

California Underground Facilities Safe Excavation Board

In the Matter of
The City and County of San Francisco
Water Department,
Respondent

Case No. D222980003

DECISION REGARDING NOTICE OF PROBABLE VIOLATION(S)

On July 10, 2023, The Office of Energy Infrastructure Safety, California Underground Facilities Safe Excavation Board (the Board) considered Case No. D222980003. On May 09, 2023, Board investigative staff issued a Notice of Probable Violation (NOPV) to the City and County of San Francisco, Water Department (Respondent). Respondent made a timely request for an informal hearing and submitted written documents to the Board for consideration. During the July 10 meeting, Board investigative staff withdrew the probable violation of California Code of Regulations title 19, section 4003, subdivision (a), (failure to maintain current contact information with the regional notification center) based on Respondent’s written response. The Board held an informal hearing during the July 10, 2023, public Board meeting.

Board members Bianchini, Charland, Del Toro, Johns, Johnson, Muñoz, and Voss participated in the decision.

FINDINGS

Having considered the investigation report, the written response from the Respondent, and the statements provided by the Respondent and Board investigative staff at the informal hearing, the Board finds that a violation of Government Code (Gov. Code) section 4216.3, subdivision (c)(1)(A) and California Code of Regulations title 19, section 4151, subdivision (c) occurred.

VIOLATION SUMMARY

Respondent failed to provide an electronic positive response.

The Dig Safe Act, Gov. Code section 4216.3, subdivision (c)(1)(A) requires operators to provide an electronic positive response (EPR) through the regional notification center before the legal excavation start date and time. Respondent acknowledged that they failed to timely provide an EPR.

Respondent failed to cooperate with the investigation.

Under California Code of Regulations title 19, section 4151, subdivision (c), excavators and operators that take actions known or that reasonably should have been known to prevent, hinder, or impede an investigation are subject to sanctions. Respondent failed to respond to

investigative staff emails. Respondent's 811 Member Representative email address was set up within Respondent's email management system to automatically divert certain incoming email, into a clutter file. Respondent reasonably should have known that providing a contact email address that is being managed with a such an automatic sorting function would require regular and timely review to ensure important emails, such as those from Board investigative staff, were not diverted.

Withdrawn: Respondent failed to maintain current contact information.

California Code of Regulations title 19, section 4003, subdivision (a) requires regional call center members to maintain current contact information with the regional notification centers. Board investigative staff withdrew their finding of a violation of California Code of Regulations title 19, section 4003, subdivision (a) based on Respondent's written response to the NOPV. This matter was not considered by the Board.

JURISDICTION

When the Board finds a probable violation of the Dig Safe Act (Gov. Code section 4216 et seq.), the Board must transmit the investigation results and any recommended penalty to the appropriate agency identified in Gov. Code section 4216.6, subsection (c) or (d). This matter is subject to the jurisdiction of the City and County of San Francisco Board of Supervisors (Board of Supervisors). The Board of Supervisors may accept, amend, or reject this Board's recommendation.

SANCTIONS

The Board recommends that Respondent be ordered take the Board's education course.

The following factors were considered relevant to this sanction determination:

- Respondent did not provide an EPR prior to the legal excavation start date and time.
- Respondent did not cooperate with the Board's investigative staff during the investigation.
- Respondent does not have a history of similar violations before the Board.

/s/ Amparo Muñoz
Amparo Muñoz, Chair

Date: 08/04/2023