



Iqbal Dhapa, PE, Acting Bureau Manager | Bureau of Engineering
iqbalbhai.dhapa@sfdpw.org | T. 628.271.2570 | 49 South Van Ness Ave. Suite 800, San Francisco, CA 94103

June 21, 2023

VIA EMAIL ONLY: enforcement.dig@energysafety.ca.gov

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

**Subject: Case No.: D222980003 (Intersection of 16th Street and Potrero Avenue
San Francisco, California 94110) – Contesting Notice in Writing and Requesting
Informal Hearing on July 10, 2023 (Virtual Meeting Platform)**

Dear Brittney Branaman:

In response to the Underground Safety Board’s (the “Board”) notice dated May 9, 2023, Case No. D222980003 (the “Notice”), on behalf of the Municipal Transportation Agency (“SFMTA”), Public Utilities Commission (“SFPUC”), and the Department of Public Works (“Department”) of the City and County of San Francisco (“City”), the Department contests the allegations that the identified City departments violated California Code of Regulations, Title 19, Sections 4151(c) (refusal to cooperate with the investigation) and 4003(a) (failure to maintain current contact information). In addition, to the extent some of the City departments, including those listed above and the Department of Technology, may not have provided timely electronic positive responses or failed to provide electronic positive responses, the City requests that the Board decline recommending sanctions against the City due to the City’s lengthy history of work conducted without violations and the minimal safety consequences resulting from the City’s omissions. To the extent necessary to answer any questions or comments raised by the Board or Board staff in response to this letter, the City requests an informal hearing on July 10, 2023, which City staff can join virtually, if necessary.

1. The City Did Not Fail to Maintain Current Contact Information With USA North 811.

By way of background, in July 2020 the Department moved from an office building at 30 Van Ness Avenue (“Former Address”) to a new office building at 49 South Van Ness (“Current Address”). The Department timely updated the City’s contact information with the regional notification center (also known as USA North 811) to indicate the Department’s move to the Current Address. Specifically, the Department updated the contact information for the Department (account number 109284, name CTYSF3), the SFMTA (account number 109600, name CTYSFO, City & County of San Francisco Parking and Traffic), and the SFPUC (account numbers 109495 and 109442, name CTYSF2 and CTYSF4, City & County of San Francisco Water and Heat/Power/Light). After the Department moved to the Current Address, the building at the Former Address was demolished and remains under construction.

The Department first became aware of the Notice after I received an email inquiry from a colleague at SFPUC on May 22, 2023 followed by a mailed copy of the Notice dated May 9, 2023 and addressed to the Department at the Current Address. The Notice alleges the Department, the SFPUC, and the SFMTA “[f]ail[ed] to maintain current contact information with the regional notification center.” On the contrary, on three occasions predating the Notice (on July 24, 2020, July 30, 2020, and December 7, 2020), the Department contacted memberservices@usanorth811.org, the email address prescribed by USA North 811, to provide the Department’s updated contact information. (See attached Exhibit 1 (noting the Current Address) and Exhibit 2 (noting the Current Address).)

Following the Department’s address update, the Department received written communications at the Current Address on June 17, 2022, October 24, 2022, and December 23, 2022. These documents indicate that USA North 811 was aware of the City’s updated mailing address. (See, e.g., Exhibit 3 (letters sent to Current Address), Exhibit 4 (invoice sent to SFPUC’s current address).)

2. The Board Mailed the Notice to an Invalid Mailing Address Despite the City’s Timely Address Update; The City Could Not Be Deemed to Have “Failed” to Respond to Letters of Which it Was Unaware.

