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DIVISION OF INDUSTRIAL RELATIONS
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MEMORANDUM

DATE: **November 17, 2025**

TO: **Dr. Kristopher Sanchez, Director**

FROM: **Salli Ortiz, Division Counsel**

SUBJECT: **TBC – The Boring Company Citation Issues with Inspection No. 1799833**

This Memo addresses the issues found with the Citation and Notification of Penalty ("CITATION") issued on May 28, 2025.

The main issues were: there were too many inconsistencies and/or missing pieces of information that made it impossible to determine if the efforts made by TBC to address the hazards were "reasonable" or justified a Willful classification for any of the citation items; the penalty calculation needed to be corrected on all items, and; the Violation Worksheets needed to be corrected in order to support the individual items.

For all of these reasons, it was clear that this CITATION was not legally supportable as written, with the available information, in its entirety. As is our normal practice in circumstances where several issues are identified, it was recommended that the CITATION be withdrawn pending further review.

The CITATION contained three citation items, all classified as "Willful Serious". Under the NV OSH Act, a willful violation exists where an employer has demonstrated either an intentional disregard for the requirements of the Act or a plain indifference to employee safety and health. This is the most serious category of violation, with penalties that can include significant fines, higher scrutiny, and even criminal charges and imprisonment. For that reason, support for willful violations must be specific and unambiguous.

For each citation item that is issued, a violation worksheet must be filled out in support

of that item. For a willful violation, the worksheet has a higher level of specificity needed, and NV OSHA has to develop and record on the Violation Worksheet all evidence that indicates employer knowledge of the requirements of a standard, and any reasons for why it disregarded statutory or other legal obligations to protect employees against a hazardous condition. The NV Operations Manual ("NOM" Revised August 2023) requires the following:

c. Violation Worksheet (formerly OSHA-1B)

1. In order to establish that a violation may be potentially classified as Willful, facts shall be documented either to show that the employer knew of the applicable legal requirements and intentionally violated them or that the employer showed plain indifference to employee safety or health. For example, document facts that the employer knew that the condition existed, and that the employer was required to take additional steps to abate the hazard. Such evidence could include prior NV OSHA citations, previous warnings by a CSHO, insurance company or city/state inspector regarding the requirements of the standard(s), the employer's familiarity with the standard(s), contract specifications requiring compliance with applicable standards, or warnings by employees or employee safety representatives of the presence of a hazardous condition and what protections are required by NV OSHA or Federal OSHA standards.

2. Also, include facts showing that even if the employer was not consciously or intentionally violating the Act, the employer acted with such plain indifference for employee safety that had the employer known of the standard, it probably would not have complied anyway. This type of evidence would include instances where an employer was aware of an employee exposure to an obviously hazardous condition(s) and made no reasonable effort to eliminate it.

3. Willful Justification

- Alleged Violation Description (AVD):
  - Description of violation.
  - Include a separate explanation for each willful violation and for each instance of a grouped willful violation. It is important to include specific details to paint the picture of what the violation is, and why it is willful.
  - The willful justification must include an explanation of the factors which make each violation willful, and, in particular, the evidence supporting each of the following elements:
    - Actual knowledge of the requirements of the Act or of a standard or actual recognition of a hazard covered under NRS 618.375 (the latter for exposing employers only);

        - Actual knowledge of a workplace condition or practice that is in violation of the standard or of NRS 618.375;
        - Actual knowledge of employee exposure to violative conditions or hazardous conditions or practices.
        - Document the evidence showing the employer's intentional disregard of the requirements of the standard and its failure to take effective steps to correct the hazardous conditions or practices; or
        - Document the evidence supporting the employer's plain indifference to the safety or health of its employees (or, when applicable, over the employees of other employers over which it exercises control).
    - If employer knowledge is based on OSHA inspection history, this section must also contain a brief explanation of the current abatement status of the cited violations that we are using to support employer knowledge - whether the District Office has received abatement documentation/ certification from the employer, or if abatement had been verified on-site.

NOM, Chapter 4, Pgs. 66-67.

A review of the Violation Worksheets for this case showed multiple, significant issues, inconsistencies, and errors.

Citation 1, Item 1: 29 CFR 1926.95(a)
(Protective equipment shall be provided, used, and maintained in a sanitary and reliable condition)

- **AVD (Alleged Violation Description)**
    - The relevant part of the violation listed in the AVD is that "Employees of TBC and CCFD, for the drill, were required to wear muck boots and tuck their pants into them, but were *not provided or required to use* protective clothing to protect against exposure to the slurry containing the accelerant."
    - This statement is contradicted in the Employer Knowledge ("ER Knowledge") section (see below).
- **PENALTY**
    - The penalty was significantly miscalculated, in a way that makes no sense.
    - Severity was listed as "Medium", which is not consistent with the NOM, or with a hazard that can result in permanent scarring (as it did here).
    - The base/starting penalty amount is $141,865.

