

U.S. Department of Labor Occupational Safety and Health Administration
521 East Main Avenue, Suite 200
Bismarck, ND 58501



March 17, 2023

Bowers Excavating LLC
and its successors
P.O. Box 145
Mandan, ND 58554

Dear Employer:

Enclosed you will find citations for violations of the Occupational Safety and Health Act of 1970 (the Act) which may have accompanying proposed penalties. Also enclosed is a booklet entitled, "Employer Rights and Responsibilities Following an OSHA Inspection", (OSHA 3000-04R) revised 2018, which explains your rights and responsibilities under the Act. If you have any questions about the enclosed citations and penalties, I would welcome further discussions in person or by telephone. Please contact me at (701) 250-4521.

You will note on page 6 of the booklet that, for violations which you do not contest, you must (1) notify this office promptly by letter that you have taken appropriate corrective action within the time set forth on the citation; and (2) pay any penalties assessed. Please inform me of the abatement steps you have taken and of their dates together with adequate supporting documentation; e.g., drawings or photographs of corrected conditions, purchase/work orders related to abatement actions, air sampling results. This information will allow us to close the case.

As indicated on page 3 of the booklet, you may request an informal conference with me during the 15-working-day notice of contest period. During such an informal conference you may present any evidence or views which you believe would support an adjustment to the citation or the penalty.

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Area Director within 15 working days of your receipt of the citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete the attached notice at the bottom of this letter and post it next to the Citations as soon as the time, date and the place of the informal conference have been determined. Be sure to bring to the conference with you any and all supporting documentation of existing conditions as well as of any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

You should be aware that OSHA publishes information on its inspection and citation activity on the Internet under the provisions of Electronic Freedom of Information Act. The information related to these alleged violations will be posted when our system indicates that you have received this citation. You are encouraged to review the information concerning your establishment at www.osha.gov. If you have any dispute with the accuracy of the information displayed, please contact this office.

Sincerely,

A handwritten signature in black ink, appearing to read 'SO', with a long horizontal flourish extending to the right.

Scott Overson
Area Director

Enclosures

U.S. Department of Labor
Occupational Safety and Health Administration
521 East Main Avenue, Suite 200
Bismarck, ND 58501



Citation and Notification of Penalty

To:
Bowers Excavating LLC
and its successors
P.O. Box 145
Mandan, ND 58554

Inspection Number: 1623855
Inspection Date(s): 09/21/2022 - 09/21/2022
Issuance Date: 03/17/2023

Inspection Site:
North 23rd Street and Kennedy Avenue
Bismarck, ND 58501

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 either call to schedule an informal conference (see paragraph below) or** you mail a notice of contest to the U.S. Department of Labor Area Office at the address shown above. Please refer to the enclosed booklet (OSHA 3000) which outlines your rights and responsibilities and which should be read in conjunction with this form. 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.

Informal Conference - An informal conference is not required. However, if you wish to have such a conference you may request one with the Area Director during the 15 working day contest period by calling (701) 250-4521. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

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If you decide to request an informal conference, please complete, remove and post the Notice to Employees next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

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 Area Director 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.**

Penalty Payment – Penalties are due within 15 working days of receipt of this notification unless contested. (See the enclosed booklet and the additional information provided related to the Debt Collection Act of 1982.) Make your check or money order payable to "DOL-OSHA". Please indicate the Inspection Number on the remittance. You can also make your payment electronically at www.pay.gov. At the top of the [pay.gov](http://www.pay.gov) homepage, type "OSHA" in the Search field and select Search. From **OSHA Penalty Payment Form** search result, select Continue. The direct link is:

<https://www.pay.gov/paygov/forms/formInstance.html?agencyFormId=53090334>

You will be required to enter your inspection number when making the payment. Payments can be made by credit card or Automated Clearing House (ACH) using your banking information. Payments of \$25,000 or more require a Transaction ID, and also must be paid using ACH. If you require a Transaction ID, please contact the OSHA Debt Collection Team at (202) 693-2170.

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

Notification of Corrective Action – For each violation which you do not contest, you must provide *abatement certification* to the Area Director of the OSHA office issuing the citation and identified above. This abatement certification is to be provided by letter within 10 calendar days after each abatement date. Abatement certification includes the date and method of abatement. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item. The abatement certification letter must be posted at the location where the violation appeared and the corrective action took place or employees must otherwise be effectively informed about abatement activities. A sample abatement certification letter is enclosed with this Citation. In addition, where the citation indicates that *abatement documentation* is necessary, evidence of the purchase or repair of equipment, photographs or video, receipts, training records, etc., verifying that abatement has occurred is required to be provided to the Area Director.

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 U.S. Department of Labor Area Office at the address shown above.

Employer Rights and Responsibilities – The enclosed booklet (OSHA 3000) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

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 U.S. Department of Labor Area Office 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.

Inspection Activity Data – You should be aware that OSHA publishes information on its inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to these alleged violations will be posted when our system indicates that you have received this citation. You are encouraged to review the information concerning your establishment at www.osha.gov. If you have any dispute with the accuracy of the information displayed, please contact this office.

U.S. Department of Labor
Occupational Safety and Health Administration



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with OSHA to discuss the citation(s) issued on 03/17/2023. The conference will be held by telephone or at the OSHA office located at 521 East Main Avenue, Suite 200, Bismarck, ND 58501 on _____ at _____.

Employees and/or representatives of employees have a right to attend an informal conference.

