

U.S. Department of Labor Occupational Safety and Health Administration
405 Capitol Street
Suite 407
Charleston, WV 25301



02/11/2022

Continental Brick Company
and its successors
154 Charles Town Road
Martinsburg, WV 25405

Dear Employer:

Enclosed you will find citations for violations of the Occupational Safety and Health Act of 1970 (the Act) which may have accompanying proposed penalties. Also enclosed is a booklet entitled, "Employer Rights and Responsibilities Following an OSHA Inspection", (OSHA 3000-04R) revised 2018, which explains your rights and responsibilities under the Act. If you have any questions about the enclosed citations and penalties, I would welcome further discussions in person or by telephone. Please contact me at (304) 347-5937.

You will note on page 6 of the booklet that, for violations which you do not contest, you must (1) notify this office promptly by letter that you have taken appropriate corrective action within the time set forth on the citation; and (2) pay any penalties assessed. Please inform me of the abatement steps you have taken and of their dates together with adequate supporting documentation; e.g., drawings or photographs of corrected conditions, purchase/work orders related to abatement actions, air sampling results. This information will allow us to close the case.

As indicated on page 3 of the booklet, you may request an informal conference with me during the 15-working-day notice of contest period. During such an informal conference you may present any evidence or views which you believe would support an adjustment to the citation or the penalty.

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Area Director within 15 working days of your receipt of the citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete the attached notice at the bottom of this letter and post it next to the Citations as soon as the time, date and the place of the informal conference have been determined. Be sure to bring to the conference with you any and all supporting documentation of existing conditions as well as of any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

You should be aware that OSHA publishes information on its inspection and citation activity on the Internet under the provisions of Electronic Freedom of Information Act. The information related to these alleged violations will be posted when our system indicates that you have received this citation. You are encouraged to review the information concerning your establishment at www.osha.gov. If you have any dispute with the accuracy of the information displayed, please contact this office.

Sincerely,

Prentice Cline
Area Director

Enclosures

U.S. Department of Labor
Occupational Safety and Health Administration
405 Capitol Street
Suite 407
Charleston, WV 25301



Citation and Notification of Penalty

To:
Continental Brick Company
and its successors
154 Charles Town Road
Martinsburg, WV 25405

Inspection Number: 1548403
Inspection Date(s): 08/16/2021 - 08/17/2021
Issuance Date: 02/11/2022

Inspection Site:
154 Charles Town Road
Martinsburg, WV 25405

The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

This Citation and Notification of Penalty (this Citation) describes violations of the Occupational Safety and Health Act of 1970. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties proposed, unless within 15 working days (excluding weekends and Federal holidays) from your receipt of this Citation and Notification of Penalty **you either call to schedule an informal conference (see paragraph below) or** you mail a notice of contest to the U.S. Department of Labor Area Office at the address shown above. Please refer to the enclosed booklet (OSHA 3000) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless this Citation is affirmed by the Review Commission or a court.

Posting - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and Federal holidays), whichever is longer.

Informal Conference - An informal conference is not required. However, if you wish to have such a conference you may request one with the Area Director during the 15 working day contest period by calling (304) 347-5937. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Area Director within 15 working days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the Notice to Employees next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

Right to Contest – You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest proposed penalties and/or abatement dates without contesting the underlying violations. **Unless you inform the Area Director in writing that you intend to contest the citation(s) and/or proposed penalty(ies) within 15 working days after receipt, the citation(s) and the proposed penalty(ies) will become a final order of the Occupational Safety and Health Review Commission and may not be reviewed by any court or agency.**

Penalty Payment – Penalties are due within 15 working days of receipt of this notification unless contested. (See the enclosed booklet and the additional information provided related to the Debt Collection Act of 1982.) Make your check or money order payable to “DOL-OSHA”. Please indicate the Inspection Number on the remittance. You can also make your payment electronically at www.pay.gov. At the top of the [pay.gov](http://www.pay.gov) homepage, type "OSHA" in the Search field and select Search. From **OSHA Penalty Payment Form** search result, select Continue. The direct link is:

<https://www.pay.gov/paygov/forms/formInstance.html?agencyFormId=53090334>

You will be required to enter your inspection number when making the payment. Payments can be made by credit card or Automated Clearing House (ACH) using your banking information. Payments of \$25,000 or more require a Transaction ID, and also must be paid using ACH. If you require a Transaction ID, please contact the OSHA Debt Collection Team at (202) 693-2170.

