



DEPARTMENT OF FORESTRY AND FIRE PROTECTION
Office of the State Fire Marshal
Underground Facilities Safe Excavation Board

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**California Underground Facilities Safe Excavation Board
("Dig Safe Board")**

September 14, 2020

MEETING MINUTES

September 14, 2020
Teleconference Meeting

OPEN SESSION

Agenda Item No. 1: Call to Order

Chair Voss called the meeting to order at 9:05 a.m.

Chair Voss explained that due to the Coronavirus Disease-19 (COVID-19) pandemic, and pursuant to the Governor declaring a State of Emergency and issuing Executive Orders N-25-20 and N-29-20, that the meeting is being held via teleconference. Chair Voss explained the procedures for the public to comment via the webinar and teleconference.

BOARD MEMBERS PRESENT:

Carl Voss, Chair
Marjorie Del Toro, Vice Chair
Ron Bianchini
Randy Charland
Jessica Forte
Bill Johns
Marshall Johnson
Amparo Muñoz

STAFF PRESENT:

Tony Marino, Executive Officer
Jeff Brooks, Attorney

Jason Corsey, Chief of Investigations
Anna Brown, Supervising Special Investigator
Carla Newman, Supervising Special Investigator
Jon Barkley, Special Investigator
John Benane, Special Investigator
Michael Ehrgott, Special Investigator

Dennis Fenton, Special Investigator
Charley Park, Special Investigator

Brittney Branaman, Policy and Budget Manager
Tom Finn, Operations Manager
Jenni Reed, Policy and Data Analyst
Jeff McClenahan, Policy Analyst
Veronica Bravo, Policy Analyst
Amber Riggle, Office Technician

Chair Voss called for a moment of silence after recognizing the 10th anniversary of the San Bruno pipeline rupture and the heroic efforts and sacrifices of firefighter efforts battling wildfires across California.

Agenda Item No. 2: Public Comments on Items not on the Agenda

Chair Voss asked if there were any other public comments on items not on the agenda. There were none.

Agenda Item No. 3: Decision on Notice of Potential Violation #20SA1004 – Nurture Source Design

Chair Voss explained that the enforcement items would be heard in a slightly different order from that posted on the agenda.

Chair Voss asked if there were any public comments on this item. There were none.

The participating Board members considered the report of investigation and argument presented by Nurture Source Design, and found that (1) a probable violation of Government Code section 4216.2(b) occurred, and (2) an order directing Nurture Source Design to take the Board's education course is an appropriate sanction.

Board Action: Motion to refer the case to the Contractors State License Board with a recommendation that the respondent attend the Board's education course.

Motion: Member Johns

Second: Member Forte

Ayes: Members Bianchini, Charland, Del Toro, Forte, Johns, Johnson, Munoz, Voss

Noes: None

Abstentions: None

Result: Motion Approved.

Agenda Item No. 7: Decision on Notice of Potential Violation #20LA1085 – West Coast Construction

Member Johnson recused himself from participation in this agenda item.

Chair Voss asked if there were any public comments on this item. There were none.

The participating Board members considered the report of investigation and argument presented by West Coast Construction, and found that (1) a probable violation of Government

Code section 4216.2(b) occurred, and (2) an order directing West Coast Construction responsible managing officer to take the Board's education course is an appropriate sanction.

Board Action: Motion to refer the case to the Contractors State License Board with a recommendation that the respondent attend the Board's education course.

Motion: Member Johns

Second: Member Forte

Ayes: Members Bianchini, Charland, Del Toro, Forte, Johns, Munoz, and Voss

Noes: None

Abstentions: None

Result: Motion Approved.

Agenda Item No. 10: Decision on Notice of Potential Violation #20SA1021 – MGE Underground

Members Charland and Johnson recused themselves from participation in this agenda item.

Chair Voss asked if there were any public comments on this item. There were none.

The participating Board members considered the report of investigation and argument presented by MGE Underground and found that (1) a probable violation of Government Code section 4216.2(b) occurred, and (2) an order directing MGE Underground to take the Board's education course is an appropriate sanction.

Board Action: Motion to refer the case to the Contractors State License Board with a recommendation that the respondent attend the Board's education course.

Motion: Member Johns

Second: Member Forte

Ayes: Members Bianchini, Del Toro, Forte, Johns, Munoz, and Voss

Noes: None

Abstentions: None

Result: Motion Approved.

Agenda Item No. 8: Decision on Notice of Potential Violation #20SA1021 – AT&T California

Members Charland and Johnson recused themselves from participation in this agenda item.

Chair Voss asked if there were any public comments on this item. There were none.

The participating Board members considered the report of investigation, the evidence presented, and argument presented by AT&T, and found that (1) probable violations of Government Code section 4216.3(a)(1)(A) occurred, and (2) an order directing AT&T to take the Board's education course is an appropriate sanction.

Board Action: Motion to refer the case to the California Public Utilities Commission with a recommendation that the respondent attend the Board's education course.

