
California Underground Facilities Safe Excavation Board

April 8-9, 2024

Agenda Item No. 9 Information Item – Staff Report

811 Notification Center Membership Termination Processes

PRESENTER

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SUMMARY

The Dig Safe Act requires all operators of subsurface installations, with limited exception, to be members of an 811 notification center. Staff reviewed requests by 811 notification center members to terminate membership and identified concerns with the current processes and excavator safety and operator compliance. Staff recommends that the Board instruct staff to work with the 811 notification centers to explore whether 811 notification centers are being provided sufficient information from members, whether the current processes support excavator safety and operator compliance, and what the appropriate roles are for the 811 notification centers and the Board in the termination process.

STRATEGIC PLAN

2020 Strategic Plan Objective: Improve Accessibility of Buried Infrastructure Location Knowledge and Understanding

2024 Strategic Activity: Clarify Notification Center Termination Requirements

BACKGROUND

The Dig Safe Act requires that all operators of subsurface installations,¹ except for Caltrans,¹ “become a member of, participate in, and share in the costs of” the 811 notification center. Operators include “any person, corporation, partnership, business trust, public agency, or other entity that owns, operates, or maintains a subsurface installation,”² but do not include the owning, operating, or maintaining of non-pressurized sewer and drainage services, as

¹ [Gov. Code § 4216.1](#)

² [Gov. Code § 4216\(o\)](#)

those are exempt from the definition of subsurface installation.³ Statute requires the 811 notification center to contact “any member, if known, who has a subsurface installation in the area of proposed excavation.”⁴ Statute also identifies members of the 811 notification centers as sources of the Board’s revenue,⁵ and the Board has adopted regulations to assess fees on those members.⁶

In June 2021, the Board received an Idea Register submission from the 811 notification centers with a safety concern that “facility operators that become a member not in good-standing due to non-payment for regional notification invoices or quit membership.” The 811 notification centers recommended they should notify the Board of any members who cancel their memberships or whose memberships are terminated due to non-payment, and the Board should consider following up with these members.⁷

In its *2024 Workplan*,⁸ the Board adopted the strategic activity to “clarify notification center termination requirements” by developing regulatory language on member termination and initiating the rulemaking process.

DISCUSSION

Each year, DigAlert and USA North 811 have members who seek to terminate their 811 notification center memberships. In response to the 811 notification centers’ Idea Register submission, staff sent a letter to both DigAlert and USA North 811 in November 2021 requesting information regarding their membership termination processes, both for nonpayment of 811 notification center fees and for termination requests. Information provided by the 811 notification centers and recent termination requests by their members have led staff to request the Board consider the following questions:

- Are 811 notification centers being provided with sufficient information ensure excavators are being notified of the presence of subsurface installations?
- Are current termination processes sufficient to ensure operator compliance with 811 notification center membership requirements and protect the safety of excavators?
- What should the 811 notification centers’ roles be in membership termination? What should the state’s role be? What authority, requirements, or other tools are necessary to support the 811 notification centers and the state in those roles?

Transfer and Termination in 811 Notification Center Bylaws

³ [Gov. Code § 4216\(s\)](#)

⁴ [Gov. Code § 4216.2\(e\)](#)

⁵ [Gov. Code § 4216.16\(b\)](#)

⁶ [19 CCR §4010](#)

⁷ November 9, 2021, Agenda Item No. 8, “[Idea Register Report 2021](#).”

⁸ https://energysafety.ca.gov/wp-content/uploads/2024/03/2024_plan_final.pdf

The 811 notification centers each have bylaws addressing the transfer and termination of a membership.^{9,10} The bylaws addressing “transfer” are nearly identical, with each 811 notification center’s Board of Directors controlling the process:

- USA North: “Section 4. Transfer of Membership. The Board may provide for the transfer of memberships, subject to such restrictions or limitations as the Board deems appropriate, including transfer upon the death, dissolution, merger or reorganization of a member.”⁹
- DigAlert: “Section 4. Transfer of Membership. The Board may provide for the transfer of memberships, subject to such restrictions or limitations as the Board deems appropriate including transfer upon the death, dissolution, merger or reorganization of a member.”¹⁰

USA North and DigAlert bylaws regarding membership “termination” differ considerably. USA North provides for automatic termination for the following:

- (1) *the voluntary resignation of a member with notice as prescribed by these Bylaws;*
- (2) *the death of a member;*
- (3) *the dissolution of corporate member; and*
- (4) *the nonpayment of dues or assessments.*

The USA North bylaws also state that the “*the membership of any member of the Corporation shall automatically terminate on such member’s written request for such termination delivered to the General Manager or Secretary of the Corporation personally or deposited in United States first-class mail, postage prepaid*” and that “*termination shall not relieve the member from any obligation for charges incurred, services or benefits actually rendered, dues, assessments, or fees, or arising from contract or otherwise.*”⁹

DigAlert’s bylaws give its Board of Directors control, stating that the “*Board may terminate or suspend a membership or expel or suspend a member for nonpayment of fees, periodic dues or assessments or for conduct which the Board deems inimical to the best interests of the corporation, including, without limitation, violation of any provision of these Bylaws or the Corporation’s Operating Procedures, as such procedures may be periodically amended, or failure to satisfy membership qualifications.*”¹⁰

Termination Requests Highlight Information Gaps

⁹ [USA North Bylaws](#).

