

**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

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## Citation and Notification of Penalty

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<b>To:</b> Oberstar Inc. and its successors 1900 Industrial Parkway Marquette, MI 49855	<b>Inspection Number:</b> <b>Inspection Date(s):</b> <b>Issuance Date:</b>	1515851 02/23/2021 - 02/23/2021 03/16/2021
<b>Inspection Site:</b> 2853 US 41 Marquette, MI 49855	<b>Reporting ID:</b> <b>CSHO ID:</b> <b>Optional Report Number:</b>	0552651 S1992 21-019/21

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**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](http://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](http://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](http://www.mi.gov/miosha).

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**Inspection Number:** 1515851  
**Inspection Date(s):** 02/23/2021 - 02/23/2021  
**Issuance Date:** 03/16/2021  
**Optional Reporting Number:** 21-019/21

**Citation and Notification of Penalty**

**Company Name:** Oberstar Inc. and its successors  
**Inspection Site:** 2853 US 41, Marquette, MI 49855

**Citation 1 Item 1**

Type of Violation: **Repeat-Serious**

408.40941(1): CS Part 9 Excavation, Trenching and Shoring

The side of an excavation more than 5 feet deep shall be sloped as prescribed in table 1, unless supported as prescribed in this part.

Workers repairing a water main in an excavation that is 25 feet long; 7 feet 6 inches deep; 15 feet wide at the top and approximately 10 feet wide at the bottom. North-side is 56 degrees and the south side is near-vertical approximately the first 2 to 3 feet. Soil is sand and the area has been previously excavated.

Oberstar Inc. was previously cited for a violation of this occupational safety and health standard or its equivalent standard 408.40941(1), which was contained in OSHA inspection number 1408682, citation number 1, item number 1 and was affirmed as a final order on 03/10/2020, with respect to a workplace located at 406 & 410 N. Lakeshore Boulevard, Marquette, MI 49855.

**Date By Which Violation Must be Abated:**

**March 24, 2021**

**Proposed Penalty:**

**\$4,800.00**

**Citation 2 Item 1**

Type of Violation: **Repeat-Other**

408.41523(1): CS Part 15 Excavators, Hoists, Elevators, Helicopters, and Conveyors

A thorough, annual inspection of all excavators shall be made by a qualified person. An employer shall maintain, on the jobsite or attached to the equipment, a copy of the latest equipment inspection record with the date and results for each piece of equipment.

Workers repairing water main were operating a CAT 336 F excavator that did not have an annual inspection completed.

Oberstar Inc. was previously cited for a violation of this occupational safety and health standard or its equivalent standard 408.41523(1), which was contained in OSHA inspection number 1408682, citation number 2, item number 1 and was affirmed as a final order on 03/10/2020, with respect to a workplace located at 406 & 410 N. Lakeshore Boulevard, Marquette, MI 49855.

**Date By Which Violation Must be Abated:**

**March 24, 2021**

**Proposed Penalty:**

**\$400.00**

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**Inspection Number:** 1515851  
**Inspection Date(s):** 02/23/2021 - 02/23/2021  
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**Optional Reporting Number:** 21-019/21

### **Citation and Notification of Penalty**

**Company Name:** Oberstar Inc. and its successors  
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#### **Citation 3 Item 1**

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

Rule 4(3): EMERGENCY RULES - CORONAVIRUS DISEASE 2019 (COVID-19) [REF MCL 24.248]  
The employer shall make the preparedness and response plan readily available to employees and their representatives, whether via website, internal network, or by hard copy.

The COVID-19 preparedness and response plan was not readily available at the worksite.

<b>Date By Which Violation Must be Abated:</b>	<b>March 24, 2021</b>
<b>Proposed Penalty:</b>	<b>\$0.00</b>

#### **Citation 3 Item 2**

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

Rule 11(1): EMERGENCY RULES - CORONAVIRUS DISEASE 2019 (COVID-19) [REF MCL 24.248]

Employers must maintain a record of the following requirements:

- (a) Training. The employer shall maintain a record of all COVID-19 employee training.
- (b) Screening protocols. The employer shall maintain a record of screening for each employee or visitor entering the workplace.
- (c) Records of required notifications. The employer shall maintain a record of each notification required by Rule 6 of these rules.

The employer does not maintain a record of the COVID-19 screening protocols employees do before starting their shift.

<b>Date By Which Violation Must be Abated:</b>	<b>March 24, 2021</b>
<b>Proposed Penalty:</b>	<b>\$0.00</b>

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### **Citation and Notification of Penalty**

**Company Name:** Oberstar Inc. and its successors  
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#### **Citation 3 Item 3**

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

408.40933(2): CS Part 9 Excavation, Trenching and Shoring

An excavation that an employee is required to enter shall have excavated and other material stored and retained not less than 2 feet from the excavation edge.

A worker entered the excavation that had the spoils stored right on the excavation edge.

**Date By Which Violation Must be Abated:**

**March 24, 2021**

**Proposed Penalty:**

**\$0.00**

#### **Citation 3 Item 4**

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

408.40933(4): CS Part 9 Excavation, Trenching and Shoring

An excavation 48 or more inches in depth and occupied by an employee shall be provided with either a ladder extending not less than 3 feet above the top as a means of access or with a ramp meeting the requirements of subrule (5) of this rule. Lateral travel along the wall of a trench to a ladder or other means of egress shall not exceed 25 feet.

A worker who entered the excavation that was more than 48 inches in depth was accessed by walking the excavation side.

**Date By Which Violation Must be Abated:**

**March 24, 2021**

**Proposed Penalty:**

**\$0.00**

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**Optional Reporting Number:** 21-019/21

**Citation and Notification of Penalty**

**Company Name:** Oberstar Inc. and its successors  
**Inspection Site:** 2853 US 41, Marquette, MI 49855

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**Citation 3 Item 5**

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

408.42233(2): CS Part 22 Signals, Signs, Tags, and Barricades

The proportions for a danger sign shall be not less than those prescribed in table 3 and the format of figure 1 shall be followed.

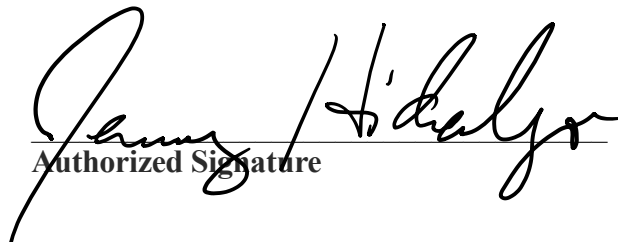
The danger stickers were the wrong size on the counterweight sides of the CAT 336 F excavator.

**Date By Which Violation Must be Abated:**

**March 24, 2021**

**Proposed Penalty:**

**\$0.00**

  
Authorized Signature



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**PROPOSED PENALTY INVOICE**

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**Company Name:** Oberstar Inc. and its successors  
**Inspection Site:** 2853 US 41  
Marquette, MI 49855

**Summary of Penalties for Inspection Number: 1515851**

Citation 1 Item 1, Repeat-Serious	\$4,800.00
Citation 2 Item 1, Repeat-Other	\$400.00
Citation 3 Item 1, Other-than-Serious	\$0.00
Citation 3 Item 2, Other-than-Serious	\$0.00
Citation 3 Item 3, Other-than-Serious	\$0.00
Citation 3 Item 4, Other-than-Serious	\$0.00
Citation 3 Item 5, Other-than-Serious	\$0.00

**TOTAL PROPOSED PENALTIES:** **\$5,200.00**

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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 (30<sup>th</sup>) 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