



**OFFICE OF ENERGY INFRASTRUCTURE SAFETY
UNDERGROUND SAFETY BOARD**
715 P Street, 20th Floor | Sacramento, CA 95814
916.902.6000 | www.energysafety.ca.gov

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September 1, 2022
The City of Kingsburg Department of Public Works
1200 Kern Street
Kingsburg, CA 93631

Case No.: 21SA01472

Address/Location of Violation(s): 333 Sierra Street, Kingsburg, CA 93631
Date/Time of Violation(s): July 13, 2021, 5:01 p.m.

Dear City of Kingsburg Department of Public Works:

You are receiving this Notice of Probable Violation (Notice) as a result of an investigation conducted pursuant to Government Code sections 4216 *et seq.* The California Underground Safety Board (Board) investigators have concluded an investigation of an incident on July 13, 2021, at 1:10 p.m. in Kingsburg, and found violations of 4216.3(c)(1)(A) of the Government Code:

4216.3(c)(1)(A) On and after January 1, 2021, every operator shall supply an electronic positive response through the regional notification center before the legal excavation start date and time. ...

Violation No. 1

Swinerton Builders requested ticket W111700318-00W on April 27, 2021, for 333 Sierra Street in Kingsburg, with a legal start date of April 29, 2021, at 5:01 p.m. The City of Kingsburg did not supply an electronic positive response for that ticket, in violation of Government Code section 4216.3 (c)(1)(A). (Evid. 18.)

Violation No. 2

Bill Nelson Construction requested ticket X114000542-00X on May 20, 2021, for 333 Sierra Street in Kingsburg, with a legal start date and time of on May 24 at 5:01 p.m. The City of Kingsburg did not supply an electronic positive response for that ticket, in violation of Government Code section 4216.3 (c)(1)(A). (Evid. 19.)

Hearing and Referral to Enforcement Agency

During the Board's public virtual meeting on November 8, 2022, at 1:00 p.m., the Board will determine whether the violations occurred and whether the penalty proposed in this Notice is

appropriate. You may contest the violation and proposed penalty noted in the below section at this meeting. Details of the Board's virtual meeting may be accessed here: [Underground Safety Board Business Meeting | Office of Energy Infrastructure Safety \(ca.gov\)](#)

Should the Board determine that a probable violation exists, the Board will refer your case with either the proposed penalty below or a new recommended penalty to the appropriate state or local agency for enforcement pursuant to Government Code section 4216.6(d). The Board's recommendation to the Enforcement Agency will include its finding of probable violation and a recommended penalty. The Board's recommendation does not constitute a final determination of your case. The Enforcement Agency has discretion to accept, amend, or reject the Board's recommendation, in whole or in part, through its own investigations pursuant to Government Code section 4216.6(d).

The Enforcement Agency for this case is:

City of Kingsburg City Council
1401 Draper Street
Kingsburg, CA 93631
559-897-5821

Proposed Penalty

Any penalties provided in this Notice, including corrective actions, are only proposals by Board investigators and do not require any corrective action or payment at this time. Your Enforcement Agency will provide the final determination to and instructions for any penalty.

Pursuant to Government Code section 4216.6, violation of Government Code section 4216 *et seq.* by an operator or excavator may be subject to a maximum penalty of \$10,000 for negligent violation, or \$50,000 for knowing and willful violation. Knowing and willful violation of Article 2 that results in damage to a gas or hazardous liquid pipeline subsurface installation and that results in the escape of any flammable, toxic, or corrosive gas or liquid may be subject to a maximum penalty of \$100,000.

The Board investigators are recommending the below corrective action and penalty:

Mandatory completion of the Underground Safety Board's education course. Please see <https://dig.fire.ca.gov/education-course/> for more information.

The proposed penalty reflects that The City of Kingsburg is eligible for corrective action in lieu of a financial penalty, as The City of Kingsburg cooperated with the investigation, the violation did not result in substantial injury or environment or property damage, and Kingsburg does not have a history of violation as identified in Board actions.

Response to this Notice

Enclosed as part of this Notice is a document titled *RESPONSE TO A NOTICE OF PROBABLE VIOLATION*. Please carefully review this document and note the response options. All material you submit in response to this enforcement action are subject to public disclosure. You have 30 business days from September 1, 2022 to submit your written response to the Board. Your response to this notice must be received by the Board no later than October 14, 2022.

If you do not respond within 30 business days, this constitutes a waiver of your right to contest the Board's determination on whether there are probable violation(s) in this case and to refer the case to the Enforcement Agency with the Board's recommendation.

Sincerely,

Jason Corsey

Jason Corsey

Chief of Investigations, Underground Infrastructure Directorate
Office of Energy Infrastructure Safety

Proposed hearing date: November 8, 2022



RESPONSE TO A NOTICE OF PROBABLE VIOLATION

Case Number: 21SA01472

Name: City of Kingsburg Department of Public Works

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 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 probable violation(s) exist and whether the corrective action and/or penalty proposed by the Board investigator(s) 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.

X **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 8, 2022 at 1:00 p.m. and Details of the Board's virtual meeting may be accessed here: <https://energysafety.ca.gov/events-and-meetings/events/underground-safety-board-business-meeting-3/>. Please note that your oral hearing may not start exactly at the time provided as there may be multiple hearing 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 investigator(s) 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.

X **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(d) (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 probable violation(s) exist and whether the corrective action and/or penalty proposed by the Board investigator(s) is appropriate at the public meeting noted in your Notice. Should the Board determine probable violation(s) exist, 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., 20th 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 investigator(s), 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 California 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.



City of Kingsburg

1401 Draper Street, Kingsburg, CA 93631-1908
(559) 897-5821 Fax: (559) 897-5568

Laura North
Mayor

Vince Palomar
Mayor Pro Tem

COUNCIL MEMBERS
Michelle Roman
Jewel Hurtado
Brandon Pursell

Alexander J. Henderson
City Manager

October 13, 2022

Office of Energy Infrastructure Safety
Underground Safety Board
715 P St., 20th Floor
Sacramento, CA 95814

Case No: 21SA01472

Dear Underground Safety Board:

The City of Kingsburg and specifically the Public Works Department has elected to a reservation of rights to contest the violation with the enforcement agency but accepts and will comply with the recommendation to complete a mandatory completion of the Underground Safety Board's education course. The Public Works Department acknowledges, the department failed to provide an electronic positive response to the requested 811 ticket related to the incident that took place on July 13, 2021. The events that took place on July 13, 2021, while unfortunate where not caused by the Public Works Department failure to provide an electronic positive response. The Public Works Department acknowledges the importance of providing electronic responses to all tickets, and the results of the events that took place on July 13, 2021, provided a learning opportunity for our department to review our processes.

The City of Kingsburg Public Works Department had an active relationship with the T-Mobile project. This project was the biggest commercial project that took place in 2021, in the City of Kingsburg. The Public Works Department did mark all water lines at the project site and the only failure was not responding electronically. Upon notification of the damage, the City of Kingsburg fully cooperated with the ensuing investigation and immediately revised our 811-ticket marking and response process. The City of Kingsburg has reached out to the Underground Infrastructure Directorate – Office of Energy Infrastructure Safety regarding the education course they offer. The next class will be held the 3rd week of November of this year and the City of Kingsburg Public Work staff responsible for 811 tickets will participate.

If you have any further questions or need additional information, please feel free to contact me via phone at 559-897-1066 or email at dgalvez@cityofkingsburg-ca.gov.

Thank you,

Daniel Galvez
Public Works Director
City of Kingsburg