CERTIFICATION OF CORRECTIVE ACTION WORKSHEET

Inspection Number: 1623855

Company Name: Bowers Excavating LLC
Inspection Site: North 23rd Street and Kennedy Avenue, Bismarck, ND 58501
Issuance Date: 03/17/2023

List the specific method of correction for each item on this citation in this package that does not read "Corrected During Inspection" and return to: **U.S. Department of Labor—Occupational Safety and Health Administration, 521 East Main Avenue, Suite 200, Bismarck, ND 58501.**

Citation Number _____ and Item Number _____ was corrected on _____
By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
By (Method of Abatement): _____

I certify that the information contained in this document is accurate and that the affected employees and their representatives have been informed of the abatement.

Signature

Date

Typed or Printed Name

Title

NOTE: 29 USC 666(g) whoever knowingly makes any false statements, representation or certification in any application, record, plan or other documents filed or required to be maintained pursuant to the Act shall, upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment of not more than 6 months or both.

POSTING: A copy of completed Corrective Action Worksheet should be posted for employee review

U.S. Department of Labor
Occupational Safety and Health Administration

Inspection Number: 1623855
Inspection Date(s): 09/21/2022 - 09/21/2022
Issuance Date: 03/17/2023



Citation and Notification of Penalty

Company Name: Bowers Excavating LLC
Inspection Site: North 23rd Street and Kennedy Avenue, Bismarck, ND 58501

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

29 CFR 1926.21(b)(2): The employer did not 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:

(a) On or about September 21, 2022, employees were working in a trench 10 feet deep installing a water line where there was accumulated water, no means of egress, overhead objects and material, and no protective system in type C soil with vertical walls where employees were unaware of the hazards in the vicinity of North 23rd Street & Kennedy Avenue in Bismarck, North Dakota.

Abatement Note: Abatement certification and documentation are required for this item (see enclosed "Sample Abatement Certification Letter").

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:
Proposed Penalty:

April 05, 2023
\$12,031.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

U.S. Department of Labor
Occupational Safety and Health Administration

Inspection Number: 1623855
Inspection Date(s): 09/21/2022 - 09/21/2022
Issuance Date: 03/17/2023



Citation and Notification of Penalty

Company Name: Bowers Excavating LLC
Inspection Site: North 23rd Street and Kennedy Avenue, Bismarck, ND 58501

Citation 2 Item 1 Type of Violation: **Willful - Serious**

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

(a) Bowers Excavating LLC: The employer is failing to protect each employee performing work in trenches by properly sloping or benching the trenches or using appropriate protective systems designed in accordance with paragraph (b) or (c) of 29 CFR 1926.652. This violation was committed on September 21, 2022, at North 23rd Street & Kennedy Avenue in Bismarck, North Dakota when employees were installing water lines in a trench that was greater than five feet deep in type C soil, without a protective system. To abate this violation, the employer must ensure that its trenches are properly sloped, benched, or equipped with appropriate protective systems, and that no employees enter trenches until this protection is provided.

Note: This company was previously cited for a violation of this occupational safety and health standard or its equivalent standard, which was contained in OSHA inspection number 1537210, Citation 2, Item 1b and was affirmed as a final order on October 28, 2021, with respect to a workplace located at Old Red Trail & Eighth Avenue NW in Mandan, North Dakota.

Note: This company was previously cited for a violation of this occupational safety and health standard or its equivalent standard, which was contained in OSHA inspection number 1439850, Citation 2, Item 1b and was affirmed as a final order on December 4, 2019, with respect to a workplace located at 313 Fox Hills Parkway in Watford City, North Dakota.

Note: This company was previously cited for a violation of this occupational safety and health standard or its equivalent standard, which was contained in OSHA inspection number 1416918, Citation 1, Item 2 and was affirmed as a final order on August 27, 2019, with respect to a workplace located at Schafer Street & College Drive in Bismarck, North Dakota.

Abatement Note: Pursuant to 29 CFR 1903.19, the employer must submit documents describing the steps it is taking to ensure compliance, including an explanation of how these steps protect its employees from the hazards of trench cave in. (An abatement plan, periodic progress reports, and provision of site addresses may be required if the abatement period is more than 90 days.)

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

U.S. Department of Labor
Occupational Safety and Health Administration

Inspection Number: 1623855
Inspection Date(s): 09/21/2022 - 09/21/2022
Issuance Date: 03/17/2023



Citation and Notification of Penalty

Company Name: Bowers Excavating LLC
Inspection Site: North 23rd Street and Kennedy Avenue, Bismarck, ND 58501

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:	March 23, 2023
Proposed Penalty:	\$120,319.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

U.S. Department of Labor
Occupational Safety and Health Administration

Inspection Number: 1623855
Inspection Date(s): 09/21/2022 - 09/21/2022
Issuance Date: 03/17/2023



Citation and Notification of Penalty

Company Name: Bowers Excavating LLC
Inspection Site: North 23rd Street and Kennedy Avenue, Bismarck, ND 58501

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

29 CFR 1926.651(h)(1): Employees are working in excavations in which there is accumulated water, or excavations in which water is accumulating, and adequate precautions are not being taken to protect employees against the hazards posed by water accumulation:

(a) Bowers Excavating LLC: The employer is failing to ensure that accumulated water or excavations with accumulating water, have adequate precautions in place to protect employees prior to employees entering the trench. This violation occurred on September 21, 2022, at North 23rd Street & Kennedy Avenue in Bismarck, North Dakota when employees were directed to enter a trench that was greater than 5 feet deep where water was accumulating. To abate this violation the employer must ensure that precautions are taken to protect employees against the hazards posed by water accumulation.

