

BEFORE THE ARKANSAS WORKERS COMPENSATION COMMISSION

CLAIM NO. H305581

**EILEEN MONTES, SPECIAL ADMINISTRATRIX
OF THE ESTATE OF EVANGELIO MONTES, JR.,
DECEASED**

PETITIONER

VS.

KAJACS CONTRACTORS, INC.

RESPONDENT

PETITION TO DETERMINE JURISDICTION

Petitioner, Eileen Montes, Special Administratrix of the Estate of Evangelio Montes, Jr., for her Petition to Determine Jurisdiction, states as follows:

1. By order of the Circuit Court of Pope County, Arkansas entered on October 3, 2023, Petitioner was appointed Special Administratrix of the Estate of Evangelio Montes, Jr. (“Decedent”), to investigate, and, if warranted, to pursue a wrongful death claim relative to the circumstances surrounding the death of Decedent, which occurred on or about August 28, 2023. See **Exhibit 1**, attached hereto.

2. Petitioner alleges that the death of Evangelio Montes Jr. was not an accident as defined by the Arkansas Workers Compensation Act, and is therefore not a matter within the exclusive jurisdiction of the Arkansas Workers Compensation Commission (“Commission”).

3. Petitioner seeks a decision from the Commission, pursuant to its primary jurisdiction to decide whether Decedent’s death is covered by the Arkansas Workers Compensation Act. See, e.g., *Van Wagoner v. Beverly Enterprises*, 334 Ark. 12, 970 S.W. 2d 810 (July 2, 1998).

4. Shortly after the Arkansas Supreme Court’s decision in *Van Wagoner*, the Arkansas Court of Appeals published its opinion in *Unicare Homes, Inc. V. Gribble*, 977 S.W. 2d 490 (October 28, 1998), holding that, “The intentional infliction of an injury upon an employee by an

employer is an exception to the exclusive-remedy provision of the Workers' Compensation Act.”

5. Petitioner alleges that KAJACS Contractors, Inc. (KAJACS) engaged in intentional and deliberate misconduct as defined by Arkansas law, including committing the tort of outrage and committing Murder in the Second Degree, as defined by the Arkansas Criminal Code. Attached hereto as **Exhibit 2** and incorporated herein by reference, is a copy of Petitioner’s Complaint that she proposes to file in Lonoke County, which sets forth the factual allegations that support her causes of action on behalf of Decedent’s estate.

6. In her proposed Complaint, Petitioner also alleges that KAJACS lied when it willfully and knowingly made a material false statement in its application to obtain workers compensation from Midwest Builders’ Casualty Mutual Company, by omitting or concealing the fact that it had no intention of complying with all laws and regulations relating to the safety of its employees.

7. Therefore, in addition to the intentional tort allegations, KAJACS’ conduct falls within the exception to the exclusive remedy of workers compensation pursuant to Ark. Code Ann. § 11-9-105(b) as a result of its violation of Ark. Code Ann. § 11-9-106, for making a false statement to obtain workers compensation coverage, which is defined as a Class D felony under the referenced statute.

8. Based upon the facts alleged in **Exhibit 2**, which facts must be considered as true under the well pleaded complaint doctrine in Arkansas, Petitioner submits that KAJACS is not immune from suit for wrongful death in the Circuit Court of Lonoke County, and respectfully requests that the Commission issue a finding that the facts alleged therein fit within the exception to the exclusive remedy of Workers Compensation.

9. Petitioner is entitled to a trial by jury in this case, pursuant to the Arkansas Constitution, Article 2, Section 7. Therefore, the Commission is not charged with having to litigate the alleged facts, but is rather limited to determining whether the alleged facts, taken as true, are sufficient to deprive the Commission of jurisdiction.

10. Whether or not KAJACS intended the consequences of its misconduct is a question of fact for a jury to determine, based upon the instructions of the Court, after weighing the credibility of the witnesses at trial.

11. The egregiousness of the alleged facts in this case removes the exclusivity bar for Decedent's estate. Otherwise, shielding KAJACS from tort liability for its intentional and outrageous misconduct which resulted in the murder of Decedent, as defined by Arkansas law, would entirely disregard the quid pro quo of the industrial bargain between employers and employees. If this were not the case, an employer could effectively obtain insurance coverage for the right to murder its employees and spread that cost over other employers who participate in the system. Such an outcome would clearly violate public policy.

12. It is respectfully submitted that, based upon the facts alleged in **Exhibit 2**, which must be considered as true, to deny Petitioner the opportunity to pursue her causes of action on behalf of Decedent's estate would send a message to KAJACS, and to all employers in Arkansas, that no matter how egregious their conduct, they can rely upon the Workers Compensation Act to shield them from liability for intentionally causing the death of their employees.

13. Undersigned counsel has contacted the Workers Compensation legal advisors and the clerk, and has been unable to determine the process for filing a Petition such as this. Upon information and belief, cases for wrongful death are customarily filed in the Circuit Court first, followed by removal to the Commission.

14. Finding no specific rules or guidance for the submission of this Petition to the Commission, Commission Rule 099.23 provides that, "For good cause shown, the Commission or an Administrative Law Judge may permit deviation from these Rules insofar as compliance is impossible or impracticable." In that regard, Petitioner respectfully requests that the Rules be suspended, and that this Petition be presented to the full Commission for a ruling in order to expedite the process and to encourage judicial economy. Otherwise, Petitioner will suffer prejudice by incurring the additional attorney fees and costs due to the unreasonable delay that will result in this matter being presented to an Administrative Law Judge first, before the inevitable appeal by either party to the full Commission.

15. In the event the Commission determines that it does not have jurisdiction over this matter, and that jurisdiction lies with the Circuit Court of Lonoke County, Petitioner respectfully requests that the Commission direct that this matter be transferred to Lonoke County where venue would be proper, pursuant to the Arkansas Rules of Civil Procedure, Rule 12(h)(3).

16. It is respectfully submitted that a determination by the Commission that it does not have jurisdiction over this matter would not be a final appealable order.

17. As stated by the Court of Appeals of Arkansas in *Entergy Ark., LLC v. Arkansas Public Service Commission*, 2021 Ark. App. 506 (Ark. Ct. App. 2021):

"The general rule, pursuant to Rule 2(a)(1) of the Arkansas Rules of Appellate Procedure-Civil, provides that, for an order to be appealable, it must be a final order. Finality is a jurisdictional requirement, and its purpose is to avoid piecemeal litigation." For a [decree] to be final and appealable, it must dismiss the parties from the court, discharge them from the action, or conclude their rights to the subject matter in controversy." It must also "put the court's directive into execution, ending the litigation or a separable part of it." A decree that contemplates further judicial action is not final. In *Fowler v. Arkansas Public Service Commission*, this court held that the final-order rule was applicable to PSC cases. Following the reasoning used in *Gina Marie Farms v. Jones*, this court held that our jurisdiction is nevertheless appellate jurisdiction, and "the final order rationale is as logically applicable to

appeals from the Public Service Commission as to appeals from the Workers' Compensation Commission."

18. A ruling by the Commission that it does not have jurisdiction would not end the litigation, but would result in the matter being transferred to the proper venue. As the Court of Appeals of Arkansas held in *Flower v. Arkansas Public Service Commission*, 31 Ark. App. 155 (1990):

"In order to avoid piecemeal litigation or confusion in the lower court's handling of a matter, we must not interrupt the proceedings of a trial court. Denial of the motion did not dispose of any of the issues nor release any of the parties and was not final as to anything except that the trial would be held in Cleburne County. Once a final order has been entered, an appeal can be taken, and the question of venue and jurisdiction, once put in issue, is not lost by continuing through a trial of the matter. *Wilson v. Wilson*, 270 Ark. 485, 606 S.W.2d 56 (1980)."

19. Likewise, an order of the Commission, a denial of KAJACS' anticipated motion that the Commission has exclusive jurisdiction over this matter would not dispose of any of the issues nor release any of the parties, and would not be final to anything except that the trial will be held in Lonoke County. Once a final appealable order has been entered by the Lonoke County Circuit Court, an appeal can be taken, and the question of venue and jurisdiction will not be lost by KAJACS by continuing through a trial in this matter in Lonoke County.

WHEREFORE, Petitioner prays that the Rules be suspended for good cause shown and that this matter should be presented to the full Commission on an expedited basis for purposes of judicial economy; that the Commission exercise its primary jurisdiction to determine jurisdiction, and find that the alleged facts surrounding the tragic death of Decedent fit within the exception to the exclusive remedy of workers compensation; that the Commission does not have jurisdiction over this matter; that public policy dictates that employers in Arkansas must be warned that the Commission will not protect employers from intentional misconduct against their employees; that Petitioner may

proceed with her suit and that this matter be transferred to Lonoke County, Arkansas; and for all other just and proper relief to which she may be entitled.

Respectfully submitted,

EILEEN MONTES, Special Administratrix
of the Estate of Evangelio Montes Jr., Deceased

By: /s/ Gary Green
Gary Green (ABA 79074)
Robert A. Ginnaven III (ABA 86065)
Law Offices of Gary Green
Attorneys for the Estate of Evangelio Montes
1001 La Harpe Boulevard
Little Rock, AR 72201
501-224-7400 (P)
501-224-2294 (F)
gary.green@gGreen.com
robert.ginnaven@gGreen.com

CERTIFICATE OF SERVICE

I, Gary Green, do hereby certify that I have served by U.S. Mail and email, the foregoing Petition to Determine Jurisdiction on KAJACS Corporation, Inc. on its registered agent for service of process listed below, on this 13th day of November, 2023:

Danny Crabtree, Esq.
10201 W. Markham, Suite 328
Little Rock, AR 72205
danny@crabtreelawar.com

/s/ Gary Green

IN THE CIRCUIT COURT OF POPE COUNTY, ARKANSAS

**IN THE MATTER OF THE ESTATE OF
EVANGELIO MONTES, JR., DECEASED**

NO.: 58PR-23-311

ORDER APPOINTING SPECIAL ADMINISTRATRIX

On this ____ day of October, 2023, is presented to the Court the Petition of Eileen Montes for appointment as Special Administratrix of the estate of Evangelio Montes, Jr., deceased for the limited purpose of performing any and all acts necessary to investigate, and, if warranted, prosecute a wrongful death claim relative to the circumstances surrounding the death of Evangelio Montes, Jr., which occurred on or about August 28, 2023. Upon consideration of such petition, and the facts and evidence in support thereof, the Court finds:

1. A Special Administratrix of the estate would be proper and should be appointed for the decedent hereunder named, whose date of birth, sex and address are set forth opposite the decedent's name:

<u>NAME:</u>	<u>DOB:</u>	<u>SEX:</u>	<u>ADDRESS:</u>
Evangelio Montes, Jr.	5/14/1988	Male	Pope County, Arkansas

2. On the 28th day of August, 2023, Evangelio Montes, Jr., suffered injuries as a result of a wrongful death incident in Lonoke County, Arkansas, and died on August 28, 2023, intestate.

3. There is no court appointed Special Administratrix of the estate of Evangelio Montes, Jr., deceased.

4. The employment contract which was entered into between Petitioner, Eileen Montes and Law Offices of Gary Green, 1001 La Harpe Boulevard, Little Rock,



Arkansas 72201, as attorney, to represent the Special Administratrix of the estate of Evangelio Montes, Jr., deceased, is customary according to the customs and usages of the legal community, the compensation to be paid to the attorney involved in this matter is reasonable and necessary in order to pursue this matter, and the contract is approved.

4. Pursuant to the Arkansas wrongful death Statute, ACA §16-62-102(e), no part of the wrongful death recovery shall be subject to the debts of the deceased or become, in any way, a part of the assets of the estate of the deceased person.