¹⁰ [DigAlert Bylaws](#).

Several recent termination events demonstrate lack of clarity for all parties regarding whether the members are meeting their legal obligations as operators.

1. Membership Contracted Out: In July 2023, DigAlert requested guidance from Board staff about how to handle the 2023 regulatory fee of a member that had terminated its membership in 2023. Upon investigation and review by staff, and with the assistance of DigAlert, it was determined:

- The entity terminating its membership was on contract to operate and maintain the streetlights for a city.
- The city had changed contractors to a division of a county.
- The county was under contract with approximately twenty cities for similar work and performed all the work under a single member code.

Operators of subsurface installations must be members of the 811 notification center.¹ The city should have been a member of the 811 notification center since it owned the street lights. While the county can perform 811 response duties for the city, the 811 notification center membership of the city should be documented through a member code separate from the county's. Staff conveyed this information to the city, who is undertaking the necessary changes to comply with the law.

This termination raises several questions:

- If the operator was not registered with DigAlert, how would the Underground Safety Board know who the legal operator was for violation charges?
- Shapefile status: were the shapefiles on file at DigAlert transferred from the first contractor to the county?
- Had there not been a change in contractor for the city, would the 811 notification center and Board ever have known that the wrong entity was registered as a DigAlert member?
- How many more instances exist of locate and mark contractors being the 811 notification center member listed as the operator instead of the subsurface installation legal "operator"?
- How does the obscurity of multiple operators working under the same member code for a contractor member affect the 811 notification center and regulatory fees the operators must pay?

2. Asset Transfer Identified Through Fee Proration Request: Following receipt of invoices from USA North 811 for 2023 membership and regulatory fees, a utility construction contractor requested termination from USA North and clarification from

both USA North and the Board of what portion of their 811 notification center and regulatory fees it should pay.

The contractor was installing new communications facilities and had been a member of USA North 811 for the duration of construction. Once the work had been completed, the contractor transferred the facilities to a communications company. It appears that the contractor was content to remain a member until it received invoices.

The resulting confusion and disagreement over who should pay 2023 fees—the contractor or the communications company—led to USA North to work for nearly a year to resolve the conflict and provide the contractor’s shapefiles to the communications company.

This termination raises several questions:

- Was the operator responding to excavation notifications after it had transferred its assets? Was it ignoring excavation notifications? Ignoring requests would have impacted the entire area within the shapefile since an excavator is not allowed to begin until all operators in the excavation area have responded.¹¹
- When the assets were transferred, were the communication company’s shapefiles updated? Did the communication company only receive the contractor’s shapefiles from USA North following the contractor’s initiation of the billing dispute?

3. Assertion of Cessation of Responsibility: When a petroleum exploration company received a letter from Board staff notifying it that it had not provided sufficient electronic positive response in the first half of 2023,¹² the company stated that it was no longer a member of the regional call center and provided a May 2023 letter it had sent to DigAlert to terminate its membership. The brief letter stated that, as of the end of May 2023, the company “will no longer be responsible for underground facilities. [Company] does not own any underground facilities.” The company did not indicate that someone else was responsible or make any indication that the facilities had been removed from the ground.

This termination raises several questions:

- Are the facilities still in the ground?

¹¹ [Gov. Code § 4216.2\(g\)](#)

¹² See Item 11 “[Electronic Positive Response Audit](#)” staff report from current meeting agenda.

- Is someone else taking legal responsibility for the ownership, operation, and maintenance of the assets?
 - If so, were the shapefiles appropriately transferred to the receiving entity?
 - If not, what events led the company come to the unilateral decision that it would no longer respond to notifications to mark facilities?
- Was the member subject to the private property exemption¹³ and thus never an operator?

Each of these cases highlights the uncertainty of whether Dig Safe Law safety requirements are being followed. Should the Board find that the uncertainty merits Board or 811 notification center action, it may wish to consider whether investigation of each termination request is an appropriate use of resources, or whether a more systematic approach to membership and its termination is preferable.

RECOMMENDATION

Staff recommends that the Board direct staff to work with the 811 notification centers to develop potential answers to the questions posed at the beginning of the discussion section. Staff believes that a Board committee may be necessary in the future to review the potential solutions but is not asking the Board to identify members at this time.

¹³ [Gov Code § 4216](#)(o) exempts an owner of subsurface installations from the definition of “operator” if the facilities are located on their property and “are used exclusively to furnish services on that property and the subsurface facilities are under the operation and control of that owner.”