The Notice cites Section 4151(c) of Title 19 of the California Code of Regulations, which states: “Any excavator or operator who *obstructs an investigation by taking actions that were known or reasonably should have been known to prevent, hinder, or impede an investigation* is subject to sanctions under the Act and this division.” (Emphasis added.) Yet the Notice fails to allege any “actions” taken by the City that were “known or reasonably should have been known” to “prevent, hinder, or impede” the investigation. While the Notice alleges that the City “failed to respond to two information request letters requesting information about ownership of an unmarked facility,” noting the Board sent two letters on November 28, 2022 and December 14, 2022, the Department could not have “failed to respond to” information request letters that it had not received.

First, both of these letters were sent to the Former Address despite the Department’s multiple actions updating the address to the Current Address in July and December 2020 (updating the Department’s address as well as the SFPUC’s and the SFMTA’s addresses).

Second, while emails about the information request appear to have been sent to me in November and December 2022, these emails were automatically diverted into the Clutter folder of my Microsoft Outlook account. As a result, I was unaware of the information request letters until after I received a mailed copy of the Notice (which was addressed to the Current Address) and I searched for any related information request letters and other correspondence. According to Microsoft, “‘Clutter’ can help you filter low-priority email, saving time for your most important messages” and “[o]nce you turn it on, Clutter is automatic.” (Microsoft Website at <https://support.microsoft.com/en-au/office/use-clutter-to-sort-low-priority-messages-in-outlook-7b50c5db-7704-4e55-8a1b-dfc7bf1eafa0>.) The Notice did not allege that the Department knowingly “prevent[ed], hinder[ed], or impede[d]” the investigation, nor did the Notice allege that the Department failed to respond to an information request despite being aware of it. After realizing the Board’s emails were diverted to the Clutter folder, I have taken actions within my Outlook account to ensure that I receive future correspondence from the Board.

The Notice alleges further that on February 7, 2023, the Board mailed the Notice to the Department “at the address on file at the regional notification center” and the Board received the notice “postmarked as return to sender” on February 15, 2023. Again, it appears that the Board mailed the Notice to the Former Address despite the Department’s multiple actions updating the address to the Current Address in July and December 2020 by following the regional notification center’s protocols.

The Department asserts that it could not be deemed to have “failed” to respond to mailed letters that it did not receive as a result of the Board’s failure to address the letter to the Current Address. The Department only became aware of the Notice on or about May 22, 2023, after the Notice was addressed correctly to the Department’s Current Address. In addition, City departments that were aware of the information requests attempted to cooperate. As the Board staff acknowledged in Exhibit 10 of the Notice, SFMTA looked into and responded to the Board staff’s information request.

3. Potential Alternative Explanation for Incorrect Mailing Address on File With the Regional Notification Center and the Board Despite the City’s Timely Address Updates.

Since the Department made no fewer than three attempts in 2020 to reflect the Department’s move from the Former Address to the Current Address, the Department asserts it did not fail to maintain its current contact information with the regional notification center even though the Board’s internal database did not appear to contain the correct contact information for the City. (Notice, Exhibit 14 (indicating Former Address).) It is possible that the regional notification center maintains multiple records of contact information and all the records may not have been updated internally. However, it did have the Current Address in some of its records as it had sent multiple letters to our current address. (See, e.g., Exhibit 3.) In response to the request from the Board for contact information, the regional notification center may have provided incorrect information. The Department would recommend that the Board consider and investigate whether the regional notification center experienced technical problems that hindered the complete updating of its mailing records, or led to the regional notification center’s provision of incorrect information in response to the Board’s query, despite efforts by the City to update its contact information. Staff at the regional notification center noted that as of November 2022, they had

been “extremely busy with our cutover to our new system.” (Notice, Exhibit 15.) In addition, in a presentation at the Board’s January 9-10, 2023 meeting titled “811 Contact Center Update – USAN, Executive Director Wingate stated, “[n]ot all functionality is working properly. Many bugs need to be fixed. Development is still ongoing.” (See <https://efiling.energy.ca.gov/eFiling/Getfile.aspx?fileid=53333&shareable=true>.) Technical issues outside of the control of the City may have contributed to correspondence from the Board being sent to incorrect addresses for City departments.

