

**State of New Mexico**

Environment Department

Occupational Health and Safety Bureau

525 Camino de los Marquez, Suite 3

Santa Fe NM 87505

Phone: (505) 476-8700 Fax: (505) 476-8734



## Citation and Notification of Penalty

To:  
City of Truth or Consequences  
AND ITS SUCCESSORS  
1595 Animal Shelter Road  
Truth Or Consequences, NM 87901

**Inspection Number:** 1688912  
**Inspection Date(s):** 07/28/2023-07/28/2023  
**Issuance Date:** 01/25/2024

**Inspection Site:**  
1595 Animal Shelter Road  
Truth Or Consequences, NM 87901

*The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.*

This Citation and Notification of Penalty (this Citation) describes violations of the Occupational Safety and Health Act of 1970. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties proposed, unless within 15 working days (excluding weekends and Federal holidays) from your receipt of this Citation and Notification of Penalty you mail a notice of contest to the Environment Department, Occupational Health and Safety Bureau at the address shown above. Issuance of this Citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless this Citation is affirmed by the Review Commission or a court.

**Posting-**The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and Federal holidays), whichever is longer. The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.

**Informal Conference-** An informal conference is not required. However, at the request of an employer, affected employee, or representative of employees, the Bureau Chief or the Bureau Chiefs designee may hold an informal conference. At this conference any issues raised by an inspection, citation, proposed penalty, proposed petition for modification of abatement date or proposed petition for variance may be discussed. If you intend to request an informal conference, take care to schedule it early enough to allow time to contest after the informal conference discussion, should you decide to do so.

When the conference is requested by an employer, an affected employee or representative shall be afforded an opportunity to participate, at the discretion of the Bureau Chief or Bureau Chiefs designee. When the conference is requested by an employee or representative of employees, the employer shall be afforded an opportunity to participate, at the discretion of the Bureau Chief or Bureau Chiefs designee.

The request for an informal conference and the informal conference meeting shall not extend or modify in any manner:

- 1) an abatement date established in the citation;
- 2) the deadline for an employer to file a notice of contest;
- 3) any other filing deadline related to the citation; or
- 4) any matter pending before the bureau.

Once an employer files a notice of contest, a petition for modification of the abatement date, a request for a commission hearing, a petition for variance, or other filing with the Occupational Health and Safety Review Commission or the Environment Department, the opportunity for an informal conference is no longer available.

**Right to Contest-** You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest proposed penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Bureau Chief in writing that you intend to contest the citation(s) and/or proposed penalty(ies) within 15 working days after receipt, the citation(s) and the proposed penalty(ies) will become a final order of the Occupational Safety and Health Review Commission and may not be reviewed by any court or agency. It is recommended that the Notice of Contest be filed via "Certified Mail".

**Penalty Payment-** Penalties are due within 15 working days of receipt of this notification unless contested. Make your check or money order payable to the Environment Department, Occupational Health and Safety Bureau. Please indicate the Inspection Number on the remittance.

OSHA does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

**Notification of Corrective Action -** For violations which you do not contest, you should notify the Occupational Health and Safety Bureau (OHSB) that each cited violation has been abated. To certify abatement, you should complete the "Description of Corrective Action Taken" box which follows each citation and sign the statement on the last citation page. You are not required to certify abatement if the compliance officer observed that abatement has occurred during the on-site inspection. The citation may indicate that you should submit additional documentation such as photographs, purchase orders, copies of written programs, etc. Failure to return all completed forms and documents to the Program Manager no later than 10 days after the abatement date may result in additional penalties.

You are also required to inform your employees about abatement activities by posting a copy of each document submitted to OHSB or a summary of the document near the place where the violation occurred. Documents must remain posted for 3 working days after submission to OHSB.

**Employer Discrimination Unlawful-** The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 30 days after the discrimination occurred with the Environment Department, Occupational Health and Safety Bureau at the address shown above.

**Notice to Employees -** The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Environment Department, Occupational Health and Safety Bureau at the address shown above and postmarked within 15 working days (excluding weekends and Federal holidays) of the receipt by the employer of this Citation and Notification of Penalty.

Please note that your facility will appear on the Department's Enforcement Watch as a result of this Citation and Notification of Penalty (see: <https://www.env.nm.gov/enforcement-watch/>). Further, the Department will issue a press release to local media highlighting your facility as appearing on this webpage. Your facility will remain on the Enforcement Watch website as an active matter until this matter is fully resolved, including the payment of the assessed civil penalty.

**State of New Mexico**  
Environment Department  
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**Inspection #:** 1688912  
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**Issuance Date:** 01/25/2024

**Citation and Notification of Penalty**

**Company Name:** City of Truth or Consequences  
**Inspection Site:** 1595 Animal Shelter Road Truth Or Consequences, NM 87901

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Citation 1 Item 1      Type of Violation: **Serious**

11.5.2.9 NMAC

29 CFR 1910.28(b)(3): Holes. The employer must ensure: (i) Each employee is protected from falling through any hole (including skylights) that is 4 feet (1.2 m) or more above a lower level by one or more of the following: (A) Covers; (B) Guardrail systems; (C) Travel restraint systems; or (D) Personal fall arrest systems.

