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

**April 15-16, 2019**

**Agenda Item No. 9 (Information Item) – Staff Report**

*Discussion on Complaint Process*

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***Presenter(s)***

Jason Corsey, Chief of Investigations

***Background***

During the January 14-15, 2019 meeting, members approved Policy B-05 ("Enforcement Philosophy"), which requires staff to develop procedures to actively limit the influence of liability in determining what accidents and complaints to investigate. During the same meeting, members expressed a desire to understand how staff would handle complaints from the public. Members wanted staff to outline the complaint process to ensure public complaints received adequate attention and were handled in a timely manner.

***Discussion***

Staff proposes a complaint process in which we encourage complainants to submit written complaints via our website, email and US Mail. There will be a complaint form available on our website which can also be mailed to a complainant upon request. The reason staff proposes requesting written complaints vs verbal complaints is that it will ensure the complainants issues are accurately described and when possible supporting documentation can be submitted with the complaint to substantiate the allegations. It is our belief this will also dissuade individuals from filing complaints without due consideration, without which Board staff could be spending time following unproductive leads.

Public reports of one call violations and complaints will be handled in a manner consistent with Board's Enforcement Philosophy, which calls on staff to develop procedures to actively limit the influence of liability in determining what accidents and complaints to investigate.

Board investigators will prioritize public reports of one call violations and complaints using the four categories of Consequence (injury, fatality and disruption), Public Interest (news worthy, visibility, proximity to locations of interest such as schools, etc.), Policy (those issues of policy importance to the Board, such as power tools in the tolerance zone) and Workload. These priority categories have not been finalized, but describe the process the Investigation Division will utilize to determine which reports and complaints merit investigation.

Staff will compile, maintain and update a list of management level company personnel from industry stakeholders to whom staff will refer and encourage complainants to contact to resolve disputes between the parties that do not merit an investigation. Staff will not mediate complaints will only insert themselves into disputes involving imminent risk to public health and safety.

Staff encourages the reporting of one call violations by whistleblowers. "Confidential" reporting and "anonymous" reporting are not synonymous, and each has benefits and drawbacks. Anonymous reporting

allows the reporter confidence that he or she will not be identified and thus not subject to ostracism or retaliation, but such reports are difficult to pursue, as an investigator cannot reach the reporter to ask follow-up or clarifying questions. Confidential reporting allows an investigator to follow up and obtain additional information as needed. When a reporting party makes a request to remain confidential, the request will be noted in the file and staff will make every effort to accommodate the request to the extent permitted by law. If a Board investigator does not have sufficient evidence to propose enforcement action without the testimony of a complainant who wishes confidentiality, the investigator will not be able to pursue the case and the investigation will be closed. In practice, this means that a complainant wishing to remain confidential must provide investigators with enough independently-verifiable information for the investigator to perform an independent investigation.

Unless the alleged one call violation meets a high threshold under the Consequence, Public Interest, or Policy criteria, staff will not investigate the report or complaint if the reporting party of a one call violation or complaint has filed an action in court for damages. Consistent with the Board's Enforcement Philosophy, investigative staff will not act as fact-finding agents in support of civil litigation.

Internally all reports of one call violations and complaints received by the Board will be given a MID# (Mail ID#). This will allow staff to track complaints and accurately respond to complainants and other interested parties when questioned about the status of a report or complaint. Reports and complaints that meet the criteria for investigation will be given an investigation case number and forwarded to the regional supervisor for assignment. When staff determines a report or complaint does not merit an investigation, the reporting party will be informed of the decision in writing. The reporting party's information will initially be entered and maintained in an excel spreadsheet and later in our case management system which will enabling staff to track complainants, alleged repeat offenders, and to identify complaint trends.