start exactly at the time provided as there may be multiple hearings during one Board meeting. You may request to reschedule your hearing no later than 15 business days from your hearing date. Your request to reschedule a hearing may be granted no more than once and only for good cause.

You may participate in person or through a virtual meeting platform. You will have 15 minutes to present your reasons for contesting the allegation or reasons that may support a modification or elimination of the penalty or corrective action. During your hearing, conducted pursuant to Section 4253 of Title 19 of the California Code of Regulations, board investigators may present the basis for your Notice of Probable Violation. You will be granted up to 15 minutes to respond to the Notice and up to 5 minutes to respond to any Board staff rebuttal. You may arrange, at your expense, for a stenographer or court reporter to transcribe the informal hearing. You must provide a copy of any transcription to the Board.

The Board will issue a decision at,

- The informal hearing;
- Thereafter within 45 business days of the informal hearing; or
- At a subsequent Board public meeting where a quorum of the Board is present.

The Board will adopt the issued written decision at the hearing or a subsequent public meeting. The Board's decision is effective upon the adoption of the written decision.

____ Reservation of Rights to Contest Violation with the Enforcement Agency

You contest the violation, the penalty, or both, but do not wish to present your comments to the Board. You request that the Board refer the case to the appropriate state or local agency that would conduct the enforcement of the probable violation pursuant to Government Code section 4216.6(c) (Enforcement Agency), and you will reserve the right to contest the violation, the penalty, or both before the Enforcement Agency. The Board will review and vote on your case to determine whether a probable violation exists and whether the corrective action and/or penalty proposed by the Board staff is appropriate at the public meeting noted in your Notice. Should the Board determine a probable violation exists, the Board will refer your case to the Enforcement Agency.

Board Contact Information:

Please direct all formal correspondence, including your written response to the Notice, to the Board either via email at enforcement.dig@energysafety.ca.gov or via mail to the following address:

Office of Energy Infrastructure Safety
Underground Safety Board
715 P St., 15th Floor
Sacramento, CA 95814

Please provide your written response within 30 business days of receiving this Notice. If a response is provided via mail, the mailed response must be received by the Board within 30 business day.

Penalties

Any penalties, including corrective actions, are only proposals by Board staff, and do not require any current corrective action or payment at this time. Your Enforcement Agency will provide the final determination to and instructions for any penalty. Please do not include any proof of compliance with proposed corrective actions or payment of a proposed penalty with your written response.

ADA Compliance

The California Underground Safety Board complies with the Americans with Disabilities Act ("ADA") by ensuring that the facilities are accessible to persons with disabilities, and providing this Notice and information given to the members of the California Underground Safety Board in appropriate alternate formats when requested. If you need further assistance, including disability-related modifications or accommodations, you may contact the Underground Safety

Board no later than seven (7) calendar days before a scheduled hearing at (916) 902-6000.
California Relay Service is available by dialing 711.

September 23, 2026

VIA EMAIL AND U.S. MAIL

Office of Energy Infrastructure Safety
Underground Safety Board
715 P St., 15th Floor
Sacramento, CA 95814
Email: enforcement.dig@energysafety.ca.gov.

**RE: Response Contesting First Amended Notice of Probable Violation
Case No. C232120002
Respondent: Horusicky Construction Inc.
Location: 3767 Ashwood Avenue, Los Angeles, California 90066
Date of Alleged Violation: February 22, 2023
Board Meeting: November 9, 2026, 1:00 p.m.**

Dear Members of the Underground Safety Board:

This firm represents Horusicky Construction Inc. ("HCI") in the above-referenced matter.

On behalf of HCI, and in response to the First Amended Notice of Probable Violation dated September 4, 2026 (the "Amended Notice"), HCI hereby contests the alleged violation and the proposed penalties in writing and requests an informal hearing before the Board.

HCI elects the response option styled "Contest in Writing and Request Informal Hearing" under Title 19, California Code of Regulations, section 4252, and asks that its oral presentation be heard at the Board's public meeting on November 9, 2026. The completed Response form reflecting this election is enclosed. This response is timely, submitted within the period ending September 30, 2026.

