



October 2006

## SB 1359 Underground Utilities Signed by Governor Schwarzenegger

by Bob Downey, RED Consulting  
Cam Dickinson, Woodruff-Sawyer & Co.

On November 9, 2004, an explosion at a construction site near downtown Walnut Creek killed five workers and severely burned four others. The incident occurred when a backhoe operator struck a high-pressure petroleum line while digging a trench for a water line project near Las Lomas High School. The fuel ignited, triggering an explosion that sent a fireball 60 feet high.

Among the areas officials focused on were:

- Whether the marking of utilities was adequate to ensure excavators would not come in contact with the high pressure fuel line
- Whether the utility marking was accurate thereby allowing for proper precautions
- When in proximity to high pressure lines, did further precautions need to be taken

As a result of this terrible accident, Senator Tom Torlakson, Democrat of Antioch, introduced legislation to amend the Government Code related to underground utilities. SB 1359 requires an "operator" (defined as an entity which owns, operates or maintains a "subsurface installation."), if the excavation is within 10 feet of a high priority subsurface installation, to notify the excavator of the installation and to hold an onsite meeting with the operator to verify the location of the installation. The bill allows only a qualified person to perform subsurface installation locating activities. It also requires the use of specified locating equipment and requires the maintenance of plans for subsurface installations. The bill requires the regional notification centers (USA North and South) to provide contact numbers of the operators of utilities and makes the operator liable if they have not fulfilled their marking and contact responsibilities. The bill also makes the excavator liable for damage to underground utilities should the operator follow all locating requirements.

SB 1359 also allows with documented notice to, and

mutual agreement from the operator(s) of subsurface installations, that an excavator may use vacuum excavation devices, or power-operated or power driven excavating or boring equipment within the approximate location of that subsurface installation.

The bill has actually provided specific definitions of "high priority subsurface installations". "These include high-pressure natural gas pipelines with normal operating pressures greater than 60 psig or greater than six inches nominal pipe diameter, petroleum pipelines, pressurized sewage pipelines, high-voltage electric supply lines, conductors or cables that have a potential to ground of greater than or equal to 60kv or hazardous materials pipelines that are potentially hazardous to workers or the public if damaged."

To facilitate improvements in qualification of subsurface locators amendments to Government Code and regulation identify that a "Qualified Person" means "a person who completes a training program in accordance with the requirements of Title 8 California Code of Regulations, Section 1509, Injury Prevention Program, that meets the minimum training guidelines and practices of Common Ground Alliance current Best Practices."

An additional item identified in the Government Code requires the excavator to notify an operator "of any breaks, leaks, nicks, dents, gouges, grooves, or other damage to subsurface installation lines, conduits, coatings, or cathodic protection". The purpose of this notification is to ensure timely repair of non-serious damage to prevent future rupture of high priority lines. In emergencies when damages occur, dialing 911 is still considered the appropriate response call.

SB 1359 will take effect January 1, 2007.

Note: on September 14, 2006, Governor Schwarzenegger signed AB 463, urgency legislation to take effect immediately. This legislation specifically allows the use of boring equipment, vacuum excavation devices, or



power-operated or power driven excavating or boring equipment within the approximate location of that subsurface installation to any depth. Documented notice must be provided and mutually agreed to by the operator of the subsurface installation and the excavator. This bill is consistent with SB 1359, but as noted above takes effect immediately.

Key supporters to Senator Torlakson's legislation include construction industry individuals, EUCA, EMBUD, PG&E, USA North & South and labor organizations.

### Contact Us

For further information on any of the topics addressed in this newsletter, please contact Woodruff-Sawyer's Construction & Real Estate Practice at:

**415.391.2141**

or e-mail our key staff at:

#### **Chuck Shoemaker**

Senior Vice President, Construction Practice Leader  
 cshoemaker@wsandco.com  
 415.399.6416

#### **Steve Gaitley**

Senior Vice President, Real Estate  
 sgaitley@wsandco.com  
 415.402.6512

#### **Cam Dickinson**

Senior Vice President, Construction  
 cdickinson@wsandco.com  
 415.399.6308

#### **Houston Knox**

Vice President, Risk Management Services  
 hknox@wsandco.com  
 925.847.7467

#### **Arie Dykhuizen**

Vice President, Workers' Compensation,  
 Safety & Loss Control Services  
 adykhuizen@wsandco.com  
 415.399.6448

The information provided in this newsletter should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only, and you are urged to consult an attorney concerning your own situation and any specific legal questions you may have.

### Additional Information

For information about Common Ground Alliance you may wish to visit their web site at [www.commongroundalliance.com](http://www.commongroundalliance.com). At this site you may review CGA's Best Management Practices Version 3.0, download a PDF version of the document or order hard copies on line.

Regulatory Changes proposed can be found at the Department of Industrial Relations (Cal OSHA) web site (<http://www.dir.ca.gov/OSHSB/excavations>). The proposed regulations and the modifications to the government code track with one another with the exception that the Division of Occupational Safety and Health allows training of utility locators to be consistent with Common Ground Alliance standards or with National Utility Locating Contractors Association Standard 101 (2001). For information about NULCA please visit their web site at <http://www.nulca.org>.

*The information provided in this newsletter should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only, and you are urged to consult an attorney concerning your own situation and any specific legal questions you may have.*

*Woodruff-Sawyer is one of the largest independent insurance brokerage firms in the nation, and is an active partner of International Benefits Network and Assurex Global. For more than 87 years, Woodruff-Sawyer has been partnering with clients to implement and manage cost-effective and innovative insurance, employee benefits and risk management solutions, both nationally and abroad. Headquartered in San Francisco, Woodruff-Sawyer has offices throughout California and in Portland, Oregon.*

**For more information, call 415.391.2141 or visit [www.wsandco.com](http://www.wsandco.com).**