OSHA does not agree to any restrictions or conditions or endorsements put on any check, money order, or electronic payment for less than the full amount due, and will process the payments as if these restrictions or conditions do not exist.

Notification of Corrective Action – For each violation which you do not contest, you must provide **abatement certification** to the Area Director of the OSHA office issuing the citation and identified above. This abatement certification is to be provided by letter within 10 calendar days after each abatement date. Abatement certification includes the date and method of abatement. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item. The abatement certification letter must be posted at the location where the violation appeared and the corrective action took place or employees must otherwise be effectively informed about abatement activities. A sample abatement certification letter is enclosed with this Citation. In addition, where the citation indicates that **abatement documentation** is necessary, evidence of the purchase or repair of equipment, photographs or video, receipts, training records, etc., verifying that abatement has occurred is required to be provided to the Area Director.

Employer Discrimination Unlawful – The law prohibits discrimination by an employer against an

employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 30 days after the discrimination occurred with the U.S. Department of Labor Area Office at the address shown above.

Employer Rights and Responsibilities – The enclosed booklet (OSHA 3000) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

Notice to Employees – The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the U.S. Department of Labor Area Office at the address shown above and postmarked within 15 working days (excluding weekends and Federal holidays) of the receipt by the employer of this Citation and Notification of Penalty.

Inspection Activity Data – You should be aware that OSHA publishes information on its inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to these alleged violations will be posted when our system indicates that you have received this citation. You are encouraged to review the information concerning your establishment at www.osha.gov. If you have any dispute with the accuracy of the information displayed, please contact this office.



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with OSHA to discuss the citation(s) issued on 02/11/2022. The conference will be held by telephone or at the OSHA office located at 405 Capitol Street, Suite 407, Charleston, WV 25301 on _____ at

_____. Employees and/or representatives of employees have a right to attend an informal conference.

CERTIFICATION OF CORRECTIVE ACTION WORKSHEET

Inspection Number: 1548403

Company Name: Continental Brick Company
Inspection Site: 154 Charles Town Road, Martinsburg, WV 25405
Issuance Date: 02/11/2022

List the specific method of correction for each item on this citation in this package that does not read "Corrected During Inspection" and return to: **U.S. Department of Labor – Occupational Safety and Health Administration, 405 Capitol Street, Suite 407, Charleston, WV 25301.**

Citation Number _____ and Item Number _____ was corrected on _____
By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
By (Method of Abatement): _____

Citation Number _____ and Item Number _____ was corrected on _____
By (Method of Abatement): _____

I certify that the information contained in this document is accurate and that the affected employees and their representatives have been informed of the abatement.

Signature

Date

Typed or Printed Name

Title

NOTE: 29 USC 666(g) whoever knowingly makes any false statements, representation or certification in any application, record, plan or other documents filed or required to be maintained pursuant to the Act shall, upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment of not more than 6 months or both.

POSTING: A copy of completed Corrective Action Worksheet should be posted for employee review



Citation and Notification of Penalty

Company Name: Continental Brick Company
Inspection Site: 154 Charles Town Road, Martinsburg, WV 25405

The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for injury or illness.

Citation 1 Item 1 a Type of Violation: **Serious**

29 CFR 1910.1053(c): The employer did not ensure that no employee was exposed to an airborne concentration of respirable crystalline silica in excess of 50 g/m³, calculated as an 8-hour TWA:

(a) Pug Mill: On August 17, 2021, an employee operating the pug mill during brick manufacturing was exposed to an airborne concentration of respirable crystalline silica at an 8-hour Time Weighted Average of 60.854 micrograms per cubic meter of air for the 424 minute sampling period. The employee was exposed over the permissible exposure limit of 50 micrograms per cubic meter of air.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:	June 27, 2022
Proposed Penalty:	\$10,151.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