Motion: Member Forte

Second: Member Bianchini

Ayes: Members Bianchini, Del Toro, Forte, Johns, Munoz, and Voss

Noes: None

Abstentions: None

Result: Motion Approved

Chair Voss recessed the meeting from 10:30 a.m. to 10:48 a.m. for a break.

Agenda Item No. 11: Decision on Notice of Potential Violation #20SA1035 – Kleven Construction

Members Charland and Johnson recused themselves from participation in this agenda item.

Chair Voss asked if there were any public comments on this item. There were none.

The participating Board members considered the report of investigation, the evidence presented, and argument presented by Kleven Construction, and found that (1) probable violations of Government Code sections 4216.3(b) (digging without field marks) and 4216.4(a)(1) (use of power tools in the tolerance zone) occurred, and (2) an order directing Kleven Construction to take the Board's education course is an appropriate sanction.

Board Action: Motion to refer the case to the Contractors State License Board with a recommendation that the respondent attend the Board's education course.

Motion: Member Munoz

Second: Member Bianchini

Ayes: Members Bianchini, Del Toro, Forte, Johns, Munoz, and Voss

Noes: None

Abstentions: None

Result: Motion Approved.

Agenda Item No. 4: Decision on Notice of Potential Violation #19LA1042 – Hosopo Corporation dba Horizon Solar Power

Member Johnson recused himself from participation in this agenda item.

Chair Voss asked if there were any public comments on this item. There were none.

The participating Board members considered the report of investigation and argument presented by Horizon Solar Power, and found that (1) a probable violation of Government Code section 4216.2(b) occurred, and (2) an order directing Horizon Solar Power to take the Board's education course is an appropriate sanction.

Board Action: Motion to refer the case to the Contractors State License Board with a monetary penalty of \$10,000 and with a recommendation that the respondent attend the Board's education course.

Motion: Member Forte

Second: Member Munoz

Ayes: Members Charland, Forte, Munoz

Noes: Members Bianchini, Del Toro, Johns, and Voss

Abstentions: None

Result: Motion Failed.

Board Action: Motion to refer the case to the Contractors State License Board with a recommendation that the respondent attend the Board's education course.

Motion: Member Bianchini

Second: Member Johns

Ayes: Members Bianchini, Del Toro, Johns, and Voss

Noes: Members Forte and Munoz

Abstentions: Member Charland

Result: Motion Approved.

Chair Voss recessed the meeting from 12:00 p.m. to 1:30 p.m. for a lunch break.

Agenda Item No. 12: Decision on Notice of Potential Violation #20SA1040 – PG&E

Member Johnson recused himself from participation in this agenda item.

Chair Voss asked if there were any public comments on this item. There were none.

The participating Board members considered the report of investigation and found that (1) a probable violation of Government Code section 4216.3(a)(1)(A)(ii) occurred, and (2) an order directing PG&E to take the Board's education course is an appropriate sanction.

Board Action: Motion to refer the case to the Contractors State License Board with a recommendation that the respondent attend the Board's education course.

Motion: Member Bianchini

Second: Member Munoz

Ayes: Members Bianchini, Charland, Del Toro, Forte, Johns, Munoz and Voss

Noes: None

Abstentions: None

Result: Motion Approved.

Agenda Item No. 5: Decision on Notice of Potential Violation #19LA1090 – Pierre Landscape

Members Bianchini, Charland and Johnson recused themselves from participation in this agenda item.

Chair Voss asked if there were any public comments on this item. There were none.

The participating Board members considered the report of investigation and found that (1) a probable violation of Government Code section 4216.2(b) occurred, and (2) an order directing Pierre Landscape to take the Board's education course is an appropriate sanction.

Board Action: Motion to refer the case to the Contractors State License Board with a recommendation that the respondent attend the Board's education course.

Motion: Member Del Toro

Second: Member Forte

Ayes: Members Del Toro, Forte, Johns, Munoz and Voss

Noes: None

Abstentions: None

Result: Motion Approved.

Agenda Item No. 6: Decision on Notice of Potential Violation #19LA1090 – Swinerton General Contractors

Members Bianchini and Johnson recused themselves from participation in this agenda item.

Chair Voss asked if there were any public comments on this item. There were none.

The participating Board members considered the report of investigation and found that (1) a probable violation of Government Code section 4216.2(b) occurred, and (2) an order directing Swinerton General Contractors to take the Board's education course is an appropriate sanction.

Board Action: Motion to refer the case to the Contractors State License Board with a recommendation that the respondent attend the Board's education course.

Motion: Member Del Toro

Second: Member Forte

Ayes: Members Charland, Del Toro, Forte, Johns, Munoz and Voss

Noes: None

Abstentions: None

Result: Motion Approved.

Agenda Item No. 13: Board Member Public Engagement Reports

Chair Voss asked for Board Member engagement reports.

Member Johns commented he contacted contractors to encourage involvement in the upcoming trenchless excavation workshop and noted the need for more excavators to get involved in the discussions.

Agenda Item No. 14: Executive Officer's Report

Executive Officer Tony Marino presented the Executive Officer's report.

