

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

MIOSHA General Industry Safety & Health Division

530 West Allegan Street

P.O. Box 30644

Lansing, MI 48909

Phone: (517) 284-7750 Fax: (517) 284-7755

Citation and Notification of Penalty

To: Bluebird Enterprises Inc and its successors 3950 Burnsline Rd. Brown City, MI 48416	Inspection Number: Inspection Date(s): Issuance Date:	1498417 10/22/2020 - 12/11/2020 01/28/2021
Inspection Site: 4008 N Van Dyke Imlay City, MI 48444	Reporting ID: CSHO ID: Optional Report Number:	0552652 M4362

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–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.

VI–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 Number: 1498417
Inspection Date(s): 10/22/2020 - 12/11/2020
Issuance Date: 01/28/2021
Optional Reporting Number:

Citation and Notification of Penalty

Company Name: Bluebird Enterprises Inc and its successors
Inspection Site: 4008 N Van Dyke, Imlay City, MI 48444

Citation 1 Item 1

Type of Violation: **Serious**

29 CFR 1910.95(c)(1): OH PART 380, OCCUPATIONAL NOISE EXPOSURE [REF 325.60101]

The employer shall administer a continuing, effective hearing conservation program, as described in paragraphs (c) through (o) of this section, whenever employee noise exposures equal or exceed an 8-hour time-weighted average sound level (TWA) of 85 decibels measured on the A scale (slow response) or, equivalently, a dose of fifty percent. For purposes of the hearing conservation program, employee noise exposures shall be computed in accordance with appendix A and Table G-16a, and without regard to any attenuation provided by the use of personal protective equipment.

(There was no effective hearing conservation program in place for employees exposed to noise levels at or above the action level of 85 decibels. On October 28, 2020 it was determined that employees who perform painting and blasting operations are exposed to noise levels which exceeded the 8-hour time-weighted average sound level (TWA) of 85 decibels.)

Provide documentation that a continuing effective hearing conservation program as described in paragraphs (c) through (o) of 1910.95 for all employees who are exposed to noise levels equal to or in excess of the action level has been developed and implemented. Submit to the department the following information:

1. A picture showing that Part 380 Occupational Noise Standard is posted in the workplace.
2. A representative employee audiogram and a list of all employees that have received an audiogram.
3. A copy of the noise training provided to the affected employees
4. A list of employees who have received noise training

Date By Which Violation Must be Abated:

March 03, 2021

Proposed Penalty:

\$2,500.00

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Company Name: Bluebird Enterprises Inc and its successors
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Citation 1 Item 2

Type of Violation: **Serious**

325.47201(3): OH PART 472, MEDICAL SERVICES AND FIRST AID

An employer shall ensure that suitable facilities for quick drenching or flushing of the eyes and body are provided within the work area for immediate emergency use when the eyes or body of any person may be exposed to injurious or corrosive materials.

(On October 22, 2020 it was determined that there were no suitable facilities for quick drenching or flushing of the eyes and body available to employees who use CHEMLOK 205 primer, CHEMLOK 6411 and CHEMLOK 6254, these chemicals are a Category 2A Serious eye damage/eye irritant which requires that an eyewash facility be easily accessible (i.e., no obstacles, closeable doorways, or turns). The eyewash station is located in the women's restroom which is blocked by a closed door.)

Date By Which Violation Must be Abated:
Proposed Penalty:

Corrected During Inspection
\$2,500.00

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Optional Reporting Number:

Citation and Notification of Penalty

Company Name: Bluebird Enterprises Inc and its successors
Inspection Site: 4008 N Van Dyke, Imlay City, MI 48444

Citation 1 Item 3a

Type of Violation: **Serious**

Rule 3(2): EMERGENCY RULES - CORONAVIRUS DISEASE 2019 (COVID-19) [REF MCL 24.248]

The employer shall categorize jobs tasks and procedures into the following risk categories:

(a) Lower exposure risk job tasks and procedures. These job tasks and procedures are those that do not require contact with people known to be or suspected of being infected with SARS-CoV-2 nor frequent close contact (e.g., within 6 feet) with the general public. Workers in this category have minimal occupational contact with the public and other coworkers.

