

# **Underground Facilities Safe Excavation Board**

*In the Matter of*

*West Coast Construction, Respondent*  
No. 19LA1085

September 14, 2020

## **DECISION**

This decision was made by the Board on September 14, 2020. Respondent West Coast Construction provided a written response to the Notice of Probable Violation and appeared through Jerry Duran.

Board members Bianchani, 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, the evidence presented, argument presented by West Coast Construction, the Board finds that (1) a probable violation of Government Code section 4216.2(b) occurred, and (2) an order directing West Coast Construction's responsible managing officer 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.

### **West Coast Construction's Contention**

West Coast's main contention is that the operator, Southern California Gas, caused the incident by not marking the location of the damaged line. West Coast was building in the back yard of the residence, and delineated in the back yard, but the work required trenching from the back yard to the street to place utility lines.

### **West Coast Construction Excavated Without a Ticket**

On December 19, 2019, West Coast damaged a gas line while digging in the front yard of the residence. West Coast concedes that it violated the requirement that West Coast obtain a ticket before excavating.<sup>1</sup> One is not permitted 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>

### **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>4</sup> 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.<sup>5</sup>

In digging the trench, West Coast was constructing the project, and 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.

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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)

<sup>4</sup> Gov. Code § 4216.19(d)

<sup>5</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

- (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.

West Coast delineated a work area in the back yard of the residence but also excavated in the front yard. And West Coast excavated without a ticket, in part, because of the pressure of deadlines and other work on the project. Further, West Coast damaged the same gas line on two occasions. The Board finds that an order directing West Coast to take the Board's education course is appropriate.

Date:

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Carl Voss, Chair