Chief of Investigations Jason Corsey provided an enforcement update explaining that three Notices of Probable Violation (NOPV) were mailed out on August 21, one

recommending referral to the Contractors State License Board (CSLB) and two recommending referral to the California Public Utilities Commission (CPUC), all of which had a recommended penalty of education. Mr. Corsey explained that there may be a potential hearing date on November 16th.

Executive Officer Tony Marino presented the Education and Outreach update on outreach materials. A flyer was created for investigators to use in the field to provide information to excavators that are unaware of the call before you dig requirements.

Mr. Marino provided an update on the case management system that will go live in October with mobile components including iPhone and iPad access available later in the fall.

Mr. Marino reminded Board members to sign up for the multi-factor authentication.

Mr. Marino explained that SB 865 passed the legislature on August 31st and is awaiting the Governor's signature or veto.

Chair Voss asked for comments from the Board.

Board members commented in support of the flyer for outreach materials.

Chair Voss asked for comments from the public. There were none.

Agenda Item No. 15: Electronic Positive Response Extension – Consideration of Applications Received in the Month of August 2020

Attorney Jeff Brooks presented a request from an operator seeking an extension of the deadline for the electronic positive response requirement for Board discussion and deliberation.

Chair Voss asked for comments from the Board.

Member Forte disclosed that she previously worked for the City of Santa Monica Water District and the City of Santa Monica but that it did not affect her ability to be objective.

Board members recognized that due to the Coronavirus Disease-19 (COVID-19) pandemic, operator's resources are strained and noted appreciation that the operator applied for the extension rather than wait until they were out of compliance.

Chair Voss asked for comments from the public. There were none.

Board Action

Motion: Member Johns

Second: Member Forte

Ayes: Members Bianchini, Charland, Del Toro, Forte, Johns, Johnson, Munoz, and Voss

Noes: None

Abstentions: None

Recusals: None

Result: Motion Approved.

Agenda Item No. 16: Resolution No. 20-09-02: Dig Safe Board Fee Regulation

Mr. Marino presented the staff report on Board Resolution No. 20-09-02, which outlines regulatory language that provides flexibility to the regional notification centers to assess the Board's fee either as a line item on the invoices they send to collect member dues or as separate invoices as well as makes other changes to administration of the Board's fee.

Chair Voss asked for comments from the Board.

Board members thanked staff and the one-call centers for their collaborative efforts to reach a solution.

Chair Voss asked for comments from the public. There were none.

Board Action

Motion: Member Forte

Second: Member Charland

Ayes: Members Bianchini, Charland, Del Toro, Forte, Johns, Johnson, Munoz, and Voss

Noes: None

Abstentions: None

Recusals: None

Result: Motion Approved.

Agenda Item No. 17: Resolution No. 20-09-01: Authorization for the Regional Notification Centers to Use the Board Seal

Mr. Marino presented the staff report on Board Resolution No. 20-09-01, which authorizes Underground Service Alert of Southern California ("DigAlert") and Underground Service Alert of Northern California and Nevada ("USA North 811") to use the Board's seal on invoices for Board regulatory fees.

Chair Voss asked for comments from the Board. There were none.

Chair Voss asked for comments from the public. There were none.

Board Action

Motion: Member Del Toro

Second: Member Bianchini

Ayes: Members Bianchini, Charland, Del Toro, Forte, Johns, Johnson, Munoz, and Voss

Noes: None

Abstentions: None

Recusals: None

Result: Motion Approved.

Chair Voss recessed the meeting from 3:15 p.m. to 3:38 p.m. for a break.

Agenda Item No. 18: Discussion on Reasonable Care Standards Development for Trenchless Excavation Techniques

Brittney Branaman, Budget and Policy Manager, presented the staff report on reasonable care standards development for trenchless excavation techniques.

Ms. Branaman discussed the participation of the workshop and the survey held in August 2020 by the Reasonable Care Committee. Participation in the workshop and survey was mainly represented by operators and operator-excavators, but there was limited participation from trenchless excavation contractors and subcontractors.

Ms. Branaman asked for all stakeholders reach out to their contacts who specialize in the field of trenchless excavation and encourage them to participate in October's workshop and survey and other upcoming opportunities to provide feedback.

Chair Voss asked for comments from the Board.

Board members acknowledged the workshop and survey was underrepresented by excavators themselves and encouraged excavators to review their best practices for trenchless excavation and send them to staff for developing further regulations for trenchless excavations.

Board members recommended staff perform outreach with suppliers to get contact information for excavators and inform them about the workshop. Member Bianchini provided excavator names for some entities in Northern California for staff to contact.

Chair Voss asked if there were public comments.

A member of the public asked that Southern California Boring Company be added to outreach list.

Other Business

Chair Voss asked if there were any other items to be added to the next board meeting agenda. There were none.

Adjournment

Chair Voss adjourned the meeting at 3:53 p.m.

Respectfully submitted,

Attest:

/s/ Tony Marino

/s/ Carl Voss

Tony Marino
Executive Officer

Carl Voss
Chair