4. SFMTA and SFPUC Acknowledge Failure to Comply with Electronic Positive Response Requirements.

The SFPUC and the SFMTA acknowledge the departments failed to provide electronic positive responses before the legal start date and time for the ticket at issue. However, any omission by these City departments did not result in any damage because the facility Phoenix Electric struck did not belong to the City. The City’s errors or omissions were unintentional. Moving forward, the City departments will take additional steps to help ensure compliance with the Underground Safety Board’s requirements including by completing the Underground Safety Board’s education course. The City maintains that penalties are unwarranted and inappropriate here.

5. The Board Should Decline To Assess Sanctions Against the City Due to Relevant Considerations Set Forth in Section 4201 of Title 19 of the California Code of Regulations.

While the SFPUC and the SFMTA acknowledge the unintentional failure to provide sufficient electronic positive response, this did not result in the incident at issue, and the City denies that it either failed to maintain current contact information with the regional notification center or refused to cooperate with an investigation. Available evidence indicates that USA North 811 did not have the correct contact information in its system despite the City’s multiple efforts to provide the correct contact information.

The Notice acknowledges that “the violations did not cause substantial injury, environment, or property damage, and . . . the respondent does not have a history of violations” In light of these

factors and the evidence that the SFPUC, the SFMTA and the Department did not receive USA North 811's communications, and thus could not fail to respond to those communications, the City maintains that penalties are unwarranted and inappropriate. Section 4201, subsection (a), of Title 19 of the California Code of Regulations states that when determining whether to assess a sanction for the violation of the Dig Safe Act of 2016, the Board may consider: "[t]ype of violation and its gravity, such as risk of or actual injury, death, or environment or property damage," "[d]egree of culpability" including "whether there were intervening acts or omissions by other persons," the respondent's "history of work conducted without violations," and "[e]fforts taken by the respondent to prevent the violation and, once the violation occurred, the efforts taken to mitigate the safety consequences of the violation." These considerations weigh against assessing sanctions against the City in Case No. D222980003.

Moreover, Section 4201, subsection (b), of Title 19 of the California Code of Regulations states "the Board must consider evidence that is relevant to any of the following matters," including, "[c]ooperation with state agencies during the investigation" and whether "Respondent had received one or more information letters from a Board investigator." Despite the City's efforts to update its contact information with USA North 811, the City and its departments were delayed in learning of the Board investigation due to incorrect contract information being on file. However, once the City learned of the Board investigation, it cooperated to the best of its ability. Thus, these considerations also weigh against assessing sanctions upon the City.

Please do not hesitate to contact me at (628) 271-2570 or Iqbalbhai.Dhapa@sfdpw.org if you have any questions regarding this letter.

Sincerely yours,

/s/ Iqbalbhai Dhapa

Iqbalbhai Dhapa, Acting Bureau Manager
Bureau of Engineering,
San Francisco Public Works

cc: Danny Phung (SFPUC)
Eddy Ho (SFMTA)
Aidin Sarabi (SFMTA)
Brian Roberts (Department of Technology)

Attachments:

- Exhibit 1: Emails from Lesley Wong to memberservices@usanorth811.org (July 24, 2020 and July 30, 2020)
- Exhibit 2: Email from Lesley Wong to memberservices@usanorth811.org (December 7, 2020)
- Exhibit 3: Correspondence From Underground Service Alert of Northern California & Nevada (various dates)
- Exhibit 4: Invoice from USA North 811 (July 20, 2021)

EXHIBIT 1

**Emails from Lesley Wong to memberservices@usanorth811.org
(July 24, 2020 and July 30, 2020)**

Wong, Lesley (DPW)

From: Wong, Lesley (DPW)
Sent: Thursday, July 30, 2020 1:33 AM
To: memberservices@usanorth811.org
Cc: Dhapa, Iqbalbhai (DPW)
Subject: RE: CTYSF3- CITY San FRANCISCO PW: Request modify Phone # and Address

Hi!