Note: This company was previously cited for a violation of this Occupational Safety and Health standard or its equivalent standard, which was contained in OSHA Inspection Number 1537210, Citation 1, Item 1, and was affirmed as a final order on October 28, 2021, with respect to a workplace located at or near Old Red Trail & Eighth Avenue NW in Mandan, North Dakota.

Abatement Note: Pursuant to 29 CFR 1903.19 the employer must submit documents that water is controlled and not allowed to accumulate causing erosion and instability in the trench. (An abatement plan and periodic progress reports may also be required if the abatement period is more than 90 days.)

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated: March 23, 2023
Proposed Penalty: \$24,063.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



Citation and Notification of Penalty

Company Name: Bowers Excavating LLC
Inspection Site: North 23rd Street and Kennedy Avenue, Bismarck, ND 58501

Citation 3 Item 2 Type of Violation: **Repeat - Serious**

29 CFR 1926.651(j)(2): Employees are not being protected from excavated or other materials or equipment that pose a hazard by falling or rolling into excavations:

(a) Bowers Excavating LLC: The employer is failing to ensure that excavated material is removed from the edge prior to employees entering to work inside the trenches. This violation was occurred on September 21, 2022, at North 23rd Street & Kennedy Avenue in Bismarck, North Dakota when workers were directed to enter a trench that was greater than 5 feet deep where large chunks of excavated material were along the edge over the tops of workers. To abate this violation, the employer must ensure that its employee's performing trenching and excavation work are protected from falling soil and rock, and that no employee is allowed into a trench or excavation without first ensuring the area above the employee is free from falling rock and soil.

Note: This company was previously cited for a violation of this occupational safety and health standard or its equivalent standard, which was contained in OSHA Inspection Number 1537210, Citation 3, Item 1b and was affirmed as a final order on October 28, 2021, with respect to a workplace located at Old Red Trail & Eighth Avenue NW in Mandan, North Dakota.

Note: This company was previously cited for a violation of this occupational safety and health standard or its equivalent standard, which was contained in OSHA Inspection Number 1439850, Citation 2, Item 1a and was affirmed as a final order on December 4, 2019, with respect to a workplace located at 313 Fox Hills Parkway in Watford City, North Dakota.

Note: This company was previously cited for a violation of this occupational safety and health standard or its equivalent standard, which was contained in OSHA Inspection Number 1416918, Citation 1, Item 1b and was affirmed as a final order on August 27, 2019, with respect to a workplace located at Schafer Street & College Drive in Bismarck, North Dakota.

Abatement Note: Pursuant to 29 CFR 1903.19 the employer must submit documents that demonstrate that workers in a trench or excavation are protected from excavated or other materials or equipment that pose a risk of falling onto employees working below. (An abatement plan and periodic progress reports may also be required if the abatement period is more than 90 days.)

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

Date By Which Violation Must be Abated:
Proposed Penalty:

March 23, 2023
\$24,063.00



Scott Overson
Area Director

U.S. Department of Labor
Occupational Safety and Health Administration
521 East Main Avenue, Suite 200
Bismarck, ND 58501



INVOICE /
DEBT COLLECTION NOTICE

Company Name: Bowers Excavating LLC
Inspection Site: North 23rd Street and Kennedy Avenue, Bismarck, ND 58501
Issuance Date: 03/17/2023

Summary of Penalties for Inspection Number: 1623855

Citation 1 Item 1, Serious	\$12,031.00
Citation 2 Item 1, Willful - Serious	\$120,319.00
Citation 3 Item 1, Repeat - Serious	\$24,063.00
Citation 3 Item 2, Repeat - Serious	\$24,063.00

TOTAL PROPOSED PENALTIES: **\$180,476.00**

To avoid additional charges, please remit payment promptly to this Area Office for the total amount of the uncontested penalties summarized above. Make your check or money order payable to: "DOL-OSHA". Please indicate OSHA's Inspection Number (indicated above) on the remittance. You can also make your payment

electronically at www.pay.gov. At the top of the [pay.gov](http://www.pay.gov) homepage, type "OSHA" in the Search field and select Search. From the **OSHA Penalty Payment Form** search result, select Continue. The direct link is: <https://www.pay.gov/paygov/forms/formInstance.html?agencyFormId=53090334>. You will be required to enter your inspection number when making the payment. Payments can be made by credit card or Automated Clearing House (ACH) using your banking information. Payments of \$25,000 or more require a Transaction ID, and also must be paid using ACH. If you require a Transaction ID, please contact the OSHA Debt Collection Team at (202) 693-2170.

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

If a personal check is issued, it will be converted into an electronic fund transfer (EFT). This means that our bank will copy your check and use the account information on it to electronically debit your account for the amount of the check. The debit from your account will then usually occur within 24 hours and will be shown on your regular account statement. You will not receive your original check back. The bank will destroy your original check, but will keep a copy of it. If the EFT cannot be completed because of insufficient funds or closed account, the bank will attempt to make the transfer up to two times.

Pursuant to the Debt Collection Act of 1982 (Public Law 97-365) and regulations of the U.S. Department of Labor (29 CFR Part 20), the Occupational Safety and Health Administration is required to assess interest, delinquent charges, and administrative costs for the collection of delinquent penalty debts for violations of the Occupational Safety and Health Act.

Interest: Interest charges will be assessed at an annual rate determined by the Secretary of the Treasury on all penalty debt amounts not paid within one month (30 calendar days) of the date on which the debt amount becomes due and payable (penalty due date). The current interest rate is one percent (1%). Interest will accrue from the date on which the penalty amounts (as proposed or adjusted) become a final order of the Occupational Safety and Health Review Commission (that is, 15 working days from your receipt of the Citation and Notification of Penalty), unless you file a notice of contest. Interest charges will be waived if the full amount owed is paid within 30 calendar days of the final order.

