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## California Underground Facilities Safe Excavation Board

June 21, 2018

### Agenda Item No. 5 (Information Item) – Staff Report

*Discussion on Proposed Draft Regulations on Investigations, Education/Training/Outreach, and Areas of Continual Excavation Pilot Program*

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#### ***Presenters***

Tony Marino, Executive Officer  
Zachary Trammell, Government Analyst  
Jason Neyer, Government Analyst  
Deborah Yang, Legal Counsel

#### ***Background***

Government Code section 4216.22 provides that the Board may prescribe the rules and regulations as may be necessary or proper to carry out the purposes and intent of the Dig Safe Act of 2016 (SB 661, Chapter 809, Statutes of 2016) (the “Act”) and to exercise the powers and duties conferred upon the Board by the Act. After conferring with the regional notification centers and Board members Charland and Bernacchi, staff drafted regulations that include investigations, education/training/outreach, and an area of continual excavation pilot program. Staff seeks Board and public input on these draft regulations.

#### ***Discussion***

##### Draft Regulation Sections 4020 and 4030: Education/Training/Outreach

Staff’s research on education/training in California show that while classroom or onsite safe excavation education/training may be provided through employers, education/training in a classroom or onsite format may not otherwise be readily available for all operators and excavators, or the public in general. The Board is required to help fill this void by coordinating education and outreach activities that encourage safe excavation practices (Government Code section 4216.12). Draft regulation section 4020 provides the Board with flexibility to conduct a formal or informal competitive process to provide a list of educational/training institutions that meet the Board’s standards. Excavators, operators, and any other interested persons may attend these courses that may be offered in various formats: classroom, onsite, or online. Individuals may also attend these courses to satisfy a sanction by the Board. Staff intends to conduct a market analysis of education/training institutions that may be able to offer these courses, and present to the Board in the following months a plan to compile a list of education/training institutions.

The draft regulations also advise the public that the Board may issue public safety information letters based on the results of an investigation. However, such a letter should not be viewed as a sanction. The purpose of the letter would be to inform the public of safe excavation practices.

##### Draft Regulation Section 4040: Area of Continual Excavation Pilot Program

The Board is required to implement regulations on areas of continual excavation by January 1, 2020 (Government Code section 4216.11). Prior to that deadline, staff recommends that the Board offer a pilot program to provide guidance to encourage safe excavation practices in areas of continual excavation. The pilot program will only be in place until regulations for a permanent program are effective on January 1,

2020. Staff intends to conduct a workshop in Bakersfield in July to begin the process of developing a pilot program.

#### Draft Regulation Sections 4100-4104: Investigations

The draft regulations establish a requirement for excavators and operators to provide damage notifications to the appropriate regional notification center and damage reports to the Board. The draft regulations also identify who may file a complaint for a possible violation of the Act, specify the Board's authority to investigate complaints, and describe the types of evidence that may be collected during an investigation.

Currently in California, excavators are required to notify operators of subsurface installation damage (Government Code section 4216.4), while operators are not required to notify any entity. As a result, many damages were simply unreported to the State. By requiring both operators and excavators to notify the appropriate regional notification center, which will then transmit the notification to the Board, the Board may be able to conduct investigations and enforcement actions or recommendations. The Board may also use the data collected from damage notifications to establish a baseline safety assessment to determine trends and root causes of damages, as well as the effectiveness of the Board's efforts. The notification of damages within four hours of discovery allows for the assessment of the severity of the damage, injuries, public safety, and the evacuation of personnel and equipment if necessary. The timeframe also allows Board investigators to gather and preserve evidence.

Many times, when a damage notification is submitted, not all the information is known by the person making the submission. Mandating a detailed report be submitted within ten business days to the Board allows excavators and operators to collect more information surrounding an incident and the possibility to review internal practices and procedures. These reports will help Board investigators get a better understanding of the events leading up to an incident. By requiring both operators and excavators to submit a damage report, Board investigators will be able to assess both accounts of the incident to complete an informed, unbiased investigation. The information collected from damage reports will also be used in establishing a baseline for safety and improvement assessments.

Often damages that do not involve breaks, cracks, or leaks are not reported because the subsurface installation was not immediately affected. It is also not uncommon for damages to go unreported due to fear of possible repercussions. By authorizing any individual to file a complaint of a possible violation of the Act, the Board will receive notification of damages that would otherwise go unreported. The Board will also mitigate the fear of possible repercussion by not singling out excavators as being the main individuals who report possible violations.