Apologies, but I mistyped Mr. Dhapa's phone number and address information. Please see information below in red.

Thanks!

Lesley



Lesley Wong
Section Manager

Hydraulic Section | Bureau of Engineering | San Francisco
Public Works | City and County of San Francisco

49 South Van Ness Avenue, Suite 800 | San Francisco, CA 94103 | (628) 271-2571 | sfpublicworks.org · twitter.com/sfpublicworks

From: Wong, Lesley (DPW)
Sent: Friday, July 24, 2020 12:54 PM
To: memberservices@usanorth811.org
Cc: Dhapa, Iqbalbhai (DPW) <iqbalbhai.dhapa@sfdpw.org>
Subject: CTYSF3- CITY San FRANCISCO PW: Request modify Phone # and Address

Hi!

The City and County of San Francisco, Public Works Department (CTYSF3-CITY SAN FRANCISCO PW) has recently moved offices.

Please make the following changes for our Member Rep, Iqbal Dhapa.

Iqbal Dhapa	Phone #	Address
Current	415-557-4677	30 Van Ness Ave, 5 th Fl, San Francisco, CA 94102
New	628-271-2570	49 South Van Ness Avenue, Suite 800 San Francisco, CA 94103

His email address remains unchanged.

If you have any questions, please feel free to give me a call.

Thanks!

Lesley



Lesley Wong
Section Manager

Hydraulic Section | Bureau of Engineering | San Francisco
Public Works | City and County of San Francisco

49 South Van Ness Avenue, 8th Floor | San Francisco, CA 94103 | (628) 271-2571 | sfpublicworks.org · twitter.com/sfpublicworks



EXHIBIT 2

**Email from Lesley Wong to memberservices@usanorth811.org
(December 7, 2020)**

Wong, Lesley (DPW)

From: Wong, Lesley (DPW)
Sent: Monday, December 07, 2020 12:08 PM
To: memberservices@usanorth811.org
Cc: Dhapa, Iqbalbhai (DPW)
Subject: Please update Member Rep information for CTYSFO, CTYSF2, CTYSF3 and CTYSF4

Dear Sir/Madam,

I'm emailing on behalf of Iqbal Dhapa. We have moved offices, please update his member representative contact



information for the following accounts:

Department	Billing ID	Company Name
CTYSFO-CITY SAN FRAN PRKG & TRF	109600	CITY & COUNTY OF SAN FRANCISCO PARKING & TRAFFIC
CTYSF2-CITY SAN FRANCISCO WTR	109495	CITY & COUNTY OF SAN FRANCISCO HEAT, POWER & LIGHT
CTYSF3-CITY SAN FRANCISCO PW	109284	CITY & COUNTY OF SAN FRANCISCO PUBLIC WORKS
CTYSF4-City SFO HEAT/PWR/LIGHT	109442	CITY & COUNTY OF SAN FRANCISCO HEAT, POWER & LIGHT

With the following phone number and address:

	Old	New
Phone	(415) 557-4677	(628) 271-2570
Address	30 Van Ness Ave	49 South Van Ness Avenue, San Francisco, CA 94103

Mr. Dhapa's email address remains the same.

Thank you in advance.

-Lesley Wong



Lesley Wong
Section Manager

Hydraulic Section | Bureau of Engineering | San Francisco Public Works | City and County of San Francisco
49 South Van Ness Avenue, Suite 800 | San Francisco, CA 94103 | (628) 271-2571 | sfpublicworks.org

twitter.com/sfpublicworks

EXHIBIT 3

**Correspondence From Underground Service Alert of
Northern California & Nevada (various dates)**

UNDERGROUND SERVICE ALERT

— NORTHERN CALIFORNIA & NEVADA —

June 17th, 2022

San Francisco (City & Co of)
Attn: Iqbal Dhapa
49 Van Ness Ave, Suite 800
San Francisco CA 94103

Underground Safety Board regulatory fee (USB) that is 60 days past due -- Please pay

Dear Mr Dhapa:

As required by California Code of Regulations Title 19 § 4011, Underground Service Alert of Northern California and Nevada has been tasked with invoicing and collecting fees for the Underground Safety Board. According to our records, the invoice sent to your company/organization is now 60 past due. Please pay as soon as possible.

