

U.S. Department of Labor Occupational Safety and Health Administration
138 River Road
Suite 102, Shattuck Office Center
Andover, MA 01810



03/07/2024

Boston Waterproofing & Construction Corp
and its successors
100 Cambridge Street, Ste 1400
Boston, MA 02114

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 will welcome further discussions in person or by telephone. Please contact me at (978) 837-4460.

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,

For Sarah T. Carle
Area Director

Enclosures

U.S. Department of Labor

Occupational Safety and Health Administration
138 River Road
Suite 102, Shattuck Office Center
Andover, MA 01810



Citation and Notification of Penalty

To:

Boston Waterproofing & Construction Corp
and its successors
100 Cambridge Street, Ste 1400
Boston, MA 02114

Inspection Number: 1696799**Inspection Date(s):** 09/11/2023 - 09/11/2023**Issuance Date:** 03/07/2024**Inspection Site:**

6 Twin Circle Drive
Arlington, MA 02474

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 (978) 837-4460. 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 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.



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with OSHA to discuss the citation(s) issued on 03/07/2024. The conference will be held by telephone or at the OSHA office located at 138 River Road, Suite 102, Shattuck Office Center, Andover, MA 01810 on _____ at _____ . Employees and/or representatives of employees have a right to attend an informal conference.

CERTIFICATION OF CORRECTIVE ACTION WORKSHEET

Inspection Number: 1696799

Company Name: Boston Waterproofing & Construction Corp
Inspection Site: 6 Twin Circle Drive, Arlington, MA 02474
Issuance Date: 03/07/2024

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,
138 River Road, Suite 102, Shattuck Office Center, Andover, MA 01810.**

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: Boston Waterproofing & Construction Corp
Inspection Site: 6 Twin Circle Drive, Arlington, MA 02474

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

29 CFR 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.

(a) Location - Jobsite at 6 Twin Circle Drive, Arlington MA

On or about 09/10/2023, the employer did not provide any safety training or instruction to employees on how to recognize and avoid hazards associated with working in the trench/excavation at the jobsite. For example, employees were not trained on core aspects of trench/excavation safety such as hazard recognition, benching and set back of spoils pile. The employer instructed employees to enter the trench/excavation without any safety training even after an employee complained to the employer that the trench was unsafe. The trench/excavation later caved-in on an employee, trapping, and seriously injuring the employee.

Since there were at least three employees who were not trained as required regarding the work being performed at this worksite, the employer is being cited for each of the three documented instances in accordance with OSHA's instance-by-instance policy, which is set forth here: <https://www.osha.gov/memos/2023-01-26/application-of-instance-by-instance-penalty-adjustments>. The justification for citing instance-by-instance here is provided by the facts set forth in the violation worksheet.

Date By Which Violation Must be Abated:
Proposed Penalty:

Corrected During Inspection
\$16,131.00

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: Boston Waterproofing & Construction Corp
Inspection Site: 6 Twin Circle Drive, Arlington, MA 02474

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

29 CFR 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.

(a) Location - Jobsite at 6 Twin Circle Drive, Arlington MA

On or about 09/10/2023, the employer did not provide any safety training or instruction to employees on how to recognize and avoid hazards associated with working in the trench/excavation at the jobsite. For example, employees were not trained on core aspects of trench/excavation safety such as hazard recognition, benching and set back of spoils pile. The employer instructed employees to enter the trench/excavation without any safety training even after an employee complained to the employer that the trench was unsafe. The trench/excavation later caved-in on an employee, trapping, and seriously injuring the employee.

Since there were at least three employees who were not trained as required regarding the work being performed at this worksite, the employer is being cited for each of the three documented instances in accordance with OSHA's instance-by-instance policy, which is set forth here: <https://www.osha.gov/memos/2023-01-26/application-of-instance-by-instance-penalty-adjustments>. The justification for citing instance-by-instance here is provided by the facts set forth in the violation worksheet.

Date By Which Violation Must be Abated:
Proposed Penalty:

Corrected During Inspection
\$16,131.00

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: Boston Waterproofing & Construction Corp
Inspection Site: 6 Twin Circle Drive, Arlington, MA 02474

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

29 CFR 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.

(a) Location - Jobsite at 6 Twin Circle Drive, Arlington MA

On or about 09/10/2023, the employer did not provide any safety training or instruction to employees on how to recognize and avoid hazards associated with working in the trench/excavation at the jobsite. For example, employees were not trained on core aspects of trench/excavation safety such as hazard recognition, benching and set back of spoils pile. The employer instructed employees to enter the trench/excavation without any safety training even after an employee complained to the employer that the trench was unsafe. The trench/excavation later caved-in on an employee, trapping, and seriously injuring the employee.

Since there were at least three employees who were not trained as required regarding the work being performed at this worksite, the employer is being cited for each of the three documented instances in accordance with OSHA's instance-by-instance policy, which is set forth here: <https://www.osha.gov/memos/2023-01-26/application-of-instance-by-instance-penalty-adjustments>. The justification for citing instance-by-instance here is provided by the facts set forth in the violation worksheet.

Date By Which Violation Must be Abated:
Proposed Penalty:

Corrected During Inspection
\$16,131.00

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: Boston Waterproofing & Construction Corp
Inspection Site: 6 Twin Circle Drive, Arlington, MA 02474

Citation 1 Item 4 Type of Violation: **Serious**

29 CFR 1926.50(f)(2)(i): When working remotely, the employer did not ensure that the communication system is effective in contacting the emergency-medical services.