    - A Multiplier of 10 is listed as being applied, however the Calculated Penalty is listed as $165,514, without explanation.
    - Ultimately, the actual Proposed Penalty reverts back to the base penalty of $141,865, apparently disregarding the multiplier, and whatever factors were used to arrive at the $165,514 figure, again with no explanation on how that figure was determined.
- **D) Injury/Illness (and Justifications for Severity and Probability)**
    - The description/justification for the Severity is incorrectly stated, as per the NOM.
- **F) ER KNOWLEDGE**
    - The section notes that chemical bib overalls were ordered by TBC twice, once before their initial meetings with CCFD, and once before the final two meetings.
    - It is noted that, during these meetings, TBC "discussed the PPE requirements for both CCFD and TBC employees."
    - It is also noted that TBC "provided the Hazard Communication training and discussed the PPE requirements for both CCFD and TBC employees."
    - The inspector states that "On December 11th, 2024, one day after the incident, chemical bib overalls were ordered by TBC, and would not arrive at the facility until December 18th, 2024, at the earliest, a week after the drill's events. However, this equipment was listed as necessary as part of the Hazard Assessment, and were not determined to be utilized on site prior to the incident, nor were they required as part of the uniform worn into the PD-1 site by CCFD, or TBC employees."
    - But then the inspector acknowledges that "With the Hazard Assessment and the purchase of this equipment prior to the drill, TBC was aware that this equipment could be utilized but did not require employees to utilize it in any of the documentation provided to CCFD, and only required TBC employees who perform "grout related duties" to wear these chemical bibs according to TBC Safety Standards Guide."
    - The inspector specifies that "Structural turnouts **that were required on site by TBC** do not apply any wicking, and do not have a moisture barrier, **and that were approved** by Mr. Stock despite knowing that employees for CCFD would be wading through and potentially be exposed to the accelerant slurry while performing these tasks, trapping the slurry against the skin."
    - The inspector concludes "The Boring Company intentionally and voluntarily disregarded the requirements of 29 CFR 1926.95(a), as the employer was aware of the chemical hazards to which employees would potentially be exposed based on their own meetings, hazard assessments, previous related injuries, and did not ensure employees were provided personal protective equipment to protect them from hazards on the dates of the drills, December 9th and 10th, 2024, for both The Boring Company (TBC) and Clark County Fire Department (CCFD)."

- **ISSUES:**
  - This citation item is for not providing or requiring protective clothing.
    - However, the inspector notes that chemical bib overalls were ordered twice before the drill, and that CCFD received approval to wear their own structural turnouts for the drill, which were required.
    - While it is stated that TBC knew the CCFD clothing was not sufficient for the hazard to which they were potentially exposed, there is no support given for that conclusion.
    - Additionally, Under the Penalty section, the employee exposure number is 10 (the highest figure used for 10 or more employees), but only 2 employees received injuries, calling into question if the clothing was insufficient, or if some other factor that only applied to these employees resulted in the injuries, since the majority were not injured.
    - At no time is it stated that TBC did not provide the ordered chemical bib overalls to CCFD, and it is noted that TBC did require CCFD's clothing, negating the violation.
    - It is unclear if the Hazard Assessment, which had amendments added, was ever provided to the CCFD, as it contains all the relevant information.
  - Regardless, the Willful classification is not supported by the information contained here.
    - The item was classified as Willful because "The Boring Company intentionally and voluntarily disregarded the requirements of 29 CFR 1926.95(a)".
    - But the Violation Worksheet contains the information that TBC conducted a Hazard Assessment (which had amendments added), it conducted training with the CCFD employees, it ordered the chemical bibs, it conducted 6 safety meetings with CCFD in advance of the drill, and it approved the CCFD using its own protective clothing, per CCFD's request.
    - **Those factors negate an intentional or voluntary disregard for employee safety.**
    - NOTE: Even if an employer is wrong in its efforts/decisions to address a hazard, the attempt typically negates a willful classification. Here, multiple steps were taken to address it.

Citation 1, Item 2: 29 CFR 1926.800(d)(7)
(All employees shall be instructed in the recognition and avoidance of hazards associated with underground construction activities including, where appropriate, the following subjects: personal protective

equipment.)

