

U.S. Department of Labor
Occupational Safety and Health Administration
2300 Main Street
Suite 168
Kansas City, MO 64108
Phone: 816-483-9531 Fax: 816-483-9724



Citation and Notification of Penalty

To:
HEARTLAND MIDWEST, LLC
15795 South Mahaffie
Olathe, KS 66062

Inspection Number: 894758
Inspection Date(s): 02/20/2013 – 08/15/2013
Issuance Date: 08/15/2013

Inspection Site:
910 W. 48th Street
Kansas City, MO 64112

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. 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.

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 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 08/15/2013. The conference will be held by telephone or at the OSHA office located at 2300 Main Street, Suite 168, Kansas City, MO 64108 on _____ at

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

CERTIFICATION OF CORRECTIVE ACTION WORKSHEET

Inspection Number: 894758

Company Name: HEARTLAND MIDWEST, LLC
Inspection Site: 910 W. 48th Street, Kansas City, MO 64112
Issuance Date: 08/15/2013

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, 2300 Main Street, Suite 168, Kansas City, MO 64108**

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: HEARTLAND MIDWEST, LLC
Inspection Site: 910 W. 48th Street, Kansas City, MO 64112

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

29 CFR 1926.20(b)(4): The employer did not ensure that each employee required to operate equipment and machinery was qualified by training or experience:

(a) On or about February 19, 2013, at a job site located at or near 910 W. 48th Street in Kansas City, MO, an employee who was not qualified by training or experience was allowed to operate a Vermeer Horizontal Directional Drilling (HDD) rig. The equipment manufacturer requires all operators to read and understand their Operating Manual for the machine and they require that a copy of the Operating Manual be stored on the machine at all times for reference. They also provide customers (either directly or through free Internet downloads) with substantial training materials including video tutorials, guidebooks and operator qualification tests. The rig operator could neither speak nor read English. The manufacturer makes a copy of their Operating Manual and training materials available in Spanish, but none were made available to the operator. For example, the rig operator did not know how to test the electrical strike alert system prior to starting a bore. Also, the employer relied solely on on-the-job training and, contrary to policies in their own Safety Manual, could produce no operator training or certification records.

Abatement certification is required for this Item; use the CERTIFICATION OF CORRECTIVE ACTION WORKSHEET for this purpose.

NOTE: IN ADDITION TO ABATEMENT CERTIFICATION, THE EMPLOYER IS REQUIRED TO SUBMIT ABATEMENT DOCUMENTATION FOR THIS ITEM. FAILURE TO COMPLY WILL RESULT IN AN ADDITIONAL PENALTY OF \$1,000.00 IN ACCORDANCE WITH 29 CFR 1903.19.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:	09/06/2013
Proposed Penalty:	\$7000.00

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: HEARTLAND MIDWEST, LLC
Inspection Site: 910 W. 48th Street, Kansas City, MO 64112

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

29 CFR 1926.21(b)(2): The employer did not instruct each employee in the recognition and avoidance of unsafe conditions and the regulations applicable to his/her environment to control or eliminate any hazards or other exposure to illness or injury:

(a) On or about February 19th, 2013, at a work site located at or near 910 W 48th Street in Kansas City, MO, employees were exposed to serious injuries (e.g., mechanical entanglement with a rotating boring rod and/or bit, electrocution hazards, and possible fire or explosion hazards) due to not having been adequately trained in recognizing and mitigating the hazards encountered while performing their jobs. The training deficiencies include, but are not necessarily limited to, the following instances:

- (1) The employer relied on arbitrary and ill-defined hand signals for communications between a Horizontal Directional Drilling machine operator and the employee tracking the progress of the boring rod and boring bit,
- (2) nor had the employer established any method of acknowledging and confirming "message received" between the HDD machine operator and the tracker while they were communicating with hand signals,
- (3) nor had the HDD crew been trained in using the tracking device to check for passive or active interference along the bore path to ensure the accuracy and validity of the information displayed on the tracking device and to ensure accurate knowledge of the location of the boring rod and boring bit at all times during the progress of the drilling operation,
- (4) nor had the HDD crew been trained in the need to wear specialized personal protective equipment (i.e., dielectric boots) while on or near the HDD machine, the bore rod, or anywhere along the intended bore path which passed within a foot of a pair of buried electrical utility cables.