HCI respectfully asks the Board to find that no probable violation warranting penalties exists and, in the alternative, to decline to recommend any monetary penalty. As set forth below: (1) the facility that was damaged was a private, unregistered homeowner line that the regional notification

center could not have located, so the notification requirement's protective purpose was not implicated; (2) any lapse in the timing of HCI's notification was inadvertent oversight, not a knowing or willful act, placing this matter at the lowest end of the statutory penalty framework; (3) the Board's delay of roughly three and one-half years in issuing the Notice is unreasonable and prejudicial and independently counsels against penalties; and (4) the statutory mitigation factors — including HCI's immediate corrective conduct and adoption of formal excavation-safety procedures — call for no sanction beyond, at most, the educational course already proposed.

I. Factual Background

HCI is a masonry and swimming-pool contractor licensed by the Contractors State License Board (License No. 309844) and in continuous good standing since 1975. Homeowner Serena Puga retained HCI to design and construct a swimming pool at her residence at 3767 Ashwood Avenue in Los Angeles.

A mature tree stood in the middle of the planned pool footprint in the backyard and had to be removed. On February 22, 2023, HCI used a Bobcat E20 to remove the tree. As the tree and its root ball were pulled, a very shallow electrical line — buried only two to three inches deep and intertwined with the tree's roots — was displaced and damaged. That line was a private, homeowner-installed 1/2-inch, 110-volt line running between the house and the garage. It served only a space heater in the garage. Its shallow depth, absence of glue at the joints, and construction indicated it had been installed by the homeowner, in all likelihood without a permit. The line ran directly through the center of the planned pool and would have had to be relocated in any event.

HCI requested a Dig Alert ticket the following morning, February 23, 2023 (Ticket No. A230540009-00A), for the pool installation. Every utility operator that responded returned a Clear

No. A230540009-00A), for the pool installation. Every utility operator that responded returned a Clear — No Conflict code. Los Angeles County Water Works returned Code 002: Clear — No Conflict But Privately Owned Utility on Property — Contact Private Utility Owner for Locate. As HCI’s principal has confirmed, and consistent with the ticket responses, no main gas line or main electrical utility line ran through the pool area. The main electrical service was overhead and plainly visible, and the gas line was located only in the front yard.

HCI did not walk away from the incident. It returned to the property the next day, reset the breakers that had tripped, restored power, and connected a replacement line to re-energize the affected area.

II. The Damaged Facility Was a Private, Unlocatable Line Outside the Protective Purpose of the Notification Requirement

The violation alleged is failure to notify the regional notification center before excavating, in violation of Government Code section 4216.2(b), which requires an excavator to notify the center at least two working days before beginning excavation. The Board’s file, however, establishes that the only facility damaged was a private line that the regional notification center could not have identified or protected — a fact that goes to the heart of whether the alleged violation caused the kind of harm the statute exists to prevent.

The notification-and-locate scheme operates through a “regional notification center,” which the statute defines as a nonprofit association or other organization of operators of subsurface installations. The center’s function is to warn its member operators so that they can mark and protect *their* installations. It has no mechanism to locate a facility whose owner is not a participating operator. A homeowner’s private, unregistered service line — such as the shallow garage line here — is not

carried on any operator's records and would not have been marked no matter how much advance notice HCI had given. That structural limitation is reflected in the Dig Alert ticket itself: Los Angeles County Water Works expressly returned Code 002, directing that any *privately* owned utility on the property is the private owner's responsibility to locate.

The Legislature drew the same line elsewhere in the statute. For purposes of the locate obligations, an "operator" excludes the owner of real property whose subsurface installations exclusively serve that property and are under the owner's control — precisely the character of Ms. Puga's private garage line. And the statute makes notification concerning private-property, no-permit work of this kind permissive rather than mandatory, providing that an excavator "may" contact the center where private property is known to contain a subsurface installation other than the excavator's own. (Gov't Code § 4216.2.)

