

Underground Facilities Safe Excavation Board

*In the Matter of
Nurture Source Design, Respondent*

No. 20SA1004

September 14, 2020

DECISION

This decision was made by the Board on September 14, 2020. Respondent Nurture Source Design provided a written response to the Notice of Probable Violation.

Board members Bianchini, Charland, Del Toro, Forte, Johns, Johnson, Munoz, and Voss participated in the decision.

Having considered the report of investigation and argument presented by Nurture Source Design, the Board finds 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.

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

Nurture Source Design's Contentions

Nurture Source Design asserts that education is not necessary because of these facts:

- (1) The employee in charge of the crew performing the work is no longer employed by Nurture Source Design.
- (2) At the time of this incident, Nurture Source Design's company policy required contacting 811 before all excavations. And after the incident, Nurture Source "reiterated the importance of this Call Before You Dig protocol" to employees.

- (3) Nurture Source Design’s Responsible Managing Officer is familiar with Dig Safe laws, and his time spent attending the education course would be better used ensuring that his company’s employees are adhering to safety protocols.

Nurture Source Design Excavated Without Obtaining a Dig Ticket

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

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.⁴

In raking dirt on the driveway, Nurture Source moved or displaced earth with rakes. Nurture Source did so without first obtaining a ticket from a regional notification center.

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).⁵ 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.⁶

¹ Gov. Code § 4216.2(b), (e), (i)

² Gov. Code § 4216.2(b)

³ Gov. Code § 4216.2(e), (i)

⁴ Gov. Code § 4216(g)

⁵ Gov. Code § 4216.19(d)

⁶ For example, Bus. & Prof. Code § 7028, acting as a contractor without a license;

In performing work on the driveway, Nurture Source acted as a contractor constructing, altering, or repairing the driveway.

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.

This incident occurred although Nurture Source Design has a policy requiring compliance with Dig Safe Laws. The Board finds that an order directing Nurture Source Design to take the Board’s education course is appropriate.

Date:

Carl Voss, Chair

§ 7028.17, compliance by unlicensed person with CSLB decision; § 7030.1, disclosure of suspended or revoked license