



Citation and Notification of Penalty

To:
City of Deming/Gas Department
AND ITS SUCCESSORS
ATTN Yeimi Bustos, 309 South Gold Avenue
Deming, NM 88030

Inspection Number: 1655101
Inspection Date(s): 03/07/2023-03/08/2023
Issuance Date: 08/24/2023

Inspection Site:
909 W Pine St
Deming, NM 88030

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 mail a notice of contest to the Environment Department, Occupational Health and Safety Bureau at the address shown above. 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. The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.

Informal Conference- An informal conference is not required. However, at the request of an employer, affected employee, or representative of employees, the Bureau Chief or the Bureau Chiefs designee may hold an informal conference. At this conference any issues raised by an inspection, citation, proposed penalty, proposed petition for modification of abatement date or proposed petition for variance may be discussed. If you intend to request an informal conference, take care to schedule it early enough to allow time to contest after the informal conference discussion, should you decide to do so.

When the conference is requested by an employer, an affected employee or representative shall be afforded an opportunity to participate, at the discretion of the Bureau Chief or Bureau Chiefs designee. When the conference is requested by an employee or representative of employees, the employer shall be afforded an opportunity to participate, at the discretion of the Bureau Chief or Bureau Chiefs designee.

The request for an informal conference and the informal conference meeting shall not extend or modify in any manner:

- 1) an abatement date established in the citation;
- 2) the deadline for an employer to file a notice of contest;
- 3) any other filing deadline related to the citation; or
- 4) any matter pending before the bureau.

Once an employer files a notice of contest, a petition for modification of the abatement date, a request for a commission hearing, a petition for variance, or other filing with the Occupational Health and Safety Review Commission or the Environment Department, the opportunity for an informal conference is no longer available.

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 Bureau Chief 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. It is recommended that the Notice of Contest be filed via "Certified Mail".

Penalty Payment- Penalties are due within 15 working days of receipt of this notification unless contested. Make your check or money order payable to the Environment Department, Occupational Health and Safety Bureau. Please indicate the Inspection Number on the remittance.

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

Notification of Corrective Action - For violations which you do not contest, you should notify the Occupational Health and Safety Bureau (OHSB) that each cited violation has been abated. To certify abatement, you should complete the "Description of Corrective Action Taken" box which follows each citation and sign the statement on the last citation page. You are not required to certify abatement if the compliance officer observed that abatement has occurred during the on-site inspection. The citation may indicate that you should submit additional documentation such as photographs, purchase orders, copies of written programs, etc. Failure to return all completed forms and documents to the Program Manager no later than 10 days after the abatement date may result in additional penalties.

You are also required to inform your employees about abatement activities by posting a copy of each document submitted to OHSB or a summary of the document near the place where the violation occurred. Documents must remain posted for 3 working days after submission to OHSB.

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 Environment Department, Occupational Health and Safety Bureau at the address shown above.

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 Environment Department, Occupational Health and Safety Bureau 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.

Please note that your facility will appear on the Department's Enforcement Watch as a result of this Citation and Notification of Penalty (see: <https://www.env.nm.gov/enforcement-watch/>). Further, the Department will issue a press release to local media highlighting your facility as appearing on this webpage. Your facility will remain on the Enforcement Watch website as an active matter until this matter is fully resolved, including the payment of the assessed civil penalty.

State of New Mexico
Environment Department
Occupational Health and Safety Bureau



525 Camino de los Marquez, Suite 3
Santa Fe, NM 87505
Phone: (505) 476-8700 Fax: (505) 476-8734

Inspection #: 1655101
Inspection Date(s): 03/07/2023-03/08/2023
Issuance Date: 08/24/2023

Citation and Notification of Penalty

Company Name: City of Deming/Gas Department
Inspection Site: 909 W Pine St Deming, NM 88030

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

11.5.2.9 NMAC

29 CFR 1910.134(c)(1): In any workplace where respirators are necessary to protect the health of the employee or whenever respirators are required by the employer, the employer shall establish and implement a written respiratory protection program with worksite-specific procedures. The program shall be updated as necessary to reflect those changes in workplace conditions that affect respirator use. The employer shall include in the program the following provisions of this section, as applicable:

On or about March 7, 2023, the City of Deming Gas Department did not develop and implement a written respiratory protection program to cover all employees who are required to use a full face respirator when gas leaks are detected. Employees are exposed to respiratory hazards while responding to gas leak calls.

