



DEPARTMENT OF FORESTRY AND FIRE PROTECTION
Office of the State Fire Marshal
California Underground Facilities Safe Excavation Board
2251 Harvard Street
SACRAMENTO, CA 95815
(916) 568-3800
<https://digsafe.fire.ca.gov/>



NOTICE OF PROBABLE VIOLATION

Michael Moran
City of Lafayette Department of Public Works
3675 Mt. Diablo Blvd, #210
Lafayette, CA 94549

February 22, 2021

Case No.: 20SA01291
Address/Location of Violation(s): City of Lafayette
Date/Time of Violation(s): Various

Dear: Michael Moran,

The Board has concluded an investigation of an incident on the above date, time and location and has determined that City of Lafayette Department of Public Works violated Article 2 of Chapter 3.1 of Division 5 of Title 1 of the California Government Code as follows:

Gov't Code 4216.1	Every operator of a subsurface installation, except the Department of Transportation, shall become a member of, participate in, and share in the costs of, a regional notification center. The City owns subsurface installations and is considered an operator as specified in 4216(s) and 4216(o).
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Violation of Article 2 of Chapter 3.1 of Division 5 of Title 1 of the Government Code (Sections 4216 *et seq.*) is punishable by a maximum penalty of \$10,000, or \$50,000 for knowing and willful violation.

A Corrective Action of compliance with Gov't Code 4216.1 by September 1, 2021 and mandatory completion of the Dig Safe Board's education course is being imposed. Please see <https://digsafe.fire.ca.gov/education-course/> for more information.

The proposed sanction reflects the nature and gravity of the violation and takes into consideration the Respondent's history of prior offenses, cooperation with the investigation and demonstration of his/her intent to comply with Government Code Sections 4216 *et seq* in the future.

This matter will be referred to the Lafayette City Council with a recommendation of the respondent becoming compliant with Gov't Code 4216.1 by September 1, 2021 and mandatory completion of the Dig Safe Board's education course.

The California Underground Facilities Safe Excavation Board will act on this notice of probable violation in a future meeting.

You may contest this notice by responding to this notice promptly. Please see attached instructions on completing and submitting your response for options available to you. Your response to this notice must be received by the California Underground Facilities Safe Excavation Board no later than April 5, 2021.

Sincerely,

Jason Corsey

Jason Corsey
Chief of Investigations
Dig Safe Board
916-926-1660

Proposed hearing date: May 11, 2021



**CALIFORNIA UNDERGROUND FACILITIES SAFE EXCAVATION BOARD
INVESTIGATION DIVISION
INVESTIGATION REPORT COVER SHEET**



DATE: 12/14/20

CASE#: 20SA01291

SUBJECT(S): The City of Lafayette

4216 Violations: Gov't Code 4216.1 - Failure to participate in a notification center

Prior Relevant Board Actions: None

Executive Summary:

On 11/10/2020 James Wingate, Director of USA North 811 submitted a complaint regarding the City of Lafayette being in violation of Government Code(GC) 4126 by owning buried facilities, which provide services to the public, and not being a member of the regional notification center. Special Investigator Michael Ehgott, Dig Safe Board, investigated the complaint and finds the City of Lafayette in violation of GC 4216.1.



**CALIFORNIA UNDERGROUND FACILITIES SAFE EXCAVATION BOARD
INVESTIGATION DIVISION
INVESTIGATION REPORT**



Report Date:	Case Number:	Notification Date:
12/14/20	20SA01291	10/5/20

Reporting Party Information:

James Wingate
USA North 811
4005 Port Chicago Hwy, Suite 100 Concord CA 94520

Subject(s) of Investigation:

The City of Lafayette
Michael Moran - City Engineer
3675 Mt. Diablo Blvd 210 Lafayette, CA 94549

Prior Relevant Board Actions:

None

Date and Time of Incident:

Ongoing violation.

Location of the Incident:

City of Lafayette Incorporated Area

Ticket No.:

N/A

Ticket Type:

N/A

Ticket Issued:

N/A

Legal Start:

N/A

Operator:

City of Lafayette

Excavator:

N/A

Facility Type Damaged:

N/A

Notification

Notification number:C202790004

Fatalities and Injuries:

Fatalities: 0

Injuries: 0

Damages:

N/A

Responding Agencies:

N/A

Scene Description

The City of Lafayette incorporated area, approximately 15 square miles.

