

U.S. Department of Labor
Occupational Safety and Health Administration
4404 South Technology Drive
Sioux Falls, SD 57106
Phone: 605-251-2021



Citation and Notification of Penalty

To:
Kempf Construction, Inc.
5621 W 9th St
Sioux Falls, SD 57107

Inspection Number: 1187597
Inspection Date(s): 10/28/2016 - 01/09/2017
Issuance Date: 01/10/2017

Inspection Site:
Sunshine and Augusta Cir
Brandon, SD 57005

The violations described in this Citation and Notification of Penalty are alleged to have occurred on or about the days 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 penalties listed herein 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 violations 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 violations cited herein 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. During such an informal conference you may present any evidence or views which you believe would support an adjustment to the citations and/or penalties.

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 citations and/or proposed penalties within 15 working days after receipt, the citations and the proposed penalties 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 on www.pay.gov. On the left side of the pay.gov homepage, you will see an option to Search Public Forms. Type "OSHA" and click Go. From the results, click on **OSHA Penalty Payment Form**. 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 citations issued on 01/10/2017. The conference will be held by telephone or at the OSHA office located at 4404 South Technology Drive, Sioux Falls, SD 57106 on _____ at _____.

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

CERTIFICATION OF CORRECTIVE ACTION WORKSHEET

Inspection Number: 1187597

Company Name: Kempf Construction, Inc.
Inspection Site: Sunshine and Augusta Cir, Brandon, SD 57005
Issuance Date: 01/10/2017

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, 4404 South Technology Drive, Sioux Falls, SD 57106**

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

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

Inspection Number: 1187597
Inspection Date(s): 10/28/2016 - 01/09/2017
Issuance Date: 01/10/2017



Citation and Notification of Penalty

Company Name: Kempf Construction, Inc.
Inspection Site: Sunshine and Augusta Cir, Brandon, SD 57005

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

29 CFR 1926.51(c)(2): Under temporary field conditions, provisions were not made to assure that not less than one toilet facility was available:

- (a) **Kempf Construction, Inc. at Sunshine and Augusta Cir., Brandon SD, 57007:** On and before October 28, 2016, the employer did not furnish at least one toilet for workers at a temporary job site.

Abatement Note: Abatement certification is required for this item (see enclosed Abatement-Certification Letter").

Date By Which Violation Must be Abated:
Proposed Penalty:

01/23/2017
\$2138.00

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: Kempf Construction, Inc.
Inspection Site: Sunshine and Augusta Cir, Brandon, SD 57005

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

29 CFR 1926.652(b): The slopes and configurations of sloping and benching systems were not in accordance with the requirement options of 29 CFR 1926.652(b)(1), (b)(2), (b)(3), or (b)(4):

(a) Kempf Construction, Inc. at Sunshine and Augusta Cir., Brandon SD, 57007: On and before October 28, 2016, the employer did not ensure that employees were not exposed to struck-by hazards while working in a 16-foot deep excavation with a trench box that was eight feet high, thus allowing the excavated walls to cave into the trench box from above. The adjacent walls located above the trench box were not sloped or benched to IAW 1926 Subpart P, Appendix B instructions.

Abatement Note: Abatement certification and documentation are required for this item (see enclosed "Certification of Corrective Action Worksheet").

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:
Proposed Penalty:

02/06/2017
\$9600.00



Citation and Notification of Penalty

Company Name: Kempf Construction, Inc.
Inspection Site: Sunshine and Augusta Cir, Brandon, SD 57005

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

29 CFR 1926.652(b)(3)(iii): Tabulated data, identifying the registered professional engineer who approved the data, was not maintained at the jobsite during construction of the protective system. After that time, that data was not made available to the Secretary when requested.

(a) Kempf Construction, Inc. at Sunshine and Augusta Cir., Brandon SD, 57007: On and before October 28, 2016, the exposing employer did not maintain a copy of the tabulated data at the job-site during construction activities related to the use of the protective system. Employees did not have access to the tabulated data which could allow the trench box to be used in a manner not recommended by the manufacturer. This condition exposed employees to struck-by hazards associated with improperly use regarding the trench box.

Abatement Note: Abatement certification and documentation are required for this item (see enclosed Abatement-Certification Letter").

Date By Which Violation Must be Abated: 02/06/2017
Proposed Penalty: \$9600.00



Citation and Notification of Penalty

Company Name: Kempf Construction, Inc.
Inspection Site: Sunshine and Augusta Cir, Brandon, SD 57005

Citation 1 Item 4 Type of Violation: **Serious**

29 CFR 1926.652(g)(1)(iii): Employees were not protected from the hazard of cave-ins when entering or exiting the area protected by shields:

- (a) **Kempf Construction, Inc. at Sunshine and Augusta Cir., Brandon SD, 57007:** On and before October 28, 2016, the exposing employer did not ensure employees were protected from cave-in hazards while using a ladder to access and egress an excavation that was not located within the trench shielding system. This condition exposed employees to cave-in hazards associated with accessing and egressing the excavation outside of the protective system.

Abatement Note: Abatement certification and documentation are required for this item (see enclosed Abatement-Certification Letter").

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:	01/23/2017
Proposed Penalty:	\$9600.00

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: Kempf Construction, Inc.
Inspection Site: Sunshine and Augusta Cir, Brandon, SD 57005

Citation 1 Item 5 Type of Violation: **Serious**

29 CFR 1926.651(k)(2): Where the competent person found evidence of a situation that could result in possible cave-in, indications of failure of protective systems, hazardous atmospheres, or other hazardous conditions, exposed employees were not removed from the hazardous area until the necessary precautions have been taken to ensure their safety.

(a) Kempf Construction, Inc. at Sunshine and Augusta Cir., Brandon SD, 57007: On and before October 28, 2016, the exposing employer did not ensure employees were protected from cave-in hazards where hazards existed and the necessary precautions were taken to ensure employees were protected. The competent person operated the excavator to form near vertical walls extending eight feet above the top of the trench shielding system and did not remove employees from the excavation to correct visible hazards such as but not limited to, inadequate shielding height, topsoil over sand and other soil layers, access ladder located outside the protective system and water penetration. This condition exposed employees to struck-by hazards as a result of the competent person not removing employees from an excavation that had identifiable hazards related to cave-in.

Abatement Note: Abatement certification and documentation are required for this item (see enclosed Abatement-Certification Letter").

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated: 02/06/2017
Proposed Penalty: \$9600.00

A handwritten signature in blue ink that reads "Sheila Stanley".

Sheila Stanley
Area Director

U.S. Department of Labor
Occupational Safety and Health Administration
4404 South Technology Drive
Sioux Falls, SD 57106
Phone: 605-251-2021



INVOICE / DEBT COLLECTION NOTICE

Company Name: Kempf Construction, Inc.
Inspection Site: Sunshine and Augusta Cir, Brandon, SD 57005
Issuance Date: 01/10/2017

Summary of Penalties for Inspection Number	1187597
Citation 1, Serious	\$40538.00
TOTAL PROPOSED PENALTIES	\$40538.00

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 on www.pay.gov. On the left side of the pay.gov homepage, you will see an option to Search Public Forms. Type "OSHA" and click Go. From the results, click on **OSHA Penalty Payment Form**. 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.

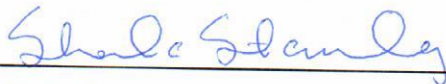
If a personal check is issued, it will be converted into an electronic fund transfer (EFT). This means that our bank will copy your check and use the account information on it to electronically debit your account for the amount of the check. The debit from your account will then usually occur within 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 2 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.



Sheila Stanley
Area Director



Date