Citation and Notification of Penalty

Company Name: Continental Brick Company
Inspection Site: 154 Charles Town Road, Martinsburg, WV 25405

Citation 1 Item 1 b Type of Violation: **Serious**

29 CFR 1910.1053(f)(1): The employer did not use engineering and work practice controls to reduce and maintain employee exposure to respirable crystalline silica to or below the PEL, unless the employer can demonstrate that such controls are not feasible:

(a) Pug Mill: On August 17, 2021, an employee operating the pug mill during brick manufacturing was exposed to an airborne concentration of respirable crystalline silica at an 8-hour Time Weighted Average of 60.854 micrograms per cubic meter of air for the 424 minute sampling period. The employer did not implement all engineering controls and work practice controls to achieve compliance with the permissible exposure limit of 50 micrograms per cubic meter of air.

Abatement Note: Feasible engineering controls include, but are not limited to the following:

1. Implement local exhaust ventilation to capture respirable crystalline silica before reaching employees breathing zone.

Step 1: Effective respiratory protection program shall be provided and used by exposed employees as an interim protective measure until feasible engineering controls and work practices can be implemented, or whenever such controls fail to reduce employee exposure to within permissible exposure limits.

Step 2: Submit to the Area Director a written, detailed plan of abatement outlining a schedule for the implementation of engineering and/or administrative measures to control employee exposure to hazardous substances as referenced in this citation. The plan shall include, at a minimum, target dates for the following actions which must be consistent with the abatement dates required by this citation:

- (1) Evaluation of engineering/administrative control options;
- (2) Selection of optimum control methods and completion of design;
- (3) Procurement, installation and operation of selected control measures; and
- (4) Testing and acceptance or modification/redesign of controls.

Note: All proposed control measures shall be approved for each particular use by a competent industrial hygienist or other technically qualified person.

Step 3: Abatement shall have been completed by the implementation of feasible engineering and/or administrative

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

U.S. Department of Labor
Occupational Safety and Health Administration

Inspection Number: 1548403
Inspection Date(s): 08/16/2021 - 08/17/2021
Issuance Date: 02/11/2022



Citation and Notification of Penalty

Company Name: Continental Brick Company
Inspection Site: 154 Charles Town Road, Martinsburg, WV 25405

controls upon verification of their effectiveness in achieving compliance.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:	June 27, 2022
Proposed Penalty:	\$0.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



Citation and Notification of Penalty

Company Name: Continental Brick Company
Inspection Site: 154 Charles Town Road, Martinsburg, WV 25405

Citation 1 Item 1 c Type of Violation: **Serious**

29 CFR 1910.1053(e)(1): The employer did not establish a regulated area wherever an employee's exposure to airborne concentrations of respirable crystalline silica was, or could have been reasonably expected to be, in excess of the PEL:

(a) Pug Mill: On August 17, 2021, an employee operating the pug mill during brick manufacturing was exposed to an airborne concentration of respirable crystalline silica at an 8-hour Time Weighted Average of 60.95 micrograms per cubic meter of air for the 424 minute sampling period. The employer did not effectively establish a regulated area wherever an employee's exposure of respirable crystalline silica was over the permissible exposure limit.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:	March 17, 2022
Proposed Penalty:	\$0.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



Citation and Notification of Penalty

Company Name: Continental Brick Company
Inspection Site: 154 Charles Town Road, Martinsburg, WV 25405

Citation 1 Item 1 d Type of Violation: **Serious**

29 CFR 1910.1053(j)(2): The employer did not post signs at all entrances to regulated areas that bear the following legend:

DANGER
RESPIRABLE CRYSTALLINE SILICA
MAY CAUSE CANCER
CAUSES DAMAGE TO LUNGS
WEAR RESPIRATORY PROTECTION IN THIS AREA
AUTHORIZED PERSONNEL ONLY

(a) Pug Mill: On August 17, 2021, an employee operating the pug mill during brick manufacturing was exposed to an airborne concentration of respirable crystalline silica at an 8-hour Time Weighted Average of 60.95 micrograms per cubic meter of air for the 424 minute sampling period. The employer did not have posted signs that included "Respirable Crystalline Silica", "Causes Damage to Lungs", "Wear Respiratory Protection in this Area" and "Authorized Personnel Only".