Delinquent Charges: A debt is considered delinquent if it has not been paid within one month (30 calendar days) of the penalty due date or if a satisfactory payment arrangement has not been made. If the debt remains delinquent for more than 90 calendar days, a delinquent charge of six percent (6%) per annum will be assessed accruing from the date that the debt became delinquent.

Administrative Costs: Agencies of the Department of Labor are required to assess additional charges for the recovery of delinquent debts. These additional charges are administrative costs incurred by the Agency in its attempt to collect an unpaid debt. Administrative costs will be assessed for demand letters sent in an attempt to collect the unpaid debt.



Scott Overson
Area Director

03/17/2023

Date

U.S. Department of Labor Occupational Safety and Health Administration
521 East Main Avenue, Suite 200
Bismarck, ND 58501



March 17, 2023

Bowers Excavating LLC
and its successors
P.O. Box 145
Mandan, ND 58554

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Scott Overson
Area Director

Enclosures

U.S. Department of Labor
Occupational Safety and Health Administration
521 East Main Avenue, Suite 200
Bismarck, ND 58501



Citation and Notification of Penalty

To:
Bowers Excavating LLC
and its successors
P.O. Box 145
Mandan, ND 58554

Inspection Number: 1628935
Inspection Date(s): 10/18/2022 - 10/18/2022
Issuance Date: 03/17/2023

Inspection Site:
225 South 26th Street
Bismarck, ND 58504

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 either call to schedule an informal conference (see paragraph below) or** you mail a notice of contest to the U.S. Department of Labor Area Office at the address shown above. Please refer to the enclosed booklet (OSHA 3000) which outlines your rights and responsibilities and which should be read in conjunction with this form. 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.

Informal Conference - An informal conference is not required. However, if you wish to have such a conference you may request one with the Area Director during the 15 working day contest period by calling (701) 250-4521. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

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<https://www.pay.gov/paygov/forms/formInstance.html?agencyFormId=53090334>

You will be required to enter your inspection number when making the payment. Payments can be made by credit card or Automated Clearing House (ACH) using your banking information. Payments of \$25,000 or more require a Transaction ID, and also must be paid using ACH. If you require a Transaction ID, please contact the OSHA Debt Collection Team at (202) 693-2170.

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

Notification of Corrective Action – For each violation which you do not contest, you must provide *abatement certification* to the Area Director of the OSHA office issuing the citation and identified above. This abatement certification is to be provided by letter within 10 calendar days after each abatement date. Abatement certification includes the date and method of abatement. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item. The abatement certification letter must be posted at the location where the violation appeared and the corrective action took place or employees must otherwise be effectively informed about abatement activities. A sample abatement certification letter is enclosed with this Citation. In addition, where the citation indicates that *abatement documentation* is necessary, evidence of the purchase or repair of equipment, photographs or video, receipts, training records, etc., verifying that abatement has occurred is required to be provided to the Area Director.

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 U.S. Department of Labor Area Office at the address shown above.

Employer Rights and Responsibilities – The enclosed booklet (OSHA 3000) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

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 U.S. Department of Labor Area Office 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.

Inspection Activity Data – You should be aware that OSHA publishes information on its inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to these alleged violations will be posted when our system indicates that you have received this citation. You are encouraged to review the information concerning your establishment at www.osha.gov. If you have any dispute with the accuracy of the information displayed, please contact this office.

U.S. Department of Labor
Occupational Safety and Health Administration



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with OSHA to discuss the citation(s) issued on 03/17/2023. The conference will be held by telephone or at the OSHA office located at 521 East Main Avenue, Suite 200, Bismarck, ND 58501 on _____ at _____.

Employees and/or representatives of employees have a right to attend an informal conference.

CERTIFICATION OF CORRECTIVE ACTION WORKSHEET

Inspection Number: 1628935

Company Name: Bowers Excavating LLC
Inspection Site: 225 South 26th Street, Bismarck, ND 58504
Issuance Date: 03/17/2023

List the specific method of correction for each item on this citation in this package that does not read "Corrected During Inspection" and return to: **U.S. Department of Labor – Occupational Safety and Health Administration, 521 East Main Avenue, Suite 200, Bismarck, ND 58501.**

Citation Number _____ and Item Number _____ was corrected on _____
By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
By (Method of Abatement): _____

I certify that the information contained in this document is accurate and that the affected employees and their representatives have been informed of the abatement.

Signature

Date

Typed or Printed Name

Title

NOTE: 29 USC 666(g) whoever knowingly makes any false statements, representation or certification in any application, record, plan or other documents filed or required to be maintained pursuant to the Act shall, upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment of not more than 6 months or both.

POSTING: A copy of completed Corrective Action Worksheet should be posted for employee review



Citation and Notification of Penalty

Company Name: Bowers Excavating LLC
Inspection Site: 225 South 26th Street, Bismarck, ND 58504

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

29 CFR 1926.651(j)(2): Protection is not being provided by placing and keeping excavated or other materials or equipment at least 2 feet (.61 m) from the edge of excavations, or by the use of retaining devices that were sufficient to prevent materials or equipment from falling or rolling into excavations, or by a combination of both if necessary:

(a) Bowers Excavating LLC: Bowers Excavating LLC: The employer is failing to ensure that excavated material is removed from the edge prior to employees entering to work inside the trenches. This violation was most recently observed on October 18, 2022, at 335 South 26th Street in Bismarck, North Dakota where employees were not protected from cave-ins caused by a spoil pile bearing weight on the edge of a trench nine feet deep. To abate this violation, the employer must ensure that spoil piles are set two or more feet from the edge of the trench. To abate this violation, the employer must ensure that its employee's performing trenching and excavation work are protected from falling soil and rock, and that no employee is allowed into a trench or excavation without first ensuring the area above the employee is free from falling rock and soil.