(b) Medium exposure risk job tasks and procedures. These job tasks and procedures include those that require frequent or close contact (e.g., within 6 feet) with people who may be infected with SARS-CoV-2, but who are not known or suspected COVID-19 patients. In areas without ongoing community transmission, workers in this risk group may have frequent contact with travelers who may return from locations with widespread SARS-CoV-2 transmission. In areas where there is ongoing community transmission, workers in this category may have contact with the general public (e.g., schools, high-population-density work environments, high-volume retail settings).

(c) High exposure risk job tasks and procedures. These job tasks and procedures are those with high potential for exposure to known or suspected sources of COVID-19. Workers in this category could include licensed health care professionals, medical first responders, nursing home employees, law enforcement, correctional officers, or mortuary workers.

(d) Very high exposure risk job tasks and procedures. These job tasks and procedures are those with high potential for exposure to known or suspected sources of COVID-19 during specific medical, postmortem, or laboratory procedures. Workers in this category can include:

(i) Healthcare workers (e.g., doctors, nurses, dentists, paramedics, emergency medical technicians) performing aerosol-generating procedures (e.g., intubation, cough induction procedures, bronchoscopies, some dental procedures and exams, or invasive specimen collection) on known or suspected COVID-19 patients.

(ii) Health care or laboratory personnel collecting or handling specimens from known or suspected COVID-19 patients (e.g., manipulating cultures from known or suspected COVID-19 patients).

(iii) Morgue workers performing autopsies, which generally involve aerosol-generating procedures, on the bodies of people who are known to have or are suspected of having COVID-19 at the time of their death.

(On October 22, 2020 the employer did not categorize jobs tasks and procedures into Lower or Medium risks categories.)

Date By Which Violation Must be Abated:

February 03, 2021

Proposed Penalty:

\$2,500.00

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Issuance Date: 01/28/2021
Optional Reporting Number:

Citation and Notification of Penalty

Company Name: Bluebird Enterprises Inc and its successors
Inspection Site: 4008 N Van Dyke, Imlay City, MI 48444

Citation 1 Item 3b

Type of Violation: **Serious**

Rule 4(1): EMERGENCY RULES - CORONAVIRUS DISEASE 2019 (COVID-19) [REF MCL 24.248]
The employer shall develop and implement a written COVID-19 preparedness and response plan, consistent with the current guidance for COVID-19 from the US Centers for Disease Control and Prevention (CDC) and recommendations in "Guidance on Preparing Workplaces for COVID-19," developed by the Occupational Health and Safety Administration (OSHA).

(On October 22, 2020 the employer did not develop and implement a written COVID-19 preparedness and response plan.)

Date By Which Violation Must be Abated:

February 03, 2021

Proposed Penalty:

\$0.00

Citation 1 Item 3c

Type of Violation: **Serious**

Rule 6(1): EMERGENCY RULES - CORONAVIRUS DISEASE 2019 (COVID-19) [REF MCL 24.248]
The employer shall conduct a daily entry self-screening protocol for all employees or contractors entering the workplace, including, at a minimum, a questionnaire covering symptoms and suspected or confirmed exposure to people with possible COVID-19, together with, if possible, a temperature screening.

(On October 22, 2020 the employer did not conduct a daily entry self-screening protocol for all employees or contractors entering the workplace that included at a minimum, a questionnaire covering symptoms and suspected or confirmed exposure to people with possible COVID-19.)

Date By Which Violation Must be Abated:

February 03, 2021

Proposed Penalty:

\$0.00

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Issuance Date: 01/28/2021
Optional Reporting Number:

Citation and Notification of Penalty

Company Name: Bluebird Enterprises Inc and its successors
Inspection Site: 4008 N Van Dyke, Imlay City, MI 48444

Citation 1 Item 3d

Type of Violation: **Serious**

Rule 10 (1): EMERGENCY RULES - CORONAVIRUS DISEASE 2019 (COVID-19) [REF MCL 24.248]
The employer shall provide training to employees on SARS-CoV-2 and COVID-19.

