

**From:** [Dean Sage](#)  
**To:** [Underground Safety Enforcement](#)  
**Subject:** Response to Notice of Probable Violation - CAS-01491-J2J3Q4  
**Date:** Friday, March 10, 2023 1:54:03 PM  
**Attachments:** [USA Construction - Response to Notice of Probable Violation.pdf](#)

---

You don't often get email from dean@sagelawsd.com. [Learn why this is important](#)

Dear Sir / Madam:

**Please confirm receipt of this email and attachment at your earliest convenience.**

We are writing on behalf of USA Construction in connection with Case No. CAS-01491-J2J3Q4. Pursuant to the CONTEST IN WRITING option, please see the response attached.

Please note that USA Construction is located at a new address. Please update your records with the following:

USA Construction  
18034 Ventura Blvd, Unit 115  
Encino, CA 91316

Please note that we are unable to attend the April 10, 2023 public meeting, but would be happy to attend the Board's meeting in May or June if required. Please respond to our office via email, phone, or fax.

I look forward to hearing from you and thank you in advance for your assistance.

Sincerely,

**Dean Sage, J.D. LL.M.**

Sage Law Firm

[www.sagelawsd.com](http://www.sagelawsd.com)

PH: 619.880.6444

FX: 619.828.6425

2801 B Street #120  
San Diego, CA 92102



PH: 619.880.6444  
FX: 619.828.6425

March 10, 2023

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

*Sent by E-mail Only {enforcement.dig@energysafety.ca.gov}*

RE: Case No.: CAS-01491-J2J3Q4

USA Construction  
18034 Ventura Blvd, Unit 115  
Encino, CA 91316

**RESPONSE TO NOTICE OF PROBABLE VIOLATION  
CONTEST IN WRITING**

Dear Sir / Madam:

We are writing on behalf of USA Construction (“Company”), in connection with Case Number CAS-01491-J2J3Q4 and the Notice of Probable Violation dated February 2, 2023 issued by the Underground Safety Board (“Board”). Please find a copy of the Notice of Probable Violation (“Notice”) attached for your convenience.<sup>1</sup>

USA Construction wishes to respond to the Notice by selecting the **Contest in Writing** option, as described in the “Response to a Notice of Probable Violation” document received with the Notice. Pursuant to the response instructions, that document is attached with the “Contest in Writing” option checked.<sup>2</sup> Please note that the Company also wishes to reserve all appeal rights before the Board and Enforcement Agency, if necessary.

<sup>1</sup> Exhibit A: *Notice of Probable Violation; February 2, 2023*

<sup>2</sup> Exhibit B: *Response to a Notice of Probable Violation*

The Notice of Probable Violation indicates that a California Underground Safety Board investigator concluded that two violations occurred on April 5, 2022 at an incident at 1134 17th St, Apt A, Santa Monica, California:<sup>3</sup>

- Government Code Sec. 4216.2(b): Excavating without first notifying the Regional One Call Center.
- Government Code Sec. 4216.4(c)(3): Failure to report damage to the Regional One Call Center.

The Notice of Probable Violation states: “USA Construction dug a trench to install an electrical line without contacting the Regional One Call Center. USA Construction exposed an underground gas line operated by Southern California Gas and used a saw to cut the line. After damaging the gas line, USA Construction failed to report the damage to the Regional One Call Center.”

**USA Construction wishes to contest both the violations and the penalty with explanations, information, and details about the circumstances surrounding the incident. We respectfully request that the Board review and carefully consider the information herein at the public meeting on April 10, 2023, or the next public meeting where a quorum is present, prior to making any determination with respect to the violations, corrective action, or financial penalty.**

The Notice of Probable Violation states that “Board staff are recommending the below corrective action and penalty:”

- 1. Mandatory completion of the Underground Safety Board’s education course.**
  - At the time of writing, USA Construction has contacted the Board to schedule an education course. This corrective action is currently only a recommendation, yet the Company’s owner is taking proactive measures to ensure a complete understanding of compliance obligations to prevent any incidents or violations on a going forward basis. USA Construction has all intentions of completing the education course prior to the Board’s public meeting on April 10, 2023.
- 2. A financial penalty, the amount to be determined by the Board.**
  - USA Construction respectfully requests that any financial penalty be waived on account of this being the Company’s first and only violation. There are certain misstatements in the California Underground Facilities Safe Excavation Board’s Investigation Report, and additional details that we believe support the request that financial penalties be waived. The facts and explanations are delineated below.

---

<sup>3</sup> We trust that Board members have access to California Underground Facilities Safe Excavation Board’s Investigation Report dated December 19, 2022. If not, please notify us and will provide a copy.