PROOF OF ABATEMENT:

Date Corrected:
Describe Corrective Action:

Date By Which Violation Must be Abated:
Proposed Penalty:

September 20, 2023
\$4,800.00

State of New Mexico
Environment Department
Occupational Health and Safety Bureau



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Company Name: City of Deming/Gas Department
Inspection Site: 909 W Pine St Deming, NM 88030

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

11.5.2.9 NMAC

29 CFR 1910.134(e)(1): General. The employer shall provide a medical evaluation to determine the employee's ability to use a respirator, before the employee is fit tested or required to use the respirator in the workplace. The employer may discontinue an employee's medical evaluations when the employee is no longer required to use a respirator.

On or about March 7, 2022, the City of Deming Gas Department did not provide a medical evaluation to determine the employee's compatibility to use a respirator, before the employee was fit tested or required to use a respirator when responding to gas leak reports. Employees are exposed to respiratory hazards while responding to gas leak calls.

PROOF OF ABATEMENT:

Date Corrected:
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Proposed Penalty:

September 20, 2023
\$0.00

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

11.5.2.9 NMAC

29 CFR 1910.134(f)(1): The employer shall ensure that employees using a tight-fitting facepiece respirator pass an appropriate qualitative fit test (QLFT) or quantitative fit test (QNFT) as stated in this paragraph.

On or about March 7, 2023, the City of Deming Gas Department did not conduct fit tests prior to respirator use. Affected employees are exposed to respiratory hazards while responding to gas leaks.

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\$0.00

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

11.5.2.9 NMAC

29 CFR 1910.134(k): Training and information. This paragraph requires the employer to provide effective training to employees who are required to use respirators. The training must be comprehensive, understandable, and recur annually, and more often if necessary. This paragraph also requires the employer to provide the basic information on respirators in Appendix D of this section to employees who wear respirators when not required by this section or by the employer to do so.

On or about March 7, 2023, the City of Deming Gas Department did not provide effective training to employees required to use full face respirators when gas leaks are detected. Employees are exposed to respiratory hazards while responding to gas leak calls.

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Company Name: City of Deming/Gas Department
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Citation 1 Item 2 a Type of Violation: **Serious**

11.5.2.9 NMAC

29 CFR 1910.1200(e)(1): Employers shall develop, implement, and maintain at each workplace, a written hazard communication program which at least describes how the criteria specified in paragraphs (f), (g), and (h) of this section for labels and other forms of warning, safety data sheets, and employee information and training will be met, and which also includes the following:

On or about March 7, 2023, the City of Deming Gas Department did not develop and implement a written hazard communication program for employees working with natural gas, cutting oil, oxygen and acetylene in the gas maintenance shop and while responding to gas leaks. Employees are exposed to respiratory hazards and other various chemical hazards while working in the gas department maintenance shop and responding to gas leak reports as they come in.

PROOF OF ABATEMENT:

Date Corrected:
Describe Corrective Action:

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Proposed Penalty:

September 20, 2023
\$4,800.00

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Citation and Notification of Penalty

Company Name: City of Deming/Gas Department
Inspection Site: 909 W Pine St Deming, NM 88030

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

11.5.2.9 NMAC

29 CFR 1910.1200(g)(1): Chemical manufacturers and importers shall obtain or develop a safety data sheet for each hazardous chemical they produce or import. Employers shall have a safety data sheet in the workplace for each hazardous chemical which they use.

