



**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/>



July 8, 2020

## **NOTICE OF PROBABLE VIOLATION**

MGE UNDERGROUND  
NICK POINDEXTER  
816 26TH ST  
PASO ROBLES, CA 93446

Agent for Service of Process:

THOMAS J. MADDEN  
1948 SPRING STREET  
PASO ROBLES CA 93446

Case No.: 20SA1021

Address/Location of Violation(s): [REDACTED] San Jose, California

Date/Time of Violation(s): March 17, 2020 at approximately 0715 hours

Dear: Mr. Poindexter

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

The Board has determined that MGE Underground violated California Government Code 4216.2(g) "Unless an emergency exists, an excavator shall not begin excavation until the excavator receives a response from all known operators of subsurface installations..."

On March 17, 2020, MGE Underground was directional boring to install an electrical conduit when they exposed an AT&T communications utility line. MGE called in a locate

request and had a start date of March 13, 2020, according to MGE employee statements and the USA North Ticket Inquiry database, AT&T and Comcast had not responded to the locate request at the time of the exposure.

A Corrective Action of 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 Gov't Code §4216 et seq. in the future.

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

This matter will be referred to the California Contractors State License Board with a recommended penalty of mandatory completion of the Dig Safe Boards education course.

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 August 19, 2020.

*Jason Corsey*

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

Proposed hearing date: September 14, 2020



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



Date:	April 16, 2020
Case #:	20SA1021
Subject(s):	MGE Underground, AT&T, and Comcast

4216 Violations:	<p><b>MGE Underground:</b> 4216.2 (g) - Unless an emergency exists, an excavator shall not begin excavation until the excavator receives a response from all known operators of subsurface installations within the delineated boundaries of the proposed area of excavation</p> <p><b>AT&amp;T:</b> 4216.3 (a) (1) (A) - Unless the excavator and operator mutually agree to a later start date and time, or otherwise agree to the sequence and timeframe in which the operator will locate and field mark, an operator shall do one of the following before the legal excavation start date and time: (i) Locate and field mark within the area delineated for excavation and, where multiple subsurface installations of the same type are known to exist together, mark the number of subsurface installations. (ii) To the extent and degree of accuracy that the information is available, provide information to an excavator where the operator's active or inactive subsurface installations are located. (iii) Advise the excavator it operates no subsurface installations in the area delineated for excavation.</p> <p>4216.4 (d) - Each excavator, operator, or locator shall communicate with each other and respect the appropriate safety requirements and ongoing activities of the other parties, if known, at an excavation site.</p> <p><b>Comcast:</b> 4216.3 (a) (1) (A) - Unless the excavator and operator mutually agree to a later start date and time, or otherwise agree to the sequence and timeframe in which the operator will locate and field mark, an operator shall do one of the following before the legal excavation start date and time: (i) Locate and field mark within the area delineated for excavation and, where multiple subsurface installations of the same type are known to exist together, mark the number of subsurface installations. (ii) To the extent and degree of accuracy that the information is available, provide information to an excavator where the operator's active or inactive subsurface installations are located. (iii) Advise the excavator it operates no subsurface installations in the area delineated for excavation.</p>
------------------	--

	4216.4 (d) - Each excavator, operator, or locator shall communicate with each other and respect the appropriate safety requirements and ongoing activities of the other parties, if known, at an excavation site.
Other Violations:	None

Prior Board Actions: ☒ No  
☐ Yes  
Action Taken:

#### Executive Summary:

##### **MGE Underground (MGE) violated 4216.2 (g) of the government code.**

GC 4216.2 (g) states: “Unless an emergency exists, an excavator shall not begin excavation until the excavator receives a response from all known operators of subsurface installations...”

MGE Underground was directional boring to install an electrical conduit when they exposed an AT&T communications utility line. MGE called in a locate request and had a start date of March 13, 2020, and exposed a telephone line on March 17, 2020. According to MGE employee statements and the USA North Ticket Inquiry database, AT&T and Comcast had not responded to the locate request at the time of the exposure.