Before the Act was signed into law there was not a single State agency with the authority to investigate damages to subsurface installations regardless of the utility involved. The Act provides the Board with the authority in investigate all damages to subsurface installations and possible violations of the Act. Board investigators will have the authority to collect and maintain all pieces of evidence related to any damages to subsurface installations and probable violations of the Act. The evidence collected may include witness statements, photographs, GPS coordinates, damaged materials, regional notification center tickets, and any other relevant documentation pertaining to an incident.

*Attachments:* Proposed rulemaking schedule  
Draft regulations text

CALIFORNIA UNDERGROUND FACILITIES SAFE EXCAVATION BOARD  
 PROPOSED RULEMAKING SCHEDULE  
 June 21, 2018

<b>Regulatory Process</b>	<b>Deadline</b>
Present draft regulations at workshop for Board discussion and public feedback	June 21, 2018
Conduct stakeholder outreach on draft regulations	July 2018
Present proposed draft regulations to Board for approval	August 2018
Internal review/approval (State Fire Marshal, CAL FIRE, Resources Agency, etc.)	September-December 2018
Submit to Office of Administrative Law (“OAL”) for publication in the CA Regulatory Notice Register	January 8, 2019
Notice is published in the CA Regulatory Notice Register and 45-day public written comment period begins	January 18, 2019
Close of public written comment period. Public hearing held if member of the public requests a public hearing in writing at least 15 days before comment period closes (Gov. Code section 11346.8).	March 4, 2019
Present to Board for approval if there are any public comments or substantive changes to the regulation	March 2019
Internal review/approval (State Fire Marshal, etc.)	March/April 2019
Submit to OAL for approval (30 working days to review)	April 2019
OAL approval and Secretary of State filing	May 2019
Effective date of regulations	July 1, 2019

## TEXT OF PROPOSED REGULATIONS

### California Code of Regulations Title 19. Public Safety

#### Division 4. California Underground Facilities Safe Excavation Board Chapter 1. General Article 1. General

##### **§ 4002. Definitions**

(a) The definitions in this section are supplementary to those under Government Code section 4216.

(b) The following definitions shall apply wherever the terms are used throughout this division:

“Act” means the Dig Safe Act of 2016 (SB 661, Chapter 809, Statutes of 2016) and Article 2 of Chapter 3.1 of Division 5 of Title 1 of the Government Code (commencing with Section 4216).

“Damage” means any damage to a subsurface installation, including breaks, leaks, nicks, dents, gouges, grooves, cracks, or punctures to subsurface installation lines, conduits, coatings, or cathodic protection.

“Investigator” means an investigator employed by the California Underground Facilities Safe Excavation Board.

NOTE: Authority cited: Section 4216.22, Government Code. Reference: Section 4216, Government Code.

#### **Chapter 2. Education, Training, and Outreach** **Article 1. Education and Training for Operators and Excavators**

##### **§ 4020. Education and Training for Operators and Excavators**

The Board may, through a request for information or qualifications, request for proposals, invitation for bids, or other evaluation method, develop a list or pool of educational or training institutions deemed qualified by the Board to provide education or training to operators and excavators. An educational or training institution that does not maintain the same or higher level of qualifications as required by the Board shall be eliminated from the list or pool. The list or pool of educational or training institutions may be terminated or modified at the Board’s discretion under the terms of the request for information or qualifications, request for proposals, invitation for bids, or other evaluation method.

NOTE: Authority cited: Section 4216.22, Government Code. Reference: Sections 4216.6, 4216.12, 4216.17, and 4216.19, Government Code.

**Chapter 2. Education, Training, and Outreach**  
**Article 2. Public Safety Education and Outreach**

**§ 4030. Public Safety Information Letter**

Based on the results of an investigation, the Board may issue public safety information letters to any person, including a homeowner. A public safety information letter under this section does not constitute a sanction.

NOTE: Authority cited: Section 4216.22, Government Code. Reference: Sections 4216.12, 4216.17, and 4216.19, Government Code.

**Chapter 3. Area of Continual Excavation**  
**Article 1. Pilot Program**

**§ 4040. Area of Continual Excavation Pilot Program**

- (a) The Board may implement a pilot program to provide guidance to encourage safe excavation practices in areas of continual excavation. The pilot program may include minimum elements for an onsite meeting between the operator and excavator, and minimum elements for a plan that is mutually agreed upon by the operator and excavator for safe excavation in an area of continual excavation.
- (b) This section shall be in effect until regulations for areas of continual excavation are effective as provided in Government Code section 4216.11.

NOTE: Authority cited: Section 4216.22, Government Code. Reference: Sections 4216.11 and 4216.22, Government Code.

