

Underground Facilities Safe Excavation Board

*In the Matter of
Swinerton General Contractors, Respondent*

No. 19LA1090

September 14, 2020

DECISION

This decision was made by the Board on September 14, 2020. Respondent Swinerton General Contractors did not respond to the Notice of Probable Violation.

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

Having considered the report of investigation, the Board finds that a probable violation of Government Code section 4216.2(b) occurred.

The Board finds that an order directing Swinerton General Contractors 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.

Swinerton's Subcontractor Excavated Without Obtaining a Dig Ticket

Swinerton was the general contractor on the project and directed the work Pierre Landscaping performed. Pierre Landscaping, Swinerton's subcontractor, damaged a gas line while digging a trench at an elementary school. Neither Swinerton nor Pierre Landscaping obtained a ticket from a regional notification center before performing that work. Swinerton violated the requirement that a ticket be obtained before excavating.¹

¹ Gov. Code § 4216.2(b), (e), (i)

One is not permitted 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

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).⁴ 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.⁵

In directing that the trench be dug, Swinerton acted as a contractor.

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.

² Gov. Code § 4216.2(b)

³ Gov. Code § 4216.2(e), (i)

⁴ Gov. Code § 4216.19(d)

⁵ 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

- (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.

Education will help Swinerton to better understand the need to ensure that subcontractors comply with Dig Safe Laws. The Board finds that an order directing Swinerton to take the Board's education course is appropriate.

Date:

Carl Voss, Chair