



# The Regulator's Perspective

Tony Marino, Executive Officer

California Dig Safe Board

September 11, 2018

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*“Societies, just like the operators of hazardous systems, put production before prevention. As we have seen, safety legislation is enacted in the aftermath of disasters, not before them. There is little or no political kudos to be gained from bringing about a non-event, although, in the long run, meeting this challenge successfully is likely to be much more rewarding. Every society gets the disasters it deserves.”*

- James Reason, “The Regulator’s Unhappy Lot”  
*Managing the Risks of Organizational Accidents*



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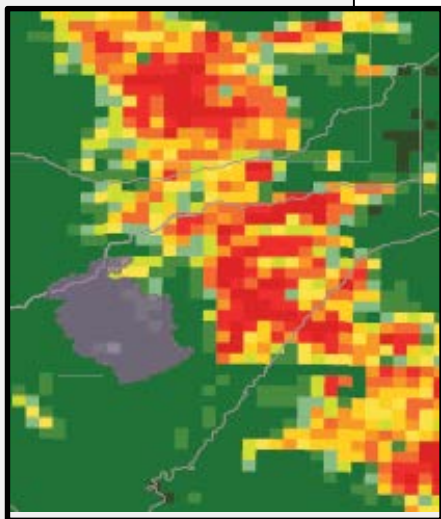
May 6, 2015

Commissioner Mike Florio  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102

RE: The Butte Fire and Fire Map 1

Dear Commissioner Florio,

I write to ask how it is that the map proposed in the determine areas at high risk for power line-ignited determine where electric utilities will spend tens to and maintenance activities and improve their infras the Butte Fire occurred as high risk. As you are we



Weick and Sutcliffe, authors of *Managing the Unexpected* and disciples of the high-reliability organization paradigm espoused by professors Karlene Roberts and Paul Schulman, differentiate between *mindfulness*, characterized by continual evaluation of the environment, and *mindlessness*, where a simple assessment leads to following an unchanging plan despite evolving circumstances and information. The process that led to this decision was not merely deficient—it was mindless. And it was mindless at the expense of millions of Californians.

I don't want to tell you how to fix this—I shouldn't have to—but it needs to be fixed.

Sincerely,

JERRY HILL  
Senator, 13<sup>th</sup> District

cc: President Michael Picker  
Commissioner Catherine J.K. Sandoval  
Commissioner Carla J. Peterman  
Commissioner Liane M. Randolph  
Timothy Sullivan, Executive Director  
Service List, R.15-05-006



# What does a regulator do?

*“There is never a case where—whether its labor-management, government-industry, parent-child—where a distant, adversarial relationship is effective. However, we still certainly need to respect each other’s legitimate roles and responsibilities. The service provider has the responsibility to provide safe service; the regulator has the responsibility to assure that to the public, and we need to respect each other’s legitimate roles, but to work in a problem-solving environment.*”

— Don Arendt, Senior Technical Advisor for Safety Management, FAA Flight Standards Service, November 18, 2013



## “Assure the public”

### The San Diego Union-Tribune

SEP. 7, 2018

The California Public Utilities Commission says you should trust it. Not yet.

By **The San Diego Union-Tribune Editorial Board**

The California Public Utilities Commission has long had a reputation for being far too chummy with the giant investor-owned electrical utilities it regulates — as well as being hostile to lawmakers, activists and journalists trying to understand its decision-making process. But that’s not how the...



# CALIFORNIA DIG SAFE BOARD



**THE WALL STREET JOURNAL.**  
 BUSINESS U.S. Edition | September 10, 2018 | Today's Paper | Video  
**California Puts Customers on Hook for Utility's Wildfire Liability**  
 Legislation to rescue PG&E from potential bankruptcy would allow utilities to pass fire costs to ratepayers  
*By Erin Ailworth and Sara Randazzo*  
 Sept. 3, 2018 2:48 p.m. ET

**THE SACRAMENTO BEE**  [sacbee.com](http://sacbee.com)  
**State audit rips California utilities commission for fund errors**  
 By [Kevin Yamamura](mailto:kyamamura@sacbee.com)  
 Published: Thursday, Jan. 17, 2013 - 12:00 am | Page 3A

**The San Diego Union-Tribune**  
**San Onofre deal concocted in secret**  
 By [Morgan Lee](#) MAY 23, 2015, 3:49 PM



## Liability – ek-skə-VĀ-shən 'DA-mij





## Trust



“The other thing I learned in the years before I introduced this bill was the shocking level of mistrust in the field between utilities and excavators—and sometimes between different utilities.

“Excavators are thought by utilities to plow through gas and telecommunications lines because it’s too much work to dig around them.

“Utilities are viewed by excavators as billing machines that can’t be bothered to mark their lines on time but will charge the excavator for every nick—even when it wasn’t the excavator’s fault.