Abatement certification is required for this Item; use the CERTIFICATION OF CORRECTIVE ACTION WORKSHEET for this purpose.

NOTE: IN ADDITION TO ABATEMENT CERTIFICATION, THE EMPLOYER IS REQUIRED TO SUBMIT ABATEMENT DOCUMENTATION FOR THIS ITEM. FAILURE TO COMPLY WILL

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: 894758
Inspection Date(s): 02/20/2013 -
Issuance Date: 08/15/2013



Citation and Notification of Penalty

Company Name: HEARTLAND MIDWEST, LLC
Inspection Site: 910 W. 48th Street, Kansas City, MO 64112

RESULT IN AN ADDITIONAL PENALTY OF \$1,000.00 IN ACCORDANCE WITH 29 CFR 1903.19.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:

09/06/2013

Proposed Penalty:

\$7000.00

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: HEARTLAND MIDWEST, LLC
Inspection Site: 910 W. 48th Street, Kansas City, MO 64112

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

29 CFR 1926.151(a)(3): Smoking was not prohibited at or in the vicinity of operations which constituted a fire hazard:

(a) On or about February 19, 2013, at a work site located at or near 910 W. 48th Street in Kansas City, MO, an employee was observed to be smoking in an area with the strong odor of natural gas present. The odor had been caused by the breach of an underground natural gas main during a boring operation which caused an uncontrolled release of natural gas.

Abatement certification is required for this Item; use the CERTIFICATION OF CORRECTIVE ACTION WORKSHEET for this purpose.

NOTE: IN ADDITION TO ABATEMENT CERTIFICATION, THE EMPLOYER IS REQUIRED TO SUBMIT ABATEMENT DOCUMENTATION FOR THIS ITEM. FAILURE TO COMPLY WILL RESULT IN AN ADDITIONAL PENALTY OF \$1,000.00 IN ACCORDANCE WITH 29 CFR 1903.19.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:	09/06/2013
Proposed Penalty:	\$7000.00



Citation and Notification of Penalty

Company Name: HEARTLAND MIDWEST, LLC
Inspection Site: 910 W. 48th Street, Kansas City, MO 64112

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

Section 5(a)(1) of the Occupational Safety and Health Act of 1970: The employer did not provide a place of employment free from recognized hazards that were causing or likely to cause death or serious physical harm to its employees in that its employees were exposed to the hazards of fire, explosion, and electrocution sources that were concealed underground and in the path of a horizontal directional drill's intended bore.

(a) On or about February 19, 2013, at a job site located at or near 910 W. 48th Street in Kansas City, MO, employees performing a horizontal directional drilling operation were exposed to electrical, fire and explosion hazards. The intended horizontal directional drilling bore path was plotted to cross marked utilities. The employees had conducted a non-destructive excavation to expose buried, but clearly marked on the surface, natural gas and electrical utility lines, then failed to continue the excavation to the depth of the intended bore path. The excavation work was stopped after the employees exposed two closely adjacent lines (both later determined to be electrical lines) and not continued on to the depth of the intended bore path which would have revealed the existence of the underlying natural gas main.

On February 19, 2013, the boring operation breached a natural gas main causing an uncontrolled release of natural gas which ultimately resulted in an explosion and fire causing one fatality, multiple serious injuries, and major property damage.

The ultimate responsibility for the abatement of any hazard rests with the employer, given the employer's superior knowledge of the workplace and work processes, but one feasible means of abatement would be to ensure that non-destructive excavations designed to expose underlying utilities being crossed by underground boring operations are continued to at least the depth of the intended bore path so that the boring bit and drill rod can be visually observed traversing the marked utility crossing point(s), and to ensure that the underground utilities are not damaged during the boring process.

Abatement certification is required for this Item; use the CERTIFICATION OF CORRECTIVE ACTION WORKSHEET for this purpose.

NOTE: IN ADDITION TO ABATEMENT CERTIFICATION, THE EMPLOYER IS REQUIRED TO

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: 894758
Inspection Date(s): 02/20/2013 -
Issuance Date: 08/15/2013



Citation and Notification of Penalty

Company Name: HEARTLAND MIDWEST, LLC
Inspection Site: 910 W. 48th Street, Kansas City, MO 64112

SUBMIT ABATEMENT DOCUMENTATION FOR THIS ITEM. FAILURE TO COMPLY WILL RESULT IN AN ADDITIONAL PENALTY OF \$1,000.00 IN ACCORDANCE WITH 29 CFR 1903.19.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:
Proposed Penalty:

09/06/2013
\$70000.00

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: HEARTLAND MIDWEST, LLC
Inspection Site: 910 W. 48th Street, Kansas City, MO 64112

Citation 2 Item 2 Type of Violation: **Willful**

29 CFR 1926.95(c): Personal protective equipment was not of safe design and construction for the work to be performed:

(a) On or about February 19, 2013, at a job site located at or near 910 W. 48th Street in Kansas City, MO, employees were exposed to potential electrical shock and burn hazards while conducting underground horizontal directional drilling operations and crossing a buried electrical utility line. The drilling machine operator, the employee tracking the location of the boring bit, and other drilling crew members were not wearing electrically insulated footwear to protect them from possible electrocution in the event of an electrical utility line strike. The wearing of electrically insulated footwear is mandated by the equipment manufacturers, standard industry safety guidelines, and the employer's own safety manual.

Abatement certification is required for this Item; use the CERTIFICATION OF CORRECTIVE ACTION WORKSHEET for this purpose.

NOTE: IN ADDITION TO ABATEMENT CERTIFICATION, THE EMPLOYER IS REQUIRED TO SUBMIT ABATEMENT DOCUMENTATION FOR THIS ITEM. FAILURE TO COMPLY WILL RESULT IN AN ADDITIONAL PENALTY OF \$1,000.00 IN ACCORDANCE WITH 29 CFR 1903.19.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:
Proposed Penalty:

09/06/2013
\$70000.00

A handwritten signature in cursive script that reads "Barbara Theriot".

Barbara Theriot
Area Director

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
2300 Main Street
Suite 168
Kansas City, MO 64108
Phone: 816-483-9531 Fax: 816-483-9724



INVOICE / DEBT COLLECTION NOTICE

Company Name: HEARTLAND MIDWEST, LLC
Inspection Site: 910 W. 48th Street, Kansas City, MO 64112
Issuance Date: 08/15/2013

Summary of Penalties for Inspection Number	894758
Citation 1, Serious	\$21000.00
Citation 2, Willful	\$140000.00
TOTAL PROPOSED PENALTIES	\$161000.00

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.

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 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.

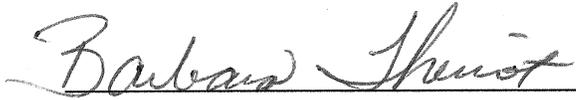
Pursuant to the Debt Collection Act of 1982 (Public Law 97-365) and regulations of the U.S. Department of Labor (29 CFR Part 20), the Occupational Safety and Health Administration is required to assess interest, delinquent charges, and administrative costs for the collection of delinquent penalty debts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

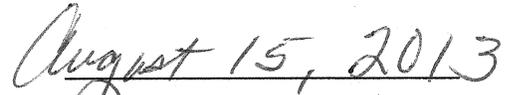
penalty debt amounts not paid within one month (30 calendar days) of the date on which the debt amount becomes due and payable (penalty due date). The current interest rate is one percent (1%). Interest will accrue from the date on which the penalty amounts (as proposed or adjusted) become a final order 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.



Barbara Theriot
Area Director



Date