



State of Utah
GARY R HERBERT
Governor
SPENCER J. COX
Lieutenant Governor

Labor Commission
SHERRIE HAYASHI
Commissioner

December 28, 2015

RYAN LOUGHLIN
AL JAZEERA AMERICA
1600 Q ST NW APT
WASHINGTON DC 2009

RE: John Kuhni & Sons Inc.
Utah OSHA Citation No.: 314193939 / 312408974 / 310456827

Dear Mr. Loughlin:

We have received your request for Utah OSHA records made pursuant to the Utah Government Records Access and Management Act ("GRAMA") and dated December 16, 2015. In response to your request, I have enclosed all documents that have been classified by the Utah Labor Commission as "public" under GRAMA. All other documents that may be contained in Utah OSHA compliance files have been classified by the Commission as "protected" under GRAMA.

Inspection No. 310456827 did not result in a citation being issued. Inspection No. 314193939 appears to have been entered incorrectly into our database and therefore incorrectly in the OSHA database, because when the file was pulled it was not for John Kuhni & Sons.

In order to release these records, the Labor Commission requires either 1) a notarized release from the subject(s) of the records obtained pursuant to Utah Code Ann. §63G-2-202(1)(d), or 2) a court order obtained pursuant to the provisions of Utah Code Ann. §63G-2-202(7). You may appeal this determination to the Commissioner of the Utah Labor Commission within 30 days of the date of this letter in accordance with Utah Code Ann. §63G-2-401. Feel free to call me at (801)530-6953 if I can provide further assistance.

Very truly yours,

Sara Danielson
Utah Labor Commission

Enclosures

Utah Labor Commission

Occupational Safety and Health Division
160 East 300 South
P O Box 146650
Salt Lake City, UT 84114-6650
Phone: (801)530-6901 FAX: (801)530-7606



Citation and Notification of Penalty

To:
John Kuhni & Sons Inc

and its successors

P O Box 15
Nephi, UT 84648

Inspection Site:
6480 W Mills Rd
Levan, UT 84639

Inspection Number: 312408974
Inspection Date(s): 05/04/2009 - 05/04/2009

Issuance Date: 06/15/2009

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 1973. The penalty(ies) listed herein is (are) based on these violation(s). You must abate the violation(s) referred to in this Citation by the dates listed and pay the penalties proposed, unless within 30 calendar days from your receipt of this Citation and Notification of Penalty you mail a notice of contest in accordance with the following section, "Right to Contest". Please refer to the enclosed booklet 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 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, if you wish to have such a conference you may request one with the Compliance Manager during the 30 calendar day contest period. 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 Adjudication Division within 30 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 page 5 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.

Penalty Payment - Penalties are due within 30 working days of receipt of this notification unless contested. Make your check or money order payable to "Utah Labor Commission". Please indicate the Inspection Number on the remittance.

UOSH 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 each violation which you do not contest, you are required by 29 CFR 1903.19 to submit an Abatement Certification to the Compliance Manager at the address identified above. The certification must be sent by you within 30 calendar days of receipt of citation. For **Willful, Repeat and Serious** violations, documents (example: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as **Other Than Serious** and the citations states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

For each citation where you do contest the violation or the abatement date, your obligation to submit abatement certification and any documents is delayed until the contest has expired. See 29 CFR 1903.19 for more information.

FOLLOW-UP INSPECTION AND FAILURE TO ABATE

A follow-up inspection may be conducted to verify that you have:

- Posted the citation as required, and
- Corrected the violations as required in the citation.

The Act provides for additional penalties for failure to post the citations and for failure to correct violations. Also, you have a continuing responsibility to comply with the Act. Any new violations discovered during a follow-up inspection will be cited. In order to achieve abatement by the date set forth in the citations, abatement efforts must be promptly initiated. Providing false information on your efforts to abate is punishable under the Act.

All abatement verification documents must contain the following information: 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission

relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by 29 CFR 1903.19 to be sent to UOSH, also be posted at the location where the violation appeared and the corrective action took place.

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 Utah Occupational Safety and Health Division of the Labor Commission and to the U.S. Department of Labor Region 8 Area Office.

OTHER EMPLOYER RIGHTS AND RESPONSIBILITIES

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. To formally contest the citation employers must file a written notice of contest with the Adjudicative Division within 30 days of receipt of the Citation of Proposed Penalties as follows: the notice may be mailed to The Adjudicative Division, Utah Labor Commission, P.O. Box 146615, Salt Lake City, UT 84114-6615 or delivered to the Adjudicative Division located in the Heber Wells Building, 160 East 300 South, 3rd Floor, Salt Lake City, Utah. The written notice of contest must comply with Utah Code Ann. 63-46b-3(3)(a). The Labor Commission will then provide an adjudicative hearing. Unless you inform the Adjudication Division in writing that you intend to contest the citation(s) and/or proposed penalty(ies) within 30 calendar days after receipt, the citation(s) and the proposed penalty(ies) will become a final order of the Utah Labor Commission and may not be reviewed by any court or agency.

