

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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DIVISION OF INDUSTRY SERVICES
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MADISON WI 53705
Contact Through Relay
<http://dsps.wi.gov/programs/industry-services>
www.wisconsin.gov



Tony Evers, Governor
Dawn B. Crim, Secretary

ORDER 0007901

NOTICE OF VIOLATIONS AND ORDERS

March 18, 2022

Village of Fredonia
242 Fredonia Avenue
Fredonia WI 53021

RESPONDENT: VILLAGE OF FREDONIA

Regulated Objects:

Nature of Complaint Summary: Public sector worker sustained injuries after a trench collapsed on him. (21 COM 157)

Last Inspection Date: August 2021

NOTE: Due to the uncertainty caused by COVID-19 the Department will extend compliance dates so long as work is being made on gaining compliance with orders or if the site is not being used due to restrictions.

INVESTIGATION NOTES: This Order concerns a trench collapse that occurred in the Village of Fredonia on August 25, 2021.

Under Wis. Stat. Sec. 101.055 the Department of Safety and Professional Services has jurisdiction to adopt by administrative rule standards to protect the safety and health of public employees. Those standards shall provide protection at least equal to that provided to private sector employees under standards promulgated by the federal occupational safety and health administration.

Wis. Admin. Code § SPS 332.15 OSHA Safety and health standards. Except as provided in s. SPS 332.16 and subch. IV, all places of employment and public buildings of a public employer shall comply with the federal Occupational Safety and Health Administration (OSHA) requirements adopted under s. SPS 332.50.

Wis. Admin. Code § SPS Penalties. Penalties for violations of this chapter may be assessed in accordance with s. 101.02, Stats.

Violations:

The following violations were revealed and must be corrected:

1. **Violation:** No protective systems were used to protect the employee in an excavation that was deeper than 5 feet consisting of clay/dirt and roadway grindings.

29 CFR § 1926.652(a)(1): Requirements for Protective Systems

Each employee in an excavation shall be protected from cave-ins by an adequate protective system designed in accordance with paragraph (b) or (c) of this section except when:

Excavations are made entirely in stable rock or Excavations are less than 5 feet in depth and examination of the ground by a competent person provides no indication of a potential cave-in

2. Violation: Water was being removed from the trench with a pump but not fast enough. Approximately 6" of water was in the trench at the time of collapse. No shield system was being used.

29 CFR 1926.651(h)(1) Protection from hazards associated with water accumulation

Employees shall not work in excavations in which there is accumulated water, or in excavations in which water is accumulating, unless adequate precautions have been taken to protect employees against the hazards posed by water accumulation. The precautions necessary to protect employees adequately vary with each situation, but could include special support or shield systems to protect from cave-in, water removal to control the level of accumulating water, or use of a safety harness and lifeline.

3. Violation: No documented excavation training was on file for public employee who was in trench when it collapsed. No job hazard analysis was made available by the Village for excavations/trenches.

29 CFR 1926.21(b)(2) Safety training and education employer responsibility

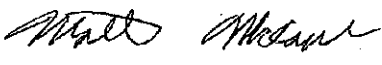
The employer shall instruct each employee in the recognition and avoidance of unsafe conditions and the regulations applicable to his work environment to control or eliminate any hazards or other exposure to illness or injury.

You are hereby ordered to have the above violations corrected to conform to the indicated provisions of the Wisconsin Administrative Code and/or Wisconsin Statutes. These corrections shall be corrected by the compliance date noted, and upon correction of violations James Creegan and I must be notified. If you fail to comply, this order is enforceable in circuit court pursuant to Wis. Stat. 101.02(13), Stats., with forfeitures ranging from \$10 to \$100 per day for each violation. Every day during which any person or corporation, or any officer, agent or employee of a person or corporation, fails to observe and comply with any order of the department or to perform any duty specified under this subchapter shall constitute a separate and distinct violation of the order or of the requirements of this subchapter, whichever is applicable. Wis. Stat. § 101.02 (12).

If you have any questions regarding this matter, please feel free to contact me at the number listed below or James Creegan at (608) 219-7185.

Wis. Admin. Code § SPS 332.07 Variances. Pursuant to s. 101.055 (4), Stats., the department shall consider and may grant a temporary variance, an experimental variance or a permanent variance in accordance with s. SPS 303.04 for a safety and health issue affecting public employees.

Wis. Stat. § 101.02(6) Any employer or other person interested either because of ownership in or occupation of any property affected by any such order, or otherwise, may petition for a hearing on the reasonableness of any order of the department in the manner provided in this subchapter. All requests must be received within 30 days of the date of this Order and shall set out specifically and in full detail the order upon which a hearing is desired and every reason why such order is unreasonable, and every issue to be considered by the department on the hearing. The petitioner shall be deemed to have finally waived all objections to any irregularities and illegalities in the order upon which a hearing is sought other than those set forth in the petition.

ATTORNEY NAME: Matthew McCasland		INVESTIGATION DATE: 8/2021
PHONE/WORK HOURS: (608) 266-9814		
E-MAIL: matthew.mccasland@wisconsin.gov		INVESTIGATION TYPE: Requested
SIGNATURE:	DATE:	INVESTIGATION SOURCE: Other
	3/18/2022	COMPLIANCE DATE: 6/23/2022

cc: James Creegan

Lucas Dederich