

# Underground Facilities Safe Excavation Board

*In the Matter of  
Pierre Landscaping, Respondent*

No. 19LA1090

September 14, 2020

## **DECISION**

This decision was made by the Board on September 14, 2020. Respondent Pierre Landscaping did not respond to the Notice of Probable Violation.

Board members Del Toro, Forte, Johns, Munoz, and Voss participated in the decision. Board members Bianchini, Charland, and Johnson did not participate in the decision.

Having considered the report of investigation, the Board finds that a probable violation of Government Code section 4216.2(b) occurred.

The Board finds that an order directing Pierre Landscaping to take the Board's education course is an appropriate sanction.

The Board will transmit the investigation results and the recommended penalty to the Contractors State License Board.

### **Pierre Landscaping Excavated Without Obtaining a Dig Ticket**

Pierre Landscaping damaged a gas line while digging a trench at an elementary school. Pierre Landscaping did not obtain a ticket, and violated the requirement that one obtain a ticket before excavating.<sup>1</sup> One is not permitted to excavate until after the legal excavation start date and time, which is indicated on a dig ticket.<sup>2</sup> And one may not continue to excavate after the ticket expires.<sup>3</sup>

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<sup>1</sup> Gov. Code § 4216.2(b), (e), (i)

<sup>2</sup> Gov. Code § 4216.2(b)

<sup>3</sup> Gov. Code § 4216.2(e), (i)

### **Referral to the Contractors State License Board is Appropriate**

When the Board finds a probable violation of Dig Safe laws, the Board may “transmit the investigation results and any recommended penalty” to the appropriate agency, identified in Government Code section 4216.6(c) or (d).<sup>4</sup> Section 4216.6(c)(1) provides that the Registrar of Contractors of the Contractors State License Board shall enforce the requirements of Article 2 (commencing with section 4216) on contractors.

“Contractor” is defined by the Business & Professions Code, in section 7026, as one who “does himself or herself or by or through others, construct, alter, repair, add to ... improve ... or demolish any ... project, development or improvement...” And Business and Professions Code section 7011.4(a) makes the Contractors State License Board responsible for enforcing statutes applicable to contractors, including unlicensed persons acting as contractors.<sup>5</sup>

In digging the trench, Pierre Landscaping acted as a contractor.

### **An Order to Take the Board’s Education Course is Appropriate**

Section 4216.19(e) provides that sanctions shall be graduated and may include notification and information letters, direction to attend relevant education, and financial penalties. And further, that information is relevant to the sanction determination:

- (1) The type of violation and gravity.
- (2) The degree of culpability.
- (3) The operator’s or excavator’s history of work conducted without violation.
- (4) The operator’s or excavator’s history of work conducted without violations.
- (5) The efforts taken by the violator to prevent violation and, once the violation occurred, the efforts taken to mitigate the safety consequences of the violation.

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<sup>4</sup> Gov. Code § 4216.19(d)

<sup>5</sup> For example, Bus. & Prof. Code § 7028, acting as a contractor without a license; § 7028.17, compliance by unlicensed person with CSLB decision; § 7030.1, disclosure of suspended or revoked license

Pierre Landscaping performed excavation without obtaining a ticket. The Board finds that on order directing Pierre Landscaping to take the Board's education course is appropriate.

Date:

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Carl Voss, Chair