IT IS THEREFORE CONSIDERED, ORDERED and ADJUDGED that the Petition for appointment of Special Administratrix of the estate of Evangelio Montes, Jr., be, and hereby is, granted; Eileen Montes is appointed Special Administratrix of the estate of Evangelio Montes, Jr., deceased for the limited purpose of performing any and all acts necessary to investigate, and, if warranted, to pursue a wrongful death claim relative to the circumstances surrounding the death of Evangelio Montes, Jr., which occurred on or about August 28, 2023; and that the employment contract requested in the petition between Petitioner, Eileen Montes, and Law Offices of Gary Green is hereby approved. Letters of Administration shall be issued without bond until assets are received.

IT IS SO ORDERED.

CIRCUIT JUDGE

DATE: _____

Prepared by:

/s/ Gary Green

Ark. Bar No. 79074

LAW OFFICES OF GARY GREEN

1001 La Harpe Boulevard

Little Rock, AR 72201

501- 224-7400 (P)

501- 224-2294 (F)

gary.green@gGreen.com



Case Title: EVANGELIO MONTES, JR.
Case Number: 58PR-23-311
Type: ORDER APPT ADMINISTRATOR/IX

So Ordered

A handwritten signature in black ink, appearing to read "Gordon W. McCain, Jr.", written in a cursive style.

Gordon W. McCain, 5th Circuit Division 2 Judge

**IN THE CIRCUIT COURT OF POPE COUNTY, ARKANSAS
IN THE MATTER OF THE ESTATE OF**

EVANGELIO MONTES, JR., DECEASED

NO.: 58PR-23-311

LETTERS OF ADMINISTRATION

BE IT KNOWN:

That Eileen Montes, whose address is 8606 Hicks Road, Mabelvale, Pulaski County, Arkansas, having been duly appointed Special Administratrix of the estate of Evangelio Montes, Jr. deceased, who died on August 28, 2023, and having qualified as such Special Administratrix is hereby authorized to act as such Special Administratrix for and in behalf of the estate as authorized by law.

ISSUED this ____ day of October, 2023.

Clerk

By: _____
Deputy Clerk

Prepared by:

/s/ Gary Green
Ark. Bar No. 79074
LAW OFFICES OF GARY GREEN
1001 La Harpe Boulevard
Little Rock, AR 72201
501- 224-7400 (P)
501- 224-2294 (F)
gary.green@gGreen.com



Case Title: EVANGELIO MONTES, JR.
Case Number: 58PR-23-311
Type: LETTERS OF ADMINISTRATION

So Ordered

Pam Ellis



POPE COUNTY CLERK

Courtney Womack-Motte, Deputy Clerk

**IN THE CIRCUIT COURT OF LONOKE COUNTY, ARKANSAS
CIVIL DIVISION**

**EILEEN MONTES, SPECIAL Administratrix
OF THE ESTATE OF EVANGELIO MONTES, JR.,
DECEASED**

PLAINTIFF

VS.

CASE NO. _____

KAJACS CONTRACTORS, INC.

DEFENDANT

COMPLAINT

Plaintiff, Eileen Montes, Special Administratrix of the Estate of Evangelio Montes, Jr., Deceased, for her Complaint against Defendant, Kajacs Contractors, Inc. ("KAJACS"), states as follows:

I. STATEMENT OF JURISDICTION

1. Jurisdiction and venue are proper before this Court. Based upon the facts alleged herein, "which are so one-sided that the issue is no longer one of fact but one of law." *Van Wagoner v. Beverly Enterprises*, 334 Ark. 12, 970 S.W. 2d 810 (1988), and based upon the law which requires this Court to treat the facts alleged herein as true and in the light most favorable to the Plaintiff, this case is an example of the kind of case that is an exception to the exclusive remedy of the Arkansas Workers Compensation Act.

2. Venue is proper under A.C.A. § 16-60-101 in that the incident herein complained of occurred in Lonoke County, Arkansas.

II. PARTIES TO THE CLAIM

3. At all times relevant herein, Decedent, also known as "Gordy," and hereinafter referred to as "Decedent," "Gordy Montes," or "Gordy" was a resident of Pope County, Arkansas.



4. KAJACS is a foreign for profit corporation registered to do business in Arkansas with the Arkansas Secretary of State since March 8, 1995, and is and has been doing business in Arkansas out of its offices located at 3401 W. 65th Street, Little Rock, AR 72209.

III. STATEMENT OF THE CASE

5. Gordy's death was not an "accident," but was the result of the intentional, outrageous, and murderous conduct of KAJACS.

A. BACKGROUND AND STANDARDS OF CARE

6. On or about August 28, 2023, KAJACS was the contractor awarded the \$5,618,200.00 public project known as the Bayou Meto Water Management District Orliceck 1 & 2 Sandage 1 Pumping System, comprising the construction of 41,000 feet of 24 inch PVC pipeline and three (3) intake pumps including an area near England, Lonoke County, Arkansas known as the Sandage Farm.

7. KAJACS won the bid on the referenced project by, among other things, making false representations that it would comply with all OSHA, and state and federal safety regulations, in constructing the project, having actual knowledge that it was not going to comply with said safety regulations, for no other reason than to save on construction costs.

8. On its website, KAJACS falsely advertises that, "At KAJACS, we have developed a culture that promotes an injury-free environment and provides the safest possible workplace for our employees and sub-contractors. Through innovative training and education programs we provide our employees with the tools, knowledge, and resources they need to work safely, reduce risk and improve loss control on every project. KAJACS is proud to be an OSHA/AGC partner in the State of Arkansas."

9. On its website, KAJACS touts its association with National Trench Safety, Inc. (NTS), which claims to be the definitive source for expert trench and shoring information. According to its website, NTS claims that, “As a global leader in trench safety, we are dedicated to delivering comprehensive, cutting-edge content that supports best practices in the industry. Our Expert Corner is where we showcase the knowledge and insights of our seasoned professionals, with a singular focus on trench and shoring safety.”

10. Among its services available to KAJACS, NTS offers rental equipment including a modular aluminum box it describes on its website as follows: “The aluminum box is a lightweight, modular, and portable system that can be assembled by hand. Modular shield panels offer the flexibility to match changing job-site trench protection requirements. Aluminum panels range from 3-ft to 16-ft in length and have an operational reach of 25-ft in depth.”

11. The key features of the modular aluminum box are touted by NTS as, “Lightweight – Aluminum panels. Modular design – 2, 3, or 4-sided builds, stackable with pins, removable panels. Assembly – On-premise or in a shop by hand with a small crew. Small Footprint – Can be used when space and clearance are limited.”

12. As NTS puts it, “If your next project involves dealing with an excavation with changing soil conditions and shifting excavation needs, the modular aluminum box may be an appropriate solution to consider.”

13. In addition to making safety equipment available to KAJACS, NTS also provides safety training courses. As NTS states on its website, “The need for trench and excavation safety is imperative, and National Trench Safety offers safety courses to ensure your employees stay up-to-date on their certifications. With this training, they can avoid costly accidents that could result

in serious injuries or death.”

14. KAJACS declares on its website that it is a “proud” partner of OSHA, and as such, KAJACS knows that it must consider the following OSHA requirements when digging a trench:

- a. Ensure trenches have cave-in protection

Example: Select appropriate protective systems based on existing soil conditions and soil analysis.

- b. Determine the hazards;

All excavations are hazardous because soil can be unstable. If workers are not using protective systems or equipment while working in trenches or excavations that are five feet or greater in depth, they are in danger of being crushed by a cave-in.

- c. Manage the hazards:

Pre-job planning is vital to incident-free excavation work; safety cannot be compromised as work progresses. The following concerns must be addressed by a competent person:

- d. Evaluate soil conditions and select appropriate protective systems. [29 CFR 1926 Subpart P Appendix A and 29 CFR 1926 Subpart P Appendix F].

Construct protective systems in accordance with the standard requirements.
[29 CFR 1926.652]

- e. Plan ahead; contact utilities (gas, electric, water and sewage) to locate underground lines, plan for traffic control if necessary, be prepared to support utilities (pipes/ducts) passing through excavations when necessary, and

determine proximity to structures that could affect choice of protective system.

- f. Test for hazardous atmospheres such as low oxygen, hazardous fumes, and toxic gases, especially when gasoline engine-driven equipment is running, or when the soil has been contaminated by leaking lines or storage tanks. When necessary, ensure that there is adequate ventilation or respiratory protection.
- g. Provide appropriate protections if water accumulation is a problem (i.e., remove water, divert water flow).
- h. Maintain safe access into and out of the excavation.

Inspect the excavation, adjacent areas, and protective systems daily at the start of the shift, after a rainstorm or after any other hazard increasing event. The inspection shall be conducted by a competent person, who looks for evidence of a situation that could result in a possible cave-in, indication of failure of the protective system, hazardous atmospheres or other hazardous conditions.
- i. Keep excavations open only for the minimum amount of time needed to complete operations.

15. According to OSHA's Fact Sheet on Trenching and Excavation Safety, attached hereto as **Exhibit 1**, KAJACS knew that trench collapses, or cave-ins, pose the greatest risk to workers' lives. When done safely, trenching operations can reduce worker exposure to other potential hazards including falls, falling loads, hazardous atmospheres, and incidents involving mobile equipment.

16. As stated in **Exhibit 1**, KAJACS knew of OSHA's requirement that, "Trenches 5 feet (1.5 meters) deep or greater require a protective system unless the excavation is made entirely in stable rock. If less than 5 feet deep, a competent person may determine that a protective system is not required." It should be noted here that the trench in question in this case was reported to be over ten (10) feet deep.

17. As stated in **Exhibit 1**, "Benching cannot be done in Type C soil."

18. Type C soil is defined by OSHA as:

(i) Cohesive soil with an unconfined compressive strength of 0.5 tsf (48 kPa) or less;

or

(ii) Granular soils including gravel, sand, and loamy sand; or

(iii) Submerged soil or soil from which water is freely seeping; or

(iv) Submerged rock that is not stable; or

(v) Material in a sloped, layered system where the layers dip into the excavation on a slope of four horizontal to one vertical (4H:1V) or steeper.

See OSHA Appendix A to Subpart P of Part 1926, attached hereto as **Exhibit 2**.

B. DISPATCH "TO A MAN BURIED ALIVE"

19. On August 28, 2023, Gordy Montes was a member of a four man crew responsible for digging a portion of the trench for the pipeline and pumping system for the project described in paragraph 5 above, on what is known as the Sandage Farm located at 3729 Red Wine Road near England, Lonoke County, Arkansas.

20. According to Phillip Wagner, the project manager for KAJACS, the project was scheduled to be completed by September 30, 2023.

21. Among the members of the crew were Decedent Gordy Montes, Steven Milsap, Michael Weaver, and Robert Healy.

22. Robert Healy was the KAJACS superintendent on site that day. According to Robert Healy, the crew arrived at the site about 6:15 a.m. and started digging about 8:00 a.m.

23. Robert Healy was operating a track hoe and stopped digging to allow Steven Milsap to enter the trench to shoot the elevation when the trench caved in burying Steven Milsap in Type C soil. According to Robert Healy, the trench caved in from the bottom up. See Lonoke County Sheriffs Office Incident Report, attached hereto as **Exhibit 3**.

24. Decedent Gordy Montes immediately jumped into the trench to save his life-long friend, Steven Milsap, and began to try to dig Milsap out with his hands. Milsap was completely buried for approximately thirty (30) minutes before Gordy was able to uncover Milsap's head and revive Milsap, and to briefly celebrate with Milsap for still being alive. Unfortunately, Gordy was unable to free Milsap before he died trying to save him.

25. While Gordy continued to try to free Milsap from the collapsed trench, KAJACS' supervisors and first responders began to arrive at the scene. KAJACS' supervisors stood by and did nothing to warn Decedent or the first responders of their knowledge that the trench was unsafe and practically certain to cave-in again.

26. When Lonoke County Deputy Sheriff Austin Hutchinson arrived at the scene he observed an excavator sitting atop a hill with the bucket down in a hole. While heading alongside the hole he observed multiple workers "just standing around" watching Gordy trying to free Milsap. Deputy Hutchinson and Sergeant John Ingram went into the hole to assist Gordy, digging by hand and with shovels and pulling on Milsap to no avail. See **Exhibit 3**.