Summary of Investigation

On 11/10/2020 SI Ehrgott reviewed the complaint submitted by James Wingate, Director, USA North 811. SI Ehrgott noted the email included an attachment to building permits issued by the City Of Lafayette which states they are not part of the Underground Service Alert system and permit holders are required to call the City to have facilities marked (Exhibits 1 & 3).

On 11/10/2020 I called Mr. Wingate and interviewed him regarding the complaint. Mr. Wingate stated that the City of Lafayette is not a member of USA North 811 despite attempts from Mr. Wingate and Charles (Chas) Whites, East Bay MUD, to educate them on the requirement to join the regional notification center as required by GC 4216. I asked Mr. Wingate about the types of facilities that Lafayette has and what locate & mark process they use if any. Mr. Wingate stated that Mr. Whites would have all that information and referred me to him as a witness. Mr. Wingate stated that the City of Lafayette's building permits have language that they are not part of the USA process and that the permittee must contact the City directly to have their facilities marked, which is in violation of multiple sections of 4216. Mr. Wingate provided SI Ehrgott with the referenced page of the City's permit package in the initial complaint. Mr. Wingate provided SI Ehrgott with the contact info for Farzaheh Sanders, Senior Engineer, City of Lafayette.

On 11/12/2020 SI Ehrgott called Charles aka "Chas" Whites, Superintendent of Construction and Maintenance, East Bay Municipal Utility District (EB MUD). Ehrgott asked Mr. Whites about the complaint submitted by Mr. Wingate. Mr. Whites confirmed that the City of Lafayette is not a member of USA North 811 and states that they city has low and high voltage buried electrical lines powering the traffic system. Mr. Whites stated that the City will mark their facilities but requires direct contact to do so. Mr. Whites states the problem is that the excavator may not know if there are buried Lafayette facilities within their work area or not. Mr. Whites stated that the locate and mark process is not timely when the City is contacted by the excavator. The City's permit packages make no mention of calling 811 beyond the fact that the City does not participate in the USA process. Mr. Whites stated that EB MUD supplies the water for the City of Lafayette and when they work on their own facilities they know to contact the City but many other excavators don't. Mr. Whites stated that beyond the USA process, the City of Lafayette is very good to deal with on excavations.

On 11/12/2020 SI Ehrgott left a voicemail for Farzaheh Sanders, Senior Engineer, City of Lafayette.


On 11/16/2020, Michael Moran, City Engineer, City of Lafayette called SI Ehrgott back and discussed the complaint. Mr. Moran stated that he recently became the City Engineer but had been working for the City for 20 years. Mr. Moran stated he did not know why Lafayette never became a member of USA North. Mr. Moran stated that their electrical contractor who performs maintenance and installation of the City's buried electrical facilities performs the locates when they are requested. Mr. Moran states the City has electrical lines feeding he traffic signals and street lamps. The City also has storm drains but no pressurized lines. Mr. Moran states that they require an encroachment permit for excavation near their facilities which triggers the locate and mark process. I explained GC 4216.1 to Mr. Moran and explained that the City would receive a NOPV if they did not begin the process to become a member of the one call center. Mr. Moran stated he understood and would forward my correspondence to the City of Lafayette's contract attorney for review. I also sent Mr. Moran

information on the USA North 811 membership process, GC 4216, and the Dig Safe Board. Mr. Moran responded to my email that he would let me know what he is advised to do.

On 11/30/2020 SI Ehrgott emailed Mr. Moran for an update. Mr. Moran stated he had spoken with the City Attorney but had received no direction yet. Mr. Moran indicated in his email that the NOPV could be sent to his attention and provided the address (Exhibit 2).

Investigative Findings

Following the investigation SI Ehrgott finds the City of Lafayette in violation of GC 4216.1.

Investigator Name	Supervisor Name
Michael Ehrgott	Carla Newman
Signature	Signature
 12/16/2020	<i>Carla Newman</i> 12/16/2020

Witness List

Name: Charles (Chas) Whites

Address:

Phone: 5107157584

DL:

Knowledge of: