



August 19, 2019

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Via Email and Regular mail

Raymond F. Morrogh
Office of the Fairfax Commonwealth's Attorney
4110 Chain Bridge Road, Suite 114
Fairfax, VA 22030

Dear Mr. Morrogh:

Re: Request for Criminal Investigation of Trench Collapse Fatality and Injury in Fairfax County on July 23, 2019

We write to request that your office open a criminal investigation of site operators responsible for the July 23, 2019, collapse of an unsecured trench at a construction site in McLean, Virginia, which killed a teenager and injured another person. The victims' names have not been made available to the public at this time; however, this information is on record with the Fairfax County police and Virginia Occupational Safety and Health (VOSH).

Advisory Council

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Trench collapses are always preventable. It is widely understood, both inside and outside of the construction industry, that failure to secure a trench is highly likely to cause a death or severe injury when the trench collapses. Further, unsecured trenches are prone to collapse, which is why there are federal and state labor standards requiring trenches deeper than five feet to be secured, and why there is so much literature and training available to educate employers and prevent needless fatalities and injuries.

The site of this fatality and injury is under development by Digges Development Corporation, which is owned by Robert and Thomas Digges. Fairfax County Police are investigating the teenager's death but have said that the worker's injury would be up to VOSH to investigate. VOSH has opened an investigation into this company for potential labor violations relating to the incident. Nonetheless, this preventable tragedy is much more than a workplace accident or a mere labor violation. Regardless of whether the teenager who was killed and the adult who was injured were bystanders or employees, they are both victims of criminal recklessness and the responsible offenders should be investigated and potentially prosecuted for their crimes.

It is clear from the information currently available that Digges Development Corporation and/or other site operators made a decision to ignore the law and industry practice and not secure trenches at the construction site in McLean. Had the trench been secured properly, it would not have collapsed. As further

evidence, pictures taken by the media show that the trench had a 90-degree angle down and was otherwise unsecured. After making the decision not to secure the trench, the responsible parties intentionally or recklessly directed or authorized two or more people to descend into or otherwise come in dangerous proximity to the unsecured trench, at least one of whom was a teenager, possibly under the legal age in the state of Virginia for working in an excavation. Subsequently, the trench collapsed, causing the death of the teenager and the injury of another person.

The undersigned individuals and organizations respectfully ask for your office to investigate Digges Development Corporation, its owners, and/or other site operators and their owners to determine whether their recklessness, which caused the death of a teenager and the injury of another, constitutes the criminal offenses of involuntary manslaughter and assault and battery, respectively. Additionally, we request a meeting with your office to discuss this incident in more detail. To respond with questions or set up a meeting, please contact Katie Tracy at (202) 747-0698 x.7 or ktracy@progressivereform.org.

Sincerely,

Rena Steinzor, Member Scholar, Center for Progressive Reform
Katie Tracy, Policy Analyst, Center for Progressive Reform
David Flores, Policy Analyst, Center for Progressive Reform (resident of Catawba, Virginia)
Diane Matthew Brown, CET, Labor of Love Safety Training and Consulting
Daniel J. Brustein, MD, FACOEM, CIH, Retired (Cleveland, OH)
Michael Felsen, Justice at Work Fellow
Debra Fisher, IUE-CWA (Moraine, OH)
Nicole Fuller, Exec. Dir., PhilaPOSH
Jaribu Hill, Mississippi Workers' Center for Human Rights
Thomas Joyce, Chairperson, Midstate (NY) Council for Occupational Safety and Health
Knox Area Workers' Memorial Day Committee (Knoxville, TN)
Maine Labor Group on Health
Sara Markle-Elder (Washington, DC)
Celeste Monforton, DrPH, MPH, Professorial Lecturer, Milken Institute School of Public Health, George Washington University
Public Citizen
Laura Punnett, Sc.D., Professor, University of Massachusetts Lowell (institution for identification purposes only)
SafeWork Washington
Emily A. Spieler, Edwin W. Hadley Professor of Law, Northeastern University School of Law (institution for identification purposes only)
Thurman Wenzl, Sc.D. (Cincinnati, OH)
Ellen Widess, Former Chief of Cal/OSHA
Wisconsin Committee on Occupational Safety & Health (WisCOSH)
Worksafe

cc: Mark Herring, Attorney General
Colonel Edwin Roessler, Jr., Chief of Police, Fairfax County
Steve Descano, Democratic Candidate for Commonwealth Attorney
Jonathan Fahey, Independent Candidate for Commonwealth Attorney
Barbara Favola, VA State Senate District 31
R.C. Sullivan, Jr., VA State House District 48