On or about July 28, 2023, and at times before, employees at the wastewater plant were exposed to fall hazards in excess of 4ft. due to an unprotected hole in the walking-working surface above a permit-required confined space.

PROOF OF ABATEMENT:

Date Corrected:
Describe Corrective Action:

**Date By Which Violation Must be Abated:**  
**Proposed Penalty:**

**February 21, 2024**  
**\$12,434.00**

**State of New Mexico**  
Environment Department  
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Citation 1 Item 2 a Type of Violation: **Serious**

11.5.2.9 NMAC

29 CFR 1910.146(c)(4): If the employer decides that its employees will enter permit spaces, the employer shall develop and implement a written permit space program that complies with this section. The written program shall be available for inspection by employees and their authorized representatives.

On or about July 28, 2023, and at times before, employees were exposed to hazards associated with entering permit-required confined spaces, such as engulfment and atmospheric hazards, due to the lack of a written confined space program.

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Citation 1 Item 2 b Type of Violation: **Serious**

11.5.2.9 NMAC

29 CFR 1910.146(d)(5)(i): Test conditions in the permit space to determine if acceptable entry conditions exist before entry is authorized to begin, except that, if isolation of the space is infeasible because the space is large or is part of a continuous system (such as a sewer), pre-entry testing shall be performed to the extent feasible before entry is authorized and, if entry is authorized, entry conditions shall be continuously monitored in the areas where authorized entrants are working.

On or about July 28, 2023, and at times before, employees were exposed to hazardous conditions due to entering a permit-required confined space before pre-entry atmospheric conditions were monitored and safe entry was authorized.

**PROOF OF ABATEMENT:**

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**Proposed Penalty:**

**February 21, 2024**  
**\$0.00**

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Citation 1 Item 2 c Type of Violation: **Serious**

11.5.2.9 NMAC

29 CFR 1910.146(g)(1): The employer shall provide training so that all employees whose work is regulated by this section acquire the understanding, knowledge, and skills necessary for the safe performance of the duties assigned under this section.

On or about July 28, 2023, and at times before, employees did not receive formal training on confined spaces prior being exposed to hazardous conditions associated with permit-required confined space entry.

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Citation 1 Item 3      Type of Violation: **Serious**

11.5.3.9 NMAC

29 CFR 1926.651(c)(2): Means of egress from trench excavations. A stairway, ladder, ramp or other safe means of egress shall be located in trench excavations that are 4 feet (1.22 m) or more in depth so as to require no more than 25 feet (7.62 m) of lateral travel for employees.

On or about January 31, July 3, August 7, August 19, and at times before, employees were exposed to hazardous conditions within trench excavations, as safe means of egress was not provided.

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**Date By Which Violation Must be Abated:**  
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**Company Name:** City of Truth or Consequences  
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Citation 1 Item 4      Type of Violation: **Serious**

11.5.3.9 NMAC

29 CFR 1926.651(h)(1): Employees shall not work in excavations in which there is accumulated water, or in excavations in which water is accumulating, unless adequate precautions have been taken to protect employees against the hazards posed by water accumulation. The precautions necessary to protect employees adequately vary with each situation, but could include special support or shield systems to protect from cave-ins, water removal to control the level of accumulating water, or use of a safety harness and lifeline.

On or about August 19, and at times before, employees were exposed to hazardous conditions within trench excavations, due to accumulations of water being present without adequate precautions being implemented to prevent cave-ins. A competent person was not present or available to monitor water removal equipment and identify hazardous conditions.

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Citation 1 Item 5 a Type of Violation: **Serious**

11.5.3.9 NMAC

29 CFR 1926.651(k)(1): Daily inspections of excavations, the adjacent areas, and protective systems shall be made by a competent person for evidence of a situation that could result in possible cave-ins, indications of failure of protective systems, hazardous atmospheres, or other hazardous conditions. An inspection shall be conducted by the competent person prior to the start of work and as needed throughout the shift. Inspections shall also be made after every rainstorm or other hazard increasing occurrence. These inspections are only required when employee exposure can be reasonably anticipated.

On or about January 31, July 3, August 7, August 19, and at times before, employees were exposed to hazardous conditions within trench excavations, due to a competent person not being available to conduct inspections of trenches to ensure safe entry.

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Citation 1 Item 5 b Type of Violation: **Serious**

11.5.3.9 NMAC

29 CFR 1926.651(h)(2): If water is controlled or prevented from accumulating by the use of water removal equipment, the water removal equipment and operations shall be monitored by a competent person to ensure proper operation.

