

California Underground Facilities Safe Excavation Board

*In the Matter of
Imerys Filtration Minerals, Inc.*

No. 20LA1094

August 10, 2021

DECISION

This decision was made by the Board on August 10, 2021. Respondent Imerys Filtration Minerals, Inc. (identified in the NOPV as Imerys Mineral USA, Inc.) has provided a written response to the Notice of Probable Violation, and has argued that (1) Imerys was not “excavating” within the meaning of Government Code section 4216(g) because Imerys was “clearing vegetation” and “landscaping,” and (2) Southern California Gas Company did not accurately mark the location of the pipeline that was damaged.

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 4216.2(b) occurred.

The Board finds that an order directing Imerys Filtration Materials, Inc., to take the Board’s education course is an appropriate action.

Imerys Excavated Without First Notifying a Call Center

Imerys argues that it did not “excavate,” within the meaning of the statute. Government Code section 4216(g) defines “excavation” to mean “any operation in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means of tools, equipment, or explosives ... in any of the following ways: grading ... scraping ... or any other way.” The Board finds that Imerys damaged a gas pipeline with the blade of a bulldozer. And both the fact of

that damage and the photographs in the investigation report establish that Imerys moved material in the ground with the bulldozer. The work constituted “excavation.”

Imerys was required to, but did not, notify a regional notification center before performing the work.¹ For that reason, the utility operator, Southern California Gas Company, was not required to respond in the manner required by Government Code section 4216.3(a).

The Board is the Appropriate Enforcement Authority

Government Code section 4216.6(e) authorizes the Board to enforce provisions of the call-before-you-dig law on persons not listed in subdivisions (c) or (d) of section 4216.6. Imerys is not an entity of the type listed in those subdivisions. Therefore, the Board is the appropriate enforcement authority.

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.

¹ Gov. Code § 4216.2(b), (e), (i)

The Board finds that an order directing Imerys to take the Board’s education course is appropriate because Imerys appeared to misunderstand the statutory definition of excavation, because erosion and other changes to the ground can reduce the depth at which underground utilities are buried, because Imerys appeared to misunderstand the information indicated by the Southern California Gas Company permanent markers, and because the incident was neither “egregious nor persistent” within the meaning of Government Code section 4216.17(c).

Date:

Marjorie Del Toro
Marjorie Del Toro, Chair