
California Underground Facilities Safe Excavation Board

April 8, 2024

Agenda Item No. 11 (Action Item) – Staff Report
Electronic Positive Response Advisory Letters

PRESENTER

Brittney Branaman, Assistant Executive Officer for Education and Enforcement

SUMMARY

Previous Board and 811 notification center analysis has indicated significant non-compliance among utility operators in the requirement to provide electronic response to 811 notifications. Staff sent letters to 469 DigAlert utility operators who had not complied with the requirement at least 50% of the time during the first half of 2023. Responses from utility operator representatives demonstrated a significant lack of knowledge of their responsibilities under the law.

STRATEGIC PLAN

2020 Strategic Plan Objective: Improve Compliance by Reaching Parties in Effective Ways

BACKGROUND

Assembly Bill 1166 (Levine, Chapter 453, Statutes of 2019) required operators to use electronic positive response as of January 1, 2021. Believing that many operators would have difficulty meeting the requirement within the timeframe, the Board recommended to the author during the bill's legislative process that it be amended to allow operators to seek a one-year extension,¹ which the author granted. In 2020 the Board issued emergency regulations to allow extension applications,² and by December 2020 had granted a one-year extension to all operators who had applied for the extension.³

In early May 2021, staff issued letters to nearly 400 private-sector operators notifying them that they were 100% non-compliant with the electronic positive response requirement. In September 2022, the Board discussed the significant non-compliance that remained among utility operators in early 2022, with 26% of DigAlert members providing the mandatory electronic response fewer than 10% of the times in which it was required. Additionally, the Board discussed how, of those 811 notification center members who were sent letters in 2021,

¹ Resolution No. 19-07-03: [Support of or Opposition to Legislation to Amend Government Code Section 4216.3 \(AB 1166 \(Levine\)\)](#), July 15, 2019.

² Resolution No. 20-04-01: [Electronic Positive Response Draft Emergency Regulations](#), April 13, 2020.

³ A list of operators granted extensions may be found [here](#).

the low compliance among that group remained largely unchanged.⁴

In its January 24 Board of Directors meeting, USA North 811 identified that 38.2% percent of tickets requiring electronic response had at least one operator who did not provide it.⁵ SB 778 (Ochoa Bogh) proposes to require that excavators need not only wait for the utility operator to perform their statutory responsibility of locate and mark, providing location information, or stating it has no facilities in the excavation area,⁶ but must also wait for an electronic response.

DISCUSSION

To promote compliance with the electronic response requirement, staff chose to send advisory notices to utility operators who have not been compliant with the requirement. Staff may choose to conduct an audit in the future, the and operators demonstrated through the audit not to have been compliant with the requirement could receive a notice of probable violation (NOPV). Staff chose to focus on utility operators who do not regularly provide electronic response rather than those who provide late electronic responses.

Electronic Response Code 999

DigAlert and USA North 811 identify a failure to provide electronic response by the legal excavation start date and time through a “999” code, which is attached to New and Remark tickets once the legal start date and time has passed.⁷ The excavator can then see the utility operator’s failure to respond.

If a utility operator provides electronic response late—after the 999 notification has been sent—the new response does not replace the 999 response, but acts as an update to it. DigAlert and USA North 811 report that, for the first eleven months of 2023, tickets where the operator responds late are 52.3% percent and 66.5% percent of notifications, respectively, with the balance never receiving a response.⁸ This may undercount the tickets eventually receiving electronic response, as both centers only allow utility operator to respond to the most recent ticket revision. If a utility operator provides an electronic response after the excavator has submitted a “No Response” or “Amendment” ticket, that response is counted toward the ticket revision.

Methodology

Investigative staff reviewed information provided by DigAlert for the January through June 2023 timeframe. USA North 811 data was not available at the time of review. Staff reviewed the data by Member Code.⁹ Staff manually removed member codes identifiable as test codes. To

⁴ [Staff Report: Analysis of Electronic Positive Response Usage](#), September 13, 2022.

⁵ USA North 811 Board of Directors Meeting Packet, January 24, 2024, p. 44.

⁶ Government Code [§ 4216.3](#) (a)(1)(A).