(a) Location - Jobsite at 6 Twin Circle Drive, Arlington MA

On or about 09/10/2023, the employer did not ensure proper access to emergency medical services at the jobsite. The employer instructed employees to enter a trench/excavation at the jobsite despite an employee raised safety concerns about the trench/excavation. After the work started, the employer left employees alone at the jobsite and did not provide a means for the employees, who spoke minimal English, to communicate with emergency medical services. When the trench/excavation caved-in on and injured and partially buried an employee, the employee called the employer to ask for help, but the employer did not contact emergency medical services or return with urgency to the jobsite to help. The employee later attempted to call 911 for help, but the employer arrived at the jobsite soon after and took the phone away from the employee and his coworkers before they could request emergency medical services. The employer then physically struck the trapped employee with objects while the employee was still in the trench/excavation to stop the employee from alerting anyone to the cave-in and need for rescue and medical attention.

Date By Which Violation Must be Abated:
Proposed Penalty:

Corrected During Inspection
\$16,131.00

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: Boston Waterproofing & Construction Corp
Inspection Site: 6 Twin Circle Drive, Arlington, MA 02474

The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for injury or illness.

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

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

(a) Location - Jobsite at 6 Twin Circle Drive, Arlington MA

On or about 09/10/2023, employees were not protected from cave-ins while working in a trench/excavation at depths of 5 feet to as much as approximately 8 feet deep. The employer instructed employees to enter a trench/excavation at the jobsite despite an employee's complaint to the employer that the trench looked unsafe. During the work, the trench/excavation at the jobsite caved-in on and injured and partially buried an employee. The employer did not attempt to rescue the employee and prevented the employee from seeking medical attention by taking away the employee's phone and physically hitting him with objects while the employee was still trapped in the trench/excavation.

Date By Which Violation Must be Abated:
Proposed Penalty:

Corrected During Inspection
\$161,323.00

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: Boston Waterproofing & Construction Corp
Inspection Site: 6 Twin Circle Drive, Arlington, MA 02474

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

29 CFR 1926.651(j)(2): Employees were not protected from excavated or other materials or equipment that could pose a hazard by falling or rolling into excavations, or by a combination of both if necessary.

(a) Location - Jobsite at 6 Twin Circle Drive, Arlington MA

On or about 09/10/2023, employees were working in a trench/excavation with the spoil pile (pile of excavated materials) placed within two feet of the edge of the excavation. The employer did not use a sufficient retaining device to prevent materials from falling or rolling into the excavation. The employer instructed employees to enter a trench/excavation at the jobsite despite an employee's complaint to the employer that the trench looked unsafe. During the work, the trench/excavation at the jobsite caved-in on and injured and partially buried an employee. The employer did not attempt to rescue the employee and prevented the employee from seeking medical attention by taking away the employee's phone and physically hitting him with objects while the employee was still trapped.

Date By Which Violation Must be Abated:
Proposed Penalty:

Corrected During Inspection
\$0.00

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: Boston Waterproofing & Construction Corp
Inspection Site: 6 Twin Circle Drive, Arlington, MA 02474

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

29 CFR 1926.651(k)(1):Daily inspections of excavations, the adjacent areas, and protective systems were not made by a competent person for evidence of a situation that could have resulted in possible cave-ins, indications of failure of protective systems, hazardous atmospheres, or other hazardous conditions.

(a) Location -Jobsite at 6 Twin Circle Drive, Arlington MA

On or about 09/10/2023, the employer did not ensure that a competent person conducted an effective inspection of the trench/excavation at the jobsite. After arriving at the jobsite, the employer did not have a competent person inspect the trench/excavation before employees entered the trench/excavation. The employer instructed employees to enter the trench/excavation at the jobsite despite an employee's complaint to the employer that the trench looked unsafe. Employees were exposed cave-in hazards while they worked in the trench/excavation. During the work, the trench/excavation at the jobsite caved-in on and injured and partially buried an employee. The employer did not attempt to rescue the employee and prevented the employee from seeking medical attention by taking away the employee's phone and physically hitting him with objects while the employee was still trapped.

Date By Which Violation Must be Abated:
Proposed Penalty:

Corrected During Inspection
\$0.00

For **Sarah T. Carle**
Area Director

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
138 River Road
Suite 102, Shattuck Office Center
Andover, MA 01810



INVOICE / DEBT COLLECTION NOTICE

Company Name: Boston Waterproofing & Construction Corp
Inspection Site: 6 Twin Circle Drive, Arlington, MA 02474
Issuance Date: 03/07/2024

Summary of Penalties for Inspection Number: 1696799

Citation 1 Item 1, Serious	\$16,131.00
Citation 1 Item 2, Serious	\$16,131.00
Citation 1 Item 3, Serious	\$16,131.00
Citation 1 Item 4, Serious	\$16,131.00
Citation 2 Item 1a, Willful - Serious	\$161,323.00
Citation 2 Item 1b, Willful - Serious	\$0.00
Citation 2 Item 1c, Willful - Serious	\$0.00

TOTAL PROPOSED PENALTIES: **\$225,847.00**

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.

For Sarah T. Carle
Area Director

Date