Note: This company was previously cited for a violation of this occupational safety and health standard or its equivalent standard, which was contained in OSHA inspection number 1537210, citation number 3, item number 1b and was affirmed as a final order on October 28, 2021, with respect to a workplace located at Old Red Trail & Eighth Avenue NW in Mandan, North Dakota.

Note: This company was previously cited for a violation of this occupational safety and health standard or its equivalent standard, which was contained in OSHA inspection number 1439850, citation number 2, item number 1a and was affirmed as a final order on December 4, 2019, with respect to a workplace located at 313 Fox Hills Parkway in Watford City, North Dakota.

Note: This company was previously cited for a violation of this occupational safety and health standard or its equivalent standard, which was contained in OSHA inspection number 1416918, citation number 1, item number 1b and was affirmed as a final order on August 27, 2019, with respect to a workplace located at Schafer Street & College Drive in Bismarck, North Dakota.

Abatement Note: Pursuant to 29 CFR 1903.19, the employer must submit documents describing the steps it is taking to ensure compliance, including an explanation of how these steps protect its employees from the hazards of trench cave in. (An abatement plan, periodic progress reports, and provision of site addresses may be required if the abatement period is more than 90 days.)

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

U.S. Department of Labor
Occupational Safety and Health Administration

Inspection Number: 1628935
Inspection Date(s): 10/18/2022 - 10/18/2022
Issuance Date: 03/17/2023



Citation and Notification of Penalty

Company Name: Bowers Excavating LLC
Inspection Site: 225 South 26th Street, Bismarck, ND 58504

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:	March 23, 2023
Proposed Penalty:	\$120,319.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

U.S. Department of Labor
Occupational Safety and Health Administration

Inspection Number: 1628935
Inspection Date(s): 10/18/2022 - 10/18/2022
Issuance Date: 03/17/2023



Citation and Notification of Penalty

Company Name: Bowers Excavating LLC
Inspection Site: 225 South 26th Street, Bismarck, ND 58504

Citation 1 Item 2 Type of Violation: **Willful - Serious**

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

(a) Bowers Excavating LLC: The employer is failing to protect each employee performing work in trenches by properly sloping or benching the trenches or using appropriate protective systems designed in accordance with paragraph (b) or (c) of 29 CFR 1926.652. This violation was committed on October 18, 2022, at 335 South 26th Street in Bismarck, North Dakota when employees were installing water lines in a trench that was greater than five feet deep in type B soil, without a protective system. To abate this violation the employer must ensure that the trenches are properly sloped, or that protective systems designed in accordance with this standard are used, and that no employees enter trenches until this protection is provided.

Note: This company was previously cited for a violation of this occupational safety and health standard or its equivalent standard, which was contained in OSHA inspection number 1537210, citation number 2, item number 1b and was affirmed as a final order on October 28, 2021, with respect to a workplace located at Old Red Trail & Eighth Avenue NW in Mandan, North Dakota.

Note: This company was previously cited for a violation of this occupational safety and health standard or its equivalent standard, which was contained in OSHA inspection number 1439850, citation number 2, item number 1b and was affirmed as a final order on December 4, 2019, with respect to a workplace located at 313 Fox Hills Parkway in Watford City, North Dakota..

Note: This company was previously cited for a violation of this occupational safety and health standard or its equivalent standard, which was contained in OSHA inspection number 1416918, citation number 1, item number 2 and was affirmed as a final order on August 27, 2019, with respect to a workplace located at Schafer Street & College Drive in Bismarck, North Dakota.

Abatement Note: Pursuant to 29 CFR 1903.19, the employer must submit documents describing the steps it is taking to ensure compliance, including an explanation of how these steps protect its employees from the hazards of trench cave in. (An abatement plan, periodic progress reports, and provision of site addresses may be required if the abatement period is more than 90 days.)

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

Date By Which Violation Must be Abated:
Proposed Penalty:

March 23, 2023
\$120,319.00



Scott Overson
Area Director

U.S. Department of Labor
Occupational Safety and Health Administration
521 East Main Avenue, Suite 200
Bismarck, ND 58501



INVOICE /
DEBT COLLECTION NOTICE

Company Name: Bowers Excavating LLC
Inspection Site: 225 South 26th Street, Bismarck, ND 58504
Issuance Date: 03/17/2023

Summary of Penalties for Inspection Number: 1628935

Citation 1 Item 1, Willful - Serious	\$120,319.00
Citation 1 Item 2, Willful - Serious	\$120,319.00

TOTAL PROPOSED PENALTIES: **\$240,638.00**

To avoid additional charges, please remit payment promptly to this Area Office for the total amount of the uncontested penalties summarized above. Make your check or money order payable to: "DOL-OSHA". Please indicate OSHA's Inspection Number (indicated above) on the remittance. You can also make your payment electronically at www.pay.gov. At the top of the pay.gov homepage, type "OSHA" in the Search field and select Search. From the **OSHA Penalty Payment Form** search result, select Continue. The direct link is: <https://www.pay.gov/paygov/forms/formInstance.html?agencyFormId=53090334>. You will be required to enter

your inspection number when making the payment. Payments can be made by credit card or Automated Clearing House (ACH) using your banking information. Payments of \$25,000 or more require a Transaction ID, and also must be paid using ACH. If you require a Transaction ID, please contact the OSHA Debt Collection Team at (202) 693-2170.

