



**OFFICE OF ENERGY INFRASTRUCTURE SAFETY  
UNDERGROUND SAFETY BOARD**  
715 P Street, 20th Floor | Sacramento, CA 95814  
916.902.6000 | [www.energysafety.ca.gov](http://www.energysafety.ca.gov)

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*By U.S. mail to the address below and electronic mail*

February 3, 2023

## **NOTICE OF PROBABLE VIOLATION**

Brian Snead, Damage Prevention, Right of Way Specialist Pacific Northern Region Bay Division  
Kinder Morgan

1140 Canal Boulevard  
Richmond, California 94804

**Case No.: C221950004**

Location of Violation: Near railroad tracks on the northeast side of Highway 33, between  
Pomelo Avenue and Marshall Road in Patterson, California

Date of Violation: July 7, 2022

Dear Kinder Morgan:

You are receiving this Notice of Probable Violation (Notice) as a result of an investigation conducted pursuant to Government Code § 4216 *et seq.* The California Underground Safety Board (Board) investigator has concluded an investigation of an incident on July 7, 2022, near the railroad tracks on the northeast side of Highway 33, between Pomelo Avenue and Marshall Road, in Patterson, California, and found the following violation:

**Government Code § 4216.2(b):** Excavating without first notifying the Regional One Call Center.

Kinder Morgan failed to contact the Regional One Call Center before using a probe to penetrate the ground.

### **Hearing and Referral to Enforcement Agency**

During the Board's public meeting on **April 10, 2023, at 1:00 p.m.**, the Board will determine whether the violations occurred and whether the penalties proposed in this Notice are appropriate. You may contest the violations and proposed penalties noted in the below section at this meeting. The location of that meeting has not yet been determined. It will be held at a location in Southern California, and should you wish to appear at that meeting, once the location is determined, that location may be obtained from the Board's website at this address:

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(c) (Enforcement Agency). The Board's recommendation to the Enforcement Agency will include its findings of the probable violations and any recommended penalties. 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(c).

The Enforcement Agency for this case is:

CAL FIRE - Office of the State Fire Marshal, Pipeline Safety Division  
715 P Street  
Sacramento, California 95814

### **Proposed Penalty**

Any penalties provided in this Notice, including corrective actions, are only proposals by Board staff 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 § 4216.6, violation of Government Code § 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 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 Staff are recommending the below corrective action and penalties:

**Mandatory completion of the Underground Safety Board's education course.** Please see <https://energysafety.ca.gov/what-we-do/underground-safety-board/education-course/> for more information.

The proposed penalty is merited, as Kinder Morgan did not contact the Regional One Call Center prior to excavating.

## **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 the February 3, 2023, to submit your written response to the Board. Your response to this Notice must be received by the Board no later than March 16, 2023.

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 violations in this case and to refer the case to the Enforcement Agency with the Board's recommendation.

Sincerely,

*Brittney Branaman*

Brittney Branaman

Assistant Executive Officer for Education & Enforcement | Underground Safety Board

Proposed hearing date: April 10, 2023