27. According to Deputy Hutchinson, “We managed to get Mr. Milsap dug out to his knees, but because of his legs being twisted we struggled to pull him out, and the dirt we were digging in prior was now nothing but very watery mud.” See **Exhibit 3**.

28. Deputy Hutchinson sat up on his knees and stopped digging for a moment to try to think of another way they could possibly free Mr. Milsap, and while he and Gordy were thinking one wall of the trench caved in trapping Deputy Hutchinson and burying Gordy in Deputy Hutchinson’s lap.

29. According to Milsap, after the trench caved in the second time, Gordy raised his head from the dirt towards Milsap and with a panicked expression, looked Milsap directly in the eyes before losing consciousness.

30. Fire fighters from the England Fire Department, James Webb and Dylan Tye, jumped in the hole along with other first responders and began digging to free Gordy and Deputy Hutchinson from behind while an EMT began digging from the front. All the while several of the first responders also became trapped after a third cave-in. After some of the dirt had been removed from Gordy, Deputy Hutchinson was able to get his hands on Gordy’s neck and felt a very faint pulse. When Deputy Hutchinson picked Gordy’s head up slightly the EMT noticed blood coming from Gordy’s nose and mouth and stated Gordy had suffered head trauma and called for a helicopter. See **Exhibit 3**.

31. After Gordy and Deputy Hutchinson were removed from the hole, Hutchinson had lost feeling in both legs and remained lying on the ground, while Gordy was carried to the ambulance where CPR was performed on him until he died.

32. Deputy Hutchinson reported that, “At no time during the situation did a worker try

to stop us and let us know of the unsafe situation. I also did not observe any safety equipment placed inside the trench that at the time looked over 10 feet deep.” See **Exhibit 3**.

33. According to Sergeant John Ingram, “The walls around the trench were just dirt and mud with no protective wood or steel cage to hold the dirt/mud in place.” Ingram also reported that, “At no time did anyone from the construction workforce advise us on whether it was safe to continue to do so.” See **Exhibit 3**.

34. According to KAJACS employee Robert Healy who dug the trench in question, the trench was about 12 ½ feet deep and 3 to 4 feet wide.

35. Prior to the cave-in of the trench on August 28, 2023, the Project Construction Engineer with the United States Department of Agriculture sent an email dated June 22, 2023, reporting to representatives of the Bayou Meto Water Management District, that, “We are having issues with some of the KAJACS crew not doing proper trench safety. The crew has been told multiple times from both Will Bowls and myself that if a trench box is not being utilized that benching or sloping must happen and that all benching or sloping must follow OSHA guidelines.” See **Exhibit 4** attached hereto. After receiving **Exhibit 4**, Daniel Hollinger, with Garver Engineering forwarded **Exhibit 4** to KAJACS' Project Manager, Phillip Wagner, which warned KAJACS that, "Here is an email documentation of the tape and wire issue and also a concern about trench safety. The ground out there is very unstable in some areas. I think this is only an issue with one of the crews. We will take further action if we continue to have trench safety issues. Kajacs is ahead of schedule, so there is no reason to cut corners on safety." See emails between Hollinger and Wagner, attached hereto as **Exhibit 5**, wherein Wagner states he will “personally” take care of the issues.

IV. TORT OF OUTRAGE

36. Plaintiff acknowledges that Decedent was an employee of KAJACS at the time of his death and that *if* Gordy's death was an "accident," this cause of action would be barred by the workers compensation exclusive remedy provision found in Ark. Code Ann. 11-9-105. However, Gordy's death was not an "accident" covered by the exclusive remedy, but rather resulted from the intentional misconduct of KAJACS, including the intentional tort-of-outrage which is a recognized exception to the exclusive-remedy provision of the Arkansas Workers' Compensation Act. See, e.g., *Unicare Homes, Inc. v. Gribble*, 977 S.W. 2d 490 (Ark. Ct Ap. 1998). See also, *Wells v. Oklahoma Roofing and Sheet Metal*, 2019 OK 45, 2019 Okla. LEXIS 43 (June 18, 2019).

37. Arkansas Model Jury Instruction 401 sets forth the burden of proof to prevail on a claim for damages for the intentional tort of outrage and places the burden of proof in this case upon Plaintiff to prove the following three essential propositions:

First, that the Decedent and his heirs sustained damages.

Second, that KAJACS willfully and wantonly engaged in extreme and outrageous conduct;

And third, that such conduct proximately caused damage to the Decedent and his heirs in the nature of emotional distress and bodily harm.

38. As alleged herein, the proof is clear-cut that KAJACS knew or should have known that it was practically certain, that its utter failure to provide and require any safety measures on the site in question and its failure to provide any safety training for Decedent, would result in someone's death.

39. Furthermore, KAJACS' effort to cover up its failures by coaching one of its

supervisors to lie to OSHA investigators and forge OSHA safety documents after Decedent's wrongful death is so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized society.

40. For Decedent's heirs, the knowledge that their loved one was needlessly killed because of KAJACS' culture of meeting its deadline to complete the job without regard to the safety of Decedent, and that Decedent's death was entirely preventable, has caused them to suffer severe emotional distress.

V. MURDER IN THE SECOND DEGREE

41. Arkansas law also provides the following remedy in addition to **any** other remedies in law or equity, including the remedy provided under the Arkansas Workers' Compensation Act, when an employer's conduct constitutes a felony under Arkansas law:

Ark. Code Ann. § 16-118-107. Civil action by crime victim.

- (a) (1) Any person injured or damaged by reason of conduct of another person that would constitute a felony under Arkansas law may file a civil action to recover damages based on the conduct.
- (2) The burden of proof for showing conduct that constituted a felony shall be a preponderance of the evidence.
- (3) If the person who is injured or damaged prevails, he or she shall be entitled to recover costs and attorney's fees.
- (b) The action may be maintained by the person who was injured or damaged or, after the person's death, the executor, administrator, or representative of his or her estate.
- (c) **The remedy provided in this section shall be in addition to any other remedies in law or equity.**
(Emphasis added).

42. Based upon the facts alleged herein, Plaintiff has stated sufficient facts to support a civil cause of action against Defendant for Murder in the Second Degree.

43. Arkansas law defines Murder in the Second Degree as follows:

Ark. Code Ann. § 5-10-103. Murder in the second degree:

(a) A person commits murder in the second degree if:

(1) The person knowingly causes the death of another person under circumstances manifesting extreme indifference to the value of human life...

(b) Murder in the second degree is a Class A felony.

44. Arkansas law defines “knowingly” in Ark. Code Ann. 5-2-202, as follows:

(2) “KNOWINGLY.” A person acts knowingly with respect to:

(A) The person's conduct or the attendant circumstances when he or she is aware that his or her conduct is of that nature or that the attendant circumstances exist; or

(B) A result of the person's conduct when he or she is aware that it is practically certain that his or her conduct will cause the result;

45. In Ark. Code Ann. § 5-1-102 (13) and Ark. Code Ann. §5-2-501, a corporation, such as KAJACS, is included in the definition of a “person” in the Arkansas Criminal Code.

46. Based upon the facts alleged herein, it is undeniable that KAJACS knowingly caused the death of Decedent under circumstances manifesting extreme indifference to the value of human life. Ark. Code Ann. § 5-1-102(13)(A) and Ark. Code Ann. § 5-2-501 authorize a cause of action for Murder in the Second Degree against a corporation, such as KAJACS.

VI. KAJACS’ MURDEROUS AND INTENTIONAL MISCONDUCT

47. KAJACS knew or should have known that it was practically certain that the soil in

the area where the trench collapsed was unstable and in such proximity to a levee holding back water that the trench would fail if cave-in protection measures were not in place.

48. KAJACS knew or should have known that it was practically certain, that in order to prevent trench collapses and save lives it must slope or bench trench walls, shore trench walls with supports, or shield trench walls with trench boxes.

49. KAJACS did not ensure that the trench in question had cave-in protection in violation of OSHA regulations and in violation of the standards of care in the trench construction industry as set forth in paragraphs 13 through 17 above.

50. KAJACS did not ever provide safety training to Decedent or the members of his crew and lied to law enforcement that it did provide safety training to Decedent and the members of his crew.

51. Before the cave-in Superintendent Robert Healy and his crew, including Decedent, had dug approximately 20,000 feet of trench since the project began in March of 2023 in exactly the same manner that they were digging on the day of the cave-in, and were under the regular supervision of KAJACS' project manager and safety manager.

52. At all times from the beginning of the project in March of 2023 until the cave-in occurred in this case on August 28, 2023, KAJACS Project Manager, Phillip Wagner and KAJACS Safety Manager, Michael Titsworth had observed and were aware that Decedent's crew had been digging the trench in question with no sloping, no benching, no shoring, and no shielding with trench boxes. Although there was a trench box on site at the beginning of the project for another crew, Decedent's crew never used nor was ever provided a trench box by KAJACS. Such misconduct and inaction by KAJACS' supervisors evidences a deliberate intent to injure its employees, including

Decedent.

VII. THE COVER-UP

53. When Dylan Tye, a firefighter with the England Fire Department was extracted from the trench and was recovering from his ordeal and while the rescue effort was ongoing, he witnessed and overheard one of the KAJACS supervisors addressing members of the KAJACS crew on site saying, "Keep your mouths shut. If you want to keep your jobs get out of here." Robert Healy also overheard a KAJACS' supervisor commanding KAJACS' crew members who were videotaping the scene of the cave-in to stop recording and to delete all videos and pictures from their phones.

54. After the cave-in, KAJACS' Superintendent, Robert Healy was encouraged by his supervisor, Phillip Wagner, to forge the signatures of Decedent Gordy Montes, Steven Milsap, and Michael Weaver on documents regarding safety training, knowing that there had been no such safety training. Robert Healy has admitted to OSHA that he forged the signatures for fear of losing his job.

55. During his interview with OSHA regarding its investigation into the trench cave-in in question, Steven Milsap was shown safety training documents that appeared to bear his signature, but denied that he had signed such safety training documents and denied that KAJACS ever provided him with any safety training.

56. Before his interview with OSHA regarding its investigation into the trench cave-in in question, KAJACS' Superintendent Robert Healy was coached by KAJACS' attorney to mislead the OSHA investigators about the safety of the trench he was digging that caved in and killed Decedent, buried Steven Milsap alive for over 4 hours, and trapped several first responders who were trying to save Steven Milsap's life.

57. KAJACS' Superintendent Robert Healy was presented a document and offered money

by KAJACS to sign the document, admitting that he had not followed protocol while digging the ditch in question. Knowing that KAJACS had not provided safety training to him or his crew in over two years of his employment, knowing that KAJACS' supervisors had witnessed him digging the trench without any safeguards for the previous six months, and knowing that the culture of KAJACS was to get the job done on time without regard to the risk of injury or death, Robert Healy refused to sign the document. Healy was told by KAJACS' lawyer that he was being fired because it would look good to OSHA and demonstrate that KAJACS was trying to solve the problem. In truth, KAJACS threw Healy and his crew under the bus and attempted to make them the fall guys for its own misconduct.

58. While Steven Milsap was trapped and before Decedent was killed by a subsequent cave-in, the following KAJACS employees were on the site standing around the trench watching Decedent desperately attempting to save his best friend by attempting to dig Milsap out with his bare hands, and said nothing to anyone in the hole about the danger of another cave-in:

- a. Owner of KAJACS Aaron Person;
- b. Project Manager for KAJACS Phillip Wagner;
- c. Project Safety Manager for KAJACS Michael Titsworth.

59. According to Superintendent Robert Healy, he and the members of his crew on the day in question, including Decedent, were never offered any safety classes or safety training before the cave-in, and knew that if they did not risk their lives they would be fired.

60. KAJACS Project Safety Manager, Michael Titsworth, therefore, lied to law enforcement officers on the scene when he stated that Decedent's crew had been to safety classes and were trained, but "that they did not do what they were trained to do." See **Exhibit 3**.