⁷ DigAlert and USA North identify New and Remark ticket types as requiring an electronic response.

⁸ Board Business Meeting, January 8, 2024, “[811 Notification Center Update](#),” pp. 17-18.

⁹ “Member code” is the term used by DigAlert and “Station Code” is the term used by USA North 811 to describe the organizational unit associated with a notification area and whose contacts are provided notifications of proposed excavation. Some organizations have multiple “Member” or “Station” codes for different geographic areas or for different facility types in the same geographic area.

exclude utility operators whose Code 999 responses were a result of occasional tardiness, staff chose to send advisory notices to those utility operators who had Code 999 electronic responses on 50% or more tickets in which response was required during the time period.

Staff drafted 469 letters to utility operators and sent them on December 11, 2023 (see template in **Attachment 1**). For each DigAlert Member Code where an email address could be identified, staff sent emails with the information in the letter included in the body of the email, with a pdf file of the letter attached.

To determine the correct address and email address to send the letters to, staff used the “MAIN” contact associated with the DigAlert member code. Where the MAIN contact was absent or did not have address information, staff looked for another contact associated with the member code. In two cases, staff used contact information associated with previously-issued NOPVs. Of the 469 DigAlert operators sent letters, 46 had no email address, so only 423 were sent emails.

Response to Letters and Emails

Of the 423 emails sent, 20 (4.7%) bounced back.

Staff received responses from 129 DigAlert member representatives (27.5%). The responses were primarily to the emails rather than the letters. The email responses could be categorized in the following manner:¹⁰

Response	Number
Turned over assets/management or abandoned	6
Individual contacted no longer with organization/in role	11
Doesn't Understand the Issue/Seeking Instructions	55
Need information about shapefiles/boundaries	12
Understand and have made/will make corrections	15

Takeaways

The Assistant Executive Officer made 149 phone calls to DigAlert member representatives who requested a follow-up conversation, which is inclusive of the multiple conversations that were had with some representatives and their organizations. In reviewing the emails and based on the subsequent phone conversations, the following assessment is made:

- 1. Operators want to comply.** In very few cases did a DigAlert member representative respond with hostility toward the letter, and those who did usually changed their approach once they understood the requirement.
- 2. Email notices are easier than mailed letters for operator representatives to process.** While official service requirements often require sending notices to businesses

¹⁰ Note that some responses didn't fit into any of these categories, and some fit into more than one.

via mail in hard copy, the people responsible for carrying out actions to comply with the Dig Safe Law are much more likely to process and respond to notifications sent directly to email.

- 3. Knowledge of 811 responsibilities often not proceduralized, and is lost during turnover.** Many representatives expressed how they were new to their roles and didn't understand their 811 responsibilities. People "new" to their role had often been in the role for a year or more.
- 4. Many representatives do not know that they are the ones who tell 811 notification center where they want to be notified.** Many do not know that they can provide shapefiles to the 811 notification centers to determine in what locations they would like to receive tickets. This cannot solely be related to staff turnover, as many DigAlert members received have received (and ignored) notifications outside their jurisdictional boundaries for years if not decades.
- 5. Some representatives believed that DigAlert marks their lines.** A handful of small DigAlert members believed that their fees to DigAlert were to mark their lines and had believed that the notifications they received were for their information, rather than a call to respond.
- 6. Not all DigAlert members are operators.** Several representatives of small non-pressurized sewer systems, learning of their responsibilities, expressed concerns about performing locate and mark and providing electronic responses. As these DigAlert members are not operators, they do not need to perform these actions under law. Nonetheless, the expectation that they do so may lead to some terminating their DigAlert memberships.

During the Board's 2023 Education and Outreach Meeting, Member Bianchini expressed the concern that not enough emphasis has been made to educate operators on their responsibilities. Many of the issues above demonstrate a knowledge gap among operators.

Staff expects to perform a similar exercise with USA North 811 members upon receipt and processing of USA North 811 electronic positive response data.

RECOMMENDATION

Staff recommends that the Board consider and discuss with the 811 notification centers methods to assess and improve the knowledge of 811 notification center members about their responsibilities under the law. Staff also recommends that the Board consider how to understand and address the obligations of non-operator 811 notification center members in future membership-related regulations.