To view the regulations online, please visit:

[https://govt.westlaw.com/calregs/Document/I329C1BE6348A40B6A990D4127B3EC126?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/Document/I329C1BE6348A40B6A990D4127B3EC126?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default))

If the payment is not received by the 90 day past due date, a 5% late fee will be assessed by the Underground Safety Board, as required by 19 CCR § 4011(b)(1).

If you have questions regarding payment method, please contact Bethany Dillon at Bethany.dillon@usan.org.

If you have questions regarding the USB fee, please email them at fee.dig@energysafety.ca.gov.

Respectfully,



James L. Wingate 925-222-6506 direct
Executive Director james.wingate@usan.org

Underground Service Alert of Northern California & Nevada
4005 Port Chicago Hwy, Ste: 100, Concord, CA 94520 P: (800) 640-5137
W: undergroundservicealert.org

State of California

Invoice

**OFFICE OF ENERGY
INFRASTRUCTURE SAFETY
California Underground Facilities
Safe Excavation Board**

Bill To
CITY/CO S.F. PUBLIC UTILITIES COMMISSION WWE ENGINEERING MANAGER WATER POLLUTION CONTROL DIVISION 750 PHELPS STREET SAN FRANCISCO, CA 94124
All questions regarding this invoice should be directed to fee.dig@energysafety.ca.gov . If you have a question regarding how to make a payment, please contact Bethany Dillon at bethany.dillon@usan.org .

Date	Invoice #
3/19/2022	22USB109284

P.O. No.

Customer Number
109284

Terms
NET 30

PAST DUE

Description	No. of Tickets	Amount
California State Fee for Regulatory Costs (Jan 1 - June 30, 2022)	3.630	2,090.43
<div>Pursuant to California Government Code 4216.16, each facility operator is required to pay an annual fee to fund the operating expenses of the California Underground Facilities Safe Excavation Board. This regulatory fee is assessed annually to facility operators that receive 500 or more tickets in a given year and is to be remitted to the regional notification center (USA North 811), as specified in California Code of Regulations Title 19 § 4011.</div>		

Total	\$2,090.43
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**Please make your check payable to:
Underground Service Alert of Northern
California and Nevada
PO Box 5040
San Jose, CA 95150**

A 5% late fee will be assessed on payments received after 90 days.
Annual budget = \$2,500,000
CA tickets for Jan-Jun 2021 = 4,341,206
Billable tickets include: NEW

UNDERGROUND SERVICE ALERT

NORTHERN CALIFORNIA & NEVADA

October 24th, 2022

San Francisco (City & Co of)
Attn: Iqbal Dhapa
49 Van Ness Ave, Suite 800
San Francisco CA 94103

Underground Safety Board (USB) regulatory fee that is 90 days past invoice date -- Please Pay

Dear Mr Dhapa:

USA North 811 has been tasked to invoice and collect all regulatory Underground Safety Board (USB) fees and according to our records, your company/organization is now 90 days past the invoice date. Please pay as soon as possible.

This payment is now 90 days past the invoice date, therefore a 5% late fee has been assessed.

If you have questions regarding payment method, please contact Bethany Dillon at Bethany.dillon@usan.org.

If you have questions regarding the USB fee, please email them at fee.dig@energysafety.ca.gov.