61. Knowing that the Arkansas Workers Compensation Act would protect it from lawsuits and limit its liability, KAJACS used the workers compensation laws as a shield for its intentional, outrageous, and murderous misconduct.

VIII. KAJACS' FALSE STATEMENT TO OBTAIN INSURANCE

62. In addition to the alleged intentional torts of outrage and murder alleged herein, upon information and belief, KAJACS lied on its application for workers compensation coverage to Midwest Builders' Casualty Mutual Company ("Midwest"), by omitting or concealing the fact that KAJACS had no intention of complying with all laws and regulations relating to the safety of its employees, as required by Midwest.

63. Based upon the facts alleged herein, that KAJACS never provided any safety training to decedent and his crew; that KAJACS did not comply with any safety regulations in digging the trench in question; that KAJACS lied to law enforcement that it had provided such safety training to decedent and his crew; that KAJACS encouraged Robert Healy to forge decedent's signature and the signatures of other members of his crew on documents stating that they received safety training that they did not receive; that KAJACS attorney coached Robert Healy to mislead the OSHA investigators about the safety of the trench he was digging; and that KAJACS offered to pay Robert Healy hush money to take the blame for the trench collapse, it is clear that KAJACS had no intention of complying with applicable safety regulations.

64. Upon information and belief, KAJACS signed Midwest's Application for Workers Compensation Insurance which application includes language that required KAJACS to agree to comply with all laws, orders, rules, and regulations in force and effect issued by the public authorities relating to the welfare, health, and safety of its employees.

65. Upon information and belief, Midwest would not have issued workers compensation insurance to KAJACS if it had known that KAJACS would not comply with all safety regulations in its construction business.

66. Upon information and belief, KAJACS “willfully and knowingly” made a material false statement, or “willfully and knowingly” omitted or concealed the fact that it had no intention of complying with safety regulations in order to obtain workers compensation coverage in violation of Ark. Code Ann. § 11-9-106.

67. Ark. Code Ann. § 11-9-106 is a criminal statute that states that “any person or entity” who makes a false statement to obtain workers compensation coverage “shall be guilty of a Class D felony.”

68. Therefore, pursuant to Ark. Code Ann. § 16-118-107, which provides a civil action by a crime victim to any person injured or damaged by reason of conduct of another person that would constitute a felony under Arkansas law, Plaintiff has standing to pursue such an action as the Administratrix of Decedent’s estate.

69. Furthermore, by making a false statement to obtain workers compensation coverage, KAJACS violated Ark. Code Ann. § 1-9-105 (b), by failing to secure the payment of compensation “as required by this chapter,” which is an exception to the exclusive remedy of workers compensation that allows Plaintiff, at her option, “to maintain a legal action in court for damages on account of the injury or death.”

IX. KAJACS’ OTHER CRIMES, WRONGS, OR ACTS

70. Following below is evidence of KAJACS’ prior crimes, wrongs, or acts which are admissible under Arkansas Rules of Evidence, Rule 404(b) as proof of KAJACS’ motive,

opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident:

- a. On June 24, 2002, KAJACS and its owner Michael Persons entered guilty pleas on mail fraud charges in Case Nos. S1-1:01CR00023ERW and 1:02CR00005ERW in the United States District Court for the Eastern District of Missouri, Southeastern Division. According to the Semiannual Report to the Congress, April 1, 2002 - September 3, 2002, the U.S. Department of Labor Office of Inspector General reported that, "In addition to the nearly \$7 million in Federal contracts named in the August 2001 indictment, KAJACS had several other ongoing or proposed public works contracts with various governmental agencies totaling in excess of \$21 million. OIG was reported to have been assisted in the investigation by the SSA OIG, the Small Business Administration OIG, and the FBI.
- b. On March 11, 2003, Channel 12 KFVS out of Cape Girardeau, MO, reported that the owner of KAJACS, Michael Persons, got \$17 million in federal contracts after falsely claiming he was a descendant of the Cherokee tribe. According to the article, Persons was assessed \$500,000 in federal fines.
- c. On February 18, 2014, KAJACS was fined by OSHA (Inspection No. 954766.015) for allowing an employee to work in an excavation that was greater than 5 feet deep that was not protected from cave-in hazard by a trench shield protective system or sloping and benching system.

X. DAMAGES

71. As a proximate result of Decedent's death, the following damages have been

sustained by Decedent's heirs:

- a. Loss of the deceased person's financial support;
- b. Emotional suffering, grief, and despair associated with the death;
- c. Loss of education, training, or guidance the deceased might have provided his or her children.

72. As a proximate result of Decedent's death, Decedent's Estate is entitled to recover damages for the losses the decedent suffered as a result of his or her death, including:

- a. Funeral and burial costs;
- b. Medical bills for treatment of the deceased person's final injury;
- c. Pain and suffering the deceased endured before death, and;
- d. The lost value of the deceased person's remaining life, including wages he would likely have earned.

73. In addition to compensatory damages, due to the deliberate, intentional, and murderous and fraudulent misconduct of KAJACS, Plaintiff is entitled to punitive damages to punish KAJACS for its intentional misconduct, and to deter other construction companies from deliberately killing their employees in the future.

74. Plaintiff respectfully demands a trial by jury.

WHEREFORE, Plaintiff prays for judgment against Defendant in an amount in excess of that required for diversity jurisdiction in federal court, for punitive damages, for her costs and attorney fees, and for all other just and proper relief to which she is entitled.

Respectfully submitted,

EILEEN MONTES, Special Administratrix
of the Estate of Evangelio Montes Jr., Deceased

By: /s/ Gary Green

Gary Green (ABA 79074)

Robert A. Ginnaven III (ABA 86065)

Law Offices of Gary Green

Attorneys for the Estate of Evangelio Montes

1001 La Harpe Boulevard

Little Rock, AR 72201

501-224-7400 (P)

501-224-2294 (F)

gary.green@gGreen.com

robert.ginnaven@gGreen.com

Trenching and Excavation Safety

Trench collapses, or cave-ins, pose the greatest risk to workers' lives. When done safely, trenching operations can reduce worker exposure to other potential hazards include falls, falling loads, hazardous atmospheres, and incidents involving mobile equipment.

OSHA standards require that employers provide workplaces free of recognized hazards. The employer must comply with the trenching and excavation requirements of 29 CFR 1926.651 and 1926.652 or comparable OSHA-approved state plan requirements.

Trench Safety Measures

Trenches 5 feet (1.5 meters) deep or greater require a protective system unless the excavation is made entirely in stable rock. If less than 5 feet deep, a competent person may determine that a protective system is not required.

Trenches 20 feet (6.1 meters) deep or greater require that the protective system be designed by a registered professional engineer or be based on tabulated data prepared and/or approved by a registered professional engineer in accordance with 1926.652(b) and (c).

Competent Person

OSHA standards require, before any worker entry, that employers have a competent person inspect trenches daily and as conditions change to ensure elimination of excavation hazards. A competent person is an individual who is capable of identifying existing and predictable hazards or working conditions that are hazardous, unsanitary, or dangerous to workers, soil types and protective systems required, and who is authorized to take prompt corrective measures to eliminate these hazards and conditions.

Access and Egress

- Keep heavy equipment away from trench edges.
- Identify other sources that might affect trench stability.
- Keep excavated soil (spoils) and other materials at least 2 feet (0.6 meters) from trench edges.
- Know where underground utilities are located before digging.

- Test for atmospheric hazards such as low oxygen, hazardous fumes and toxic gases when > 4 feet deep.
- Inspect trenches at the start of each shift.
- Inspect trenches following a rainstorm or other water intrusion.
- Do not work under suspended or raised loads and materials.
- Inspect trenches after any occurrence that could have changed conditions in the trench.
- Ensure that personnel wear high visibility or other suitable clothing when exposed to vehicular traffic.

Protective Systems

There are different types of protective systems.

Benching means a method of protecting workers from cave-ins by excavating the sides of an excavation to form one or a series of horizontal levels or steps, usually with vertical or near-vertical surfaces between levels. *Benching cannot be done in Type C soil.*

Sloping involves cutting back the trench wall at an angle inclined away from the excavation.

Shoring requires installing aluminum hydraulic or other types of supports to prevent soil movement and cave-ins.

Shielding protects workers by using trench boxes or other types of supports to prevent soil cave-ins. Designing a protective system can be complex because you must consider many factors: soil classification, depth of cut, water



content of soil, changes caused by weather or climate, surcharge loads (e.g., spoil, other materials to be used in the trench) and other operations in the vicinity.

Additional Information

Visit OSHA's Safety and Health Topics webpage on trenching and excavation at www.osha.gov/trenching.

Workers' Rights

Workers have the right to:

- Working conditions that do not pose a risk of serious harm.
Receive information and training (in a language and vocabulary the worker understands) about workplace hazards, methods to prevent them, and the OSHA standards that apply to their workplace.
- Review records of work-related injuries and illnesses.
- File a complaint asking OSHA to inspect their workplace if they believe there is a serious

hazard or that their employer is not following OSHA's rules. OSHA will keep all identities confidential.

- Exercise their rights under the law without retaliation, including reporting an injury or raising health and safety concerns with their employer or OSHA. If a worker has been retaliated against for using their rights, they must file a complaint with OSHA as soon as possible, but no later than 30 days.

For additional information, see OSHA's Workers page (www.osha.gov/workers).

How to Contact OSHA

Under the Occupational Safety and Health Act of 1970, employers are responsible for providing safe and healthful workplaces for their employees. OSHA's role is to help ensure these conditions for America's working men and women by setting and enforcing standards, and providing training, education and assistance. For more information, visit www.osha.gov or call OSHA at 1-800-321-OSHA (6742), TTY 1-877-889-5627.

This is one in a series of informational fact sheets highlighting OSHA programs, policies or standards. It does not impose any new compliance requirements. For a comprehensive list of compliance requirements of OSHA standards or regulations, refer to Title 29 of the Code of Federal Regulations. This information will be made available to sensory-impaired individuals upon request. The voice phone is (202) 693-1999; teletypewriter (TTY) number: (877) 889-5627.



U.S. Department of Labor



DOC FS-3476 09/2011

Occupational Safety and Health Administration

- **Part Number:** 1926
Part Number
- **Title:** Safety and Health Regulations for Construction
- **Subpart:** 1926 Subpart P
- **Subpart Title:** Excavations
Standard
- **Number:** 1926 Subpart P App A
- **Title:** Soil Classification
- **GPO Source:** e-CFR

Appendix A to Subpart P of Part 1926-Soil Classification

(a) *Scope and application* -

(1) *Scope.* This appendix describes a method of classifying soil and rock deposits based on site and environmental conditions, and on the structure and composition of the earth deposits. The appendix contains definitions, sets forth requirements, and describes acceptable visual and manual tests for use in classifying soils.

(2) *Application.* This appendix applies when a sloping or benching system is designed in accordance with the requirements set forth in § 1926.652(b)(2) as a method of protection for employees from cave-ins. This appendix also applies when timber shoring for excavations is designed as a method of protection from cave-ins in accordance with appendix C to subpart P of part 1926, and when aluminum hydraulic shoring is designed in accordance with appendix D. This appendix also applies if other protective systems are designed and selected for use from data prepared in accordance with the requirements set forth in § 1926.652(c), and the use of the data is predicated on the use of the soil classification system set forth in this appendix.

(b) *Definitions.* The definitions and examples given below are based on, in whole or in part, the following: American Society for Testing Materials (ASTM) Standards D653-85 and D2488; The Unified Soils Classification System, the U.S. Department of Agriculture (USDA) Textural Classification Scheme; and The National Bureau of Standards Report BSS-121.

EXHIBIT

"2"

Cemented soil means a soil in which the particles are held together by a chemical agent, such as calcium carbonate, such that a hand-size sample cannot be crushed into powder or individual soil particles by finger pressure.

Cohesive soil means clay (fine grained soil), or soil with a high clay content, which has cohesive strength. Cohesive soil does not crumble, can be excavated with vertical sideslopes, and is plastic when moist. Cohesive soil is hard to break up when dry, and exhibits significant cohesion when submerged. Cohesive soils include clayey silt, sandy clay, silty clay, clay and organic clay.

Dry soil means soil that does not exhibit visible signs of moisture content.

Fissured means a soil material that has a tendency to break along definite planes of fracture with little resistance, or a material that exhibits open cracks, such as tension cracks, in an exposed surface.

Granular soil means gravel, sand, or silt, (coarse grained soil) with little or no clay content. Granular soil has no cohesive strength. Some moist granular soils exhibit apparent cohesion. Granular soil cannot be molded when moist and crumbles easily when dry.

Layered system means two or more distinctly different soil or rock types arranged in layers. Micaceous seams or weakened planes in rock or shale are considered layered.

Moist soil means a condition in which a soil looks and feels damp. Moist cohesive soil can easily be shaped into a ball and rolled into small diameter threads before crumbling. Moist granular soil that contains some cohesive material will exhibit signs of cohesion between particles.

Plastic means a property of a soil which allows the soil to be deformed or molded without cracking, or appreciable volume change.

Saturated soil means a soil in which the voids are filled with water. Saturation does not require flow. Saturation, or near saturation, is necessary for the proper use of instruments such as a pocket penetrometer or shear vane.

Soil classification system means, for the purpose of this subpart, a method of categorizing soil and rock deposits in a hierarchy of Stable Rock, Type A, Type B, and Type C, in decreasing order of stability. The categories are determined based on an analysis of the properties and performance characteristics of the deposits and the environmental conditions of exposure.

Stable rock means natural solid mineral matter that can be excavated with vertical sides and remain intact while exposed.

Submerged soil means soil which is underwater or is free seeping.

Type A means cohesive soils with an unconfined compressive strength of 1.5 ton per square foot (tsf) (144 kPa) or greater. Examples of cohesive soils are: clay, silty clay, sandy clay, clay loam and, in some cases, silty clay loam and sandy clay loam. Cemented soils such as caliche and hardpan are also considered Type A. However, no soil is Type A if:

- (i) The soil is fissured; or
- (ii) The soil is subject to vibration from heavy traffic, pile driving, or similar effects; or
- (iii) The soil has been previously disturbed; or
- (iv) The soil is part of a sloped, layered system where the layers dip into the excavation on a slope of four horizontal to one vertical (4H:1V) or greater; or
- (v) The material is subject to other factors that would require it to be classified as a less stable material.

Type B means:

- (i) Cohesive soil with an unconfined compressive strength greater than 0.5 tsf (48 kPa) but less than 1.5 tsf (144 kPa); or
- (ii) Granular cohesionless soils including: angular gravel (similar to crushed rock), silt, silt loam, sandy loam and, in some cases, silty clay loam and sandy clay loam.
- (iii) Previously disturbed soils except those which would otherwise be classified as Type C soil.
- (iv) Soil that meets the unconfined compressive strength or cementation requirements for Type A, but is fissured or subject to vibration; or
- (v) Dry rock that is not stable; or
- (vi) Material that is part of a sloped, layered system where the layers dip into the excavation on a slope less steep than four horizontal to one vertical (4H:1V), but only if the material would otherwise be classified as Type B.

Type C means:

- (i) Cohesive soil with an unconfined compressive strength of 0.5 tsf (48 kPa) or less; or
- (ii) Granular soils including gravel, sand, and loamy sand; or
- (iii) Submerged soil or soil from which water is freely seeping; or
- (iv) Submerged rock that is not stable; or

(v) Material in a sloped, layered system where the layers dip into the excavation on a slope of four horizontal to one vertical (4H:1V) or steeper.

Unconfined compressive strength means the load per unit area at which a soil will fail in compression. It can be determined by laboratory testing, or estimated in the field using a pocket penetrometer, by thumb penetration tests, and other methods.

Wet soil means soil that contains significantly more moisture than moist soil, but in such a range of values that cohesive material will slump or begin to flow when vibrated. Granular material that would exhibit cohesive properties when moist will lose those cohesive properties when wet.

(c) *Requirements-*

(1) *Classification of soil and rock deposits.* Each soil and rock deposit shall be classified by a competent person as Stable Rock, Type A, Type B, or Type C in accordance with the definitions set forth in paragraph (b) of this appendix.

(2) *Basis of classification.* The classification of the deposits shall be made based on the results of at least one visual and at least one manual analysis. Such analyses shall be conducted by a competent person using tests described in paragraph (d) below, or in other recognized methods of soil classification and testing such as those adopted by the American Society for Testing Materials, or the U.S. Department of Agriculture textural classification system.

(3) *Visual and manual analyses.* The visual and manual analyses, such as those noted as being acceptable in paragraph (d) of this appendix, shall be designed and conducted to provide sufficient quantitative and qualitative information as may be necessary to identify properly the properties, factors, and conditions affecting the classification of the deposits.

(4) *Layered systems.* In a layered system, the system shall be classified in accordance with its weakest layer. However, each layer may be classified individually where a more stable layer lies under a less stable layer.

(5) *Reclassification.* If, after classifying a deposit, the properties, factors, or conditions affecting its classification change in any way, the changes shall be evaluated by a competent person. The deposit shall be reclassified as necessary to reflect the changed circumstances.

(d) *Acceptable visual and manual tests -*

(1) *Visual tests.* Visual analysis is conducted to determine qualitative information regarding the excavation site in general, the soil adjacent to the excavation, the soil forming the sides of the open excavation, and the soil taken as samples from excavated material.

(i) Observe samples of soil that are excavated and soil in the sides of the excavation. Estimate the range of particle sizes and the relative amounts of the particle sizes. Soil that is primarily composed of fine-grained material is cohesive material. Soil composed primarily of coarse-grained sand or gravel is granular material.

(ii) Observe soil as it is excavated. Soil that remains in clumps when excavated is cohesive. Soil that breaks up easily and does not stay in clumps is granular.

(iii) Observe the side of the opened excavation and the surface area adjacent to the excavation. Crack-like openings such as tension cracks could indicate fissured material. If chunks of soil spall off a vertical side, the soil could be fissured. Small spalls are evidence of moving ground and are indications of potentially hazardous situations.

(iv) Observe the area adjacent to the excavation and the excavation itself for evidence of existing utility and other underground structures, and to identify previously disturbed soil.

(v) Observe the opened side of the excavation to identify layered systems. Examine layered systems to identify if the layers slope toward the excavation. Estimate the degree of slope of the layers.

(vi) Observe the area adjacent to the excavation and the sides of the opened excavation for evidence of surface water, water seeping from the sides of the excavation, or the location of the level of the water table.

(vii) Observe the area adjacent to the excavation and the area within the excavation for sources of vibration that may affect the stability of the excavation face.

(2) *Manual tests.* Manual analysis of soil samples is conducted to determine quantitative as well as qualitative properties of soil and to provide more information in order to classify soil properly.

(i) *Plasticity.* Mold a moist or wet sample of soil into a ball and attempt to roll it into threads as thin as $\frac{1}{8}$ -inch in diameter. Cohesive material can be successfully rolled into threads without crumbling. For example, if at least a two inch (50 mm) length of $\frac{1}{8}$ - inch thread can be held on one end without tearing, the soil is cohesive.

(ii) *Dry strength.* If the soil is dry and crumbles on its own or with moderate pressure into individual grains or fine powder, it is granular (any combination of gravel, sand, or silt). If the soil is dry and falls into clumps which break up into smaller clumps, but the smaller clumps can only be broken up with difficulty, it may be clay in any combination with gravel, sand or silt. If the dry soil breaks into clumps which do not break up into small clumps and which can only be broken with difficulty, and there is no visual indication the soil is fissured, the soil may be considered unfissured.

(iii) *Thumb penetration.* The thumb penetration test can be used to estimate the unconfined compressive strength of cohesive soils. (This test is based on the thumb penetration test described in American Society for Testing and Materials (ASTM) Standard designation D2488 —“Standard Recommended Practice for Description of Soils (Visual—Manual Procedure).”) Type A soils with an unconfined compressive strength of 1.5 tsf can be readily indented by the thumb; however, they can be penetrated by the thumb only with very great effort. Type C soils with an unconfined compressive strength of 0.5 tsf can be easily penetrated several inches by the thumb, and can be molded by light finger pressure. This test should be conducted on an undisturbed soil sample, such as a large clump of spoil, as soon as practicable after excavation to keep to a minimum the effects of exposure to drying influences. If the excavation is later exposed to wetting influences (rain, flooding), the classification of the soil must be changed accordingly.

(iv) *Other strength tests.* Estimates of unconfined compressive strength of soils can also be obtained by use of a pocket penetrometer or by using a hand-operated sheavane.

(v) *Drying test.* The basic purpose of the drying test is to differentiate between cohesive material with fissures, unfissured cohesive material, and granular material. The procedure for the drying test involves drying a sample of soil that is approximately one inch thick (2.54 cm) and six inches (15.24 cm) in diameter until it is thoroughly dry:

(A) If the sample develops cracks as it dries, significant fissures are indicated.

(B) Samples that dry without cracking are to be broken by hand. If considerable force is necessary to break a sample, the soil has significant cohesive material content. The soil can be classified as an unfissured cohesive material and the unconfined compressive strength should be determined.

(C) If a sample breaks easily by hand, it is either a fissured cohesive material or a granular material. To distinguish between the two, pulverize the dried clumps of the sample by hand or by stepping on them. If the clumps do not pulverize easily, the material is cohesive with fissures. If they pulverize easily into very small fragments, the material is granular.

[85 FR 8737, February 18, 2020]



U.S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration
200 Constitution Ave NW
Washington, DC 20210
☎ 1-800-321-OSHA
1-800-321-6742
www.osha.gov

FEDERAL GOVERNMENT OCCUPATIONAL SAFETY & HEALTH

White House
Benefits.gov
Coronavirus Resources
Disaster Recovery Assistance
DisasterAssistance.gov
USA.gov
Notification of EEO Violations
No Fear Act Data
U.S. Office of Special Counsel

Frequently Asked Questions
A - Z Index
Freedom of Information Act - OSHA
Read The OSHA Newsletter
Subscribe to the OSHA Newsletter
OSHA Publications
Office of Inspector General

ABOUT THE SITE

Freedom of Information Act
Disclaimers
Plug-ins Used on DOL.gov
Accessibility Statement

Connect With OSHA



Site Map

Important Website Notices

Privacy & Security Statement

Incident # 23-01461

Lonoke County Sheriffs Office

Report Date 08/28/23

Page 1 of 10

Incident Report

Report Time 3:52 PM

Status Closed	Exception Clearance	Date	Reporting Officer		ORI/Agency
		Not Applicable	1380 Ingram, John F		AR0430000
	Assigned Officer	Entered By		Approving Officer	
	Lucas, Carla J.	AWISE			
Assisting Officers					

Complainant						
SSN/ID/TIN ** MASKED **	Title	Name	DOB	Age	Sex	Resident Status
		Male, Caller	** MASKED **		U	Unknown
Race	Unknown	Ethnicity	DL (#, ST)	Email		
		Unknown	** MASKED **	** MASKED **		
Home Phone	Work Phone	Other Phone	Personal Cell	Work Cell		
** MASKED **	** MASKED **	** MASKED **	** MASKED **	** MASKED **		
US Citizen	Legal Alien	Doc Type	Immig Doc #	Nationality		
Yes						
Home Address				Employer		
Work Address				Occupation		

Offenses			
Incident Location			Zone
3729 Red Wine RD Scott, AR			

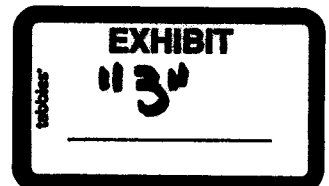
Earliest Possible Date	Time	Latest Possible Date	Time
08/28/2023	13:00	08/28/2023	18:00

#	Statute/Code	Description	Fel/Misd	Att/Comp	Loc	Bias	Wpn	CATypes
1	INFO	GENERAL INFORMATION		Completed	25	88	99	

MO	Method Of Entry	# Prems
	n/a	0

Location Types 01 Air/Bus/Train Terminal 02 Bank/S&L 03 Bar/Night Club 04 Church/Synag/Temple 05 Commercial/Off Bldg 06 Construction Site 07 Convenience Store 08 Dept/Discount Store 09 Drug Str/Dr Off/Hosp 10 Field/Woods 11 Govt/Public Bldg 12 Grocery/Supermarket 13 Hwy/Road/Alley 14 Hotel/Motel 15 Jail/Prison 16 Lake/Waterway 17 Liquor Store 18 Parking Lot/Garage 19 Rental Storage Facility 20 Residence/Home 21 Restaurant 23 Service/Gas Station 24 Specialty Store 25 Unknown/Other	37 Abandoned/Condemned Structure 38 Amusement Park 39 Arena/Stadium/Fair grounds/Coffeum 40 ATM Separate from Bank 41 Auto Dealership New/Used 42 Camp/Campground 44 Daycare Facility 45 Dock/Wharf/Freight/ Modal Terminal 46 Farm Facility 47 Gambling Facility/Casino/Race Track 48 Industrial Site 49 Military Installation 50 Park/Playground 51 Rest Area 52 School - College/University 53 School - Elementary/Secondary 54 Shelter - Mission/Homeless 55 Shopping Mall 56 Tribal Lands 57 Community Center 58 Cyberspace	Bias Motivation Codes ANTI- 11 White 12 Black or African American 13 American Indian or Alaska Native 14 Asian 15 Multi-races, Group 16 Native Hawaiian or Other Pacific Islander 21 Jewish 22 Catholic 23 Protestant 24 Islamic (Muslim) 25 Other Religion 26 Multi-religious group 27 Atheist/Agnostic 31 Arab 32 Hispanic or Latino 33 Not Hispanic or Latino 41 Gay (male) 42 Lesbian 43 Lesbian, Gay, Bisexual, or Transgender, Mixed Group (LGBT) 44 Heterosexual 45 Bisexual 51 Phys Disability 52 Mental Disability 61 Male 62 Female 71 Transgender 72 Gender Non-Conforming 88 None 99 Unknown
---	--	--

Suspected Of Using None	Criminal Activity Types B Buying/Receiving P Possessing/Concealing D Distributing/Selling E Exploiting Children C Cultivating/Manufact/Publishing O Operating/Promoting/Assisting T Transport/Import/Transmit U Using/Consuming A Simple/Gross Neglect F Organized Abuse I Intentional Abuse & Torment S Sexual Animal Abuse	Weapon Type(s) 11 Firearm (Auto) 12 Handgun (Auto) 13 Rifle (Auto) 14 Shotgun (Auto) 15 Other Firearm 20 Knife/Cutting Instr 30 Blunt Object 35 Motor Vehicle 40 Personal Weapons 50 Poison 60 Explosives 65 Fire/Incendary Device 70 Drugs/Nerc./Sleeping Pills 85 Asphyxiation 90 Other 95 Unknown 99 None
-----------------------------------	---	--



SSN/ID/TIN ** MASKED **		Title	Name Montes, Evangelio		DOB ** MASKED **	Age 35	Sex M	Resident Status Unknown
Race White		Ethnicity Hispanic/Latino		DL (#, ST) ** MASKED **	Email ** MASKED **			
Home Phone ** MASKED **		Work Phone ** MASKED **		Other Phone ** MASKED **	Personal Cell ** MASKED **		Work Cell ** MASKED **	
US Citizen No	Legal Alien Unknown	Doc Type		Immig Doc #	Nationality			
Home Address 118 Janef CT, Romance, AR 72136					Employer Kajacs			
Work Address 65Th ST, Little Rock, AR					Occupation			
Victim Type Individual	Injury Type None,	Aggravated Assault/Homicide Circumstances None			Relationship To Suspect			
Justifiable Homicide Circumstances None				Taken to: (Hospital Name)				
Injury Description								

Victim #3		Event/Is Related						
SSN/ID/TIN ** MASKED **		Title	Name Milsap, Steven		DOB ** MASKED **	Age 37	Sex M	Resident Status Resident
Race White		Ethnicity Not Hispanic/Latino		DL (#, ST) ** MASKED **	Email ** MASKED **			
Home Phone ** MASKED **		Work Phone ** MASKED **		Other Phone ** MASKED **	Personal Cell ** MASKED **		Work Cell ** MASKED **	
US Citizen No	Legal Alien Unknown	Doc Type		Immig Doc #	Nationality			
Home Address 100 Union ST, Jacksonville, AR 72076					Employer Kajacs			
Work Address					Occupation			
Victim Type Individual	Injury Type None,	Aggravated Assault/Homicide Circumstances None			Relationship To Suspect			
Justifiable Homicide Circumstances None				Taken to: (Hospital Name)				
Injury Description								

SSN/ID/TIN ** MASKED **	Title	Name Weaver, Micheal Taylor	DOB ** MASKED **	Age 19	Sex M	Resident Status Resident
Race White	Ethnicity Unknown	DL (#, ST) ** MASKED **	Email ** MASKED **			
Home Phone ** MASKED **	Work Phone ** MASKED **	Other Phone ** MASKED **	Personal Cell ** MASKED **	Work Cell ** MASKED **		
US Citizen Yes	Legal Alien	Doc Type	Immig Doc #	Nationality		
Home Address 202 Sierra CV, Austin, AR 72007				Employer Kajacs		
Work Address				Occupation		

SSN/ID/TIN ** MASKED **	Title	Name Healy, Robert Anthony	DOB ** MASKED **	Age 61	Sex M	Resident Status Resident
Race White	Ethnicity Unknown	DL (#, ST) ** MASKED **	Email ** MASKED **			
Home Phone ** MASKED **	Work Phone ** MASKED **	Other Phone ** MASKED **	Personal Cell ** MASKED **	Work Cell ** MASKED **		
US Citizen Yes	Legal Alien	Doc Type	Immig Doc #	Nationality		
Home Address 1328 Johnson RD, Lonoke, AR 72086				Employer Kajacs		
Work Address				Occupation		

Narrative - Statements

Narrative - Ingram, John F - 8/29/2023 10:43:51 AM (Initial)

On 8/28/2023, I was dispatched to 3729 Red Wine Road, for a medical emergency where a worker had fallen into a hole and was having difficulty breathing.

On arrival, I observed a deep trench with an excavator above it with the bucket still down. There were about 10 people standing on the banks of the trench and it wasn't until I made it down to the trench that I was able to see the male subject, later identified as, a Mr. Steven Millsap buried about mid waist deep in the hole. Mr. Millsap was located at the east side of the trench and in an emotional state with unknown injuries. The walls around the trench were just dirt and mud with no protective wood or steel cage to hold the dirt/mud in place. Inside the trench was another male who was trying to help Mr. Millsap. Deputy Hutchinson also got behind Mr. Millsap and began trying to dig him out and EMT'S from EASI ambulance service was also present trying to get vitals from Mr. Millsap. While Deputy Hutchinson was attempting to dig Mr. Millsap out, the other male, later identified as, a Mr. Evangeliojr Montes and I held onto to Mr. Millsap in order to see if we could try and pull him out. A med flight helicopter was originally asked for by EASI EMT but later cancelled as Mr. Millsap stated that he would refuse to fly on a helicopter.

We managed to get down to Mr. Millsap's lower leg area but his feet were twisted beneath him and the dirt had more of a mud like consistency and was more compact also. Mr. Millsap was conscious through out. Mr. Montes joined Deputy Hutchinson behind Mr. Millsap to continue to try and dig him out and another male swapped out for me, so that I could contact dispatch due to my radio not being able to communicate. At no time did anyone from the construction workforce advise us on whether it was safe to continue to do so. Two pieces of plywood were brought down into the trench to try and keep the mud walls from potentially coming down. While they were placing the plywood I was told the trench collapsed and Mr. Montes, Deputy Hutchinson and a female EMT were now also trapped. A volunteer fire fighter had been hit by the wall of mud also and was having a separate medical incident while this occurred.

Mr. Montes was pulled from the trench but was not conscious or appeared to be breathing and CPR was started on him when he was in the ambulance. Deputy Hutchinson was also freed from the trench and appeared to have heavy bruising and was complaining that he didn't have any sensation in his lower legs. The female EMT was able to get out also with no apparent injuries. I requested med flight as Mr. Millsap was still stuck in the hole.

Narrative - Ingram, John F - 8/29/2023 10:43:51 AM (Initial)

Mr. Montes did not recover from his injuries and I requested the coroner. Deputy Hutchinson was transported to UAMS and the unidentified volunteer fire fighter was transported to Spring hill Baptist. Mr. Millsap was eventually pulled from the hole approximately 3.5 hours late by a combination of Little Rock Fire Department, North Little Rock FD and England FD. Mr. Millsap was transported by Med Flight.

CID responded to the event and I took a verbal statement from Mr. Robert Healy were he stated that they hadn't put the required protections in place for the trench.

Narrative - Lucas, Carla J. - 8/29/2023 1:33:11 PM (Initial)

Kajacs
3401 W. 65th Street
Little Rock, AR 72209

Owner of Kajacs- Aaron Person 501-772-7149— Aaron showed on site after incident happened
Project Safety Manager for Kajacs - Michael Titsworth 501-249-0665— Michael showed on site after incident happened
Project Manager for Kajacs-Phillip Wagner 573-714-4018-Phillip showed on site after incident
Supervisor (foreman) for Kajacs- Robert Healy 870-550-9655— Robert was on site when incident happened
Kajacs crew worker-(Deceased) - Evangelio Montes, nickname "Gordy"- Evangelio's sister, Eileen Montes 501-366-9901
Kajacs crew worker- Michael Weaver - message number 720-218-4070- Michael was on site when incident happened
Kajacs crew worker- Steven Milsap- Steven was the victim that was med flighted out . I have no information on Steven .

Narrative - Lucas, Carla J. - 8/31/2023 11:34:13 AM (Initial)

On August 28, 2023 at approximately 1 pm, Sergeant John Ingram and Deputy Austin Hutchison was dispatched to 3729 Red Wine Road Scott, AR for a medical emergency.

At approximately 1:48pm, I was contacted by Lieutenant Giacomo Portale and was asked to go to Red Wine Road for someone possibly trapped in a trench cave in. Upon my arrival, I spoke with Kajacs worker, Michael Weaver. He advised both sides of the ditch collapsed on Steven Milsap and he ran over to uncover him. Micheal advised he and Gordy (Evangelio Montes, the deceased) were shoveling Steven out when the walls of the ditch fell again. EMT's arrived the ditch walls fell again.

I then spoke with Kajacs's supernatant for the jobsite, Robert Healy. Robert advised that they got to the job site about 6:15 am by the time they got everything gathered up they started digging about 8 am. Robert advised they went and ate lunch then came back. They did some shots. Robert advised everything looked fine. Robert advised he moved the guy off the machine, then he heard the guy holler, and it caved in.

Narrative - Lucas, Carla J. - 8/31/2023 11:34:13 AM (Initial)

Robert advised he had it benched (stair step it down). He advised it caved in from bottom up. I asked Robert who was all down in the hole he advised Steven Milsap at the time it initially caved in. Then they got in there to dig Steven out. Then the paramedics and the deputy sheriffs got there and started help dig Steven out and that's when it caved in again.

I spoke with Kajacs's Project Manager/Safety Manger, Michael Titsworth while I was on scene and he advised the crew has been to classes and were trained but they did not do what they were trained to do. Titsworth also wrote a statement and it is as follows no corrections have been made. "Kajacs Safety Policy is to slope or shore excavations over 4' in depth, none of which was done."

Kajacs Protect Manger, Phillip Wagner wrote a statement and it is as follows, no corrections have been made. "Project started March 3, 2023, included the install of 3 pump stations scheduled to finished Sept 30. Sandage pump station pump can installation started 8/28/2023."