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:	March 17, 2022
Proposed Penalty:	\$0.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

U.S. Department of Labor
Occupational Safety and Health Administration

Inspection Number: 1548403
Inspection Date(s): 08/16/2021 - 08/17/2021
Issuance Date: 02/11/2022



Citation and Notification of Penalty

Company Name: Continental Brick Company
Inspection Site: 154 Charles Town Road, Martinsburg, WV 25405

Citation 1 Item 2 Type of Violation: **Serious**

29 CFR 1910.1053(d)(3)(iv): Where the most recent exposure monitoring indicated that employee exposures were above the PEL, the employer did not repeat such monitoring within three months of the most recent monitoring:

(a) Continental Brick: On August 17, 2021 and times prior the employer did not conduct periodic monitoring within three months following monitoring conducted in June 2019. The most recent monitoring in 2019 indicated that four employees were exposed to respirable crystalline silica greater than the permissible exposure limit.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:	March 31, 2022
Proposed Penalty:	\$10,151.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



Citation and Notification of Penalty

Company Name: Continental Brick Company
Inspection Site: 154 Charles Town Road, Martinsburg, WV 25405

Citation 1 Item 3 Type of Violation: **Serious**

29 CFR 1910.1053(i)(1)(i): The employer shall make medical surveillance available at no cost to the employee, and at a reasonable time and place, for each employee who will be occupationally exposed to respirable crystalline silica at or above the action level for 30 or more days per year.

(a) Pug Mill: On August 17, 2021, an employee operating the pug mill during brick manufacturing was exposed to an airborne concentration of respirable crystalline silica at an 8-hour Time Weighted Average of 60.854 micrograms per cubic meter of air for the 424 minute sampling period. The employee was exposed over the permissible exposure limit of 50 micrograms per cubic meter of air. The employer did not make medical surveillance available as required.

(b) Sand Mixing Room: On August 17, 2021, an employee mixing sand in the sand mixing room was exposed to an airborne concentration of respirable crystalline silica at an 8-hour Time Weighted Average of 46.537 micrograms per cubic meter of air for the 436 minute sampling period. The employee was exposed under the permissible exposure limit of 50 micrograms per cubic meter of air but above the action level of 25 micrograms per cubic meter of air. The employer did not make medical surveillance available as required.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:	March 10, 2022
Proposed Penalty:	\$10,151.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



Citation and Notification of Penalty

Company Name: Continental Brick Company
Inspection Site: 154 Charles Town Road, Martinsburg, WV 25405

The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for injury or illness.

Citation 2 Item 1 a Type of Violation: **Willful - Serious**

29 CFR 1910.1053(g)(2): Where respirator use was required by this section, the employer did not institute a respiratory protection program in accordance with 29 CFR 1910.134:

(a) Pug Mill: On August 17, 2021, an employee operating the pug mill during brick manufacturing was exposed to an airborne concentration of respirable crystalline silica at an 8-hour Time Weighted Average of 60.854 micrograms per cubic meter of air for the 424 minute sampling period. The employer did not institute a respiratory protection program to protect workers from airborne silica dust which exceeded the permissible exposure limit of 50 micrograms per cubic meter of air.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:	February 17, 2022
Proposed Penalty:	\$101,519.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



Citation and Notification of Penalty

Company Name: Continental Brick Company
Inspection Site: 154 Charles Town Road, Martinsburg, WV 25405

Citation 2 Item 1 b Type of Violation: **Willful - Serious**

29 CFR 1910.134(c): The employer did not develop and implement a written respiratory protection program with required worksite-specific procedures and elements for required respirator use:

(a) Pug Mill: On August 17, 2021, an employee operating the pug mill during brick manufacturing was exposed to an airborne concentration of respirable crystalline silica at an 8-hour Time Weighted Average of 60.854 micrograms per cubic meter of air for the 424 minute sampling period. The employer did not institute a respiratory protection program to protect workers from airborne silica dust which exceeded the permissible exposure limit of 50 micrograms per cubic meter of air.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:	March 10, 2022
Proposed Penalty:	\$0.00