- An MGE employee stated his work crew waited the two business days but did not receive any notification from UtiliQuest and with no UtiliQuest response the MGE Underground work crew started excavation.
- USA North ticket inquiry indicates AT&T and Comcast did not provide a response to the initial locate request.

##### **AT&T violated 4216.4 (d) and 4216.3 (a) (1) (A) of the government code.**

GC 4216.4 (d) states: “Each excavator, operator, or locator shall communicate with each other and respect the appropriate safety requirements and ongoing activities of the other parties, if known, at an excavation site.” GC 4216.3 (a) (1) (A) states: Unless the excavator and operator mutually agree to a later start date and time, or otherwise agree to the sequence and timeframe in which the operator will locate and field mark, an operator shall do one of the following before the legal excavation start date and time: (i) Locate and field mark within the area delineated for excavation and, where multiple subsurface installations of the same type are known to exist together, mark the number of subsurface installations. (ii) To the extent and degree of accuracy that the information is available, provide information to an excavator where the operator’s active or inactive subsurface installations are located. (iii) Advise the excavator it operates no subsurface installations in the area delineated for excavation.

A UtiliQuest employee explained at the time of the initial request UtiliQuest was lacking the manpower to meet all locate request. In order to respond to the locate request, UtiliQuest needed permission from AT&T to use a code that indicated extraordinary circumstances existed. AT&T did not communicate with UtiliQuest concerning the response.

- UtiliQuest employee stated UtiliQuest would have responded with an XJ response to the initial locate request but had not received permission from AT&T to do so.

##### **Comcast violated 4216.4 (d) and 4216.3 (a) (1) (A) of the government code.**

GC 4216.4 (d) states: “Each excavator, operator, or locator shall communicate with each other and respect the appropriate safety requirements and ongoing activities of the other parties, if known, at an excavation site.” GC 4216.3 (a) (1) (A) states: Unless the excavator and operator mutually agree to a later start date and time, or otherwise agree to the sequence and timeframe in which the operator will locate and field mark, an operator shall do one of the following before the legal excavation start date and time: (i) Locate and field mark within the area delineated for excavation and, where multiple subsurface installations of the same type

**are known to exist together, mark the number of subsurface installations.(ii)To the extent and degree of accuracy that the information is available, provide information to an excavator where the operator's active or inactive subsurface installations are located. (iii)Advise the excavator it operates no subsurface installations in the area delineated for excavation.**

A UtiliQuest employee explained at the time of the initial request UtiliQuest was lacking the manpower to meet all locate request. In order to respond to the locate request, UtiliQuest needed permission from Comcast to use a code that indicated extraordinary circumstances existed. Comcast did not communicate with UtiliQuest concerning the response.

- UtiliQuest employee stated UtiliQuest would have responded with an XJ response to the initial locate request but had not received permission from Comcast to do so.



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



<b>Case Number:</b> 20SA1021	<b>Report Date:</b> April 16, 2020
<b>Subject Name:</b> MGE Underground, AT&T, and Comcast	<b>Notification Date:</b> March 17, 2020

**Reporting Party Information:**

Company: MGE UNDERGROUND  
 Co Addr: 816 26TH ST  
 City : PASO ROBLES State: CA Zip: 93446  
 Created By: NICK POINDEXTER Language: ENGLISH  
 Office Phone: [REDACTED] SMS/Cell: [REDACTED]  
 Office Email: usa@mgeunderground.com

**Subject(s) of Investigation:**

MGE Underground, AT&T and Comcast

**Date & Time of Incident:**

March 17, 2020 at approximately 0715 hours

**Location of Incident:**

[REDACTED] San Jose, California

**Ticket #:**

W007000152

-00W NEW NORM	Created 03/10/20	Legal Start 03/13/20	Expiration 04/07/20
-01W NRSP RUSH	Created 03/16/20	Legal Start 03/13/20	Expiration 04/07/20
-02W DMEX RUSH	Created 03/17/20	Legal Start 03/13/20	Expiration 04/07/20
-03W AMND NORM	Created 03/17/20	Legal Start 03/19/20	Expiration 04/07/20

**Operator:**

AT&T

**Excavator:**

MGE Underground

**Facility Type Damaged:**

No damage, Communications utility line (AT&T) was exposed.

