

Basic 4216 Enforcement Model

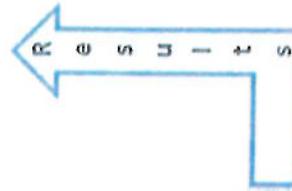
4216
Violation
Form
Complaint Filed with
Call Center



Call Center Research



Complaint & Research
Given to Agency



CALIFORNIA
REGIONAL

CGATM

Common Ground Alliance

7 Member Panels for
Disputed Complaints



Penalty Structure

- Progressive
- Rank Violations
- From Education to \$250,000

The Complaint Process:

This process is complaint-driven and administered by the **agency**. All penalties provided under this law are set forth in **4216.10**. All civil penalties collected by the **agency** for violations of the excavation laws are kept by the **agency**.

The complaint process is initiated by a 4216 Violation Form (VF4216). The form provides the mechanism for reporting probable violations of requirements of California Government Code section 4216 et seq. The forms are available on line at www.digalert.org or www.usanorth.org

California law provides that a violation of any rule of California Government Code section 4216 et seq. shall incur a penalty of not more than \$100,000. In addition to all other penalties provided by law, every person who knowingly and willfully violates any rule of the California Government Code section 4216 et seq. shall incur a penalty of not more than \$250,000.

After the form is completely filled out, it must be sent back to the One Call Center for the background research necessary for the **agency** to determine if further action is appropriate. If further action is indicated, the process can involve up to four distinct steps:

1. **Agency** staff will contact the person named in the VF4216 and discuss the probable violation(s). First offense violations are education of the requirements of California Government Code section 4216 with the person who caused the violation as well as a manager or officer of the company. Optionally others may attend. Proof of completed training must be sent to the **agency**.
2. Violation Panels (1 for Northern California 1 for Southern California) provide a setting for both sides of a dispute to discuss the issues. Each of the 7 member Violation Panels are made up of the following representatives from the CARCGA: state regulator, 3 facility owners (1 from pipeline, 1 from sewer/water and 1 from power/communication) and 3 contractors (1 from road builders, 1 from pipeline and 1 trenchless). At the conclusion of the meeting, the Violation Panel will apprise the violator of their findings and recommendations for resolution of the VF4216. If there is an agreement, the recommendation will be forwarded to the **agency** for final action. The Violation Panel recommendation is advisory only, and is not binding on the **agency**
3. If a resolution cannot be reached through either of the first two steps, the VF4216 will be processed at a formal hearing before an **agency** Administrative Law Judge in accordance with established hearing procedures. At the conclusion of the hearing, the judge will make a ruling, and a formal **agency** Order will be issued.
4. The violator may pursue an appeal of the formal **agency** Order to the Attorney General for final disposition.

Penalty for violation of California Government Code section 4216 et seq.

- (1) Except as provided in subsection (2) of this section and in addition to all other penalties provided by law, every person who violates any rule of California Government Code section 4216 et seq. shall incur a penalty of not more than \$10,000 for the first violation and not more than \$100,000 for each subsequent violation.
- (2) In addition to all other penalties provided by law, every person who knowingly and willfully violates any rule of California Government Code section 4216 et seq. shall incur a penalty of not more than \$25,000 for the first violation and not more than \$250,000 for each subsequent violation.
- (3) Each violation of any rule of California Government Code section 4216 et seq. shall be a separate offense. In the case of a continuing violation, each day that the violation continues shall constitute a separate violation.
- (4) Penalties under this section shall not be imposed except by order following a complaint as provided in **4216.11**. A complaint must be filed within six (6) months of the date of discovery of the violation.
- (5) The **state agency** may reduce any penalty provided in this section on such terms as the agency considers proper if:
 - (a) The defendant admits to the violation or violations alleged in the complaint and makes a timely request for reduction of the penalty as long as the violation has not been determined to be knowing and willful; or
 - (b) The defendant submits to the **agency** a written request for reduction of the penalty within 15 days from the date of the penalty order.
- (6) If the amount of the penalty is not paid to the **agency**, the Attorney General, at the request of the **agency**, shall bring an action in the name of the State of California to recover the penalty. The action shall not be commenced until after the time has expired for an appeal from the findings, conclusions and order of the **agency**.
- (7) The **agency** shall not seek penalties under this section except in response to a complaint alleging a violation of a rule or rules adopted by California Government Code section 4216 et seq. The **agency** may investigate any such complaint, and the **agency** shall have sole discretion to seek penalties under this section. Any findings or rulings under this code may not be used in any other **agency** proceedings.

Violation levels

- 1 = **Flagrant** - safety to people and facilities compromised;
 - 2 = **Dangerous** - safety to people & facilities likely compromised;
 - 3 = **Important** - could cause increase in costs or possible damage
- 1st time violations may have education offered
 Negligent violations will have penalties not to exceed \$100,000
 Knowing & Willful violations will have penalties not to exceed \$250,000

Violation	Median Violation Level
1 Operator is NOT a Member of the One-Call Center	1
2 Excavator Did Not Call	1
3 Excavator Did Not Delineate	3
4 Operator Did Not Notify of High Priority subsurface installation within 10ft of excavation before legal excavation start date and time	2
5 Excavator Did Not Meet with operator of High priority subsurface installation within 10ft of excavation	2
6 Excavator Began Working Without Giving 2 working Days Notice	1
7 Excavator Failed to Adequately Maintain the Marks and/or is Performing Excavation Activities Without Sufficient Marks	2
8 Excavator Failed to Confirm Location of Facilities Marked in Accordance with Marking Guidelines	2
9 Used Vacuum excavation device or power-operated/driven excavating or boring equipment without agreement from operator	2
10 Excavator Failed to Notify the Operator of a Damaged Facility	1
11 Excavator begins excavating before receiving response from ALL facility owners	2
12 Excavator Working Past 28 Day Without Revalidation	3
13 Locator Did Not Respond to the Marking or Re-Marking Request Made by the Excavator by the Legal Start Time Allowed to the Excavator, Subsequent to 2 Working Days Notice	2
14 Unqualified person located facilities	2
15 Locator Performed Marking but Not within approximate location	2
16 Locator Did NOT Notify the Excavator of No Conflict in the area of the Proposed Excavation	3
17 Locator Failed to Respond to Make Replacement Marks as Requested by Excavator	2
18 One-Call System Error led to Marking NOT being Performed	1
19 Other Violations	TBD by Enforcement Agency