THE CONTEST PROCESS

If the Notice of Contest has been filed within the required thirty calendar days to the Labor Commission Adjudication Division, at P O Box 146615, Salt Lake City, UT 84114-6650, the case will be assigned to an administrative law judge. A hearing will be scheduled. Both you and your employees may participate in the hearing.

Representation: If the employer is a corporate entity they must be represented by an attorney. Only an unincorporated individual can represent themselves at a formal hearing.

The hearing will involve all of the elements of a trial, including examination and cross-examination of witnesses. The administrative law judge may affirm, modify, or eliminate any contested item of the citation, or penalty. Once the administrative law judge has ruled, any party to the case may request a further review by the Labor Commission. The ruling of the Commission may be appealed to the Utah Court of Appeals.

PETITION FOR MODIFICATION OF ABATEMENT

Abatement dates are assigned on the basis of the best available information at the time the citation is issued. When uncontrollable events or other circumstances prevent meeting a date, a petition for modification of abatement may be appropriate. This procedure is used when the thirty calendar day contest period has expired and you have not contested the citation. It may be used when you have not been able to meet the abatement requirements of the

citation due to circumstances beyond your control. If you have made a good faith effort to comply, you may file a petition of modification of abatement with the UOSH Compliance Manager. A petition for modification of abatement date must be in writing. It must include all of the following information.

1. Steps you have taken so far in an effort to achieve compliance and dates of those steps.
2. Additional time period you need to comply
3. Why you need additional time.
4. Interim steps you are taking to safeguard your employees against the cited hazard during the abatement period.
5. A statement that the petition for extension has been posted, and, if appropriate, served on an authorized representative of affected employees. The petition must remain posted for ten days, during which your employees may file an objection.

Further information on petitions of modification of abatement dates may be obtained from the UOSH Administrator.

TYPE OF VIOLATIONS

WILLFUL - violation where either: (1) The employer committed an intentional and knowing violation of the Act or (2) though the employer was not intentionally violating the Act, he or she was aware that hazardous conditions existed and acted in careless disregard of employer responsibilities under the Act.

SERIOUS - A violation where an accident or illness could occur which would most likely result in death or serious physical harm, unless the employer did not know or could not have known of the violation.

OTHER - A violation that has a direct relationship to the safety and health, but which is not a serious violation.

REPEATED - A violation of the UOSH Rules/Standards for which an employer has been previously cited and which has become a final order.

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 UOSH Division at the address shown above and postmarked within 30 working days (excluding weekends and 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 UOSH's inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 7 calendar days after the Citation Issuance Date. 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 UOSH to discuss the citation(s) issued on 06/15/2009. The conference will be held at the UOSH office located at 160 East 300 South, P O Box 146650, Salt Lake City, UT, 84114-6650 on _____ at _____.

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

Citation and Notification of Penalty

Company Name: John Kuhni & Sons Inc
Inspection Site: 6480 W Mills Rd, Levan, UT 84639

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

29 CFR 1910.178(l)(1)(i)

The employer shall ensure that each powered industrial truck operator is competent to operate a powered industrial truck safely, as demonstrated by the successful completion of the training and evaluation specified in this paragraph (l).

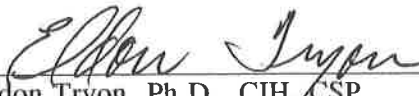
Note:

1910.178(l)(1)(ii) Prior to permitting an employee to operate a powered industrial truck (except for training purposes), the employer shall ensure that each operator has successfully completed the training required by this paragraph (l), except as permitted by paragraph (l)(5).

(A) On 05/04/09 a Compliance Officer conducted a complaint investigation at the job site located at 6480 W Mills Rd Levan, UT 84639. As part of this inspection the Compliance Officer observed employee operating powered industrial truck without the necessary training and certification to ensure the employee is competent to operate the forklift. Prior to permitting an employee to operate a powered industrial truck the employer did not ensure that each operator has successfully completed the training as required. Through employer and employee interviews the compliance officer determined employee was operating forklift without the necessary training and certification. This exposed employees of John Kuhni Sons to potential injury from inadequate training and certification in the safe operation of powered industrial truck.

Date By Which Violation Must be Abated:
Proposed Penalty:

07/03/2009
\$ 1225.00



Eldon Tryon, Ph.D., CIH, CSP
Compliance Manager

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.