On or about August 19, 2023, and at times before, employees were exposed to hazardous conditions within trench excavations, due to a competent person not being made available to ensure water removal equipment was operating properly.

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**Proposed Penalty:**

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**\$0.00**

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**Company Name:** City of Truth or Consequences

**Inspection Site:** 1595 Animal Shelter Road Truth Or Consequences, NM 87901

Citation 1 Item 6      Type of Violation: **Serious**

11.5.3.9 NMAC

29 CFR 1926.652(a)(1): Each employee in an excavation was not protected from cave-ins by an adequate protective system designed in accordance with 29 CFR 1926.652 (b) or (c).

On or about January 31, July 3, August 7, August 19, and at times before, employees were exposed to hazardous conditions within trench excavations. Protective systems were not utilized.

PROOF OF ABATEMENT:

Date Corrected:	
Describe Corrective Action:	

**Date By Which Violation Must be Abated:**  
**Proposed Penalty:**

**February 21, 2024**  
**\$12,434.00**

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**Citation and Notification of Penalty**

**Company Name:** City of Truth or Consequences  
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Citation 1 Item 7      Type of Violation: **Serious**

11.5.2.9 NMAC

29 CFR 1910.1030(g)(2)(i): Bloodborne pathogens. The employer shall train each employee with occupational exposure in accordance with the requirements of this section. Such training must be provided at no cost to the employee and during working hours. The employer shall institute a training program and ensure employee participation in the program.

On or about July 28, 2023, and at times before, employees were exposed to hazards associated with bloodborne pathogens in human waste due to a lack of training on the hazards, the necessary PPE to mitigate or prevent exposure, and other required items.

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Date Corrected:
Describe Corrective Action:

**Date By Which Violation Must be Abated:**  
**Proposed Penalty:**

**February 21, 2024**  
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**Citation and Notification of Penalty**

**Company Name:** City of Truth or Consequences  
**Inspection Site:** 1595 Animal Shelter Road Truth Or Consequences, NM 87901

Citation 2 Item 1      Type of Violation: **Other-than-Serious**

11.5.2.9 NMAC

29 CFR 1910.22(a)(2): The floor of each workroom is maintained in a clean and, to the extent feasible, in a dry condition. When wet processes are used, drainage must be maintained and, to the extent feasible, dry standing places, such as false floors, platforms, and mats must be provided.

On or about September 7, 2023, and at times before, employees were exposed to hazardous conditions associated with standing water in the pump house at the Wastewater Plant.

**PROOF OF ABATEMENT:**

Date Corrected:

Describe Corrective Action:

**Date By Which Violation Must be Abated:**

**February 21, 2024**

**Proposed Penalty:**

**\$0.00**

I attest that all corrective actions contained in this document are accurate and affected employees have been informed of the abatement.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**State of New Mexico**  
Environment Department  
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**Citation and Notification of Penalty**

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Pursuant to the New Mexico Environment Department Delegation Order dated March 24, 2023, the Cabinet Secretary has delegated the authority to issue this Citation and Notification of Penalty to the Occupational Health and Safety Bureau Chief.

DocuSigned by:  
*Gregory Marquez*  
309D20B21A80461...

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Gregory J. Marquez, Program Manager

**State of New Mexico**  
Environment Department  
Occupational Health and Safety Bureau  
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**Phone: (505) 476-8700 Fax: (505) 476-8734**



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## INVOICE

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**Company Name:** City of Truth or Consequences

**Inspection Site:** 1595 Animal Shelter Road Truth Or Consequences, NM 87901

**Issuance Date:** 01/25/2024

**Summary of Penalties for Inspection Number:** 1688912

Citation 1 Item 1, Serious	\$12,434.00
Citation 1 Item 2a, Serious	\$12,434.00
Citation 1 Item 2b, Serious	\$0.00
Citation 1 Item 2c, Serious	\$0.00
Citation 1 Item 3, Serious	\$12,434.00
Citation 1 Item 4, Serious	\$12,434.00
Citation 1 Item 5a, Serious	\$12,434.00
Citation 1 Item 5b, Serious	\$0.00
Citation 1 Item 6, Serious	\$12,434.00
Citation 1 Item 7, Serious	\$12,434.00
Citation 2 Item 1, Other-than-Serious	\$0.00

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**TOTAL PROPOSED PENALTIES:** **\$87,038.00**

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Please remit payment promptly to this office for the total amount of the uncontested penalties summarized above. Make your check or money order payable to: Environment Department, Occupational Health and Safety Bureau. Please indicate OHSB's Inspection Number (indicated above) on the remittance.

OHSB does not agree to any restrictions or conditions or endorsements put on any check or money order for less than full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

DocuSigned by:  
*Gregory Marquez*  
309D20B21A80461...  
\_\_\_\_\_  
Gregory J. Marquez, Program Manager

1/25/2024  
\_\_\_\_\_  
Date