

Underground Facilities Safe Excavation Board

*In the Matter of
MGE Underground, Respondent*

No. 20SA1021

September 14, 2020

DECISION

This decision was made by the Board on September 14, 2020. Respondent MGE Underground responded to the Notice of Probable Violation and did not contest the violation or penalty.

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

Having considered the report of investigation, the Board finds that (1) a probable violation of Government Code section 4216.2(g) occurred, and (2) that an order directing MGE Underground 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.

MGE Underground Excavated Before All Operators Responded

One is not permitted to begin excavating without receiving responses from all known operators of subsurface installations within the work area.¹ MGE obtained a ticket from the regional notification center and began boring before Comcast or AT&T had responded to the locate-and-mark request.

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

¹ Gov. Code § 4216.2(g)

appropriate agency, identified in Government Code section 4216.6(c) or (d).² Section 4216.6(c)(1) provides that the Registrar of Contractors 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.³

In boring, MGE acted as a contractor constructing, altering, or 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.
- (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.

² Gov. Code § 4216.19(d)

³ 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

Undergoing education will help MGE Underground understand what's at risk when they bore through an area that has not been field marked. The Board finds that an order directing MGE Underground to take the Board's education course is appropriate.

Date:

Carl Voss, Chair