
California Underground Facilities Safe Excavation Board

January 10, 2022

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

Workshop on No-Call Excavation Complaints

PRESENTERS

Jason Corsey, Chief of Investigations
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SUMMARY

The existing damage notification and complaint processes lead to an underrepresentation of no-call damages reported through the Board's Investigations Case Management System. Staff proposes that the Board discuss with operators and other stakeholders means of improving the number and quality of potential no-call violation notifications.

STRATEGIC PLAN

2020 Strategic Plan Objective: Improve Compliance by Reaching Parties in Effective Ways

BACKGROUND

Damage Reporting

The Board's Investigations Case Management System (CMS) receives both damage notifications and complaints via a portal hosted by DigAlert. Current excavation safety law requires excavators to, among other things, report subsurface installation damages to operators¹ and to report damages to the one-call centers, and for these centers to forward the damage notifications to the Board within a specified timeframe.² In 2018,³ the Board discussed the possibility of engaging with operators to provide information about each of their "no-call" damages. A "no-call" violation is one in which an excavator does not contact the one-call center prior to excavating. Following the meeting,

¹ [Govt Code §4216.4\(c\)\(1\) Excavator to Report Damages to Operator](#)

² [CCR §4100 Excavator's Damage Reporting](#)

³ [Board Meeting October 2018](#)

investigative staff received informal notifications of these no-call damages from a small number of operators.

Complaint Process

At later meetings in 2019,⁴ the Board's developed a process for considering complaints from the public. Board members wanted staff to outline the complaint process to ensure public complaints received adequate attention and were handled in a timely manner. Staff discussed creating a complaint process consistent with the Board's Enforcement Philosophy, which calls on staff to develop procedures to actively limit the influence of liability in determining which accidents and complaints to investigate. Further, public reports of violations and complaints would be selected and prioritized for investigation using the following criteria:

- a) Consequence - injury, fatality, and disruption
- b) Public Interest - visibility, proximity to locations of interest such as schools, hospitals, etc.
- c) Policy - those issues of policy importance to the Board
- d) Workload

Additionally, staff expressed a preference that complaints be made in writing, as that would ensure submittal of accurate description and detailed information of the incident. Staff believed written complaints could dissuade individuals from filing complaints without due consideration, which could possibly lead to unproductive leads and waste of resources for the Board.

DISCUSSION

A review of notifications received by the CMS identified that, of the more than 1,600 damage notifications and complaints received since it became operational in October 2020,⁵ 54 (or about 3.4%) were for no-call excavations. In contrast, the Common Ground Alliance received 3,529 reports of no-call damages in California in 2020.⁶ The discrepancy is primarily because the large majority of notifications are damage notifications (91%) and not complaints (9%). Damage notifications do not require the reporter to list the cause or potential violation, as this was thought to discourage accurate reporting. Causal information was envisioned to be included in a less immediate report that has yet to be implemented.⁷ Additionally, staff suspects that damage reports contain a disproportionately low percentage of no-call damages, as an excavator who does

⁴ [Board Meeting April 2019](#)

⁵ Includes the period of approximately October 12, 2020 to November 26, 2021. While 147 Complaints were received, only 140 identified the nature of the potential violation.

⁶ [Common Ground Alliance DIRT Dashboard](#)

⁷ [Board meeting February 2018](#)

not know to contact 811 may also not know to report a damage.

In looking at complaints alone, their percentage (39%) aligns with the figures contained in the 2020 CARCGA DIRT report,⁸ which cited no-call as the root cause of damages in 37% of the reports received.

Staff would like to receive more no-call violation reports. Staff would also like to receive more complete information regarding these alleged no-call violations than it currently does through the damage notification and complaint portal. The Board has previously identified these types of potential violation as a priority for investigation, and they are well-suited for new investigators, many of whom will join the Board in Spring of 2022.

To most expeditiously and efficiently investigate no-call damages, Board investigators need to be provided information and evidence up front-information that cannot currently be accepted through the damage notification and complaint portal. Operators often have this information available within a few hours of discovery of the potential violation; the Board needs to determine a fair and effective means by which an operator may provide it.

Information Needed to Identify and Prosecute No-Call Excavation Complaints

To conduct a successful investigation of a complaint for a “no-call”, staff will need:

- 1) **Evidence demonstrating that an excavation occurred at a certain location and time.** This may often be a photograph of damage. Photographs showing both the damage and a landmark (such as a street sign) may allow investigators to tie the damage to a particular location. Timestamps on photographs and witness statements can assist an investigator in demonstrating the time and date of an excavation.
- 2) **Evidence that there was no ticket for the location and time.** Searches of USA North 811 or DigAlert systems as well as reports from their “near-ticket” applications can identify any tickets in the area, or the lack thereof.
- 3) **Evidence that associates a person/company with the excavation.** The excavation company’s name and names of onsite personnel can assist in identifying the persons responsible for the excavation. Photographs of trucks with company logos, phone numbers, or marketing can assist in placing a person at the site of an excavation.

Of those three information items, staff will need assistance from operators to acquire #1 and #3. Investigation staff will be able to perform a search of #2 (evidence that there was no ticket for the location and time).

⁸ [DigAlert 2020 CARGA Incident Report, Root Causes p.12](#)

During the process of the investigation, investigators will need to offer persons accused of a no-call violation the opportunity to rebut the assertion or offer rationale that may mitigate any sanction. For that reason, staff will need to be able to make contact with the persons named in the complaint.

Considerations in Receiving No-Call Complaints

Enforcement Philosophy

Investigating all “no ticket” complaints, and not just those that operators select to report, supports a positive safety culture consistent with the Board’s enforcement philosophy which seeks to actively limit the influence of liability in determining what accidents and complaints to investigate. Should a subsurface installation operator be willing to provide “no ticket” complaint or notifications to the Board, that operator should provide all notifications or use a pre-defined procedure instead of informally pre-screening them. This protects the operator and the Board, as it allows operators to tie their own hands and demonstrate that they are not picking and choosing who to “turn in” for an investigation.

CMS

Currently, the CMS only allows for submissions reporting damages or complaints in the form of text, it does not accept submission of photos or other documents such as emails and ticket searches. This will pose a challenge for staff as the proposed efforts to improve processing of no-call complaints is likely to require the ability to collect and store these types of information.

Timing

Staff would like to receive the complaint information from stakeholders as close as possible to the date and time of the incident while the details of the facts and information are still fresh in the minds of those persons involved. Staff and stakeholders will need to determine how quickly operators will be able to collect and transmit relevant material. Staff will also need to assign resources to ensure this activity can be completed in a timely manner, which will require balancing the level of effort needed against other investigative priorities.

RECOMMENDATION

Staff recommends the Board discuss with operators and other stakeholders ways to improve number and quality of no-call complaints in a way that creates a standardized means for interested stakeholders to voluntarily submit such complaints and allows investigative staff to quickly and efficiently investigate these incidents consistent with the Board’s Enforcement Philosophy.