

OSHA Violations Lead to Criminal Indictments and \$1,475,000.00 Proposed Penalties

Labor & Employment Law Update

on April 14, 2017

An OSHA investigation concluded on April 11, 2017 found that Atlantic Drain Service Company, Inc. failed to train its employees to recognize and avoid cave-in and collapse hazards, and failed to provide basic safeguards against trench collapse. Two Atlantic Drain Company employees died on October 21, 2016 in Boston when a trench collapsed which ruptured an adjacent fire hydrant supply line filling the 12 foot deep trench with water in a matter of seconds.

In announcing \$1,475,813 in proposed penalties for 18 willful, repeat, serious and other violations, OSHA determined that both Atlantic Drain and its owner (who oversaw the work the day of the fatalities):

- Failed to install a support system to fully protect employees in the 12' deep trench from cave-in and an adjacent fire hydrant supply line from collapsing;
- Failed to remove employees from the hazardous conditions in the trench;
- Failed to train the workers on how to identify and address hazards associated with trenching and excavation;
- Failed to provide an escape ladder at all times; and
- Failed to provide support structures in and next to the trench for overhead hazards.

You can find the full citations [here](#).

OSHA, the US Solicitor, the Inspector General, Boston Police Department Homicide Unit and Suffolk County District Attorney's Office all coordinated to investigate and obtain indictments of both Atlantic Drain and its owner on two counts each of manslaughter. More information can be read [here](#) on the Suffolk County District Attorney's office website.

"The deaths of these two men could have and should have been prevented" said Galen Blanton, OSHA's New England Regional Administrator. He also noted that Atlantic Drain had previously been cited by OSHA in 2007 and 2012 for similar trenching violations and knew what safeguards were needed to protect its employees, but apparently chose to ignore its responsibility.

As we start the spring construction season, this case is an important reminder to employers that all employees need to be fully trained on all hazards associated with the work they are performing, and that workplace supervision needs to be trained and they also need to be supervised to ensure consistent enforcement of all workplace safety standards.

Contractors should remember the walls of an unprotected trench can collapse suddenly and with great force trapping and engulfing workers before they have a chance to react or escape. Contractors must provide effective protection against cave in hazards by properly shoring the trench walls, sloping the soil, or by deploying appropriate protective trench box technology.

Not providing a means of escape (ladders) was an aggravating factor, especially when high pressure firefighting water supply lines were known to be embedded in the immediate vicinity of the trench.

The case should also remind all employers, especially those organizations that have a record of serious violations, that OSHA will rigorously enforce the employee training, workplace safety information, and periodic retraining provisions of all safety regulations with repeat, willful and in extreme cases, criminal violations, should subsequent violations be documented by OSHA.

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