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

If a personal check is issued, it will be converted into an electronic fund transfer (EFT). This means that our bank will copy your check and use the account information on it to electronically debit your account for the amount of the check. The debit from your account will then usually occur within 24 hours and will be shown on your regular account statement. You will not receive your original check back. The bank will destroy your original check, but will keep a copy of it. If the EFT cannot be completed because of insufficient funds or closed account, the bank will attempt to make the transfer up to two times.

Pursuant to the Debt Collection Act of 1982 (Public Law 97-365) and regulations of the U.S. Department of Labor (29 CFR Part 20), the Occupational Safety and Health Administration is required to assess interest, delinquent charges, and administrative costs for the collection of delinquent penalty debts for violations of the Occupational Safety and Health Act.

Interest: Interest charges will be assessed at an annual rate determined by the Secretary of the Treasury on all penalty debt amounts not paid within one month (30 calendar days) of the date on which the debt amount becomes due and payable (penalty due date). The current interest rate is one percent (1%). Interest will accrue from the date on which the penalty amounts (as proposed or adjusted) become a final order of the Occupational Safety and Health Review Commission (that is, 15 working days from your receipt of the Citation and Notification of Penalty), unless you file a notice of contest. Interest charges will be waived if the full amount owed is paid within 30 calendar days of the final order.

Delinquent Charges: A debt is considered delinquent if it has not been paid within one month (30 calendar days) of the penalty due date or if a satisfactory payment arrangement has not been made. If the debt remains delinquent for more than 90 calendar days, a delinquent charge of six percent (6%) per annum will be assessed accruing from the date that the debt became delinquent.

Administrative Costs: Agencies of the Department of Labor are required to assess additional charges for the recovery of delinquent debts. These additional charges are administrative costs incurred by the Agency in its attempt to collect an unpaid debt. Administrative costs will be assessed for demand letters sent in an attempt to collect the unpaid debt.



Scott Overson
Area Director

03/17/2023

Date

U.S. Department of Labor Occupational Safety and Health Administration
521 East Main Avenue, Suite 200
Bismarck, ND 58501



March 16, 2023

Bowers Excavating LLC
and its successors
P.O. Box 145
Mandan, ND 58554

Dear Employer:

Enclosed you will find citations for violations of the Occupational Safety and Health Act of 1970 (the Act) which may have accompanying proposed penalties. Also enclosed is a booklet entitled, "Employer Rights and Responsibilities Following an OSHA Inspection", (OSHA 3000-04R) revised 2018, which explains your rights and responsibilities under the Act. If you have any questions about the enclosed citations and penalties, I would welcome further discussions in person or by telephone. Please contact me at (701) 250-4521.

You will note on page 6 of the booklet that, for violations which you do not contest, you must (1) notify this office promptly by letter that you have taken appropriate corrective action within the time set forth on the citation; and (2) pay any penalties assessed. Please inform me of the abatement steps you have taken and of their dates together with adequate supporting documentation; e.g., drawings or photographs of corrected conditions, purchase/work orders related to abatement actions, air sampling results. This information will allow us to close the case.

As indicated on page 3 of the booklet, you may request an informal conference with me during the 15-working-day notice of contest period. During such an informal conference you may present any evidence or views which you believe would support an adjustment to the citation or the penalty.

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Area Director within 15 working days of your receipt of the citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete the attached notice at the bottom of this letter and post it next to the Citations as soon as the time, date and the place of the informal conference have been determined. Be sure to bring to the conference with you any and all supporting documentation of existing conditions as well as of any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

You should be aware that OSHA publishes information on its inspection and citation activity on the Internet under the provisions of Electronic Freedom of Information Act. The information related to these alleged violations will be posted when our system indicates that you have received this citation. You are encouraged to review the information concerning your establishment at www.osha.gov. If you have any dispute with the accuracy of the information displayed, please contact this office.

Sincerely,

A handwritten signature in black ink, appearing to read 'SO', with a long horizontal flourish extending to the right.

Scott Overson
Area Director

Enclosures

U.S. Department of Labor
Occupational Safety and Health Administration
521 East Main Avenue, Suite 200
Bismarck, ND 58501



Citation and Notification of Penalty

To:
Bowers Excavating LLC
and its successors
P.O. Box 145
Mandan, ND 58554

Inspection Number: 1629981
Inspection Date(s): 10/24/2022 - 10/24/2022
Issuance Date: 03/16/2023

Inspection Site:
In the vicinity of 47th Street NW & Cortez Circle
Mandan, ND 58554

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 either call to schedule an informal conference (see paragraph below) or** you mail a notice of contest to the U.S. Department of Labor Area Office at the address shown above. Please refer to the enclosed booklet (OSHA 3000) which outlines your rights and responsibilities and which should be read in conjunction with this form. 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.

Informal Conference - An informal conference is not required. However, if you wish to have such a conference you may request one with the Area Director during the 15 working day contest period by calling (701) 250-4521. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Area Director within 15 working days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the Notice to Employees next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

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 Area Director 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.**

Penalty Payment – Penalties are due within 15 working days of receipt of this notification unless contested. (See the enclosed booklet and the additional information provided related to the Debt Collection Act of 1982.) Make your check or money order payable to “DOL-OSHA”. Please indicate the Inspection Number on the remittance. You can also make your payment electronically at www.pay.gov. At the top of the [pay.gov](http://www.pay.gov) homepage, type “OSHA” in the Search field and select Search. From **OSHA Penalty Payment Form** search result, select Continue. The direct link is:

<https://www.pay.gov/paygov/forms/formInstance.html?agencyFormId=53090334>

You will be required to enter your inspection number when making the payment. Payments can be made by credit card or Automated Clearing House (ACH) using your banking information. Payments of \$25,000 or more require a Transaction ID, and also must be paid using ACH. If you require a Transaction ID, please contact the OSHA Debt Collection Team at (202) 693-2170.

