

## OSHA Creates New National Emphasis Program for Trenching and Excavation

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Effective October 1, 2018, Federal Occupational Safety and Health Administration (OSHA) has created a new National Emphasis Program (Directive Number CPL-02-00-161) for Trenching and Excavation due to a recent spike in trenching fatalities nationwide.

This new Program provides updated guidance and increased enforcement on the National Emphasis Program OSHA has had in place for trenching/ excavation since 1985. (CPL-02-00-269). The first three months of this new National Emphasis Program will focus on educational outreach, followed by enforcement.

Under these new guidelines, states must implement and adhere to the new Trenching/Excavation National Emphasis Program within six months, or by April 1, 2019.

Under the new Program, OSHA Compliance Officers shall initiate an inspection whenever they observe an open trench or open excavation. These observations may occur during the OSHA Compliance Officer's normal work day travel, or while engaged in other programmed or unprogrammed OSHA inspections.

Note that in addition to the "plain view" doctrine allowing OSHA Compliance Officers to issue citations for safety hazards in plain view, most Federal Courts and the OSHA Review Commission rule that the underlying injury/illness data supporting the National Emphasis Programs creates "Administrative Probable Cause" for OSHA Compliance Officers to conduct OSHA inspections under these programs.

Since trench collapses almost always end in employee deaths or very serious injury, OSHA monetary penalties for trench/excavating violations are usually significant.

For example, in June 2018, a Cincinnati area excavating company was issued OSHA penalties of \$202,201 and was placed on OSHA's Severe Violator list after an employee working in an unguarded 16-foot excavation was killed.

There have been at least two other trenching/excavating fatalities in Ohio in the past year. Trench fatalities can subject employers to Criminal Willful OSHA fines and prosecutions, and also subject the employer to being placed on Ohio's Severe Violator List with its substantial inspection and enforcement protocols.

If you have any questions about trench/excavating safety or OSHA's new National Emphasis Program on Trenching/Excavating, please call or email Hahn Loeser's Construction and OSHA Team.