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July 5, 2024

***VIA EMAIL ONLY (ENFORCEMENT.DIG@ENERGYSAFETY.CA.GOV)***

OFFICE OF ENERGY INFRASTRUCTURE SAFETY  
UNDERGROUND SAFETY BOARD  
715 P Street, 20th Floor  
Sacramento, CA 95814

Re: ALL CONSTRUCTION, INC. – Response to Notice of Probable Violation  
Case No. CAS-01575-B9F6K1

To the Board:

All Construction, Inc. (License No. 668835) is in receipt of Notice of Probable Violation (“NOPV”) – Case No. CAS-01575-B9F6K1, dated May 21, 2024, regarding an investigation conducted following pipeline damage occurring on December 12, 2023, at 173 Comanche Street, Topanga, CA 90290. The NOPV alleges violations of the following provisions of the Government Code:

1. Government Code § 4216.2(b): Failure to notify the regional notification center before excavating (before damaged occurred.)
2. Government Code § 4216.2(b): Failure to notify the regional notification center before excavating (after damaged occurred.)
3. Government Code § 4216.4(c)(2): Failure to contact 911 emergency services after causing damage to gas facility.
4. Government Code § 4216.4(c)(3): Failure to notify the regional notification center of damage to gas facility.

The Underground Safety Board has proposed penalties of: (1) Mandatory completion of the Underground Safety Board's education course; and (2) a financial penalty in an amount to be determined by the board.

This letter provides All Construction's response to the NOPV. All facts alleged herein are supported by the Declaration of Dan Fortuna, which is enclosed with this response. As outlined in detail below, All Construction does not dispute the violations occurred, and is willing and able to comply with an order requiring Mandatory completion of the Underground Safety Board's education course. However, All Construction disputes that a monetary penalty is warranted. As outlined in more detail below, the violations resulted from a misunderstanding regarding whether a DigAlert ticket was issued, and ignorance of All Construction's responsibilities following the damage to the pipeline. All Construction has no history violations and has never engaged in work causing damage to underground lines prior (or subsequent) to the events set forth in the NOPV. The Board should therefore issue an order for corrective action instead of monetary penalty.

#### **BACKGROUND OF ALL CONSTRUCTION, INC.**

All Construction, Inc. was formed in 2003 and holds a B (General Building) and C-8 (Concrete) licensed from the Contractors State License Board. Prior to forming All Construction, its principal officer and RMO, Dan Fortuna, obtained a C-8 license in 1993 and a B licensed in 1998.

All Construction specializes in concrete and masonry work. They primarily do foundations, site work and block walls. Excavation work is a normal part of their business. Prior to 2006, All Construction primarily work for homeowners as the prime contractor. In 2006, All Construction began working primarily as a subcontractor for larger contractors that focus on commercial buildings. When All Construction worked as a prime contractor, it always contacted DigAlert and obtained a ticket before digging. When All Construction worked as a subcontractor, its understanding was that the Prime Contractor obtained the ticket, as that has been their practice and experience over the last 20+ years. Following the incident set forth in the NOPV, All Construction has revised its policies and verifies a ticket has been issued before commencing any excavation work. All Construction has no history of violations with the Underground Safety Board and has never had an incident resulting in damage to an

underground installation prior or subsequent to December 12, 2023. All Construction was also not aware of its obligation to notify the regional notification center or to contact 911 after damage occurs but has since revised their policies to ensure all employees are aware of these requirements.

### **PROJECT AT 173 COMANCHE STREET, TOPANGA, CA 90290**

On December 8, 2023, All Construction was hired by Commercial Paving & Coating Company Inc., doing business as Commercial Paving & Coating (License No. 475564) to install 18 bollards. The contract price was \$12,600.00. On December 12, 2023, All Construction began digging at the project site in preparation for the bollards. All Construction did not contact DigAlert prior to digging because Commercial Paving informed them the area was already marked. All Construction understood that to mean a ticket was issued. And that was consistent with past practices, as All Construction was often hired as a sub for Commercial Paving, and Commercial Paving has always handled notifying DigAlert on their projects. Commercial Paving acknowledged this in their interview with the investigator (See Exhibit 9).

All Construction was digging with hand tools when it nicked a natural gas pipeline. All Construction immediately notified Southern California Gas Company to repair the damage, and waited nearby until the Gas Company arrived and fixed the line. Nobody was injured in the incident, nor did the incident cause any environmental or property damage beyond the damaged pipe.

### **A MONETARY PENALTY IS NOT APPROPRIATE**

In deciding whether to issue a monetary penalty, the Board shall consider the following: (1) Type of violation and its gravity, such as risk of or actual injury, death, or environment or property damage; (2) Degree of culpability, which may be measured in part by whether there were intervening acts or omissions by other persons; (3) Respondent's history of violations; (4) Respondent's history of work conducted without violations; (5) Efforts taken by the respondent to prevent the violation and, once the violation occurred, the efforts taken to mitigate the safety consequences of the violation. (Cal. Code Regs., tit. 19, § 4201, Subd. (a).) These factors weigh against the issuance of monetary sanctions.

**(1) Type of violation and its gravity, such as risk of or actual injury, death, or environment or property damage.**

Here, all the violations are based on failure to notify, which posed little or no risk of injury, death, or environment or property damage. While All Construction failed to obtain a ticket prior to digging, this was the result of a miscommunication due to the area previously being marked for underground installations. Had All Construction notified DigAlert prior to digging, the result would have been the same as the markings would not have changed. And All Construction's failure to notify DigAlert or 911 after the accident posed little or no risk because the damaged line is not immediately adjacent to any dwellings and All Construction immediately acted to get the line repaired.