**Chapter 4. Investigation**  
**Article 1. Notification and Report**

**§ 4100. Damage Notification**

- (a) An operator shall notify the appropriate regional notification center of any damage to the operator's subsurface installation caused by excavation or excavation related work, within four hours after the operator's knowledge of the damage. The operator shall provide the notification by phone, email, mobile application, or other method as may be provided on the appropriate regional notification center's website or in an agreement between the operator and the regional notification center. The notification

shall include, as known to the operator at the time of notification, the ticket number, the location and brief description of the damage, the approximate date and time the damage occurred, any injuries, and the operator's contact information.

- (b) An excavator shall notify the appropriate regional notification center of any damage to a subsurface installation caused by excavation or excavation related work, within four hours after the excavator's knowledge of the damage. The excavator shall provide the notification by phone, email, mobile application, or other method as may be provided on the appropriate regional notification center's website. The notification shall include, as known to the excavator at the time of notification, the ticket number, the location and brief description of the damage, the approximate date and time the damage occurred, any injuries, and the excavator's contact information.
- (c) Regional notification centers shall transmit by email or other method as may be provided on the Board's website (digsafe.fire.ca.gov) or mobile application any notification under subdivision (a) or (b) to the Board within one hour, or as soon as practicable after any technical difficulties, of the regional notification center's receipt of the notification.

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

#### **§ 4101. Damage Report**

- (a) An operator shall provide a report to the Board of any damage to the operator's subsurface installation caused by excavation or excavation related work, within ten business days after the operator's knowledge of the damage. The operator shall submit the report by email, mail, hand delivery, or other method as may be provided on the Board's website (digsafe.fire.ca.gov). The report shall include, as known to the operator at the time of the report, the ticket number, location of the damage, description of the damage including type of subsurface installation and materials, description of how the damage occurred, the approximate date and time the damage occurred, any other property damage, any injuries, names of any of the operator's employees or contactors/subcontractors at the site of the damage, and the operator's contact information.
- (b) An excavator shall provide a report to the Board of any damage to a subsurface installation caused by excavation or excavation related work, within ten business days after the excavator's knowledge of the damage. The excavator shall submit the report by email, mail, hand delivery, or other method as may be provided on the Board's website (digsafe.fire.ca.gov). The report shall include, as known to the excavator at the time of the report, the ticket number, location of the damage, description of the damage including type of subsurface installation and materials, description of how the damage occurred, the approximate date and time the damage occurred, names of any

of the excavator's employees or contractors/subcontractors at the site of the damage, any other property damage, any injuries, and the excavator's contact information.

- (c) The report may be provided to any of the Board's investigators that may be present at the site of the damage, instead of by email, mail, hand delivery, or other method as may be provided on the Board's website (digsafe.fire.ca.gov).

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

### **§ 4102. Complaints**

Any person may file a complaint to the Board against a person for violation of this division or the Act.

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

### **§ 4103. Investigators**

(a) An investigator may investigate complaints, notifications, or reports of damages or probable violations of this division or the Act.

(b) An investigator is delegated the powers conferred on the Board under Article 2 of Chapter 2, Part 1, Division 3, Title 2 of the Government Code (commencing with Section 11180). An investigator is authorized to pursue any other investigatory or discovery power authorized under state law.

(c) An investigator may issue notices of probable violation and warning, notification, or information letters.

NOTE: Authority cited: Section 4216.22, Government Code. Reference: Sections 4216.6, 4216.12, 4216.19, and 11180-11191, Government Code.

### **§ 4104. Information Collected by Investigators**

(a) Investigators may collect and maintain evidence related to any damage or probable violation of this division or the Act. Evidence may include the following:

- (1) Photographs, electronic recordings, maps, drawings including computer-aided designs, GPS coordinates, design plans, emails, ticket information, previous incident documentation, and soil samples.

- (2) Witness interviews, statements, and affidavits under penalty of perjury pursuant to Code of Civil Procedure section 2015.5.
  - (3) Any other relevant documentation regarding activities performed at the site of the incident and the individuals and entities performing these activities, even if not directly involved with the excavation activities.
- (b) Operators and excavators shall cooperate with investigators. Upon an investigator's request, operators and excavators shall provide access to sites and facilities, and any information, documents, and materials related to the damage or probable violation of this division or the Act. Operators and excavators shall remove objects, such as barricades and plates, at or near the site of the damage to facilitate the investigation.

NOTE: Authority cited: Section 4216.22, Government Code. Reference: Sections 4216.6, 4216.12, 4216.19, and 11180-11191, Government Code; Section 2015.5, Code of Civil Procedure.