

**Michigan Department of Labor and Economic Opportunity
Michigan Occupational Safety and Health Administration (MIOSHA)**

MIOSHA Construction Safety & Health Division
530 West Allegan Street
P.O. Box 30645
Lansing, MI 48909
Phone: (517) 284-7680 Fax: (517) 284-7685



Citation and Notification of Penalty

To:

B D Construction
and its successors
751 Lacosta Court
Pontiac, MI 48340

Inspection Number: 1478490
Inspection Date(s): 06/11/2020 - 06/11/2020
Issuance Date: 08/28/2020

Inspection Site:

3201 Lohr Rd
Ann Arbor, MI 48108

Reporting ID: 0552651
CSHO ID: Q4680
Optional Report Number: 20-025/02

SUMMARY: An inspection at the site noted above has revealed conditions we believe do not comply with the provisions of the Michigan Occupational Safety and Health Act, Act 154, of the P.A. of 1974, as amended (MIOSH Act). The nature of such alleged violation(s) is described on the citation(s) with reference to the applicable standards, rules, regulations, orders and provisions of the Act. Following is a list of items the employer must consider carefully, to resolve the issues alleged in the citation(s). Following this numbered summary is a more detailed explanation of the requirements.

1. The violation(s) alleged in the citation(s) must be corrected on or before the date(s) shown in the line marked "Date By Which Violation Must Be Abated". If the line is marked "Immediately Upon Receipt," the violation must be corrected on or before the date that the citation is received by the employer. If the violation was corrected during the inspection, the line will be marked "Abated." or "Corrected during inspection." Correcting a violation does not eliminate the requirement to pay the penalty nor does payment of the penalty negate having to correct the violation.
2. A copy of the citation(s) must be posted at or near the location of the violation(s) for a minimum of 3 days or until the item(s) have been corrected, whichever is later.
3. Documentation of abatement must be provided to the issuing division. Failure to provide such documentation may result in a follow-up inspection.
4. The employer may enter into a Penalty Reduction Agreement (PRA) that can result in a 50% reduction in any assessed penalties. The employer should apply for a PRA online at www.michigan.gov/mioshapra within 5 workdays upon receiving a citation(s) if interested. An employer without access to a computer may contact the issuing division to request a PRA.
5. The employer may file a first appeal for modification or dismissal of a citation item and/or any proposed penalty or request an extension of time for abatement. **The appeal must be in writing and be postmarked within 15 workdays of receipt (workday is defined below).** The first appeal can also result in a penalty reduction of up to 50%. If an appeal is untimely, the citation(s) become a Final Order of the Board of Health and Safety Compliance and Appeals (Board) and is no longer subject to review by the issuing division. An employee or employee representative may appeal abatement dates.
6. Except under a PRA monetary penalties must be paid within 15 workdays of a citation becoming a Final Order of the Board.
7. The employer may file a request for an extension of time to abate a citation(s) that has become a Final Order of the Board. Such a request must be in writing and received or post marked no later than 1 working day following the abatement date.
8. It is unlawful to discriminate against an employee for exercising any of their rights under MIOSHA.

Note: As defined in statutes, “workday” or “working day” means any day other than a Saturday, Sunday, or state legal holiday. The state legal holidays are:

January 1, New Year’s Day
The third Monday in January, Martin Luther King, Jr. Day
February 12, Lincoln’s birthday
The third Monday of February, Washington’s birthday
The last Monday of May, Memorial or Decoration Day
July 4, Independence Day
The first Monday in September, Labor Day
The second Monday in October, Columbus Day
November 11, Veterans’ Day
The fourth Thursday of November, Thanksgiving Day
December 25, Christmas Day

Please note whenever January 1; February 12; July 4; November 11; or December 25 fall on a Sunday, the next Monday following is deemed a public holiday (non-working day) for appeal purposes. However, there is no compensating day when one of the five dated holidays falls on a Saturday. Also, when computing the 15 working days, you do not count the date on which it is received; you start with the next working day. Additionally, the count is based on when the citation was received at the employer’s location, not when it got to any particular person or office at the employer’s location.

I–CITATIONS: The nature of the alleged violation(s) is described on the enclosed citation(s). These conditions must be corrected on or before the date(s) shown in the line marked “Date By Which Violation Must Be Abated.” The issuing division may be contacted by telephone at the number indicated on the front of the citation for the purpose of discussing any issues related to the inspection or citation(s).

A copy of the citation(s) must be posted at or near the location of the violation for a minimum of 3 days or until the items have been corrected, whichever is later. The MIOSH Act provides for civil penalties of up to \$7,000 for each violation for failure to comply with posting requirements.

When compliance is achieved, a copy of the citation must be signed and returned to the issuing division along with documentation of abatement.

Documentation of abatement for citation items originally classified as “serious,” “repeat,” “fail-to-abate,” “willful,” or “instance-by-instance,” require documentation as deemed appropriate by the issuing division. Examples of documentation for these violation classifications are:

- (a) A detailed description of how the violation was abated.
- (b) Work orders or an invoice indicating the corrective work that has been done.
- (c) Photographs of the abated conditions.
- (d) Other forms of conclusive evidence that your employees are no longer exposed to the hazard.

For citation items classified as “other,” submitting to the issuing division a signed copy of the citation item indicating the item has been abated is acceptable documentation of abatement. Submitting a document in writing, certifying abatement of the particular citation item is also acceptable for citation items classified as “other.”

If the employer does not provide adequate documentation of abatement, a re-inspection may be conducted. Failure to correct an alleged violation within the abatement period may result in new or additional proposed penalties.

Correcting a violation prior to the expiration of the abatement date does not eliminate the requirement to pay the penalty. Payment of the penalty does not eliminate the requirement of correcting the violation.

II–PENALTY REDUCTION: In addition to the appeal rights afforded by the MIOSH Act, the Michigan Occupational Safety and Health Administration has implemented a program for negotiating an expedited settlement of penalties with the employers known as a Penalty Reduction Agreement (PRA). This is a program designed to reach abatement of the hazard at the earliest possible opportunity and reduce the need for formal appeals. The penalty reduction (PRA) can result in a penalty reduction of 50% provided the issuing division and the employer agree to a number of specified conditions. These conditions include an agreement by the employer to accept all of the citations issued and to:

- (a) Not appeal further.
- (b) Abate all items within the abatement period.
- (c) Provide proof of abatement.
- (d) Pay all agreed upon penalties as required (within 15 working days of approval of the PRA.)
- (e) Abide by any other mutually agreed upon actions.

Inspections involving a fatality, the Severe Violator Enforcement Program (SVEP), or willful citations are not eligible for the program. Construction citations must be confirmed as corrected by the issuing division before a penalty reduction agreement can be approved.

If you are interested in pursuing a PRA, you should apply online at www.michigan.gov/mioshapra **within 5 workdays upon receipt of the citation(s)**, but no later than the 15th workday beyond receipt of the citation(s). If you do not have access to a computer, you should contact the issuing division within the same timeframe to request a PRA. If the employer wishes to accept the conditions stated above and the process can be completed within 15 workdays from receipt, then no appeal need be filed.

III–CITATION APPEAL: An employer may file a first appeal to the issuing division in writing for modification or dismissal of a citation item and/or any proposed penalty or an extension of time for abatement. The first appeal can also result in a penalty reduction of up to 50% providing the issuing division and the employer agree to the conditions (a) through (e) as stated in Section II, PENALTY REDUCTION (above).

An employee or employee representative may appeal in writing the reasonableness of the abatement date(s). The envelope containing an appeal must be postmarked no later than the 15th workday following receipt of the citation.

If a citation is not appealed within 15 workdays of receipt, then the citation becomes a Final Order of the Board of Health and Safety Compliance and Appeals (Board). Final Order citations are not subject to review by the issuing division unless the Bureau of Hearings establishes good cause for the late appeal.

An appeal must specify the item(s) appealed and that portion of the item (e.g., violation, abatement date, penalty) which is being appealed and include a certification that the appeal has been posted or given to affected employees or their representatives. If the issuing division meets with the employer to discuss an appeal, the issuing division will notify the employee representative and allow attendance at the meeting.

The issuing division will notify an employer of its decision within 15 workdays of the receipt of the employer's written appeal. The decision must be posted at the location of the subject citation.

