

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



Citation and Notification of Penalty

To:
 Young Guns Construction, LLC
 AND ITS SUCCESSORS
 3485 Hwy 47
 Los Lunas, NM 87031

Inspection Number: 1668708
Inspection Date(s): 05/04/2023-05/04/2023
Issuance Date: 10/13/2023

Inspection Site:
 8901 Jefferson NE
 Albuquerque, NM 87110

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



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Inspection #: 1668708
Inspection Date(s): 05/04/2023-05/04/2023
Issuance Date: 10/13/2023

Citation and Notification of Penalty

Company Name: Young Guns Construction, LLC
Inspection Site: 8901 Jefferson NE Albuquerque, NM 87110

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

NMAC 11.5.3.9

29 CFR 1926.451(a)(6):Scaffolds shall be designed by a qualified person and shall be constructed and loaded in accordance with that design. Non-mandatory Appendix A to this subpart contains examples of criteria that will enable an employer to comply with paragraph (a) of this section.

On or about May 4, 2023, Young Gun Construction (YGC) did not have a qualified person constructing the scaffolding on building #5 and building #6. Employees were exposed to hazards related to falling scaffolding.

PROOF OF ABATEMENT:

Date Corrected:
Describe Corrective Action:

Date By Which Violation Must be Abated:
Proposed Penalty:

November 08, 2023
\$3,956.00

State of New Mexico
Environment Department
Occupational Health and Safety Bureau



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Inspection #: 1668708
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Citation 1 Item 1 b Type of Violation: **Serious**

NMAC 11.5.3.9

29 CFR 1926.451(b)(1): Each platform on all working levels of scaffolds shall be fully planked or decked between the front uprights and the guardrail supports as follows:

(b)(1)(i): Each platform unit (e.g., scaffold plank, fabricated plank, fabricated deck, or fabricated platform) shall be installed so that the space between adjacent units and the space between the platform and the uprights is no more than 1 inch (2.5 cm) wide, except where the employer can demonstrate that a wider space is necessary (for example, to fit around uprights when side brackets are used to extend the width of the platform).

On or about May 4, 2023, Young Gun Construction (YGC) employees were working on scaffolding adjacent to buildings #5 and #6 that were not fully planked or decked.

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November 08, 2023
\$0.00

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

NMAC 11.5.3.9

29 CFR 1926.451(c)(2): Supported scaffold poles, legs, posts, frames, and uprights shall bear on base plates and mud sills or other adequate firm foundation.

On or about May 4, 2023 , employee was exposed to fall hazards while working on building #5 and #6 using a scaffold that was not properly constructed with base plates and mud sills or other adequate firm foundation.

PROOF OF ABATEMENT:

<p>Date Corrected:</p> <p>Describe Corrective Action:</p>
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Date By Which Violation Must be Abated:
Proposed Penalty:

November 08, 2023
\$0.00

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

NMAC 11.5.3.9

29 CFR 1926.451(e)(1): When scaffold platforms are more than 2 feet (0.6 m) above or below a point of access, portable ladders, hook-on ladders, attachable ladders, stair towers (scaffold stairways/towers), stairway-type ladders (such as ladder stands), ramps, walkways, integral prefabricated scaffold access, or direct access from another scaffold, structure, personnel hoist, or similar surface shall be used. Crossbraces shall not be used as a means of access.

On or about May 18, 2023, an employee working on building #5 and #6 did not have a portable ladder or a hook-on ladder or other means to directly access the frame of the scaffolding. The employee was exposed to fall hazards when exiting the scaffold without a point of access and instead was climbing down the scaffolding using the crossbraces.

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

NMAC 11.5.3.9

29 CFR 1926.451(g)(1): Each employee on a scaffold more than 10 feet (3.1 m) above a lower level shall be protected from falling to that lower level. Paragraphs (g)(1)(i) through (vii) of this section establish the types of fall protection to be provided to the employees on each type of scaffold. Paragraph (g)(2) of this section addresses fall protection for scaffold erectors and dismantlers.

On or about May 4, 2023, an employee working on the roof of building #5 without fall protection was exposed to fall hazards as he was prepping exterior walls with chicken wire.

