

# Underground Facilities Safe Excavation Board

*In the Matter of  
Hosopo Corporation, dba Horizon Solar, Respondent*

No. 19LA1042

September 14, 2020

## **DECISION**

This decision was made by the Board on September 14, 2020.

Respondent Horizon Solar provided a written response to the Notice of Probable Violation.

Board members Bianchini, Charland, Del Toro, Forte, Johns, Munoz, and Voss participated in the decision. Board member Johnson did not participate in the decision.

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

The Board will transmit the investigation results and the recommended penalty to the Contractors State License Board.

### **Horizon Excavated Without Obtaining a Dig Ticket**

One must obtain a ticket before excavating,<sup>1</sup> and may not begin to excavate until after the legal excavation start date and time, which is indicated on a dig ticket.<sup>2</sup> And one may not continue to excavate after the ticket expires.<sup>3</sup>

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<sup>1</sup> Gov. Code § 4216.2(b), (e), (i)

<sup>2</sup> Gov. Code § 4216.2(b)

<sup>3</sup> Gov. Code § 4216.2(e), (i)

Excavation is:

Any operation in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means of tools, equipment, or explosives in any of the following ways: grading, trenching, digging, ditching, drilling, augering, tunneling, scraping, cable or pipe plowing and driving, or any other way.<sup>4</sup>

Horizon admits that (1) it inserted a grounding the rod into the ground while installing a solar power system at a residence, and (2) it did not obtain a dig ticket before placing the grounding rod.

### **Referral to the Contractors State License Board is Appropriate**

When the Board finds a probable violation of Dig Safe laws, the Board may “transmit the investigation results and any recommended penalty” to the appropriate agency, identified in Government Code section 4216.6(c) or (d).<sup>5</sup> Section 4216.6(c)(1) provides that the Registrar of Contactors of the Contractors State License Board shall enforce the requirements of Article 2 (commencing with section 4216) on contractors.

“Contractor” is defined by the Business & Professions Code, in section 7026, as one who “does himself or herself or by or through others, construct, alter, repair, add to ... improve ... or demolish any ... project, development or improvement...” And Business and Professions Code section 7011.4(a) makes the Contractors State License Board responsible for enforcing statutes applicable to contractors, including unlicensed persons acting as contractors.<sup>6</sup>

The Board finds that in installing a solar power system, Horizon acted as a contractor constructing and improving a project.

### **An Order to Take the Board’s Education Course is Appropriate**

Section 4216.19(e) provides that sanctions shall be graduated and may include notification and information letters, direction to attend relevant education, and financial penalties. And further, that this information is relevant to the sanction determination:

- (1) The type of violation and gravity.

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<sup>4</sup> Gov. Code § 4216(g)

<sup>5</sup> Gov. Code § 4216.19(d)

<sup>6</sup> For example, Bus. & Prof. Code § 7028, acting as a contractor without a license; § 7028.17, compliance by unlicensed person with CSLB decision; § 7030.1, disclosure of suspended or revoked license

- (2) The degree of culpability.
- (3) The operator's or excavator's history of work conducted without violation.
- (4) The operator's or excavator's history of work conducted without violations.
- (5) The efforts taken by the violator to prevent violation and, once the violation occurred, the efforts taken to mitigate the safety consequences of the violation.

Horizon argued that Horizon acted reasonably in view of the prevailing industry standard for installation of solar equipment. And that Horizon has been licensed to install solar equipment since 2015,<sup>7</sup> and since that time, has installed 10 to 20 grounding rods per week "without incident."<sup>8</sup>

The Board finds that (1) Horizon's placement of the grounding rod was done in ignorance of statutory requirements, and that (2) Horizon was not responsible for stopping the flow of gas after the gas line was damaged. The Board finds that an order directing Horizon to take the Board's education course is appropriate.

Date:

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Carl Voss, Chair

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<sup>7</sup> Weinberger letter at p. 6

<sup>8</sup> Yarnell declaration, ¶ 4