If an employer, employee or employee representative is not satisfied with this decision then they may file a second appeal. The appeal must be in writing and the envelope containing the second appeal must be postmarked within 15 workdays of the receipt of the issuing division's decision on the first appeal. If the issuing division's decision is not appealed then the citation becomes a Final Order of the Board.

IV–PAYMENT OF MONETARY PENALTIES: Unless subject to a PRA, payment must be made within 15 workdays of the date a proposed penalty of a citation becomes a Final Order of the Board. This would be the 30th workday after receipt of each citation item that is not appealed. For payment of a penalty, make a check or money order payable to the "State of Michigan" and remit to the issuing division at the address shown on the citation. Please record the inspection number, citation and item number on the check, money order or transmittal letter.

V–EXTENSION OF TIME TO ABATE: An employer may file a petition for modification of abatement date(s) (PMA) on an item of a citation, which has become a Final Order of the Board. The PMA must be submitted to the issuing division in writing by personal delivery or postmarked no later than one day following the abatement date, and a copy posted near the place the citation was posted. An employer must have made a good faith effort to correct the violation by the abatement date, and has or will not be successful because of factors beyond the employer's reasonable control. A PMA must include:

- (a) Steps taken to achieve compliance.
- (b) The specific additional abatement time necessary.
- (c) The reasons the additional time is needed.
- (d) Available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.
- (e) A certification that a copy of the PMA has been posted for employees at the location of the subject citation.

The posted copy must remain posted for a minimum of 10 workdays.

If the issuing division or affected employees file an objection to the PMA within 10 workdays of the employer's filing date, the Board will schedule a hearing and advise the employer of the date, time, and place of the hearing.

VI–EMPLOYEE DISCRIMINATION: Section 65 of the MIOSH Act, prohibits discrimination by an employer against an employee for filing a complaint or exercising any rights under the MIOSH Act, as amended. If an employee believes that he or she was discharged or otherwise discriminated against as a result of filing a complaint, they may file a complaint with the MIOSHA Employee Discrimination Section within 30 days after the violation occurs.

VII-STATE CONSULTATION EDUCATION AND TRAINING SERVICES: The MIOSHA Consultation Education and Training (CET) Division offers a wide range of services to help businesses with their health and safety practices. CET services include: helping employers create a Safety and Health Management System, seminars and workshops, onsite consultations, hazard surveys, an equipment loan program and information material. The majority of CET services are provided free of charge to Michigan employers and employees. For information on these services, contact the CET Division at (517) 284-7720 or visit their web site at www.mi.gov/miosha.

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Inspection Date(s): 06/11/2020 - 06/11/2020

Issuance Date: 08/28/2020

Optional Reporting Number: 20-025/02

Citation and Notification of Penalty

Company Name: B D Construction

Inspection Site: 3201 Lohr Rd, Ann Arbor, MI 48108

Citation 1 Item 1

Type of Violation: **Serious**

408.1011(a): ACT 154, MICHIGAN OCCUPATIONAL SAFETY AND HEALTH ACT

An employer shall furnish to each employee, employment and a place of employment that is free from recognized hazards that are causing, or are likely to cause, death or serious physical harm to the employee.

The employer did not furnish to employees a place of employment that free from recognized hazards that were likely cause death or serious harm to employees, in that employees were not protected from the hazard of contracting the virus, SARS-CoV-2 (severe acute Respiratory Syndrome coronavirus 2), the cause of coronavirus disease 2019 (COVID-19):

- a. Employees were performing masonry activities in Ann Arbor, MI on June 11, 2020, where the employer allowed workers to be within six feet of one another when it was feasible to have them work more than six feet apart, thus potentially exposing employees to SARS-CoV-2 Virus.
- b. Employees were performing masonry activities in Ann Arbor, MI on June 11, 2020, where the employer did not require workers to wear non-medical grade face coverings when they did not consistently maintain six feet of separation, thus potentially exposing workers to the SARS-CoV-2 virus.
- c. On June 11, 2020, the employer had not developed a COVID-19 preparedness plan, which would have included requirements for social distancing and use of face covering.
- d. On June 11, 2020, the employer had not conducted employee training on COVID-19 that covered social distancing and the use of face coverings.

