

Category:	Organization	Policy Number:	B-05
Title:	Enforcement Philosophy		
Adopted:	January 14, 2019	Resolution:	19-01-02
Revision:			

The Board, in exercising its statutory responsibility to enforce, and recommend enforcement to other state agencies, does so pragmatically, with the goal of improving the safety of excavations in the vicinity of subsurface installations in the state. The Board has many enforcement tools, and sets forth the following enforcement philosophy to communicate how it intends to use those tools. Though the details of its application will necessarily vary based on case-specific circumstances, this philosophy applies to all persons and entities subject to enforcement of the state’s one-call law (Article 2 of Chapter 3,1 of Division 5 of Title 1 of the Government Code).

1. **Given evidence of unintentional error and lack of evidence of reckless or willful non-compliance, the Board’s enforcement should focus on assisting violators in correcting non-compliances.** The effectiveness of an intervention method in effecting behavior change is dependent on the cause of the misbehavior. All else being equal, most persons in regulated industries want to be both safe and compliant with the law, and for those people, requiring a corrective action—be it education, procedure change, or otherwise—will be more effective in eliciting improvement than financial penalties. Furthermore, punishing unintentional errors can cause companies and—more importantly—people within those companies, not to share safety-related errors. The more localized the penalty to an individual, the greater the negative effect on communication. Increased communication about safety leads to improved safety. Cultures that limit communication limit safety performance.

2. **Given lack of evidence of unintentional error and evidence of reckless or willful non-compliance, the Board should use fines as an enforcement tool.** The effectiveness of an intervention method in effecting behavior change is dependent on the cause of the misbehavior. Safety performance in a production-focused industry is determined by how internal personnel interact with external forces, and the Board is but one of these external forces. Directing an entity to correct intentional or reckless non-compliances will not elicit behavior change, but is instead more likely to create surface-level compliance without addressing the underlying cause of the reckless or willful noncompliance. Repeated violations and failure to implement corrective actions may be indicators of reckless or willful non-compliance. In this case, monetary penalty is the Board’s most effective tool in creating compliance.

3. **Board investigative staff should develop procedures to actively limit the influence of liability in determining what accidents and complaints to investigate.** The Board’s statutory mission is to oversee safety performance, not

Monitoring Method: Board
Frequency: Biennial

determine liability in accidents. Persons and companies may make reports and complaints of one-call law violations at little to no cost to themselves. The Board, on the other hand, has limited investigatory resources. Board investigation of complaints made for liability purposes will encourage further complaints for liability purposes, straining Board resources. Furthermore, a perception that the Board can be a tool by parties to collect damages from each other will undermine trust in the Board's interest and ability in pursuing its safety mission and reduce communication about safety. Board investigations initiated to serve liability purposes can undermine safety communication, thus undermine safety culture in the state.