(On October 22, 2020 the employer did not provide training to employees on SARS-CoV-2 and COVID-19.)

Date By Which Violation Must be Abated:

February 03, 2021

Proposed Penalty:

\$0.00

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Issuance Date: 01/28/2021
Optional Reporting Number:

Citation and Notification of Penalty

Company Name: Bluebird Enterprises Inc and its successors
Inspection Site: 4008 N Van Dyke, Imlay City, MI 48444

Citation 2 Item 1a

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

29 CFR 1910.134(h)(1): OH PART 451, RESPIRATORY PROTECTION [REF 325.60052]

Cleaning and disinfecting. The employer shall provide each respirator user with a respirator that is clean, sanitary, and in good working order. The employer shall ensure that respirators are cleaned and disinfected using the procedures in Appendix B-2 of this section, or procedures recommended by the respirator manufacturer, provided that such procedures are of equivalent effectiveness. The respirators shall be cleaned and disinfected at the following intervals:

(i) Respirators issued for the exclusive use of an employee shall be cleaned and disinfected as often as necessary to be maintained in a sanitary condition

(On October 22, 2020 it was determined that respirators were not properly cleaned and disinfected as often as necessary to be maintained in a sanitary condition. Respirators being used for application of CHEMLOK 205 & CHEMLOK 6411 where dirty both on the outside and inside of the respirator.)

Date By Which Violation Must be Abated:

March 03, 2021

Proposed Penalty:

\$0.00

Citation 2 Item 1b

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

29 CFR 1910.134(h)(3)(ii): OH PART 451, RESPIRATORY PROTECTION [REF 325.60052]

The employer shall ensure that respirator inspections include the following:

(A): A check of respirator function, tightness of connections, and the condition of the various parts including, but not limited to, the facepiece, head straps, valves, connecting tube, and cartridges, canisters or filters; and

(B) A check of elastomeric parts for pliability and signs of deterioration.

(On October 22, 2020 it was determined that inspections of respirators was not being done. A respirator being used by an employee had expired organic vapor cartridges.)

Date By Which Violation Must be Abated:

Corrected During Inspection

Proposed Penalty:

\$0.00

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Issuance Date: 01/28/2021
Optional Reporting Number:

Citation and Notification of Penalty

Company Name: Bluebird Enterprises Inc and its successors
Inspection Site: 4008 N Van Dyke, Imlay City, MI 48444

Citation 2 Item 1c

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

29 CFR 1910.132(d)(2): OH PART 433, PERSONAL PROTECTIVE EQUIPMENT [R 325.60001]

The employer shall verify that the required workplace hazard assessment has been performed through a written certification that identifies the workplace evaluated; the person certifying that the evaluation has been performed; the date(s) of the hazard assessment; and, which identifies the document as a certification of hazard assessment.

(It was determined on October 22, 2020 that there was no written certification which verified that a workplace hazard assessment had been performed for job task requiring the use of personal protective equipment. Employees are required to wear safety glasses, cotton gloves, respirators and foam ear plugs are provided for voluntary use.)

Date By Which Violation Must be Abated:

March 03, 2021

Proposed Penalty:

\$0.00

Authorized Signature

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Optional Reporting Number:
CSHO ID: M4362

PROPOSED PENALTY INVOICE

Company Name: Bluebird Enterprises Inc and its successors
Inspection Site: 4008 N Van Dyke
Imlay City, MI 48444

Summary of Penalties for Inspection Number: 1498417

Citation 1 Item 1, Serious	\$2,500.00
Citation 1 Item 2, Serious	\$2,500.00
Citation 1 Item 3a, Serious	\$2,500.00
Citation 1 Item 3b, Serious	\$0.00
Citation 1 Item 3c, Serious	\$0.00
Citation 1 Item 3d, Serious	\$0.00
Citation 2 Item 1a, Other-than-Serious	\$0.00
Citation 2 Item 1b, Other-than-Serious	\$0.00
Citation 2 Item 1c, Other-than-Serious	\$0.00

TOTAL PROPOSED PENALTIES: **\$7,500.00**

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