On or about March 7, 2023, the City of Deming Gas Department did not have safety data sheets for chemicals used in the maintenance shop readily available and were blocked by two large cabinets. Employees work with cutting oil, oxygen and acetylene for some welding as needed and respond to gas leak reports. Employees are exposed to respiratory hazards and other various chemical hazards while working in the maintenance shop and out on the field attending gas leaks.

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

11.5.2.9 NMAC

29 CFR 1910.1200(h)(1): Employers shall provide employees with effective information and training on hazardous chemicals in their work area at the time of their initial assignment, and whenever a new chemical hazard the employees have not previously been trained about is introduced into their work area. Information and training may be designed to cover categories of hazards (e.g., flammability, carcinogenicity) or specific chemicals. Chemical-specific information must always be available through labels and safety data sheets.

On or about March 7, 2023, the City of Deming Gas Department did not provide effective information and training on hazardous chemicals used in the Gas Department such as cutting oil, oxygen, acetylene, and natural gas and did not provide any training records for employees responding to gas leak reports. Affected employees are exposed to respiratory hazards and other various chemical hazards while working in the gas maintenance shop and responding to gas leak reports as needed.

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Proposed Penalty:

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\$0.00

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Citation and Notification of Penalty

Company Name: City of Deming/Gas Department
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Citation 2 Item 1 Type of Violation: **Other-than-Serious**

11.5.2.9 NMAC

29 CFR 1910.157(e)(2): Portable extinguishers or hose used in lieu thereof under paragraph (d)(3) of this section shall be visually inspected monthly.

On or about March 7, 2023, the City of Deming Gas Department did not conduct the monthly inspection of portable fire extinguishers located in well #1 pump house, inventory building break room, inventory building S wall, inventory building E wall, and in the wastewater office break room S exit. Employees are potentially exposed to fire hazards during a fire emergency due to the availability of uninspected portable fire extinguishers that may lead to malfunction.

PROOF OF ABATEMENT:

Date Corrected:
Describe Corrective Action:

Date By Which Violation Must be Abated:
Proposed Penalty:

September 20, 2023
\$0.00

I attest that all corrective actions contained in this document are accurate and affected employees have been informed of the abatement.

Signature

Date

State of New Mexico
Environment Department
Occupational Health and Safety Bureau



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Pursuant to the New Mexico Environment Department Delegation Order dated March 24, 2023, the Cabinet Secretary has delegated the authority to issue this Citation and Notification of Penalty to the Occupational Health and Safety Bureau Chief.

A handwritten signature in blue ink, appearing to read "R. Genoway", is written over a horizontal line.

Robert Genoway, Bureau Chief

State of New Mexico
Environment Department
Occupational Health and Safety Bureau
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Phone: (505) 476-8700 Fax: (505) 476-8734



INVOICE

Company Name: City of Deming/Gas Department

Inspection Site: 909 W Pine St Deming, NM 88030

Issuance Date: 08/24/2023

Summary of Penalties for Inspection Number: 1655101

Citation 1 Item 1a, Serious	\$4,800.00
Citation 1 Item 1b, Serious	\$0.00
Citation 1 Item 1c, Serious	\$0.00
Citation 1 Item 1d, Serious	\$0.00
Citation 1 Item 2a, Serious	\$4,800.00
Citation 1 Item 2b, Serious	\$0.00
Citation 1 Item 2c, Serious	\$0.00
Citation 2 Item 1, Other-than-Serious	\$0.00

TOTAL PROPOSED PENALTIES:

\$9,600.00

Please remit payment promptly to this office for the total amount of the uncontested penalties summarized above. Make your check or money order payable to: Environment Department, Occupational Health and Safety Bureau. Please indicate OHSB's Inspection Number (indicated above) on the remittance.

OHSB 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.



Robert Genoway, Bureau Chief

8/24/2023

Date