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

Notification of Corrective Action – For each violation which you do not contest, you must provide *abatement certification* to the Area Director of the OSHA office issuing the citation and identified above. This abatement certification is to be provided by letter within 10 calendar days after each abatement date. Abatement certification includes the date and method of abatement. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item. The abatement certification letter must be posted at the location where the violation appeared and the corrective action took place or employees must otherwise be effectively informed about abatement activities. A sample abatement certification letter is enclosed with this Citation. In addition, where the citation indicates that *abatement documentation* is necessary, evidence of the purchase or repair of equipment, photographs or video, receipts, training records, etc., verifying that abatement has occurred is required to be provided to the Area Director.

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 U.S. Department of Labor Area Office at the address shown above.

Employer Rights and Responsibilities – The enclosed booklet (OSHA 3000) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

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 U.S. Department of Labor Area Office 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.

Inspection Activity Data – You should be aware that OSHA publishes information on its inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to these alleged violations will be posted when our system indicates that you have received this citation. You are encouraged to review the information concerning your establishment at www.osha.gov. If you have any dispute with the accuracy of the information displayed, please contact this office.

U.S. Department of Labor
Occupational Safety and Health Administration



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with OSHA to discuss the citation(s) issued on 03/16/2023. The conference will be held by telephone or at the OSHA office located at 521 East Main Avenue, Suite 200, Bismarck, ND 58501 on _____ at _____.

Employees and/or representatives of employees have a right to attend an informal conference.

CERTIFICATION OF CORRECTIVE ACTION WORKSHEET

Inspection Number: 1629981

Company Name: Bowers Excavating LLC

Inspection Site: In the vicinity of 47th Street NW & Cortez Circle, Mandan, ND 58554

Issuance Date: 03/16/2023

List the specific method of correction for each item on this citation in this package that does not read "Corrected During Inspection" and return to: **U.S. Department of Labor—Occupational Safety and Health Administration, 521 East Main Avenue, Suite 200, Bismarck, ND 58501.**

Citation Number _____ and Item Number _____ was corrected on _____
By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
By (Method of Abatement): _____

I certify that the information contained in this document is accurate and that the affected employees and their representatives have been informed of the abatement.

Signature

Date

Typed or Printed Name

Title

NOTE: 29 USC 666(g) whoever knowingly makes any false statements, representation or certification in any application, record, plan or other documents filed or required to be maintained pursuant to the Act shall, upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment of not more than 6 months or both.

POSTING: A copy of completed Corrective Action Worksheet should be posted for employee review

U.S. Department of Labor
Occupational Safety and Health Administration

Inspection Number: 1629981
Inspection Date(s): 10/24/2022 - 10/24/2022
Issuance Date: 03/16/2023



Citation and Notification of Penalty

Company Name: Bowers Excavating LLC

Inspection Site: In the vicinity of 47th Street NW & Cortez Circle, Mandan, ND 58554

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

29 CFR 1926.651(c)(2): A stairway, ladder, ramp or other safe means of egress is not located in trench excavations that are 4 feet (1.22m) or more in depth so as to require no more than 25 feet (7.62m) of lateral travel for employees:

(a) Bowers Excavating LLC: The employer is failing to provide safe means of egress for employees working in trenches or excavations. This violation was committed on October 24, 2022, at or near 47th Street NW and Cortez Circle in Mandan, North Dakota, employees were installing water lines in a trench of approximately 8 feet deep without a ladder or properly sloped ramp provided within 25 feet for emergency egress.

Note: This company was previously cited for a violation of this Occupational Safety and Health standard or its equivalent standard, which was contained in OSHA Inspection Number 1439850, Citation 1, Item 1b, and was affirmed as a final order on December 4, 2019, with respect to a workplace located at or near 313 Fox Hills Parkway in Watford City, ND.

Pursuant to 29 C.F.R. 1903.19(c), the employer must submit documents describing the steps it is taking to ensure compliance, including an explanation of how these steps protect its employees from cave-in hazards. (An abatement plan, periodic progress reports, and provision of site addresses may be required if the abatement period is more than 90 days.)

The employer shall cease and desist from violating the requirements of 29 C.F.R. 1926.651, Access and Egress.

Pursuant to 29 C.F.R. 1926.21(b)(2), The employer shall instruct each employee in the recognition and avoidance of unsafe conditions and the regulations applicable to his work environment to control or eliminate any hazards or other exposure to illness or injury.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:

March 28, 2023

Proposed Penalty:

\$24,063.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



Citation and Notification of Penalty

Company Name: Bowers Excavating LLC

Inspection Site: In the vicinity of 47th Street NW & Cortez Circle, Mandan, ND 58554

Citation 1 Item 2 Type of Violation: **Repeat - Serious**

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

(a) Bowers Excavating LLC: The employer is failing to protect each employee performing work in trenches by properly sloping or benching the trenches or using appropriate protective systems designed in accordance with paragraph (b) or (c) of 29 CFR 1926.652. This violation was committed on October 24, 2022, at or near 47th Street NW & Cortez Circle in Mandan, North Dakota where employees were exposed to cave in hazards while installing water lines in a trench approximately 8 feet in depth. To abate this violation, the employer must ensure that its trenches are properly sloped, benched, or equipped with appropriate protective systems, and that no employees enter trenches until this protection is provided.