“The worst part about these disputes is how they are resolved—in settlements with non-disclosure agreements where both sides walk away feeling they got the short end of the stick and learning nothing.”

Senator Jerry Hill  
July 6, 2015





# Dig Safe Act of 2016

- Prohibited the “reasonably known” exemption for utility owners
- No longer allowed power tools in the tolerance zone on “mutual agreement” between excavator and operator
- Created an annual “area of continual excavation” ticket process for agriculture and flood control basins
- Required operators to maintain records and to identify known abandoned lines
- Clarified liability provisions in the favor of excavators
- Required the development of safe excavation standards
- Created the Dig Safe Board and clarified enforcement authorities



# Dig Safe Act Board Responsibilities

**4216.12.** (a) The California Underground Facilities Safe Excavation Board is hereby created under, and shall be assisted by the staff of, the Office of the State Fire Marshal.

(b) The board shall perform the following tasks:

- 1) Coordinate education and outreach activities that encourage safe excavation practices, as described in Section 4216.17.
- 2) Develop standards, as described in Section 4216.18.
- 3) Investigate possible violations of this article, as described in Section 4216.19.
- 4) Enforce this article to the extent authorized by subdivision (e) of Section 4216.6.

(c) Notwithstanding any other law, on and after January 1, 2020, the board shall be subject to review by the appropriate policy committees of the Legislature.



# Enforcement Hub-&-Spoke



Public Utilities Commission



Local Governing Boards

Investor-owned public utilities

Local agencies



Petroleum pipeline operators

Contractors



Office of the State Fire Marshal



Contractors State License Board



# Does Enforcement Work?

*“The main question for a just culture is not about matching consequences with outcome. It is this: Did the assessments and actions of the professionals at the time make sense, given their knowledge, their goals, their attentional demands, their organizational context?”*

— Sidney Dekker, *Just Culture*



# CALIFORNIA DIG SAFE BOARD



Bakersfield, 11/13/15



Fresno, 04/17/15



Walnut Creek, 11/9/04

**UNITED CONTRACTORS**

TAKE ACTION ON PG&E CONTRACTOR ISSUES

United Contractors has launched an important project to improve the excavation safety and accountability process between PG&E and our contractors. Your input is absolutely critical in this effort! UCON is attempting to take these or other challenging incidents on through research and advocacy. Please help UCON advocate for a fair and equitable process.

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## Enforcement Mentality

### AB 56 (Hill, 2011):

- “The commission shall adopt and enforce a one-call notification program for the state consistent with the requirements adopted by the Department of Transportation pursuant to Chapter 601 (commencing with Section 60101) of Subtitle VIII of Title 49 of the United States Code.”

### AB 1514 (Lowenthal, 2012)

- “An action may be brought by the Attorney General, the district attorney, [the Public Utilities Commission](#), or the local or state agency which issued the permit to excavate, for the enforcement of the civil penalty pursuant to this section.”

### PUC’s Safety and Enforcement Division Director (Senate Hearing 6/4/13)

- “Here we don’t have an effective punishment system.”



## Enforcement Mentality Persists

### SB 119, Governor's Veto (10/10/15):

- "I understand that the telecommunications and cable companies have resisted providing explicit enforcement authority to the Public Utilities Commission over excavation safety. However, it is the Public Utilities Commission, and not the Contractors' State Licensing Board, that has the technical expertise and funds and should be given full authority to enforce and regulate excavation activities near subsurface installations."

### Governor's "Principles of Reform" for the CPUC (Feb, 2016)

The Commission should be empowered to enforce safety requirements in the case of poor excavation practices that threaten utility infrastructure and pose significant risks to the public. The Commission should be granted citation authority in cases where excavation damage has occurred but the excavator has failed to call 811 prior to commencing excavation