Prentice Cline
Area Director

U.S. Department of Labor
Occupational Safety and Health Administration
405 Capitol Street
Suite 407
Charleston, WV 25301



**INVOICE /
DEBT COLLECTION NOTICE**

Company Name: Continental Brick Company
Inspection Site: 154 Charles Town Road, Martinsburg, WV 25405
Issuance Date: 02/11/2022

Summary of Penalties for Inspection Number: 1548403

Citation 1 Item 1a, Serious	\$10,151.00
Citation 1 Item 1b, Serious	\$0.00
Citation 1 Item 1c, Serious	\$0.00
Citation 1 Item 1d, Serious	\$0.00
Citation 1 Item 2, Serious	\$10,151.00
Citation 1 Item 3, Serious	\$10,151.00
Citation 2 Item 1a, Willful - Serious	\$101,519.00
Citation 2 Item 1b, Willful - Serious	\$0.00

TOTAL PROPOSED PENALTIES: \$131,972.00

To avoid additional charges, please remit payment promptly to this Area Office for the total amount of the uncontested penalties summarized above. Make your check or money order payable to: "DOL-OSHA". Please indicate OSHA's Inspection Number (indicated above) on the remittance. You can also make your payment electronically at www.pay.gov. At the top of the pay.gov homepage, type "OSHA" in the Search field and select Search. From the **OSHA Penalty Payment Form** search result, select Continue. The direct link is: <https://www.pay.gov/paygov/forms/formInstance.html?agencyFormId=53090334>. You will be required to enter your inspection number when making the payment. Payments can be made by credit card or Automated Clearing House (ACH) using your banking information. Payments of \$25,000 or more require a Transaction ID, and also must be paid using ACH. If you require a Transaction ID, please contact the OSHA Debt Collection Team at (202) 693-2170.

OSHA does not agree to any restrictions or conditions or endorsements put on any check, money order, or electronic

payment for less than the full amount due, and will cash the check or money order as if these restrictions or conditions do not exist.

If a personal check is issued, it will be converted into an electronic fund transfer (EFT). This means that our bank will copy your check and use the account information on it to electronically debit your account for the amount of the check. The debit from your account will then usually occur within 24 hours and will be shown on your regular account statement. You will not receive your original check back. The bank will destroy your original check, but will keep a copy of it. If the EFT cannot be completed because of insufficient funds or closed account, the bank will attempt to make the transfer up to two times.

Pursuant to the Debt Collection Act of 1982 (Public Law 97-365) and regulations of the U.S. Department of Labor (29 CFR Part 20), the Occupational Safety and Health Administration is required to assess interest, delinquent charges, and administrative costs for the collection of delinquent penalty debts for violations of the Occupational Safety and Health Act.

Interest: Interest charges will be assessed at an annual rate determined by the Secretary of the Treasury on all penalty debt amounts not paid within one month (30 calendar days) of the date on which the debt amount becomes due and payable (penalty due date). The current interest rate is one percent (1%). Interest will accrue from the date on which the penalty amounts (as proposed or adjusted) become a final order of the Occupational Safety and Health Review Commission (that is, 15 working days from your receipt of the Citation and Notification of Penalty), unless you file a notice of contest. Interest charges will be waived if the full amount owed is paid within 30 calendar days of the final order.

Delinquent Charges: A debt is considered delinquent if it has not been paid within one month (30 calendar days) of the penalty due date or if a satisfactory payment arrangement has not been made. If the debt remains delinquent for more than 90 calendar days, a delinquent charge of six percent (6%) per annum will be assessed accruing from the date that the debt became delinquent.

Administrative Costs: Agencies of the Department of Labor are required to assess additional charges for the recovery of delinquent debts. These additional charges are administrative costs incurred by the Agency in its attempt to collect an unpaid debt. Administrative costs will be assessed for demand letters sent in an attempt to collect the unpaid debt.

Prentice Cline

Area Director

Date