



**CARCGA Leg/Reg Committee Proposed
4216 Enforcement Model**

The Enforcement Process:

This enforcement process is primarily complaint-driven and administered by the **agency**. However, the process does not prevent the agency from taking enforcement action, including stoppage of work or the imposition of penalties, on its own against any offender whose actions in violating California Government Code Section 4216 et seq. (hereinafter referred to as GC 4216), damages, or creates the potential to damage subsurface facilities. All penalties provided under this law are set forth in **4216.10**. Notwithstanding any other provision of law, all civil penalties collected by the **agency** for violations of the excavation laws are kept by the **agency** and to be used for the sole and exclusive purposes of enforcement of GC 4216, or damage prevention activities related to GC 4216.

The Complaint Process:

The complaint process is initiated by a 4216 Violation Form (COMPLAINT). The form provides the mechanism for reporting alleged violations of requirements of GC 4216. The forms are available on line at www.digalert.org or www.usanorth.org or the **agency's** website.

After filling out the complaint form, prior to submission to the **agency**, the parties involved will attempt to resolve the issue through negotiation, mediation or other process. If the parties resolve the issue no further action will be taken by the **agency**, only the filing of the resolved complaint. If the issue can't be resolved, the complaint form is submitted to the **agency**, along with any documentation supporting the claim, to determine if further action is warranted. If further action is indicated, the process can involve up to four distinct steps:

1. **Agency** staff will contact the person named in the COMPLAINT and discuss the alleged violation(s). If person agrees there was a violation, **agency** determines penalty based on penalty matrix.
2. If the person disputes that there was a violation the agency forwards the COMPLAINT to the appropriate Violation Panels (1 for Northern California 1 for Southern California).
 - A. The Violation Panels meet every two months but could meet more often dependent upon the level of activity and provide a setting for both sides of a dispute to present their case either in writing or in person.
 - B. Each of the 7 member Violation Panels are made up of the following representatives: state regulator, 3 facility owners and 3 excavating contractors.
 - C. Within 10 working days after the case is reviewed, the Violation Panel will apprise the **agency** of their findings and recommendations for resolution of the COMPLAINT. If the Violation Panel determines more time or information is needed to make a recommendation to the **agency**, the notification that more time is needed will be sent within 10 working days.

- D. The recommendations of the Violation Panel and any details on any agreements reached will be forwarded to the **agency** for final disposition of the COMPLAINT. If the **agency** does NOT agree with the Violation Panels' recommendations; the two will meet to discuss before implementation.
3. If a resolution cannot be reached through either of the first two steps, the COMPLAINT will be processed at a formal hearing before the **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 pursuant to the codes and laws governing the appeal process of the **agency**.

Penalty for violation of GC 4216

California law provides that a violation of any provision of GC 4216 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 provision of the GC 4216 shall incur a penalty of not more than \$250,000.

- (1) First offense violations of GC 4216 generally result in a person receiving mandatory education on the requirements of GC 4216. The education may be provided through seminars administrated and conducted by the **agency**, or any other entity agreeable to the **agency**. Optionally others may attend. Proof of completed training must be sent to the **agency**.
- (2) Except as provided in subsection (3) of this section and in addition to all other penalties provided by law, every person who violates any provision of GC 4216 shall incur a penalty of not more than \$10,000 for the first violation along with education and not more than \$100,000 for each subsequent violation.
- (3) In addition to all other penalties provided by law, every person who knowingly and willfully violates any provision of GC 4216 shall incur a penalty of not more than \$25,000 for the first violation along with education and not more than \$250,000 for each subsequent violation.
- (4) Each violation of any requirement of GC 4216 shall be a separate offense. In the case of a continuing violation, each day that the violation is known to the violator and continues, shall constitute a separate violation.
- (5) 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.
- (6) The **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 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 business days from the date of the penalty order.
- (7) 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**.
- (8) The **agency** shall only seek penalties under this section for violation(s) for any requirement(s) of GC 4216 that are recommend by the violation panel. Any findings or rulings under GC 4216 may not be used in any other **agency** proceedings.

Definitions

Person – individual, firm, company, corporation, county, city, city and county, or other political subdivision thereof.

Panel Items

- Panel must have a 2/3 majority for passage.
- Quorum for the panel is 5.
- If a panel member's company is involved in the complaint they will not vote in the matter.
- Stakeholders provide applicants for the panel that either the CARCGA choose or the governor appoints. Applicants should be subject matter experts.

Examples of Violations of 4216

	Violation	4216 Reference
1	Excavator Did Not Delineate	4216.2
2	Excavator Did Not Call Before Digging	4216.2
3	Excavator Began Working Without Giving 2 working Days Notice	4216.2
4	Excavator Did Not Meet with operator of High priority subsurface installation within 10ft of excavation	4216.2 (2)
5	Excavator Working Past 28 Day Without Revalidation ("Expired Ticket")	4216.2 (c)
6	Excavator begins excavating before receiving response from ALL facility owners	4216.3 (a) (1) & Title 8 Section 1541 (a)(2)
7	Excavator Failed to Adequately Maintain the Marks and/or is Performing Excavation Activities Without Sufficient Marks ("No Re-Mark Request")	4216.3 (c)
8	Excavator Failed to Confirm Location of Facilities Marked in Accordance with Marking Guidelines ("No Hand Dig")	4216.4
9	Excavator used vacuum excavation device or power-operated/driven excavating or boring equipment without agreement from operator	4216.4 (a)
10	Excavator Failed to Notify the Operator of a Damaged Facility	4216.4 (c)
11	Operator is NOT a Member of the One-Call Center	4216.1
12	Operator Did Not Notify of High Priority subsurface installation within 10ft of excavation before legal excavation start date/time	4216.2 (2)
13	Operator 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 ("No Operator Response")	4216.3
14	Operator Did NOT Notify the Excavator of No Conflict in the area of the Proposed Excavation	4216.3 (a) (1)
15	Unqualified person located facilities	4216.3 (a) (2)
16	Operator Failed to Respond to Make Replacement Marks as Requested by Excavator ("Remarks")	4216.3 (c)
17	Operator Performed Marking but Not within approxiamte location ("Miss Mark)	4216 (a)
18	One-Call System Error led to Marking NOT being Performed	4216.2 (c)