We do not ask the Board to disregard the timing of HCI's ticket. We ask the Board to recognize that even flawless compliance with section 4216.2(b) would not have located or protected the private line that was damaged. The damage to that line therefore cannot fairly be treated as a consequence of the alleged notification lapse, and it cannot be used to elevate the gravity of the violation or the penalty.

III. Any Violation Was Inadvertent Oversight, Not Knowing or Willful, and Falls at the Lowest End of the Penalty Framework

The penalty framework of Government Code section 4216.6 is expressly graduated by culpability. A *negligent* violation is subject to a civil penalty not to exceed \$10,000; a *knowing and willful* violation, not to exceed \$50,000; and a knowing and willful violation that damages a *gas or hazardous liquid pipeline* subsurface installation *and* results in the escape of a flammable, toxic, or corrosive gas or liquid, not to exceed \$100,000.

Two points follow. First, the \$100,000 tier referenced in the Notice has no application whatsoever. That tier requires both damage to a gas or hazardous liquid pipeline and an escape of gas or liquid. Here there was neither: the damaged facility was a 110-volt private electrical line, there was no gas or hazardous liquid, and nothing escaped. No one was injured. Including that figure in the Notice materially overstates HCI's exposure.

Second, HCI's conduct was, at most, negligent — and in truth reflects nothing more than an inadvertent oversight. HCI did not conceal the ticket timing. Indeed, just the opposite, it disclosed it and cooperated throughout the investigation. HCI obtained the Dig Alert ticket the very next morning, promptly restored the homeowner's power, and installed a replacement line. That is not the conduct of an excavator acting knowingly or willfully to evade the law. It is the conduct of a licensed contractor that made an isolated timing error and immediately worked to make the property whole. There is no basis to treat this as anything other than a negligent, low-gravity violation.

IV. The Board's Delay of More Than Three Years in Issuing the Notice Is Unreasonable and Prejudicial

The incident occurred on February 22, 2023. The homeowner submitted her complaint on July 31, 2023. Yet the investigation report was not signed until April 3, 2026, and the original Notice did not issue until August 17, 2026 — roughly three and one-half years after the incident and after the Board had full knowledge of the alleged violation.

While the statutes of limitation in the Code of Civil Procedure do not by their terms bar an administrative proceeding, California courts have long held that the equitable defense of **laches** may bar an administrative enforcement action by a public agency where there is unreasonable delay and resulting prejudice. [(*Robert F. Kennedy Med. Ctr. v. Dep't of Health Servs.*, 61 Cal. App. 4th 1357,

(1998).] Laches “may operate as a bar to a claim by a public administrative agency” when “the requirements of unreasonable delay and resulting prejudice are met.” [(*Malaga Cnty. Water Dist. v. State Water Res. Control Bd.*, 58 Cal. App. 5th 447 (2020).] Because no statute of limitations directly governs, courts “borrow” the limitations period for the analogous action at law as “the outer limit of reasonable delay,” and once that period has run, delay is presumed unreasonable and prejudice is presumed, shifting the burden to the agency to justify its delay. [(*Brown v. State Pers. Bd.*, 166 Cal. App. 3d 1151 (Ct. App. 1985).]

The analogous period here is three years. An action upon a liability created by statute, other than a penalty or forfeiture, must be brought within three years. (Civ. Proc. Code § 338.) California courts have borrowed that same three-year period as the point at which an agency’s delay in an administrative penalty proceeding becomes presumptively unreasonable and prejudicial. [(*Malaga Cnty. Water Dist. v. State Water Res. Control Bd.*, 58 Cal. App. 5th 447 (2020).] Indeed, “any claims where the [agency] could be said to have known of the violation more than three years before the enforcement action was initiated are subject to the burden shifting presumption that the delay in initiating an action was unreasonable and prejudicial.” (*Id.*) The Board knew of this alleged violation no later than July 31, 2023, when the complaint was filed, yet did not issue the Notice until August 2026 — well beyond three years. The presumption applies, and the Board bears the burden of showing a reasonable excuse and the absence of prejudice.