Respectfully,



James L. Wingate 925-222-6506 direct
Executive Director james.wingate@usan.org

State of California

Invoice

**OFFICE OF ENERGY
INFRASTRUCTURE SAFETY
California Underground Facilities
Safe Excavation Board**

Bill To

CITY/CO S.F. PUBLIC UTILITIES COMMISSION
WWE ENGINEERING MANAGER
WATER POLLUTION CONTROL DIVISION
750 PHELPS STREET
SAN FRANCISCO, CA 94124

All questions regarding this invoice should be directed to fee.dig@energysafety.ca.gov. If you have a question regarding how to make a payment, please contact Bethany Dillon at bethany.dillon@usan.org.

Date	Invoice #
7/26/2022	109284USB22

P.O. No.

Customer Number

109284

Terms

NET 30

PAST DUE

Description	No. of Tickets	Amount
California State Fee for Regulatory Costs (July 1, 2022 to June 30, 2023)	6.804	4,123.12
Late Fee due to DigSafe		206.16

Total

\$4,329.28

**Please make your check payable to:
Underground Service Alert of Northern
California and Nevada
PO Box 5040
San Jose, CA 95150**

A 5% late fee will be assessed on payments received after 90 days.
Annual budget = \$5,000,000
CA tickets for Jan-Dec 2021 = 4,503,030
Billable tickets include: NEW

UNDERGROUND SERVICE ALERT

— NORTHERN CALIFORNIA & NEVADA —

December 23rd, 2022

San Francisco (City & Co of)
Attn: Iqbal Dhapa
49 Van Ness Ave, Suite 800
San Francisco CA 94103

Underground Safety Board (USB) regulatory fee that is 90 days past invoice date -- Please Pay

Dear Mr Dhapa:

USA North 811 has been tasked to invoice and collect all regulatory Underground Safety Board (USB) fees and according to our records, your company/organization is now 90 days past the invoice date. Please pay as soon as possible.

This payment is now 90 days past the invoice date, therefore a 5% late fee has been assessed.

If you have questions regarding payment method, please contact Bethany Dillon at Bethany.dillon@usan.org.

If you have questions regarding the USB fee, please email them at fee.dig@energysafety.ca.gov.

Respectfully,



James L. Wingate 925-222-6506 direct
Executive Director james.wingate@usan.org

Invoice

Date	Invoice #
7/26/2022	109284USB22

A circular stamp with the words "PAST DUE" written in a bold, sans-serif font. The stamp is tilted slightly to the right.

NET 30

[illegible]

\$ 206.16

A 5% late fee will be assessed on payments
received after 90 days.
Annual budget = \$5,000,000
CA tickets for Jan-Dec 2021 = 4,503,030
Billable tickets include: NEW

EXHIBIT 4

Invoice from USA North 811 (July 20, 2021)



Underground Service Alert of
Northern California & Nevada
4005 Port Chicago Hwy,
Ste. 100 Concord, CA
94520-1122

INVOICE

DATE	INVOICE #
7/20/2021	1094422021

BILL TO
CITY AND COUNTY OF SAN FRANCISCO ATTN: PATRICK HO - SFPUC POWER 525 GOLDEN GATE AVENUE, 7TH FLOOR SAN FRANCISCO, CA 94102

Customer Number
109442

Service Period
ANNUAL

P.O. NO.

Members are only billed for Unique "NEW" tickets. Please see email for more detailed information. Email bethany.dillon@usanorth811.org with any questions.

TERMS

Net 30 days

TICKET TYPES	DESCRIPTION	QTY	AMOUNT
NEW	CTYSF4	20,472	0.00
TICKET	Total Unique Billable Tickets	20,472	0.00
CALIF	2021 Membership fee \$150 plus NEW unique 2020 billable ticket fee	1	29,291.68

REMITTANCE ADDRESS:

Underground Service Alert of
Northern California and Nevada
PO Box 5040
San Jose, CA 95150

Total	\$29,291.68
Payments/Credits	\$0.00
Balance Due	\$29,291.68