Narrative - Hutchison, Austin R - 9/1/2023 5:09:05 AM (Initial)

On 08/28/2023, Sergeant John Ingram and Myself were dispatched out to 3729 Red Wine Road in reference to a man buried alive. Upon arrival I observed an excavator sitting atop a hill with the bucket down in a hole. While heading down the hill along side the hole that was being dug I observed multiple workers just standing around watching one worker later identified as, Evangeliojr Montes, try and free the man that was buried later identified as, Steven Millsap. Mr. Millsap was buried up to the bottom of his chest when I made it down to him along side EMTS. Mr. Montes and myself were in front of Mr. Millsap digging with shovels and by hand while Sergeant Ingram tried to pull Mr. Millsap from the back. While digging I learned the reason Mr. Millsap was buried at the moment was because while he was in the hole attempting to get measurements the trench collapsed on him, and had collapsed a second time while Mr. Montes was trying to free him. After a while of digging Sergeant Ingram stepped away to try and get out over the radio to dispatch to advise them of the current situation. When Sergeant Ingram returned I stepped out myself for a moment to catch my breath. When I returned back into the hole it was Mr. Montes and myself in front of Mr. Millsap once again and an EASI EMT behind Mr. Millsap. A couple of workers from, what I saw, decided to place two pieces of plywood on each side of us while we dug to try and keep the walls from caving. We managed to get Mr. Millsap dug out to his knees, but because of his legs being twisted we struggled to pull him out, and the dirt we were digging in prior was now nothing but very watery mud.

We managed to get Mr. Millsap dug out to his knees, but because of his legs being twisted we struggled to pull him out, and the dirt we were digging in prior was now nothing but very watery mud. I tried to have the EASI EMT pull Mr. Millsap from behind by his belt loops, but the belt loops broke and Mr. Millsap had not moved. I had lost site of Sergeant Ingram at this time as well. I sat up on me knees and stopped digging for a moment to try and think of another way we could possibly free Mr. Millsap. While Mr. Montes and myself were thinking the wall to my right caved in. The cave in cause Mr. Montes and myself to become trapped under a large amount of dirt. The EASI EMT that was helping with Mr. Millsap was hit by the wall as it caved as well, but she did not become trapped. The dirt wall that have caved in was heavy enough that when it caved it snapped the plywood in half. Mr. Montes was trapped in my lap under the dirt, and did not show signs of being conscious or aware. A fire fire fighter from England Fire Department had made his way back behind Mr. Montes and myself, and began trying to dig us out while the EASI EMT tried digging us out from the front. After some of the dirt had been removed I was able to get my hands on Mr. Montes's neck to check for a pulse, and I felt a very faint pulse. I picked Mr. Montes head up slightly just to check to make sure he was breathing, and the EASI EMT noticed the blood coming form his nose and mouth, and stated he

Narrative - Hutchison, Austin R - 9/1/2023 5:09:05 AM (Initial)

had head trauma, so she called for a Medical Helicopter. The EASI EMT was able to remove enough dirt from in front of me to be able to break the plywood and get me free. After getting out and the adrenaline from the situation going away I noticed that I could not feel my legs from the knees down. I was able to get help getting onto an ambulance where I was transported to UAMS.

At no time during the situation did a worker try and stop us and let us know of the unsafe situation. I also did not observe any safety equipment placed inside the trench that at the time looked over 10 feet deep. After being transported to UAMS I had regained feeling to both legs and had no severe injuries.

Narrative - Lucas, Carla J. - 9/5/2023 11:58:49 AM (Initial)

On August 31, 2023 at approximately 11:30 am , I contacted Fire Fighters, Chris McClain and Tony and they both advised they will email me statements in reference to the Red Wine Road trench cave in.

Narrative - Lucas, Carla J. - 9/7/2023 10:52:50 AM (Initial)

Tony Edmonson emailed this statement to me. No changes have been made it is as follows:

On 08/28/2023 at , I arrived on scene at Redwine Road to a man trapped in a trench. When I arrived, I witnessed several workers that I assumed worked for the company digging the trench. There was one of the workers (whom passed away later on in call), two deputies and both ambulance crew members in the trench trying to get the trapped man out. The only fire fighter that was on scene when I arrived was James Webb. We accessed the scene and I told Kevin Sandage to go get us some plywood from his shop across the road to use as support. There were no support on the walls of the trench. They did have the excavator bucket above the trapped man but the bottom part of the walls had already started to slip off and there was no kind of support for the rest of the walls. Sandage brought 1 an ½ sheets of plywood. We put the ½ sheet on the North wall and the full sheet on the South wall beside the trapped man to try and protect people in the trench.

A few minutes later, the wall started caving in again from the East end of trench then kep caving toward the West end. When it reached where the bucket was it had already fallen on one deputy and the worker on the East side of the bucket then around the ambulance driver, who was just West of the bucket. At this time, fire fighter James Webb and Dylan Tye jumped in to try and get them out as soon as got in position West of the excavator bucket. The wall fell on them and it was then that I went in the ditch to try and free them and as I stepped in the ditch to go towards them the North wall caved gain and pinned me against the South wall. I was able to shimmy and squeeze myself free and make it tot he west end of the ditch which was the shallowest part and lean on the wall. The medic asked if I was alright and I told her no, I was fixing to pass out. The next thing I remember was being brought out on a backboard and put in the ambulance.

Incident # 23-01461

Lonoke County Sheriffs Office

Report Date 08/28/23

Page 7 of 10

Incident Report

Report Time 3:52 PM

Narrative - Lucas, Carla J. - 9/7/2023 10:52:50 AM (Initial)

Tony Edmonson
09/01/2023

#4

LONOKE COUNTY SHERIFFS OFFICE

Dispatch Call Detail

Call #: C23680 - MEDICAL EMERGENCY

Received Date/Time: 08/28/2023 12:52:44 **Taken By:** Justice, Alice
Initial Call Type: MEDICAL EMERGENC **Caller Name:** CALLER, MALE **Amb Run#:** AM23-03282
Cleared Date/Time: 08/28/2023 20:59:59 **Phone:** **Fire Run#:** FM23-02783
Cleared By: Abel, Tamatha **Caller Loc.:**
Controlled:
Location: 3729 Red Wine RD
 Scott,

Units Dispatched

	Dispatched	Enroute	Arrived	Transport	Trans Dest	Cleared	At Station	Mileage	Trns To
122 - Miller, Austin (LCSO)	08/28/2023 12:56:31		08/28/2023 14:24:50			08/28/2023 14:52:24			
EASI - EASI (EASI)	08/28/2023 12:56:36					08/28/2023 20:59:38			
104 - Ingram, John (LCSO)	08/28/2023 12:58:56	08/28/2023 12:59:21	08/28/2023 13:11:01			08/28/2023 17:54:47			
123 - Hutchison, Austin (LCSO)	08/28/2023 12:59:00	08/28/2023 12:59:23	08/28/2023 13:11:03			08/28/2023 19:25:34			
LOFD - LONOKE FIRE (LONOKE FIRE)	08/28/2023 12:59:11	08/28/2023 13:40:25				08/28/2023 18:33:50			
ENPD - ENPD (England Police)	08/28/2023 12:59:59					08/28/2023 20:59:59			
103 - Shepard, Steven (Lynn) (LCSO)	08/28/2023 13:46:54	08/28/2023 13:49:08	08/28/2023 14:02:07			08/28/2023 18:04:27			
21 - Lucas, Carla (LCSO)	08/28/2023 13:48:35	08/28/2023 13:49:05	08/28/2023 14:05:23			08/28/2023 17:56:13			
24 - McCain, Robbie (LCSO)	08/28/2023 13:48:40	08/28/2023 13:49:01	08/28/2023 14:05:19			08/28/2023 19:29:21			
26 - Rice, Nathan (LCSO)	08/28/2023 13:48:51	08/28/2023 13:48:56	08/28/2023 14:06:48			08/28/2023 17:02:45			
101 - Clem, Danny (LCSO)	08/28/2023 14:07:09		08/28/2023 14:07:20			08/28/2023 17:56:17			
20 - Portale, Giacomo (LCSO)	08/28/2023 14:07:30		08/28/2023 14:07:34			08/28/2023 17:56:19			
C2 - Rivera, Brandon (LCSO)	08/28/2023 14:25:56					08/28/2023 17:57:43			
106 - White, Darren (LCSO)	08/28/2023 17:08:09		08/28/2023 17:08:15			08/28/2023 18:43:07			
121 - Watkins, Jeremy (LCSO)	08/28/2023 17:08:20		08/28/2023 18:42:58			08/28/2023 18:43:02			
113 - Steele, Patricia (LCSO)	08/28/2023 17:51:00		08/28/2023 17:51:06			08/28/2023 19:22:49			

Wreckers Involved

Wrecker Company	Assigned	Reason

29

LONOKE COUNTY SHERIFFS OFFICE

Dispatch Call Detail

Call #: C23680 - MEDICAL EMERGENCY

Phillips Wrecker 08/28/2023 15:07 Rotation

Narrative

Date/Time	Dispatcher	Narrative
08/28/2023 12:53:26	Justice, Alice	CALLER ADVISED THAT THEY WERE DIGGING AND THE BANK CAVED IN AND IT BURRIED HIS WORKER ALIVE AND THEY DONT KNOW WHAT TO DO
08/28/2023 13:04:18	Duerson, Amber	ATTEMPTED CONTACT WITH ALL NUMBERS IN BOOK FOR OEM - NEG CONTACT
08/28/2023 13:06:18	Duerson, Amber	OEM NOTIFIED
08/28/2023 13:09:37	Justice, Alice	104 ADVISED ON RED WINE ATL
08/28/2023 13:11:07	Justice, Alice	123 ADVISED EASI IS 10-97
08/28/2023 13:11:16	Duerson, Amber	PER 123 EASI ON SCENE
08/28/2023 13:25:18	Duerson, Amber	FD1 ADV LRFD AND PULS OEM EN ROUTE
08/28/2023 13:29:12	Duerson, Amber	PULS AND LRFD EN ROUTE FROM PULS
08/28/2023 13:34:58	Duerson, Amber	SO RESERVED MAC 2 PER 104 PS - BIRD WAS CANCELED - SUBJ IS STILL IN THE HOLE - BURIED TO HIS LEGS
08/28/2023 13:41:11	Duerson, Amber	PER FD1 CONTACT RURAL WATER FOR VACCUUM TRUCK CONTACT MADE RURAL WATER SENDING A VACCUUM TRUCK
08/28/2023 13:47:25	Duerson, Amber	LRFD ON SCENE
08/28/2023 13:50:59	Justice, Alice	2 ARE OUT AND 2 ARE STILL IN THE HOLE
08/28/2023 13:52:35	Duerson, Amber	LRFD 2 PEOPLE OUT - 2 STILL TRAPPED
08/28/2023 13:53:42	Duerson, Amber	LR BATT 1 ON SCENE
08/28/2023 13:58:52	Duerson, Amber	LANDING ZONE BEING SET UP AND MARKED
08/28/2023 13:59:38	Duerson, Amber	CPR IN PROGRESS
08/28/2023 14:03:07	Justice, Alice	ADVISED THAT WE WILL NEED BOTH BIRDS
08/28/2023 14:03:32	Duerson, Amber	MED FLIGHT HAS A ONE MINUTE ETA AS WELL
08/28/2023 14:09:59	Duerson, Amber	NLR BATALLION 1 10/97
08/28/2023 14:25:04	Duerson, Amber	104 REQ C UNIT
08/28/2023 14:55:55	Duerson, Amber	103 98 - 96 UAMS
08/28/2023 15:05:25	Duerson, Amber	24 REQ CODE 11 WEST END OF RED WINE RD
08/28/2023 15:31:05	Wise, Amanda	phillips is 97
08/28/2023 17:29:57	Duerson, Amber	106 - LAST PERSON IS OUT OF THE HOLE NOW
08/28/2023 18:19:07	Abel, Tamatha	26 IS STILL ON SCENE

Dispositions

Unknown,

Incidents

Agency	Incident	Officer
LCSO	23-01461	Ingram, John

Association

911 Call

310

LONOKE COUNTY SHERIFFS OFFICE

Dispatch Call Detail

Call #: C23680 - MEDICAL EMERGENCY

<u>Date</u>	<u>Name</u>	<u>Phone</u>	<u>Address</u>	<u>PD</u>	<u>FD</u>	<u>EMS</u>
08/28/2023 12:52	AT&T MOBILITY		3001 W 60TH ST - SW Sector LITTLE ROCK AR	WIRELESS CALL	WIRELESS CALL	WIRELESS CALL
08/28/2023 12:52	AT&T MOBILITY		3001 W 60TH ST - SW Sector LITTLE ROCK AR	WIRELESS CALL	WIRELESS CALL	WIRELESS CALL
08/28/2023 12:52	AT&T MOBILITY		3001 W 60TH ST - SW Sector LITTLE ROCK AR	WIRELESS CALL	WIRELESS CALL	WIRELESS CALL



STATEMENT FORM

LONOKE COUNTY SHERIFF'S DEPARTMENT
440 Dee Dee Lane, Lonoke AR 72086 PH# 501-676-3000

Statement of Complainant _____ Victim _____ Witness _____ Suspect _____

Date: _____ Time: _____ A.M./P.M.

