



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

November 9, 2023

NOTICE OF PROBABLE VIOLATION

City of Oakland

250 Frank H Ogawa Plaza Suite 4314
Oakland, California 94612

City of Oakland City Council

Oakland City Hall, 1 Frank H. Ogawa Plaza
Oakland, California 94612

Case No.: D230030002

Date of Violation: January 3, 2023

Dear City of Oakland:

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) investigator has concluded an investigation of an incident on January 3, 2023, involving excavation at 309 Thackeray Drive, in the city of Oakland, California, and found the following violation of Government Code section 4216.3(c)(1)(A):

Government Code § 4216.3(c)(1)(A): Failure to provide electronic positive response before the legal start date and time.

The City of Oakland (USA North 811 Member Code CTYOAK) did not provide an electronic positive response before the legal start date and time to ticket 2023010303767-000.

Hearing and Referral to Enforcement Agency

During the Board's public meeting on January 8, 2024, at 1:00 p.m., the Board will determine whether the violation 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 the meeting will be in Sacramento.

Warren Alquist State Energy Building
Rosenfeld Hearing Room
1516 9th Street
Sacramento, California 95814

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 finding 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:
City of Oakland City Council
Oakland City Hall, 1 Frank H. Ogawa Plaza
Oakland, California 94612

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 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 is recommending the below corrective action and penalty:

- 1. 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 the City of Oakland (USA North 811 Member Code CTYOAK) did not provide an electronic positive response before the legal start date and time to ticket 2023010303767-000.

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 is subject to public disclosure. You have 30 business days from November 9, 2023, to submit your written response to the Board. Your response to this Notice must be received by the Board no later than December 27, 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
Assistant Executive Officer for Education & Enforcement | Underground Safety Board

Proposed hearing date: January 8, 2024



RESPONSE TO A NOTICE OF PROBABLE VIOLATION

Case Number: D230030002

Name: City of Oakland

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 is 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 violations 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 penalties proposed by the Board staff are appropriate at the meeting.

Response Options

___ No Contest

You do not contest the violations or the penalties. If you choose to not contest the violations or the penalties, 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 violations, the penalties, 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.

___ Contest in Writing and Request Informal Hearing

You wish to contest either the violations, the penalties, 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 January 8, 2024, at 1:00 p.m. The location of the meeting will be in Sacramento.

Warren Alquist State Energy Building
Rosenfeld Hearing Room
1516 9th Street
Sacramento, California 95814

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 penalties or corrective action. During your hearing, conducted pursuant to § 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 violations, the penalties, 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 violations, the penalties, 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 penalties proposed by the Board staff are 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 or via mail to the following address:

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