

Underground Facilities Safe Excavation Board

*In the Matter of
the City of Lafayette*

No. 20SA01291

May 11, 2021

DECISION

This decision was made by the Board on May 11, 2021. Respondent City of Lafayette did not contest the Notice of Probable Violation, and has asked that up to four participants from Lafayette be allowed to attend the course.

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

Having considered the report of investigation, the Board finds that a probable violation of Government Code section 4216.1 occurred.

The Board finds that an order directing the city of Lafayette to (1) take the Board's education course, and (2) to become a member of USA North 811 before September 1, 2021, is an appropriate sanction.

The Board will transmit the investigation results and the recommended penalty to the city of Lafayette.

The City of Lafayette is Required to Be a Member of USA North 811

Government Code section 4216.1 requires every operator of subsurface installation to become a member of a regional notification center. The city of Lafayette is an "operator" within the meaning of Government Code section 4216(o), which defines "operator" to be any public agency that owns, operates, or maintains a subsurface installation. A "subsurface installation" is any underground pipeline, conduit, duct, wire, or other structure other than a non-pressurized drain line. (Gov. Code §4216(s).) The city of Lafayette operates buried electrical lines. USA North 811 is

the regional notification center that provides service in northern California, including the city of Lafayette.

Referral to the City of Lafayette City Council 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). (Gov. Code § 4216.19(d).) Section 4216.6(d) provides that “A local governing board may enforce this article on local agencies under the governing board’s jurisdiction.”

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 this 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.

Date: 5/25/2021

Marjorie Del Toro
Marjorie Del Toro, Chair