The Notice of Probable Violation includes the following summary on Page 1: “USA Construction dug a trench to install an electrical line without contacting the Regional One Call Center. USA Construction exposed an underground gas line operated by Southern California Gas and used a saw to cut the line. After damaging the gas line, USA Construction failed to report the damage to the Regional One Call Center.”

USA Construction wishes to respond to that summary and the corresponding findings listed in the investigative report with the following additional information and explanation:

1. “USA Construction dug a trench to install an electrical line without contacting the Regional One Call Center.”

USA Construction was under the impression that the work was a type that did not require contacting the Regional One Call Center. The owner of USA Construction believed that the type of apartment building at the premises was relieved from the notification requirement. Moreover, the owner believed contacting the Regional One Call Center was unnecessary due to the trench being only 18” deep. The owner did not knowingly or willfully fail to contact the Regional One Call Center but was rather mistaken about the conditions requiring a call.

USA Construction is now aware of the notification requirements in the Governmental Code and ensures full compliance in all future projects. USA Construction is scheduling the Underground Safety Board’s education course as soon as possible to further understand all obligations and maintain compliance on a going forward basis.

2. “USA Construction exposed an underground gas line operated by Southern California Gas and used a saw to cut the line.”

USA Construction contends that the gas line operated by Southern California Gas (“SCG”) was only placed 3” below the surface, in violation of the law. The California Code of Regulations, Sec. 536 states that underground piping shall be buried not less than 18” below the surface of the ground. USA Construction contends that the gas line would not have been exposed or damaged if it had been buried at the appropriate depth.

A worker for USA Construction, on an as-needed basis, was the individual responsible for the incident and was performing the work at the time of the violation. The owner of USA Construction instructed the worker to use *only* a shovel when digging the trench. This is the standard practice of the Company when digging trenches and the worker had been instructed similarly in projects previous to the incident. The worker, however, did not follow these instructions, and as he indicated to the investigator, also used a pickaxe and possibly a small saw. The worker stated that he believed the gas line was an abandoned pipeline, likely on account of the improper depth of the line. He did not consult with USA Construction’s owner before the damage to the pipeline occurred.

USA Construction did not knowingly or willfully expose the gas line and contends that the exposure was accidental and unexpected on account of the improper depth at which the gas line was encountered.

USA Construction no longer has a relationship with the worker involved in the incident of April 5, 2022. Moreover, the Company is implementing procedures that will increase supervision and oversight of workers and ensure full compliance going forward. Again, the Company is completing the Board's education course to further safeguard against any future violations or incidents.

3. "After damaging the gas line, USA Construction failed to report the damage to the Regional One Call Center."

Upon the damaging of the gas line, a small fire broke out. The owner of USA Construction, upon learning of the fire, properly called 9-1-1. Both the Santa Monica Fire Department and Southern California Gas were called to the scene. As both the Fire Department and the operator of the gas line were present, USA Construction reasonably believed that either agency, or both, would properly report the incident, and USA Construction would therefore not need to report to the Regional One Call Center. USA Construction mistakenly believed that making such a report would be duplicative as at least one if not both of the other parties would be legally required to properly report the incident as necessary.

USA Construction did not knowingly or willfully fail to report the incident to the Regional One Call Center. They reasonably believed that the Santa Monica Fire Department or operator of the gas line would make the proper report and notify the necessary agencies. USA Construction is now aware that they, also, are subject to the post-incident reporting requirements and is completing the Board's education course proactively to ensure full compliance on a going forward basis. The Company is also reviewing their policies and procedures to ensure that the Regional One Call Center is properly contacted before any excavation begins, and that they are properly notified of any subsequent incident during the course of the work or project.

**Based on the foregoing, USA Construction respectfully requests that the Board reconsider the violations and waive the imposition of financial penalties in connection with this matter.**

Page 2 of the Notice of Probable Violation states that "the proposed penalty reflects the fact that the excavator deliberately cut the gas line." USA Construction strongly asserts that this statement is patently untrue. The actions or inactions of USA Construction were not intentional, deliberate, knowing, willful, or in reckless disregard to the law or safety of the community. During the incident they took corrective action including calling 9-1-1 and disconnecting the building's electricity at the premises.

*Underground Safety Board  
Re: USA Construction  
Case No. CAS-01491-J2J3Q4  
March 10, 2023*

Please be reminded that this is USA Construction's first and only violation. They are a small company and will be forced into bankruptcy if faced with a large financial penalty. Bankruptcy will be the only available option if a civil penalty is imposed. They are remorseful about their errors and are taking all manner of cautionary steps to prevent similar errors occurring in the future.