Among other methods, a feasible abatement method to correct this hazard is to:

- a. Keep everyone on the worksite at least six feet from one another to the maximum extent possible, including through the use of ground markings, signs, and physical barriers, as appropriate to the worksite.
- b. Require face coverings to be worn when workers cannot consistently maintain six feet of separation from other individuals in the workplace.
- c. Develop a COVID-19 preparedness and response plan, consistent with the recommendations in the Guidance on Preparing Workplaces for COVID-19, developed by the Occupational Safety and Health Administration. Make the plan readily available to employees, weather via website, internal network, or by hard copy.

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d. Provide COVID-19 training to employees which covers, at a minimum: workplace infection-control practices; and the proper use of personal protective equipment.

Date By Which Violation Must be Abated:

September 03, 2020

Proposed Penalty:

\$2,100.00

Citation 1 Item 2

Type of Violation: **Serious**

408.40115(1): CS PART 1 GENERAL RULES

An employer shall identify as unsafe a machine, powered tool, or piece of equipment that is damaged or defective. The machine, tool, or equipment shall be locked out, made inoperable, or be physically removed from the jobsite.

Worker operating a CAT Rough Terrain Vehicle, TH360B-SLE5311, that has non-working brakes to lift materials throughout the work site.

Date By Which Violation Must be Abated:

September 03, 2020

Proposed Penalty:

\$2,100.00

Citation 2 Item 1

Type of Violation: **Other-than-Serious**

408.40114(1): CS Part 1 General Rules

An employer shall develop, maintain, and coordinate with employees an accident prevention program, a copy of which shall be available at the worksite.

Workers performing Masonry activities with no accident prevention program on the work site.

Date By Which Violation Must be Abated:

September 03, 2020

Proposed Penalty:

\$0.00

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

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Citation 2 Item 2

Type of Violation: **Other-than-Serious**

408.42159(1): Part 21 Guarding of Walking and Working Areas

A floor, platform, stair tread, or landing shall be maintained free of tripping or slipping hazards.

Workers performing masonry activities with tripping hazards caused by broken bricks and debris throughout the work area.

Date By Which Violation Must be Abated:

September 03, 2020

Proposed Penalty:

\$0.00

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Citation 2 Item 3

Type of Violation: **Other-than-Serious**

1910.1200(e)(1)(i): CS Part 42 Hazard Communication REF 1926.59 REF 408.44202

Employers shall develop, implement, and maintain at each workplace, a written hazard communication program which at least describes how the criteria specified in paragraphs (f), (g), and (h) of this section for labels and other forms of warning, safety data sheets, and employee information and training will be met, and which also includes a list of the hazardous chemicals known to be present using a product identifier that is referenced on the appropriate safety data sheet (the list may be compiled for the workplace as a whole or for individual work areas).

Workers performing masonry activity with no Safety Data Sheets for cement materials used on the work site.

Date By Which Violation Must be Abated:

September 03, 2020

Proposed Penalty:

\$0.00

Authorized Signature

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PROPOSED PENALTY INVOICE

Company Name: B D Construction
Inspection Site: 3201 Lohr Rd
Ann Arbor, MI 48108

Summary of Penalties for Inspection Number: 1478490

Citation 1 Item 1, Serious	\$2,100.00
Citation 1 Item 2, Serious	\$2,100.00
Citation 2 Item 1, Other-than-Serious	\$0.00
Citation 2 Item 2, Other-than-Serious	\$0.00
Citation 2 Item 3, Other-than-Serious	\$0.00

TOTAL PROPOSED PENALTIES: **\$4,200.00**

Correcting a violation prior to the expiration of the abatement date does not eliminate the requirement to pay the penalty.
Payment of the penalty does not eliminate the requirement of correcting the violation.

The state does not agree to any restrictions or conditions or endorsements put on any check or money order for less than full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

Payment must be made within 15 working days of the date a proposed penalty of a citation item becomes a final order of the board. This would be the thirtieth (30th) working day after receipt of each citation item which is not appealed. For the payment of any penalty, make a check or money order payable to the "State of Michigan" and remit to the Department of Labor and Economic Opportunity at the address shown on the citation. **PLEASE RECORD THE APPLICABLE INSPECTION NUMBER, CITATION NUMBER(S) AND ITEM NUMBER(S) ON THE CHECK, MONEY ORDER OR YOUR TRANSMITTAL LETTER.**

Enclose this invoice page (or a copy thereof) with your payment.

Authorized Signature