



## Citation and Notification of Penalty

To:  
Roswell, City of, Water Department

**Inspection Number:** 1705461  
**Inspection Date(s):** 10/21/2023-10/23/2023  
**Issuance Date:** 04/19/2024

AND ITS SUCCESSORS  
425 N. Richardson Ave  
Roswell, NM 88201

**Inspection Site:**  
East Tilden Street  
Roswell, NM 88203

*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.

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

**Inspection Number:** 1705461  
**Inspection Date(s):** 10/21/2023-10/23/2023  
**Issuance Date:** 04/19/2024

### **Citation and Notification of Penalty**

**Company Name:** Roswell, City of, Water Department  
**Inspection Site:** East Tilden Street, Roswell, NM 88203

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

11.5.3.9 NMAC

29 CFR 1926.21(b)(2): The employer shall instruct each employee in the recognition and avoidance of unsafe condition(s) and the regulation(s) applicable to his work environment to control or eliminate any hazard(s) or other exposure to illness or injury.

On or about October 21, 2023, City of Roswell employees were exposed to excavation hazards including cave-ins, water intrusion, and a lack of appropriate means of egress when working in and near an excavation during response to a water line break at East Tilden Street in Roswell, New Mexico. The employer did not train each exposed employee in the regulatory requirements and methods to recognize and control such conditions.

PROOF OF ABATEMENT:

Date Corrected:
Describe Corrective Action:

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

**May 14, 2024**  
**\$155,442.00**

State of New Mexico  
Environment Department  
Occupational Health and Safety Bureau



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**Company Name:** Roswell, City of, Water Department  
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Citation 1 Item 2      Type of Violation: **Willful-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 October 21, 2023, City of Roswell employees were exposed to excavation hazards when working in and near an excavation during response to a water line break at East Tilden Street in Roswell, New Mexico. The employer did not take adequate precautions to protect employees from cave-in and engulfment hazards posed by water which was accumulating in the excavation.

#### PROOF OF ABATEMENT:

Date Corrected:
Describe Corrective Action:

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**Proposed Penalty:**

**May 14, 2024**  
**\$155,442.00**



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Citation 1 Item 3      Type of Violation: **Willful-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 October 21, 2023, City of Roswell employees were exposed to cave-in, engulfment and egress hazards when working in and near an excavation during response to a water line break at East Tilden Street in Roswell, New Mexico. The employer did not ensure that a competent person inspected the excavation to determine that hazardous conditions including but not limited to cave-ins and water intrusion were present as needed throughout the shift.

PROOF OF ABATEMENT:

Date Corrected:
Describe Corrective Action:

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

**May 14, 2024**  
**\$155,442.00**

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### **Citation and Notification of Penalty**

**Company Name:** Roswell, City of, Water Department  
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Citation 1 Item 4      Type of Violation: **Willful-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 29 CFR 1926.652(b) or 1926.652(c):

On or about October 21, 2023, City of Roswell employees were exposed to cave-in hazards when working in and near an excavation five feet or greater in depth during response to a water line break at East Tilden Street in Roswell, New Mexico. The employer did not ensure protective systems were in place to prevent employee injuries from cave-ins.

PROOF OF ABATEMENT:

Date Corrected:
Describe Corrective Action:

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

**May 14, 2024**  
**\$155,442.00**

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### **Citation and Notification of Penalty**

**Company Name:** Roswell, City of, Water Department  
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Citation 2 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 October 21, 2023, City of Roswell employees were exposed to excavation hazards including cave-ins and water intrusion during response to a water line break at East Tilden Street in Roswell, New Mexico. The employer did not ensure safe means of egress was in place for employees working in an excavation 5 feet or more in depth.

PROOF OF ABATEMENT:

Date Corrected:
Describe Corrective Action:

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

**May 14, 2024**  
**\$15,543.00**

**State of New Mexico**  
Environment Department  
Occupational Health and Safety Bureau



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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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Occupational Health and Safety Bureau



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\_\_\_\_\_  
Robert Genoway, Bureau Chief

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## INVOICE

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**Company Name:** Roswell, City of, Water Department  
**Inspection Site:** East Tilden Street, Roswell, NM 88203  
**Issuance Date:** 04/19/2024

**Summary of Penalties for Inspection Number:** 1705461

Citation 1 Item 1, Willful-Serious	\$155,442.00
Citation 1 Item 2, Willful-Serious	\$155,442.00
Citation 1 Item 3, Willful-Serious	\$155,442.00
Citation 1 Item 4, Willful-Serious	\$155,442.00
Citation 2 Item 1, Serious	\$15,543.00

**TOTAL PROPOSED PENALTIES:** **\$637,311.00**

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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.

\_\_\_\_\_  
Robert Genoway, Bureau Chief

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Date