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Citation and Notification of Penalty

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Inspection Site: 8901 Jefferson NE Albuquerque, NM 87110

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

NMAC 11.5.3.9

29 CFR 1926.451(h)(4)(ii): At least three and one-half inches (9 cm) high from the top edge of the toeboard to the level of the walking/working surface. Toeboards shall be securely fastened in place at the outermost edge of the platform and have not more than 1/4 inch (0.7 cm) clearance above the walking/working surface. Toeboards shall be solid or with openings not over one inch (2.5 cm) in the greatest dimension.

[44 FR 8577, Feb. 9, 1979; 44 FR 20940, Apr. 6, 1979, as amended at 58 FR 35182 and 35310, June 30, 1993; 61 FR 46025, Aug. 30 1996; 61 FR 59831, Nov. 25, 1996]

On or about May 4, 2023, an employee was working on building #5 using a scaffold that was constructed without toeboards. Employees at lower levels were exposed to struck-by hazard.

PROOF OF ABATEMENT:

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Date By Which Violation Must be Abated:
Proposed Penalty:

November 08, 2023
\$0.00

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Company Name: Young Guns Construction, LLC
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Citation 1 Item 2 Type of Violation: **Serious**

NMAC 11.5.3.9

29 CFR 1926.452(c)(2): Frames and panels shall be braced by cross, horizontal, diagonal braces, or combination thereof, which secure vertical members together laterally. The cross braces shall be of such length as will automatically square and align vertical members so that the erected scaffold is always plumb, level, and square. All brace connections shall be secured.

On or before May 4, 2023, employees of Young Gun Construction were exposed to fall hazards while working on scaffolding adjacent to buildings #5 and #6. The scaffolding did not have cross braces or horizontal, or diagonal braces (guard-rails) installed.

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November 08, 2023
\$3,956.00

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Company Name: Young Guns Construction, LLC
Inspection Site: 8901 Jefferson NE Albuquerque, NM 87110

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

NMAC 11.5.3.9
29 CFR 1926.1053(b)(13): The top or top step of a stepladder shall not be used as a step.

On or about May 4, 2023, an employee working on building #5 was straddled over the top step of a stepladder.

PROOF OF ABATEMENT:

Date Corrected:
Describe Corrective Action:

Date By Which Violation Must be Abated:
Proposed Penalty:

November 08, 2023
\$2,400.00

State of New Mexico
Environment Department
Occupational Health and Safety Bureau



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Inspection #: 1668708
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Issuance Date: 10/13/2023

Citation and Notification of Penalty

Company Name: Young Guns Construction, LLC
Inspection Site: 8901 Jefferson NE Albuquerque, NM 87110

Citation 2 Item 1 Type of Violation: **Other-than-Serious**

NMAC 11.5.3.9

29 CFR 1926.454(a): The employer shall have each employee who performs work while on a scaffold trained by a person qualified in the subject matter to recognize the hazards associated with the type of scaffold being used and to understand the procedures to control or minimize those hazards. The training shall include the following areas, as applicable: 454(a)(1)-(5)

On or before May 4, 2023, Young Gun Construction failed to provide principles of scaffolding training to their employees thereby exposing them to fall hazards as they perform work on scaffolding.

PROOF OF ABATEMENT:

Date Corrected:
Describe Corrective Action:

Date By Which Violation Must be Abated:
Proposed Penalty:

November 08, 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
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Occupational Health and Safety Bureau



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Citation and Notification of Penalty

Company Name: Young Guns Construction, LLC
Inspection Site: 8901 Jefferson NE Albuquerque, NM 87110

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.

DocuSigned by:

Gregory Marquez

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Gregory J. Marquez, Program Manager

State of New Mexico
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INVOICE

Company Name: Young Guns Construction, LLC

Inspection Site: 8901 Jefferson NE Albuquerque, NM 87110

Issuance Date: 10/13/2023

Summary of Penalties for Inspection Number: 1668708

Citation 1 Item 1a, Serious	\$3,956.00
Citation 1 Item 1b, Serious	\$0.00
Citation 1 Item 1c, Serious	\$0.00
Citation 1 Item 1d, Serious	\$0.00
Citation 1 Item 1e, Serious	\$0.00
Citation 1 Item 1f, Serious	\$0.00
Citation 1 Item 2, Serious	\$3,956.00
Citation 1 Item 3, Serious	\$2,400.00
Citation 2 Item 1, Other-than-Serious	\$0.00

TOTAL PROPOSED PENALTIES: **\$10,312.00**

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.

DocuSigned by:
Gregory Marquez
309D20B21A80461...

Gregory J. Marquez, Program Manager

10/13/2023

Date