Name: _____ Date of Birth _____ Age: _____

Home Address: _____ Ph# _____

Sex: _____ Race: _____ Height: _____ Weight: _____

Social Security # _____ Driver's License # _____

Employer: _____ Occupation: _____

Work Address: _____ Ph# _____

Statement: Robert Heeler - Supervisor

Mike Titusworth - ~~the~~ Project Manager Safety - 501-249-0665

Arpa Persons - Owner 501-772-7149

Michael Weaver

~~Project Manager~~

~~Steven~~

Evangelio montes Deceased

501-992-8022 Elean montes

118 Janel H
Kornhaas

Steven Mitsop

Deputy's Signature

Signature

REPORT# 23-01461

PAGE OF



STATEMENT FORM



LONOKE COUNTY SHERIFF'S DEPARTMENT

440 Dee Dee Lane, Lonoke AR 72086 PH# 501-676-3000

Statement of Complainant Victim Witness Suspect

Date: Time: 1:00 A.M./P.M. P.M.

Name: Michael Weaver Date of Birth Age:

Home Address: Ph#

Sex: Race: Height: Weight:

Social Security # Driver's License #

Employer: Occupation:

Work Address: Ph#

Statement: Both sides of the ditch
collapsed on Steven I ran to
on cover with ~~me~~ (good) and I were
shoveling him out I ran again
EMTs arrived and I ran again

Deputy's Signature

Signature

REPORT# 23-01461

PAGE OF



STATEMENT FORM



LONOKE COUNTY SHERIFF'S DEPARTMENT

440 Dee Dee Lane, Lonoke AR 72086 PH# 501-676-3000

Statement of Complainant ^{owner} Victim Witness Suspect

Date: Time: A.M./P.M.

Name: Aron Pizzos Date of Birth: Age: 43

Home Address: Ph# 501-772-7149

Sex: M Race: W Height: 5'11" Weight: 185

Social Security #: Driver's License #:

Employer: KAJACS Occupation:

Work Address: 3401 W. 65TH Street Ph#
LR 72209

Statement:

*Project started Mar. 3, 2023,
included the install of 3 Pump stations
Scheduled to finished Sept. 30
Sewage pump station pump can installation started
8/28/23*

*This statement
belongs to
Phillip Wagner*

Deputy's Signature

Signature

REPORT# 23-01461

PAGE _____ OF _____



STATEMENT FORM



LONOKE COUNTY SHERIFF'S DEPARTMENT
440 Dee Dee Lane, Lonoke AR 72086 PH# 501-676-3000

Statement of Complainant _____ Victim _____ Witness _____ Suspect _____

Date: _____ Time: _____ A.M./P.M.

Name: Robert Healy Date of Birth _____ Age: _____

Home Address: _____ Ph# 870-550-9655

Sex: _____ Race: _____ Height: _____ Weight: _____

Social Security # _____ Driver's License # _____

Employer: Ka Jacs Occupation: superintendent

Work Address: 65th St L.R. Ph# _____

Statement: 6:15 AM

Book moved in, had in bench

Deputy's Signature

Signature

On 08/28/2023 at , I arrived on scene at Redwine Road to a man trapped in a trench. When I arrived, I witnessed several workers that I assumed worked for the company digging the trench. There was one of the workers (whom passed away later on in call), two deputies and both ambulance crew members in the trench trying to get the trapped man out. The only fire fighter that was on scene when I arrived was James Webb. We accessed the scene and I told Kevin Sandage to go get us some plywood from his shop across the road to use as support. There were no support on the walls of the trench. They did have the excavator bucket above the trapped man but the bottom part of the walls had already started to slip off and there was no kind of support for the rest of the walls. Sandage brought 1 an ½ sheets of plywood. We put the ½ sheet on the North wall and the full sheet on the South wall beside the trapped man to try and protect people in the trench.

A few minutes later, the wall started caving in again from the East end of trench then kept caving toward the West end. When it reached where the bucket was it had already fallen on one deputy and the worker on the East side of the bucket then around the ambulance driver, who was just West of the bucket. At this time, fire fighter James Webb and Dylan Tye jumped in to try and get them out as soon as got in position West of the excavator bucket. The wall fell on them and it was then that I went in the ditch to try and free them and as I stepped in the ditch to go towards them the North wall caved again and pinned me against the South wall. I was able to shimmy and squeeze myself free and make it to the west end of the ditch which was the shallowest part and lean on the wall. The medic asked if I was alright and I told her no, I was fixing to pass out. The next thing I remember was being brought out on a backboard and put in the ambulance.

Tony Edmonson
09/01/2023

From: Edward Swaim
To: Hollinger, Daniel C.; Uekman, Eugene - FPAC-NRCS, AR; Tony Ramick
Cc: Bowls, William - FPAC-NRCS, AR; Bowie, Charolette - FPAC-NRCS, AR; Smedley, Stephen - FPAC-NRCS, AR; Dalla Rosa, Marvin G.
Subject: Re: RCPP Pumps and Pipelines Project Safety
Date: Thursday, June 22, 2023 4:31:46 PM

Trey and Daniel,

Thank you. On behalf of Bayou Meto, without using safety measures we expect them to stop work immediately.

Ed

Edward Swaim
Bayou Meto Water Management District
501-231-3332

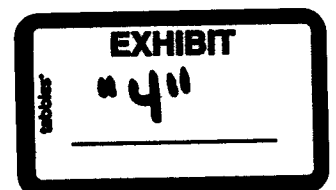
From: Hollinger, Daniel C. <DCHollinger@GarverUSA.com>
Sent: Thursday, June 22, 2023 3:26 PM
To: Uekman, Eugene - FPAC-NRCS, AR <Trey.Uekman@usda.gov>; Tony Ramick <tonyramick@bayou-meto.org>; Edward Swaim <edwardswaim@bayou-meto.org>
Cc: Bowls, William - FPAC-NRCS, AR <William.Bowls@usda.gov>; Bowie, Charolette - FPAC-NRCS, AR <charolette.bowie@usda.gov>; Smedley, Stephen - FPAC-NRCS, AR <Stephen.Smedley@usda.gov>; Dalla Rosa, Marvin G. <MGDallaRosa@GarverUSA.com>
Subject: RE: RCPP Pumps and Pipelines Project Safety

Trey,

Thank you for documenting these issues. I will address these with the contractor promptly.

Daniel Hollinger, PE
Garver
501-537-3236

From: Uekman, Eugene - FPAC-NRCS, AR <Trey.Uekman@usda.gov>
Sent: Thursday, June 22, 2023 2:29 PM
To: Hollinger, Daniel C. <DCHollinger@GarverUSA.com>; Tony Ramick <tonyramick@bayou-meto.org>; Edward Swaim <edwardswaim@bayou-meto.org>
Cc: Bowls, William - FPAC-NRCS, AR <William.Bowls@usda.gov>; Bowie, Charolette - FPAC-NRCS, AR <charolette.bowie@usda.gov>; Smedley, Stephen - FPAC-NRCS, AR <Stephen.Smedley@usda.gov>



Subject: RCPP Pumps and Pipelines Project Safety

Daniel,

We are having issues with some of the KAJACS crew not doing proper trench safety. The crew has verbally been told multiple times from both Will Bowls and myself that if a trench box is not being utilized that benching or sloping must happen and that all benching or sloping must follow OSHA guidelines. Please advise the proper authority with KAJACS on this issue.

Side note:

It was brought to my attention earlier today that the tracer wire and the tear tape is above natural ground on a portion of the pipeline installed on the Brantley Farm. I have attached a picture of what was found.

If you have any questions feel free to contact me anytime.

Thanks,

Trey Uekman E.I
Project Construction Engineer
501-266-9930

This electronic message contains information generated by the USDA solely for the intended recipients. Any unauthorized interception of this message or the use or disclosure of the information it contains may violate the law and subject the violator to civil or criminal penalties. If you believe you have received this message in error, please notify the sender and delete the email immediately.

Tara Ashton

From: Phillip Wagner <pwagner@kajacs.com>
Sent: Thursday, June 22, 2023 3:43 PM
To: Hollinger, Daniel C.
Subject: RE: RCPP Pumps and Pipelines Project Safety

Daniel,
I will personally take care of the issues that we are having with one of the crews.

Phillip Wagner
Project Manager/Estimator



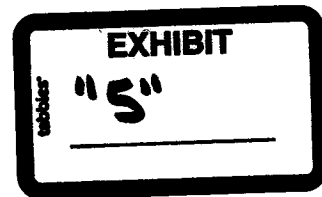
3401 W. 65th St.
Little Rock, AR 72209
Office 501-725-5924
Cell 573-714-4018

From: Hollinger, Daniel C. <DCHollinger@GarverUSA.com>
Sent: Thursday, June 22, 2023 3:29 PM
To: Phillip Wagner <pwagner@kajacs.com>
Subject: FW: RCPP Pumps and Pipelines Project Safety

Phillip,

Here is an email documentation of the tape and wire issue and also a concern about trench safety. The ground out there is very unstable in some areas. I think this is only an issue with one of the crews. We will take further action if we continue to have trench safety issues. Kajacs is ahead of schedule, so there is no reason to cut corners on safety.

Daniel Hollinger, PE
Garver
501-537-3236



From: Uekman, Eugene - FPAC-NRCS, AR <Trey.Uekman@usda.gov>
Sent: Thursday, June 22, 2023 2:29 PM
To: Hollinger, Daniel C. <DCHollinger@GarverUSA.com>; Tony Ramick <tonyramick@bayou-meto.org>; Edward Swaim <edwardswaim@bayou-meto.org>
Cc: Bowls, William - FPAC-NRCS, AR <William.Bowls@usda.gov>; Bowie, Charolette - FPAC-NRCS, AR <charolette.bowie@usda.gov>; Smedley, Stephen - FPAC-NRCS, AR <Stephen.Smedley@usda.gov>
Subject: RCPP Pumps and Pipelines Project Safety

Daniel,
We are having issues with some of the KAJACS crew not doing proper trench safety. The crew has verbally been told multiple times from both Will Bowls and myself that if a trench box is not being utilized that benching or sloping must

happen and that all benching or sloping must follow OSHA guidelines. Please advise the proper authority with KAJACS on this issue.

Side note:

It was brought to my attention earlier today that the tracer wire and the tear tape is above natural ground on a portion of the pipeline installed on the Brantley Farm. I have attached a picture of what was found.

If you have any questions feel free to contact me anytime.

Thanks,

Trey Uekman E.I
Project Construction Engineer
501-266-9930

This electronic message contains information generated by the USDA solely for the intended recipients. Any unauthorized interception of this message or the use or disclosure of the information it contains may violate the law and subject the violator to civil or criminal penalties. If you believe you have received this message in error, please notify the sender and delete the email immediately.