**(2) Degree of culpability, which may be measured in part by whether there were intervening acts or omissions by other persons.**

All Construction reasonably believed that a DigAlert was notified because the area was marked, Commercial Paving (the Prime Contractor) notified them that it was marked, and Commercial Paving typically obtained the ticket on their projects. And All Construction failed to notify DigAlert or call 911 after the accident because they were ignorant of the requirement.

**(3) Respondent's history of violations.**

All Construction has no history of violations.

**(4) Respondent's history of work conducted without violations.**

All Construction has been providing concrete and masonry work since 2003, and its RMO has been performing similar work since 1993. This work often involves excavation. Respondent has had no violations other than those alleged in the NOPV.

**(5) Efforts taken by the respondent to prevent the violation and, once the violation occurred, the efforts taken to mitigate the safety consequences of the violation.**

Following the incident, All Construction immediately notified the Gas Company to repair the damage, covered the hole to prevent any falling injuries, and waited nearby until the Gas Company fixed the line. Since the incident, All Construction has revised their policies to verify that a ticket has been issued before commencing any digging and has educated its workers of the requirement to notify DigAlert and to call 911 in the event of an incident.

The Board has the Authority to issue an order for corrective action instead of monetary penalty. In making this determination, the Board must consider evidence that is relevant to the following matters: (1) Respondent is willing and able to comply with an order for corrective action; (2) Respondent notified the appropriate regional notification center, the Board, or other state agency with jurisdiction over the respondent under Government Code section 4216.6, if possible, of the violation immediately after detecting it and before the state agency or the Board learned of it by other means; (3) Cooperation with state agencies during the investigation; (4) Violation did not cause death or substantial injury, environment or property damage, or pose significant risk of death or substantial injury, or environment or property damage; (5) Respondent did not act willfully or knowingly, which includes recklessly; (6) Respondent does not have a history of the same or similar violations, and has not failed to comply with an order for corrective action; and (7) If the respondent has a history of engaging in excavation or excavation related work, the respondent has a history of conducting this work without a history of the same or similar violations; (8) Respondent took immediate action upon discovery to mitigate the safety consequences of the violation; and (9) Other factors in consideration of the facts, evidence, and violation. . (Cal. Code Regs., tit. 19, § 4201, Subd. (c).)

Here, all factors except (2) weigh in favor of corrective action instead of a monetary penalty. Respondent is willing and able to comply with the proposed corrective action. All Construction fully cooperated with the investigation. The violation did not cause death or substantial injury, environment or property damage, nor did it pose significant risk of death or substantial injury, or environment or property damage since All Construction immediately acted to have the damage repaired. All

Construction did not act willfully or knowingly, as they reasonably believed that a ticket was issued due to representations by Commercial Paving and the markings, and they were not aware of the requirement to notify DigAlert or to call 911 after the incident. All Construction has been performing excavation work since 2003 and has never had a violation. Immediately after the incident, All Construction contacted the Gas Company to repair the line. And All Construction has since revised its policies to ensure a ticket is verified before it performs any excavation work, and it has notified its workers of the requirement to report incident to DigAlert and to call 911.

All Constructions takes seriously its obligations to comply with its requirements to notify the appropriate authorities before and after undertaking excavation work. All Construction has taken steps to ensure these obligations are met and will comply with any corrective action issued by the Board.

Very truly yours,

THE GREEN LAW GROUP, LLP



Matthew T. Bechtel  
Counsel for All Construction, Inc.

MTB/pr  
cc: Client  
Enclosure

**DECLARATION OF DAN FORTUNA**

I, Dan Fortuna declare:

1. I am the RMO and principal officer of All Construction, Inc. I make this declaration in support of All Construction's response to the Notice of Probable Violation issued by the Underground Safety Board. I am fully informed of the facts stated herein, and if called as a witness, I could and would competently testify thereto.

2. All Construction, Inc. was formed in 2003 and holds a B (General Building) and C-8 (Concrete) licensed from the Contractors State License Board. Prior to forming All Construction, I obtained a C-8 license in 1993 and a B licensed in 1998.

3. All Construction specializes in concrete and masonry work. We primarily do foundations, site work and block walls. Excavation work is a normal part of our business. Prior to 2006, All Construction primarily worked for homeowners as the prime contractor. In 2006, All Construction began working primarily as a subcontractor for larger contractors that focus on commercial buildings. When All Construction works as a prime contractor, it always contacted DigAlert and obtained a ticket before performing excavation work.

4. Prior to this incident, it was my understanding that the Prime Contractor obtained the DigAlert ticket. That has been my experience over the last 20+ years. Following the incident set forth in the NOPV, All Construction has revised its policies and now verifies a ticket has been issued before commencing any excavation work. All Construction has no history of violations with the Underground Safety Board and has never had an incident resulting in damage to an underground installation prior or subsequent to December 12, 2023.

5. I was not aware on or prior to December 12, 2023, of my obligation to notify the regional notification center or to contact 911 after damage occurs. All Construction has since revised its policies to ensure all employees are aware of these requirements.

6. On December 8, 2023, All Construction was hired by Commercial Paving & Coating Company Inc., doing business as Commercial Paving & Coating (License No. 475564) to install 18 bollards. The contract price was \$12,600.00. On December 12, 2023, All Construction began digging at the project site in preparation for the bollards. All Construction did not contact DigAlert prior to digging because Commercial Paving informed us the area was already marked. All Construction understood that to mean a ticket was issued. Again, that was consistent with past practices. All Construction was often hired as a sub for Commercial Paving, and Commercial Paving has always handled notifying DigAlert on their projects.

I declare under penalty of perjury under the law of the State of California that the foregoing is true and correct. Executed this 3<sup>rd</sup> day of July 2024, at Simi Valley, California.

DocuSigned by:  
DAN FORTUNA  
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