Note: This company was previously cited for a violation of this Occupational Safety and Health standard or its equivalent standard, which was contained in OSHA Inspection Number 1416918, Citation 1, Item 2, and was affirmed as a final order on August 27, 2019, with respect to a workplace located at or near Schaefer Street and College Drive in Bismarck, ND.

Note: This company was previously cited for a violation of this Occupational Safety and Health standard or its equivalent standard, which was contained in OSHA Inspection Number 1439850, Citation 2, Item 1B, and was affirmed as a final order on December 4, 2019, with respect to a workplace located at or near 313 Fox Hills Parkway in Watford City, ND.

Note: This company was previously cited for a violation of this Occupational Safety and Health standard or its equivalent standard, which was contained in OSHA Inspection Number 1537210, Citation 2, Item 1B, and was affirmed as a final order on October 28, 2021, with respect to a workplace located at or near Old Red Trail and Eighth Avenue NW in Mandan, ND.

Abatement Note: Pursuant to 29 CFR 1903.19, the employer must submit documents describing the steps it is taking to ensure compliance, including an explanation of how these steps protect its employees from the hazards of trench cave in. (An abatement plan, periodic progress reports, and provisions of site addresses may be required if the abatement is more than 90 days.)

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

U.S. Department of Labor
Occupational Safety and Health Administration

Inspection Number: 1629981
Inspection Date(s): 10/24/2022 - 10/24/2022
Issuance Date: 03/16/2023



Citation and Notification of Penalty

Company Name: Bowers Excavating LLC

Inspection Site: In the vicinity of 47th Street NW & Cortez Circle, Mandan, ND 58554

The employer shall cease and desist from violating the requirements of 29 C.F.R. 1926.652, Requirements for Protective Systems.

Pursuant to 29 C.F.R. 1926.21(b)(2), The employer shall instruct each employee in the recognition and avoidance of unsafe conditions and the regulations applicable to his work environment to control or eliminate any hazards or other exposure to illness or injury.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:

March 28, 2023

Proposed Penalty:

\$60,156.00

A handwritten signature in black ink, appearing to read "Scott Overson".

Scott Overson

Area Director

U.S. Department of Labor
Occupational Safety and Health Administration
521 East Main Avenue, Suite 200
Bismarck, ND 58501



INVOICE /

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

DEBT COLLECTION NOTICE

Company Name: Bowers Excavating LLC
Inspection Site: In the vicinity of 47th Street NW & Cortez Circle, Mandan, ND 58554
Issuance Date: 03/16/2023

Summary of Penalties for Inspection Number: 1629981

Citation 1 Item 1, Repeat - Serious	\$24,063.00
Citation 1 Item 2, Repeat - Serious	\$60,156.00

TOTAL PROPOSED PENALTIES: **\$84,219.00**

To avoid additional charges, please remit payment promptly to this Area Office for the total amount of the uncontested penalties summarized above. Make your check or money order payable to: "DOL-OSHA". Please indicate OSHA's Inspection Number (indicated above) on the remittance. You can also make your payment electronically at www.pay.gov. At the top of the pay.gov homepage, type "OSHA" in the Search field and select Search. From the **OSHA Penalty Payment Form** search result, select Continue. The direct link is: <https://www.pay.gov/paygov/forms/formInstance.html?agencyFormId=53090334>. You will be required to enter your inspection number when making the payment. Payments can be made by credit card or Automated Clearing House (ACH) using your banking information. Payments of \$25,000 or more require a Transaction ID, and also must be paid using ACH. If you require a Transaction ID, please contact the OSHA Debt Collection Team at (202) 693-2170.

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

If a personal check is issued, it will be converted into an electronic fund transfer (EFT). This means that our bank will copy your check and use the account information on it to electronically debit your account for the amount of the check. The debit from your account will then usually occur within 24 hours and will be shown on your regular account statement. You will not receive your original check back. The bank will destroy your original check, but will keep a copy of it. If the EFT cannot be completed because of insufficient funds or closed account, the bank will attempt to make the transfer up to two times.

Pursuant to the Debt Collection Act of 1982 (Public Law 97-365) and regulations of the U.S. Department of Labor (29 CFR Part 20), the Occupational Safety and Health Administration is required to assess interest, delinquent charges, and administrative costs for the collection of delinquent penalty debts for violations of the Occupational Safety and Health Act.

Interest: Interest charges will be assessed at an annual rate determined by the Secretary of the Treasury on all penalty debt amounts not paid within one month (30 calendar days) of the date on which the debt amount becomes due and payable (penalty due date). The current interest rate is one percent (1%). Interest will accrue from the date on which the penalty amounts (as proposed or adjusted) become a final order of the Occupational Safety and Health Review Commission (that is, 15 working days from your receipt of the Citation and Notification of Penalty), unless you file a notice of contest. Interest charges will be waived if the full amount owed is paid within 30 calendar days of the final order.

Delinquent Charges: A debt is considered delinquent if it has not been paid within one month (30 calendar days) of the penalty due date or if a satisfactory payment arrangement has not been made. If the debt remains delinquent for more than 90 calendar days, a delinquent charge of six percent (6%) per annum will be assessed accruing from the date that the debt became delinquent.

Administrative Costs: Agencies of the Department of Labor are required to assess additional charges for the recovery of delinquent debts. These additional charges are administrative costs incurred by the Agency in its attempt to collect an unpaid debt. Administrative costs will be assessed for demand letters sent in an attempt to collect the unpaid debt.



Scott Overson
Area Director

03/16/2023

Date