That burden cannot be met here. Prejudice from such delay may be shown by faded memories, lost evidence, or detrimental reliance on the status quo. [(*Brown v. State Pers. Bd.*, 166 Cal. App. 3d 1151 (Ct. App. 1985).] The passage of more than three years has impaired HCI’s ability to marshal its defense: the excavation site was long ago completed or altered, the shallow private line and its point

of failure can no longer be independently examined, and recollections of a brief 2023 tree-removal have necessarily dimmed. HCI reasonably regarded the matter as closed after cooperating with the investigation and hearing nothing further for years. The Board's unexplained delay is precisely the kind of stale prosecution the doctrine of laches guards against, and it independently supports declining to find a penalized violation.

V. The Statutory Mitigation Factors Call for No Penalty Beyond, at Most, the Educational Course

Should the Board nonetheless find a probable violation, the governing statute directs that sanctions "shall be graduated" and may begin with notification and information letters and direction to attend education before any financial penalty. In assessing citations and penalties, the Board "shall consider" the type of violation and its gravity, the degree of culpability, the excavator's history of violations, the excavator's history of work conducted without violations, and the efforts taken to prevent the violation and to mitigate its consequences. (Gov't Code § 4216.19.) Every one of these factors favors HCI:

- **Gravity.** The violation was a one-day timing lapse involving a private line that the notification system could not have protected. No utility facility, no gas or hazardous liquid line, and no member operator's installation was endangered. No injury occurred.
- **Culpability.** The lapse was inadvertent, not knowing or willful. HCI disclosed the timing candidly and cooperated fully with the investigation.
- **History of violations.** HCI has none. It has held its license since 1975.
- **History of work without violations.** HCI has performed excavation and pool work for decades without a comparable incident.
- **Prevention and mitigation.** HCI restored the homeowner's power and installed a replacement

line the very next day. It has since adopted formal underground-excavation procedures for its employees, drawn from the Excavation Safety guidance published by the California Department of Industrial Relations, Division of Occupational Safety and Health, so that Dig Alert tickets are obtained in advance going forward. A corrective program is already in place.

Imposing a substantial monetary penalty on these facts would be disproportionate to a non-willful, low-gravity oversight that has already been corrected. HCI respectfully submits that no financial penalty is warranted and that, at most, completion of the Board's educational course would fully serve the statute's remedial purpose.

VI. Context Regarding the Complaining Homeowner

Finally, and while HCI does not offer this as a legal defense, the Board should weigh the reliability and motivation of the underlying complaint. The homeowner's own contemporaneous text messages, which are part of the Board's file, reflect open hostility toward HCI's principal rather than a measured safety concern. On the evening of the incident she wrote "i hate him" and, later, "So I may need an electrician. I really hate him." When asked why the wire was damaged, she answered "Who the fuck knows." She discussed reporting HCI to the police and preserving "prints," and described using the interval to "strategize" and to "pivot to Mike" after concluding another matter. HCI's prior counsel likewise documented what he described as the "harassing nature" of the homeowner's parallel complaints to the Board, the Contractors State License Board, and HCI's surety.

This history bears directly on how much weight the Board should give the homeowner's characterization of events, including her insistence that the line was deliberately "cut." The record supports a very different account: a shallow, unpermitted private line was inadvertently displaced during routine tree removal and was promptly repaired. HCI asks the Board to keep that context in

mind in evaluating the basis for the alleged violation.

VII. Conclusion and Requested Relief

For the foregoing reasons, Horusicky Construction Inc. respectfully requests that the Board:

1. Find that no probable violation warranting penalties exists;
2. In the alternative, decline to recommend any monetary penalty and impose no sanction beyond, at most, completion of the Board's educational course; and
3. Grant HCI an informal hearing at the November 9, 2026 public meeting, at which HCI and its counsel will present the foregoing.

HCI appreciates the Board's consideration and looks forward to being heard. Please direct all correspondence concerning this matter to the undersigned.

Thank you for your consideration of the foregoing.

Sincerely,



MAC W. CABAL
Principal Attorney