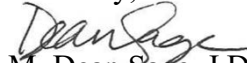
It bears repeating that the violations were not made knowingly or willfully, and the failures to meet reporting requirements were not intentional or deliberate. USA Construction, in their action or inaction, did not operate in reckless disregard to the law or safety of the community. The imposition of the civil penalties proposed in connection with operators or excavators who knowingly and willfully violate provisions of the California Government Code would be improper and unequitable in this instance.

In addition to the completion of the Board's education course, the owner of USA Construction would willingly submit to further education requirements, community service, or other corrective action that would not result in financial ruin.

Please contact our office promptly if additional information or documentation is required to effectuate the Company's request. Should we be required to attend a public meeting of the Board, please let us know with thirty (30) days notice and we will be happy to discuss this matter at the next meeting of the Board. You may reach us by phone, fax, or e-mail.

Thank you in advance for your assistance and cooperation in this matter. We look forward to a prompt response.

Sincerely,



M. Dean Sage, J.D. LL.M.  
Sage Law Firm



OFFICE OF ENERGY INFRASTRUCTURE SAFETY  
UNDERGROUND SAFETY BOARD  
715 F Street, 30th Floor | Sacramento, CA 95834  
916.807.8700 | www.energyinfrastructure.ca.gov

**MEMBER**  
Kirsten Krieger - Chair  
Miguel Lopez - Chair  
Donna Wilson  
Frankie Blackford  
Marlene Duff-Loren  
Markell Johnson  
Liz Torres

**EXECUTIVE OFFICER**  
Tony Martin

By U.S. mail to the addresses below and electronic mail

February 2, 2023

## NOTICE OF PROBABLE VIOLATION

Sharon Rubin  
USA Construction  
18954 Strathern Street  
Reseda, California 91335

Case No.: CAS-01491-J2J3Q4  
Address of the Violations: 1134 17<sup>th</sup> Street, Apartment A  
Santa Monica, California 90403  
Date of Violations: April 5, 2022

Dear USA Construction:  
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 April 5, 2022, at 1134 17<sup>th</sup> Street, Apartment A, Santa Monica, California, and found the following violations:

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

**Government Code § 4216.4(c)(3):** Failure to report damage to the Regional One Call Center.

USA Construction dug a trench to install an electrical line without contacting the Regional One Call Center. USA Construction exposed an underground gas line operated by Southern California Gas and used a saw to cut the line. After damaging the gas line, USA Construction failed to report the damage to the Regional One Call Center.

### 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 penalty proposed in this Notice is appropriate. You may contest the violation and proposed penalty 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:

[Underground Safety Board Business Meeting | Office of Energy Infrastructure Safety \(ca.gov\)](#)

Should the Board determine 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 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(c).

The Enforcement Agency for this case is:

**Contractors State License Board**  
9821 Business Park Drive  
Sacramento, CA 95827  
916-255-3900

#### 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 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.

Board staff are recommending the below corrective action and penalty:

**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.

**A financial penalty, the amount to be determined by the Board.**

The proposed penalty reflects the fact that the excavator deliberately cut the gas line. Government Code § 4216.6(a)(1) provides for imposition of a financial penalty of up to \$10,000 for one who negligently violates a call-before-you-dig law, and § 4216.6(a)(3) for imposition of a financial penalty of up to \$100,000 for one who knowingly and willfully violates.



**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 2, 2023, to submit your written response to the Board. Your response to this notice must be received by the Board no later than March 15, 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



## RESPONSE TO A NOTICE OF PROBABLE VIOLATION

Case Number: CAS-01491-J2J3Q4

Name: USA Construction

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 violations exist and whether the corrective action and/or penalty proposed by the Board investigators 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](mailto: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.

### **\_\_\_ 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.dlg@energysafety.ca.gov](mailto:enforcement.dlg@energysafety.ca.gov).

Your hearing would be during the public meeting noted in the Notice, on April 10, 2023, at 1:00 p.m., and 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: [Underground Safety Board Business Meeting | Office of Energy Infrastructure Safety \(ca.gov\)](#). Please note that your oral hearing may not start exactly at the time provided as there may be multiple hearings 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 investigators 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.

### **\_\_\_ 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 § 4216.6(c) (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 violations exist and whether the corrective action and/or penalty proposed by the Board staff is appropriate at the public meeting noted in your Notice. Should the Board determine probable violations 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](mailto:enforcement.dig@energysafety.ca.gov) or via mail to the following address:

Office of Energy Infrastructure Safety  
Underground Safety Board  
715 P St., 20<sup>th</sup> 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 staff, 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 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.