

**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:  
C D Mechanical  
AND ITS SUCCESSORS  
6881 Moongate Road  
Las Cruces, NM 88012

**Inspection Number:** 1676177  
**Inspection Date(s):** 06/08/2023-06/08/2023  
**Issuance Date:** 11/28/2023

**Inspection Site:**  
901 Herrera Road  
Hatch, NM 87937

*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.

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**Inspection #:** 1676177  
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**Issuance Date:** 11/28/2023

**Citation and Notification of Penalty**

**Company Name:** C D Mechanical  
**Inspection Site:** 901 Herrera Road Hatch, NM 87937

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Citation 1 Item 1      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 June 08, 2023, CD Mechanical employees were exposed to a cave-in hazard while working in a trench 5 feet or deeper without an egress ladder within 25 feet.

**PROOF OF ABATEMENT:**

Date Corrected:

Describe Corrective Action:

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

**December 22, 2023**

**Proposed Penalty:**

**\$3,956.00**

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**Company Name:** C D Mechanical  
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Citation 1 Item 2      Type of Violation: **Serious**

11.5.3.9 NMAC

29 CFR 1926.651(j)(2): Employees shall be protected from excavated or other materials or equipment that could pose a hazard by falling or rolling into excavations. Protection shall be provided by placing and keeping such materials or equipment at least 2 feet (.61 m) from the edge of excavations, or by the use of retaining devices that are sufficient to prevent materials or equipment from falling or rolling into excavations, or by a combination of both if necessary.

On or about June 08, 2023, C D Mechanical employees were working in trench where the soil pile was less than two feet away from edge exposing them to struck by and cave in hazards.

**PROOF OF ABATEMENT:**

Date Corrected:
Describe Corrective Action:

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

**December 22, 2023**  
**\$3,956.00**

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**Citation and Notification of Penalty**

**Company Name:** C D Mechanical  
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Citation 1 Item 3      Type of Violation: **Serious**

11.5.3.9 NMAC

29 CFR 1926.652(a)(1): Each employee in an excavation shall be protected from cave-ins by an adequate protective system designed in accordance with paragraph (b) or (c) of this section except when: (i) excavations are made entirely in stable rock; or (ii) excavations are less than 5 feet (1.52m) in depth and examination of the ground by a competent person provides no indication of a potential cave-in.

On or about June 08, 2023, CD Mechanical Employees were working inside a trench greater than five feet deep without any type of trenching protective system, exposing employees to cave in hazards.

**PROOF OF ABATEMENT:**

Date Corrected:

Describe Corrective Action:

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

**December 22, 2023**  
**\$3,956.00**

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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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*

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Gregory J. Marquez, Program Manager

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## INVOICE

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**Company Name:** C D Mechanical

**Inspection Site:** 901 Herrera Road Hatch, NM 87937

**Issuance Date:** 11/28/2023

**Summary of Penalties for Inspection Number:** 1676177

Citation 1 Item 1, Serious	\$3,956.00
Citation 1 Item 2, Serious	\$3,956.00
Citation 1 Item 3, Serious	\$3,956.00
<b>TOTAL PROPOSED PENALTIES:</b>	<b>\$11,868.00</b>

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

11/28/2023  
\_\_\_\_\_  
Date