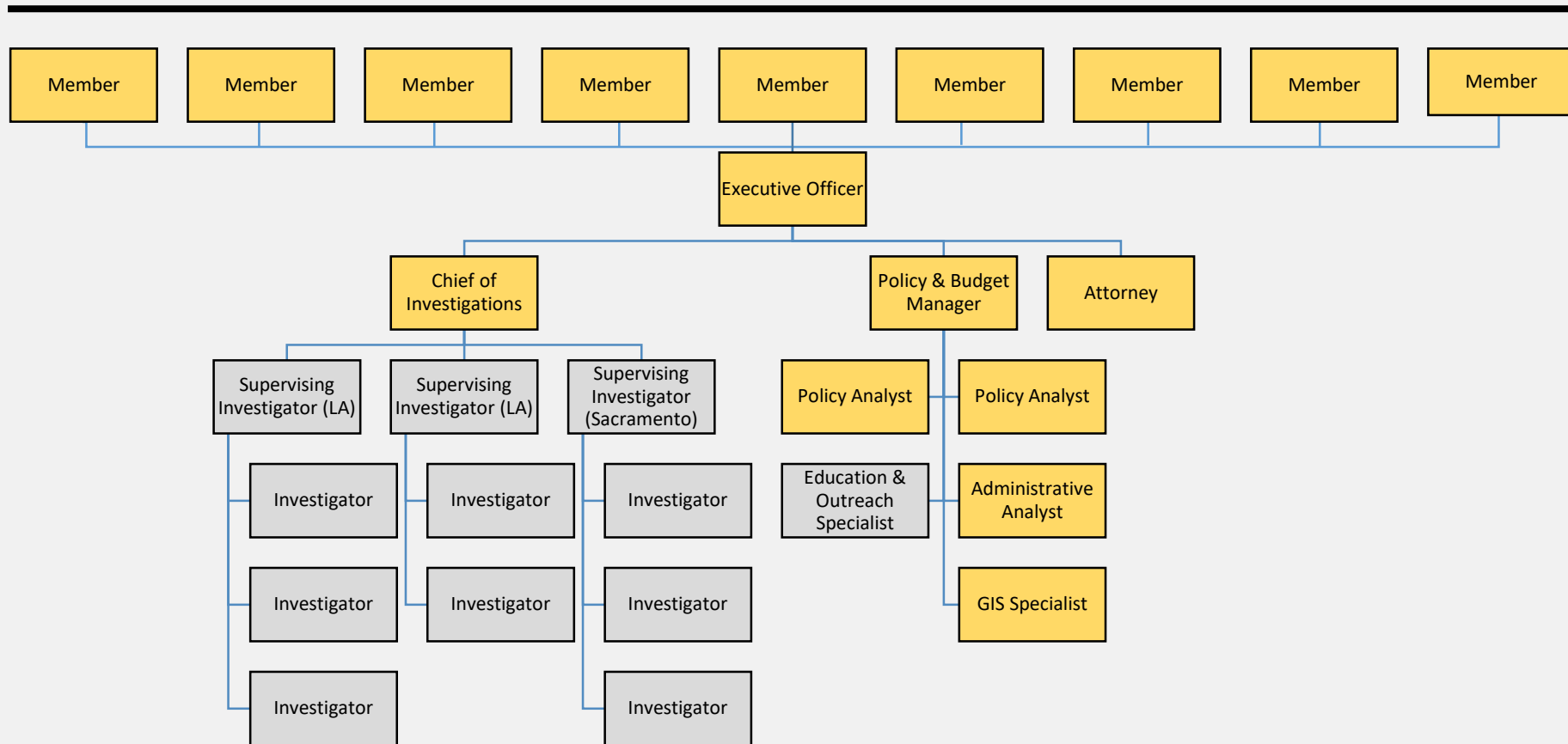
# Challenges with Enforcement

- Difficult to enforce based on an activity's risk (instead of consequence)
- Enforcement impedes the flow of communication
- Enforcement takes a disproportionate share of regulator resources
- Traffic tickets only hurt the poor





## Low-Consequence Investigations



(Greyed positions authorized 7/2018)



## Is Over-Regulation Under-Regulation?

*“Although both the federal and California Process Safety Management standards, respectively, were intended to be goal-setting or performance-based, in practice they appear to function primarily as reactive and activity-based regulatory schemes that require extensive rulemaking to modify. As a result, the federal and California PSM standards have become static in the face of advancing best practices and technology, with the emphasis placed on the completion of a task or activity rather than achievement of continuous risk reduction.”*