**Violations:****MGE Underground:**

4216.2 (g) - Unless an emergency exists, an excavator shall not begin excavation until the excavator receives a response from all known operators of subsurface installations within the delineated boundaries of the proposed area of excavation

**AT&T:**

4216.3 (a) (1) (A) - Unless the excavator and operator mutually agree to a later start date and time, or otherwise agree to the sequence and timeframe in which the operator will locate and field mark, an operator shall do one of the following before the legal excavation start date and time: (i) Locate and field mark within the area delineated for excavation and, where multiple subsurface installations of the same type are known to exist together, mark the number of subsurface installations. (ii) To the extent and degree of accuracy that the information is available, provide information to an excavator where the operator's active or inactive subsurface installations are located. (iii) Advise the excavator it operates no subsurface installations in the area delineated for excavation.

4216.4 (d) - Each excavator, operator, or locator shall communicate with each other and respect the appropriate safety requirements and ongoing activities of the other parties, if known, at an excavation site.

**Comcast:**

4216.3 (a) (1) (A) - Unless the excavator and operator mutually agree to a later start date and time, or otherwise agree to the sequence and timeframe in which the operator will locate and field mark, an operator shall do one of the following before the legal excavation start date and time: (i) Locate and field mark within the area delineated for excavation and, where multiple subsurface installations of the same type are known to exist together, mark the number of subsurface installations. (ii) To the extent and degree of accuracy that the information is available, provide information to an excavator where the operator's active or inactive subsurface installations are located. (iii) Advise the excavator it operates no subsurface installations in the area delineated for excavation.

4216.4 (d) - Each excavator, operator, or locator shall communicate with each other and respect the appropriate safety requirements and ongoing activities of the other parties, if known, at an excavation site.

**Notification:**

On March 17, 2020, Supervising Special Investigator Carla Newman conducted a database search for damage tickets on the Underground Service Alert (USA) North database and found USA North ticket W007000152-02W.

**Fatalities and Injuries:**

None

**Damages:**

None, exposure

**Responding Entities:**

None

**Scene Description:**



Excavation site was located on [REDACTED] San Jose, California, near the Montevideo and Oak Canyon area of San Jose, in a suburban area. The excavation site is next to Guadalupe Elementary School. (Exhibit 6)

**Summary of Investigation:**

On March 17, 2020, Supervising Special Investigator (SSI) Carla Newman conducted a database search for damage tickets on the Underground Service Alert (USA) North database and found USA North ticket W007000152-02W (**Exhibit 03**), where MGE Underground (MGE) employee Nick Poindexter reported exposing an unmarked communications line at [REDACTED] San Jose, California, on March 17, 2020, at approximately 0716 hours.

SSI Newman assigned the case to Special Investigator Dennis Fenton on March 17, 2020. An analysis of the USA North database system indicated a previous locate request (W007000152-00W, (**Exhibit 01**)) had been requested on March 10, 2020. The expiration date was for April 07, 2020, and the exposure ticket (DMEX), W007000152-02W (**Exhibit 03**) was created on March 17, 2020, within the twenty-eight-day time frame of the initial locate request. Additionally, a no response ticket (NRSP), W007000152-01W (**Exhibit 02**) was created on March 16, 2020. A query of the Contractors State License Board database indicated MGE had a current and active license (**Exhibit 07**).

MGE employee Nick Poindexter, stated he had called in the location request to USA North on March 10, 2020. His work crew waited the two business days but did not receive any notification from UtiliQuest (doing work for Comcast and AT&T). With no UtiliQuest response the MGE work crew started excavation. The work crew exposed a one inch communications line while using an excavator on March 17, 2020. Mr. Poindexter did not hear from UtiliQuest concerning W007000152 until March 18, 2020, after reporting the exposure of the communications line. Mr. Poindexter further stated he had spoken to UtiliQuest employee Steve French concerning the exposed utility line.

