

WATER
City of Orange
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MS ANONA BONNER CHIEF OF INVESTIGATIONS
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SACRAMENTO CA 95814-6408



City of Orange

Public Works Department
300 E. Chapman Ave.
Orange, CA 92866

October 17, 2025

Ms. Anona Bonner, Chief of Investigations

Office of Energy Infrastructure Safety – Underground Safety Board

715 P Street, 15th Floor

Sacramento, CA 95814

Re: Response to Notice of Probable Violation (Case No. 23NTS0023)

Dear Ms. Anona Bonner,

The City of Orange Public Works Department – Water Division (“City”) respectfully requests that the Board waive the proposed penalty for the alleged violation of Government Code § 4216.3(c)(1)(A), or, in the alternative, substantially reduce it in recognition of the unique circumstances of this case, the City’s lack of operational responsibility over the damaged facility, and the City’s prompt remedial actions demonstrating full compliance with California law.

1. Request for Waiver or Substantial Mitigation

While the City acknowledges that an electronic positive response was transmitted after the legal excavation start date, this procedural delay neither endangered public safety nor reflected disregard for compliance. The City fulfilled all substantive duties, acted in good faith, and has since implemented permanent safeguards to ensure this issue will not recur.

Given the absence of harm, the City’s lack of jurisdictional responsibility, and its proactive compliance measures, the City respectfully requests a complete waiver of the proposed penalty. Alternatively, any penalty should be mitigated to the minimum allowable amount under California law.

2. Jurisdictional Relevance and Lack of Operational Responsibility



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The alleged violation arose from an incident on November 29, 2023, when A G Vinyl Fencing, Inc. damaged a Southern California Gas Company natural gas line while excavating without prior notification to the regional notification center. Southern California Gas Company created emergency ticket No. B233330560-00B to initiate emergency leak repairs.

The City was required to respond under the regional notification system but had no operational control or maintenance responsibility over the damaged facility. The City's role was purely procedural, not operational, and therefore did not contribute in any way to the cause of the damage. This jurisdictional distinction is critical in evaluating the City's compliance under California Government Code § 4216.3(c)(1)(A). The City's limited, non-culpable involvement strongly supports waiver or substantial mitigation of any penalty.

3. Compliance with Government Code § 4216.3(c)(1)(A)

While the City's electronic positive response (code 999) was submitted on December 1, 2023, at 5:01 p.m., after the legal excavation start date, the City fulfilled its substantive responsibilities by marking the excavation area and assisting in the emergency response. The procedural delay was a clerical oversight, not a systemic failure, and did not endanger public safety or impede repair operations. The City's conduct aligns with the intent of the statute, which it is to ensure excavation safety. This demonstrates that any violation was purely technical in nature.

4. Mitigation Under California Law

California Labor Code § 2699 provides explicit authority for penalty mitigation where a party has taken reasonable steps toward compliance either before or after receiving notice of a violation. Following this incident, the City undertook significant corrective actions, including the adoption of new Standard Operating Procedures (SOPs) with cross-checks. These measures have been integrated into the City's standard operating protocol to ensure timely and accurate electronic responses going forward. These actions reflect the City's commitment to compliance and continuous improvement, fully satisfying the statutory framework for penalty reduction under California law.

5. Public Safety and Good Faith Efforts



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The City acted promptly and responsibly in responding to the emergency, marking the site, and ensuring public safety was never compromised. The procedural delay in submitting the electronic positive response did not result in harm, service interruption, or operational disruption. This incident demonstrates the City's good faith and diligence, not negligence or disregard for legal obligations.

6. Application of Statutory Mitigation Factors

Under Labor Code § 2699, if reasonable steps to comply are taken within 60 days of notice, any civil penalty shall not exceed 30 percent of the amount sought. Here, the City did so and the steps were taken prior to notice, which points to the penalty not exceeding 15 percent. Because the City implemented comprehensive and permanent remedial actions well within 60 days of notice, the Board should exercise its discretion to reduce the penalty to no more than 15 percent of the proposed amount, or preferably waive it entirely, consistent with statutory guidance and the City's demonstrated good faith.

7. Conclusion

The City of Orange Public Works Department – Water Division acted in good faith, responded appropriately to the emergency, and has since incorporated permanent safeguards into its standard protocols to ensure full compliance with California's safe-excavation laws. The infraction was a minor procedural delay unrelated to the underlying incident or public safety. Accordingly, the City respectfully requests that the Board waive the proposed penalty in full. In the alternative, the City requests that the Board apply statutory mitigation and reduce the penalty to the minimum allowable percentage under California law.

Respectfully submitted,

Sonny Tran, P.E.

Water Manager



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