
***California Underground Facilities Safe Excavation Board
("Dig Safe Board")***

July 13-14, 2020

Agenda Item No. 3 (Action Item) – Staff Report

Resolution No. 20-07-01 Approving Section 4201 of the Investigations and Enforcement Regulations, and Authorizing the Rulemaking Proceedings

PRESENTER

Jeff Brooks, Attorney

DISCUSSION

Staff published, for public review and comment, the Board's proposed regulation section 4201, which relates to evidence the Board will consider in imposing a penalty for violations of Dig Safe laws. The publication and comment period began on June 23 and ended on July 7.

The Board received no comments on the regulation from members of the public.

RECOMMENDATION

Staff recommends the approval of Resolution No. 20-07-01 approving section 4201 and authorizing the executive officer to proceed as required by the Administrative Procedure Act to adopt the proposed regulations and submit the proposed regulations with the supporting documentation required by law to the Office of Administrative Law.

ATTACHMENTS

- A: Resolution No. 20-07-01
- B: Text of Regulations

**CALIFORNIA UNDERGROUND FACILITIES SAFE
EXCAVATION BOARD**

RESOLUTION NO. 20-07-01

**APPROVING SECTION 4201 OF THE INVESTIGATIONS AND
ENFORCEMENT REGULATIONS AND AUTHORIZING RULEMAKING
PROCEEDINGS**

WHEREAS, Government Code section 4216.22 authorizes the Board to prescribe rules and regulations as may be necessary to carry out the purpose and intent of Government Code sections 4216 through 4216.24;

WHEREAS, the Board must adopt regulations to implement the provisions of Government Code section 4216 et seq., relating to investigation and enforcement;

THEREFORE, BE IT RESOLVED by the California Underground Facilities Safe Excavation Board as follows:

1. The proposed regulations are approved in substantially the form submitted to the Board. The Executive Officer is hereby authorized, for and on behalf of the Board, to proceed as required by the Administrative Procedure Act to adopt the proposed regulation and to submit the regulation, with the required supporting documentation, to the Office of Administrative Law.

2. The Executive Officer is authorized, for and on behalf of the Board, to take such actions, including making or causing to be made such changes to the proposed regulation as may be required for approval thereof by the Office of Administrative Law, and to execute and deliver any and all documents, including STD. 399 and STD. 400, that the Executive Officer may deem necessary or advisable in order to effectuate the purposes of this resolution.

3. This resolution shall take effect immediately upon approval.

Date of Adoption: July 13, 2020

I hereby certify that the attached resolution is a true and exact copy of Resolution No. 20-07-01 adopted by the California Underground Facilities Safe Excavation Board on July 13, 2020: RESOLUTION OF THE CALIFORNIA UNDERGROUND FACILITIES SAFE EXCAVATION BOARD APPROVING APPROVING SECTION 4201 OF THE INVESTIGATIONS AND ENFORCEMENT REGULATIONS AND AUTHORIZING RULEMAKING PROCEEDINGS.

Tony Marino
Executive Officer

Carl Voss
Chair

Date: July 13, 2020

SECOND 15 DAY TEXT OF REGULATIONS

California Code of Regulations
Title 19. Public Safety
Division 4. California Underground Facilities Safe Excavation Board
Chapter 1. General
Article 1. General
Section 4201

The first 15-day version of the proposed text to be added appears in underline. The second 15-day text of modifications proposed to be added is in **highlighted**, double underline, and deleted text is in **highlighted**, ~~double-strikeout~~.

Section 4201. Considerations to Assess Sanctions

(a) All of the following shall be considered to determine whether to assess a sanction for a violation of the Act or this division, and if so, the appropriate sanction for the violation:

- (1) Type of violation and its gravity, such as risk of or actual injury, death, or environment or property damage.
- (2) Degree of culpability, which may be measured in part by whether there were intervening acts or omissions by other persons.
- (3) Respondent's history of violations.
- (4) Respondent's history of work conducted without violations.
- (5) Efforts taken by the respondent to prevent the violation and, once the violation occurred, the efforts taken to mitigate the safety consequences of the violation.

(b) In determining whether to assess a sanction for a violation of the Act or this division, and if so, the appropriate sanction for the violation, the Board ~~has discretion to~~ **must** consider **competent** evidence that is relevant to any of the following matters:

- (1) Respondent notified the appropriate regional notification center, the Board, or other state agency with jurisdiction over the respondent under Government Code section 4216.6, if possible, of the violation immediately after detecting it and before the respective state agency learned of it by other means. This consideration does not apply when the respondent is required to report violations

related to damages that must be reported under section 4100, or violations under any other law to the appropriate regional notification center, the Board, or other state agency with jurisdiction over the respondent under Government Code section 4216.6.

(2) Cooperation with state agencies during the investigation.

(3) Appropriateness of the sanction to the size of the business of the respondent, including any effect on the respondent's ability to continue doing business.

(4) Economic benefit gained from the violation without any reduction because of subsequent costs.

(5) Respondent had received one or more information letters from a Board investigator.

(6) Other factors in consideration of the facts, evidence, and violation.

(c) In determining whether to issue an order for corrective action instead of monetary penalty, the Board ~~has discretion to~~ **must** consider ~~competent~~ evidence that is relevant to any of the following matters:

(1) Respondent is willing and able to comply with an order for corrective action.

(2) Respondent notified the appropriate regional notification center, the Board, or other state agency with jurisdiction over the respondent under Government Code section 4216.6, if possible, of the violation immediately after detecting it and before the state agency or the Board learned of it by other means. This consideration does not apply when the respondent is required to report violations related to damages that must be reported under section 4100, or violations under any other law to the appropriate regional notification center, the Board, or other state agency with jurisdiction over the respondent under Government Code section 4216.6.

(3) Cooperation with state agencies during the investigation.

(4) Violation did not cause death or substantial injury, environment or property damage, or pose significant risk of death or substantial injury, or environment or property damage.

(5) Respondent did not act willfully or knowingly, which includes recklessly.

(6) Respondent does not have a history of the same or similar violations, and has not failed to comply with an order for corrective action.

(7) If the respondent has a history of engaging in excavation or excavation related

work, the respondent has a history of conducting this work without a history of the same or similar violations.

(8) Respondent took immediate action upon discovery to mitigate the safety consequences of the violation.

(9) Other factors in consideration of the facts, evidence, and violation.

(d) When the Board issues an order for corrective action, Respondent must provide the Board with access to respondent's records, sites, and facilities to verify compliance with the order for corrective action. The Board has discretion to impose a monetary penalty upon a respondent that fails to timely comply with an order for corrective action if the Board determines that the failure to comply was willful.

NOTE: Authority cited: Section 4216.22, Government Code. Reference: Sections 4216.6, 4216.12, and 4216.19, Government Code.