In an interview with Mr. French he explained UtiliQuest's response to the W007000152 ticket was considered an XJ code which meant that extraordinary circumstances existed and no locate could be done due to weather/emergency condition and that an email was sent as a response. Mr. French would later direct SI Fenton to speak to UtiliQuest director Pritpal Aujla (**Exhibit 08**).

An analysis of the USA North Ticket Inquiry system (**Exhibit 05**) indicated UtiliQuest did not initially respond to locate request W007000152-00W (created on March 10, 2020). It was not until W007000152-03W (created on March 17, 2020, **Exhibit 04**), a remark request, that UtiliQuest responded with a message of "080 - EXTRAORDINARY CIRCUMSTANCES EXIST - NO LOCATE DUE TO WEATHER/EMERGENCY/SAFETY CONDITIONS" for both Comcast and AT&T. The "080..." message was sent on March 17, 2020, at approximately 1326 hours and was followed up by a message of "010 - LOCATE AREA MARKED" on March 18, 2020, at approximately 1540 hours.

In an interview with Mr. Aujla, he stated UtiliQuest does not respond to exposures or damages for AT&T lines. He further explained at the time when W007000152 was requested UtiliQuest had a hard time responding to locate requests because of the availability of their workforce, many of their workers had called out due to concerns with the Coronavirus. Mr. Aujla further explained UtiliQuest would have responded with an XJ response to the initial locate request but had not received permission from Comcast nor AT&T to do so.

### **Investigative Findings**

Through the course of the investigations it was found that MGE failed to wait for all Operator responses before starting their excavation. However, it is worth noting MGE waited six days before calling a NRSP ticket. The wait of six days past the legal start date gave enough time for UtiliQuest to respond. Furthermore, it was also found UtiliQuest failed to communicate with MGE to inform them the locate request would be delayed. UtiliQuest had received an initial locate request, NRSP, and DMEX, but sent no response to MGE. UtiliQuest claimed they were waiting on permission from AT&T and Comcast to send a response to MGE but did not receive that permission to do so.

Investigator Name		Supervisor Name	
Dennis Fenton		Carla Newman	
Signature	Date	Signature	Date
<i>Dennis Fenton</i>	April 16, 2020	<i>Carla Newman</i>	April 16, 2020

**Witness List**

Name:	Nick Poindexter
Address:	816 26 <sup>th</sup> Street, Paso Robles, California, 93446
Phone:	██████████ Email: usa@mgeunderground.com
DL:	
Knowledge of:	Mr. Poindexter, MGE employee, was the foreman for the MGE work crew that exposed the communication utility line.

Name:	Steve French
Address:	
Phone:	██████████
DL:	
Knowledge of:	Mr. French, UtiliQuest employee, spoke with Mr. Poindexter concerning the exposed utility line.

Name:	Pritpal Aujla
Address:	
Phone:	██████████
DL:	
Knowledge of:	Mr. Aujla, UtiliQuest employee, explained UtiliQuest's response to W007000152.

**Exhibit List**

Exhibit Number	Description	Date Received	Received From
01	USA North Ticket - W007000152-00W	March 18, 2020	USA North Database
02	USA North Ticket - W007000152-01W	March 18, 2020	USA North Database
03	USA North Ticket - W007000152-02W	March 18, 2020	USA North Database
04	USA North Ticket - W007000152-03W	March 18, 2020	USA North Database
05	USA North Ticket Inquiry Search - W007000152	March 18, 2020	USA North Database
06	Ticket Visualizer - W007000152-02W	April 17, 2020	Dennis Fenton
07	CSLB License Check - MGE UNDERGROUND	March 18, 2020	CSLB License Check Database
08	Text - 04-07-20, From Locator, Directors Contact Info	April 07, 2020	UtiliQuest employee Steve French
09	Email - 04-03-20, To Locator, Doc Request	April 03, 2020	Dennis Fenton