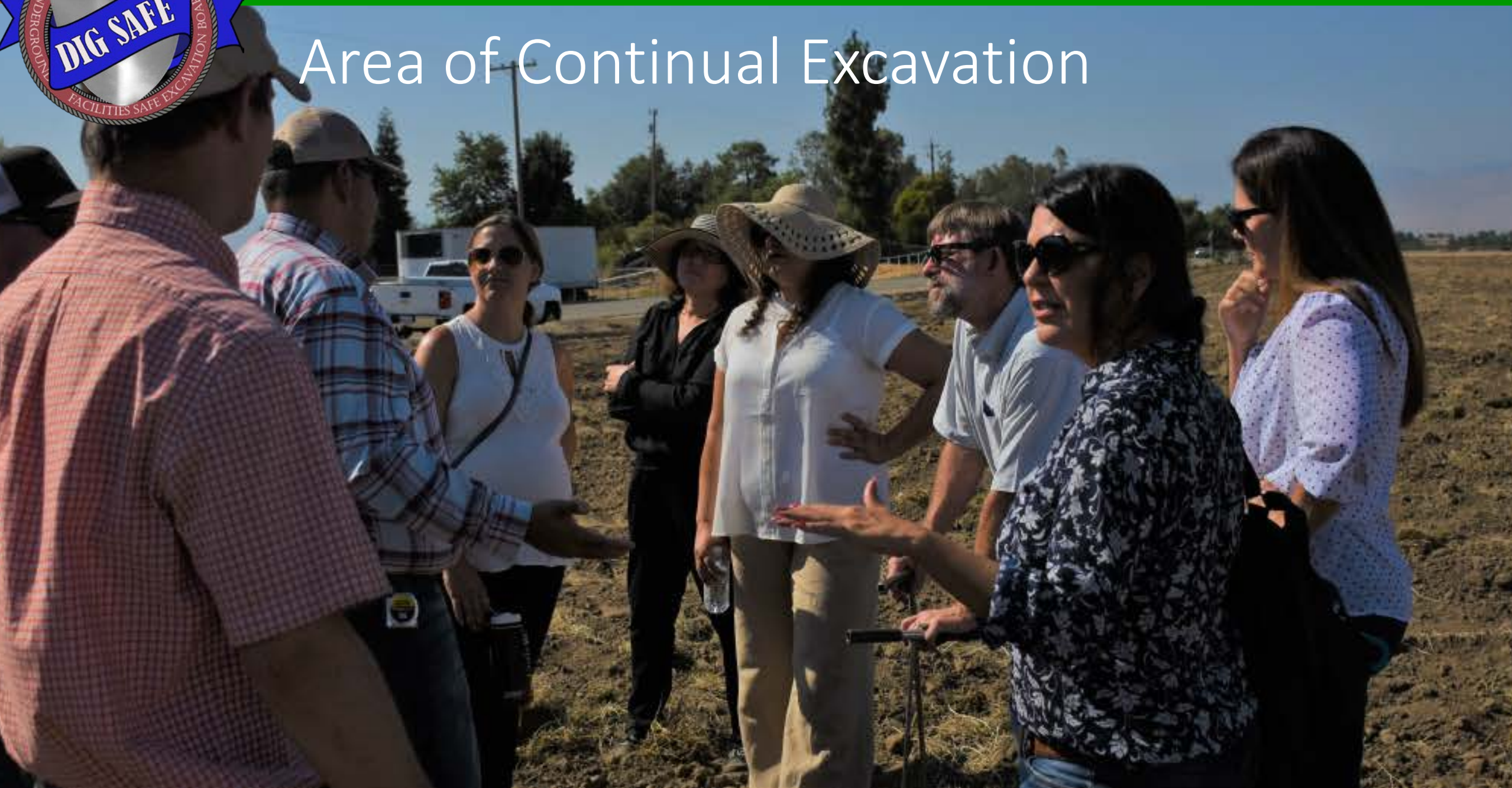
– Chemical Safety Board

*Regulatory Report: Chevron Richmond Refinery Pipe Rupture & Fire*

October 2014



# Area of Continual Excavation





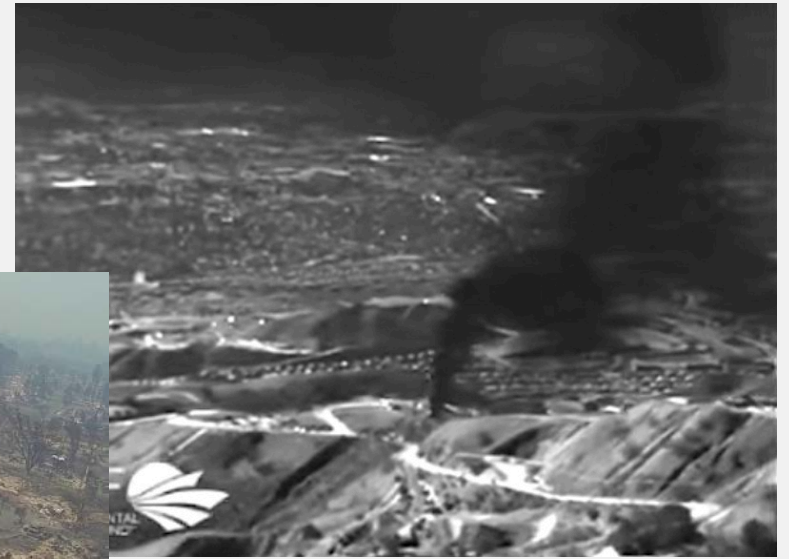
# Don't Trust Thy Neighbor; or Too Much Tolerance for Bad Regulators!

*“Regulators need to learn to be more than just an overseer, but a leader, of their industry. They have to have certain expectations of the industries that they lead.”*

- Don Arendt, Senior Technical Advisor for Safety Management,  
FAA Flight Standards Service, November 18, 2013



# Consequences of Failure are Rising





# CALIFORNIA DIG SAFE BOARD



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