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

April 15-16, 2019

Agenda Item No. 5 (Information Item) – Staff Report

Discussion on Investigations

Presenter

Jason Corsey, Chief of Investigations

Summary

The Board had requested that staff be ready to initiate investigations of "No Ticket" and "No Response" incidents by March of 2019. To meet the Board's request, Investigations Division leadership filled investigator positions with personnel having extensive investigative experience, choosing to focus training predominantly on industry subject matter and Gov't Code § 4216 *et seq.* Staff conducted preliminary investigations of "No Ticket" damage reports both as a training tool and as a means to refine internal policies and procedures. Although industry specific training for investigative staff will be continuous and ongoing throughout 2019, staff proposes to begin official investigations in earnest.

Background

Government Code § 4216.19 requires the Board to investigate possible violations of California's "One-Call" law (Gov't Code § 4216 *et seq.*). In the 2017-18 Budget, the Legislature authorized the Board to begin hiring the investigative team on July 1, 2018. At the October 15-16, 2018 Board meeting, when the Investigation Division's management team had begun to be formed, the Board requested that staff be ready to initiate investigations of "No Ticket" and "No Response" incidents by March of 2019, and staff concurred that the date was reasonable.

The Board's 2019 Plan outlined investigator training, policies, procedures and investigative protocols that needed to be completed and in place prior to initiating these investigations. The Board felt "No Ticket" and "No Response" incidents were a logical place for the Board to begin investigations due to the seriousness of the violations, the parity between excavator and operator shown by exploring both, and the educational value these investigations would provide to new investigators.

Discussion

Investigator Training and Preliminary Investigations

The Investigation Division's Special Investigators were hired between November and April and were chosen for their investigative experience, with the recognition that they would need to be trained in excavation and Gov't Code § 4216 *et seq.* Each investigator has at least 7 years of experience conducting complex administrative and criminal investigations for governmental agencies. They have received training in fraud detection, interviews and interrogations, de-escalation techniques, investigative report writing, evidence collection and analysis, maintenance of accurate and detailed case files, and preparation and service of investigatory subpoenas. For investigators to be prepared for the subject matter of their investigations, their training included both formal and informal training, such as the OSHA 10-Hour Construction Course, locate and mark, USA North 811 and DigAlert office visits, and ride-alongs, presentations and site visits with industry experts.

To supplement their training, and to exercise and refine recently-developed incident investigation protocols and report writing templates and procedures, investigators also began to conduct preliminary investigations in late February. Preliminary investigations differed significantly from the official incident investigations that staff proposes to begin soon. Under normal circumstances, investigators will be assigned reports of damages to investigate based on the four categories of Consequence (injury, fatality and disruption), Public Interest (newsworthy, visibility, proximity to locations of interest such as schools, etc.), Policy (those issues of policy importance to the Board, *e.g.* power tools in the tolerance zone) and Workload. The investigation itself will determine if one or more of the involved parties is responsible for the damage and if any of the parties violated a section of GC 4216.

Preliminary investigations, on the other hand, were focused on “No Ticket” damage reports, which were easily identified through searches of damage tickets in USA North 811 and DigAlert databases. Preliminary investigations did not have a field component but were desk investigations. Investigators contacted all parties named in the damage reports, introduced themselves and explained the Board’s mission and regulatory authority. Investigators conducted phone interviews to determine the underlying cause of damage and to determine why the excavator had not called to obtain a ticket prior to digging. Investigators requested any relevant supporting documentation such as previously issued incident reports, photos, permits and license histories. The interviews and supporting documentation were compiled into a Report of Investigation which detailed their findings and the section of the One-Call Law violated.

Insights Drawn from Preliminary Investigations

Although these preliminary investigations represent a small subset of the investigations staff will conduct, they did reveal some interesting information.

Homeowners

When staff investigators called homeowners involved in “No Ticket” damage reports, a large number were either unaware of 811 requirements or stated they thought they knew where all the utilities on their property were located. In several instances, the excavation activity on the homeowner’s property was performed by gardeners and landscapers and not the actual homeowner. Most homeowners were surprised to learn that a regulatory agency such as the Dig Safe Board exists and hope the Board will protect the rights of homeowners to dig on their own property. Homeowners expressed appreciation for the Board’s focus on improving public safety and that there was a regulatory agency to make sure utilities responded to customer calls. Investigators took time during each call to educate homeowners as to the need to call 811 before they dig. The message was well received, with most homeowners stating they had learned their lesson and that they would definitely call 811 prior to digging in the future.

Commercial Excavators

While the majority of commercial excavation companies contacted by staff investigators regarding “No Ticket” damage reports were responsive and cooperative, six refused to return calls. As these were preliminary investigations, staff did not pursue unresponsive parties. While the number of unresponsive parties was small, the experience suggests that investigative staff will encounter some uncooperative subjects and witnesses.

In one instance a staff investigator contacted a plumbing company who had reported damaging a marked telecommunications line to the one-call center. The plumbing company had a valid and active USA ticket for the dig site on the day of the reported damage. The manager reported that the telecommunications line was marked, but that it was only 2 ¼ inches below the surface. The line lay directly beneath the concrete. The plumber’s crew made saw cuts and then used a jackhammer to remove the concrete. The jackhammer struck the telecommunications conduit and damaged the line. The operator responded, repaired the line, and then billed the plumber nearly \$3,000. The office manager expressed concern to the investigator saying “it’s always the excavator who gets blamed but there is nobody holding the utilities accountable” and showed appreciation that there was someone she could tell about this issue. She hoped that the Dig Safe Board would help to protect excavators who try to do the right thing. Several

commercial excavators expressed this frustration to staff investigators when contacted. These responses further underscored the need for the Board and its investigators to ensure the public understands that Board investigations are impartial. They also illustrate that Board investigators will often walk a tightrope and will need to avoid being ensnared in fights over liability. The Board's Enforcement Philosophy states that the Board's statutory mission is to oversee safety performance, not to determine liability in accidents, and it directs staff to develop procedures to actively limit the influence of liability in determining what accidents and complaints to investigate.

Subsurface Installation Operators

When investigators contacted utility companies to request information and supporting documentation, the companies were responsive to the requests. These contacts during preliminary investigations illustrated the need for investigative staff to tailor some document request procedures for specific utilities and to submit those requests to specific individuals. These changes to internal administrative procedures will ensure that both parties can track the requests made and timely production of documentation. All utilities provided the requested information in a timely manner.

Investigation Plan

Staff proposes to initiate official investigations. As regulations requiring notification of specified damages will not be in effect until January 1, 2020, the plan is to continue to focus on investigating "No Ticket"/"No Response" events, as discovered through one-call center ticket database searches throughout 2019. Staff will begin the investigation of "No Response" reports, as the one-call center ticket standardization process, initiated following the Board's April 19, 2018 meeting, now allows these types of events to be isolated in USA North 811 and DigAlert databases. Staff will also investigate any incidents of Consequence (injury, fatality and disruption), Public Interest (news worthy, visibility, proximity to locations of interest such as schools, etc.) and/or Policy (those issues of policy importance to the Board) that staff is made aware of.

Once staff initiates investigations in the Board's official capacity, those found to be in violation of Gov't Code § 4216 *et seq.* will be treated according to the graduated enforcement guidance in Gov't Code § 4216.19(e) and the Board's Enforcement Philosophy. Staff expects, based on information collected in the process of its preliminary investigations, that the bulk of the violations found as a result of the initial official investigations will result in a warning letter indicating the code section violated and the potential for sanctions for continued violations of Gov't Code § 4216 *et seq.*