- **AVD (Alleged Violation Description)**
  - The relevant part of the violation listed in the AVD is that "Training was provided to employees but did not include information on the recognition and avoidance of hazards associated with the underground construction activities and with regard to personal protective equipment."
  - This statement is at least partially contradicted in the ER Knowledge section which notes safety training was held, that chemical bibs were the selected TBC protective clothing, and that the CCFD's own protective clothing was approved for use in the drill, per the CCFD's request.
  - There is no further information indicating how this training and discussions did not properly address PPE.
- **NOTE: The rest of the relevant sections of the Violation Worksheet listed above are cut and pasted here, so this Worksheet contains the same problems as with Citation 1, Item 1.**
  - Of more concern, because the ER Knowledge is verbatim to Citation 1, Item 1, it does not address this cited standard directly.
  - In fact, the ER Knowledge section concludes by stating "The Boring Company intentionally and voluntarily disregarded **the requirements of 29 CFR 1926.95(a),** as the employer was aware of the chemical hazards to which employees would potentially be exposed based on their own meetings, hazard assessments, previous related injuries, and did not ensure employees were provided personal protective equipment to protect them from hazards on the dates of the drills, December 9th and 10th, 2024, for both The Boring Company (TBC) and Clark County Fire Department (CCFD)."
  - To be clear, the standard cited in Citation 1, Item 2, is 29 CFR 1926.800(d)(7).
  - Since this Violation Worksheet's ER Knowledge section specifies it applies to the incorrect standard, it cannot support this citation item at all.

Citation 1, Item 3: 29 CFR 1910.1200(h)(1)
(Employers shall provide employees with effective information and training on hazardous chemicals in their work area)

- **AVD (Alleged Violation Description)**
  - The relevant part of the violation listed in the AVD is that "Employees were provided with training regarding the MasterRoc AGA 41S accelerant, but were not provided with information regarding what chemical hazards would be present in the tunnel, such as the accelerant slurry "raining down" from the ceiling, and what chemicals were in the muck that CCFD employees would crawl through."
  - This statement is at least partially contradicted in the ER Knowledge section which notes safety training/discussions were held multiple times

where “requirements were outlined, hazards were discussed, and precautions were noted for the employees of both TBC and CCFD”, as well as stating TBC “provided the Hazard Communication training and discussed the PPE requirements for both CCFD and TBC employees.”
    - There is also a statement that, during the drill, “a Training Plan would be utilized that was generated by both CCFD and approved by TBC confirming the specifics of the training what assumed hazards would be within the tunnels”.
    - There is no further information indicating how this training and discussions did not properly address the chemical hazards.
- **NOTE: The rest of the relevant sections of the Violation Worksheet listed for Citation 1, Item 1, above are cut and pasted here, so this Worksheet contains the same problems as with Citation 1, Item 1.**
    - Of more concern, because the ER Knowledge is verbatim to Citation 1, Item 1, it does not address this cited standard directly.
    - In fact, the ER Knowledge section concludes by stating “The Boring Company intentionally and voluntarily disregarded **the requirements of 29 CFR 1926.95(a),** as the employer was aware of the chemical hazards to which employees would potentially be exposed based on their own meetings, hazard assessments, previous related injuries, and did not ensure employees were provided personal protective equipment to protect them from hazards on the dates of the drills, December 9th and 10th, 2024, for both The Boring Company (TBC) and Clark County Fire Department (CCFD).”
    - To be clear, the standard cited in Citation 1, Item 3, is 29 CFR 1910.1200(h)(1).
- Since this Violation Worksheet’s ER Knowledge section specifies it applies to the incorrect standard, it cannot support this citation item at all.

As the most serious category of violations, willful violations have the highest level of proof required. NV OSHA must prove the employer knew about a hazardous condition and either deliberately disregarded the law or acted with plain indifference to employee safety. This requires evidence that the employer was aware of the hazardous condition but made no reasonable effort to eliminate it.

Here, there are many inconsistencies and/or missing pieces of information that make it impossible to determine if the efforts made were “reasonable”. It is obvious that efforts were made, so these issues needed to be addressed/clarified before that determination could be made.

The penalty calculation also needed to be corrected, as did the Violation Worksheets in order to support the individual items. Cutting and pasting the exact same information will never support separate, distinct citation items as some additional information is required in order to trigger the requirements of a different standard to cite.

For all of these reasons, it was clear that this CITATION was not legally supportable as

written, with the available information, in its entirety.

As is our normal practice in these circumstances, it was recommended that the CITATION be withdrawn pending further review.