



Citation and Notification of Penalty

To:
Mega Marts, LLC dba Pick 'N Save
and its successors
12735 West Capitol Drive
Brookfield, WI 53005

Inspection Number: 315120360
Inspection Date(s): 03/21/2011-03/30/2011
Issuance Date: 09/19/2011
Optional Report No.
:

Inspection Site:
12735 West Capitol Drive
Brookfield, WI 53005

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 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. **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 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 decide to request 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. **Therefore, it is suggested that you telephone rather than write.** 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.

When you have scheduled an informal conference, please complete, remove and post the page 4 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 are required by 29 CFR 1903.19 to submit an Abatement Certification to the Area Director of the OSHA office issuing the citation and identified above. The certification must be sent by you within 10 calendar days of the abatement date indicated on the citation. For **Willful** and **Repeat** violations, documents (examples: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as **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.

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 OSHA, 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 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.

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 your inspection will be available 30 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.



Citation and Notification of Penalty

Company Name: Mega Marts, LLC dba Pick 'N Save
Inspection Site: 12735 West Capitol Drive, Brookfield, WI 53005

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

Section 5(a)(1) of the Occupational Safety and Health Act of 1970: The employer did not furnish employment and a place of employment which were free from recognized hazards that were causing or likely to cause death or serious physical harm to employees in that; employees were exposed to fall hazard when working at elevated heights without fall protection.

- (a) On or about March 20, 2011, the Store Director and Grocery Operations Manager failed to ensure that an employee working from the elevated forks of a Raymond Walkie Reach Model RRS30 (stacker powered industrial vehicle) was protected from falling to the lower level by an approved personnel elevating platform. This exposed an employee to fall hazard of approximately 11 feet 11 inches.

Among other methods, the following are feasible and acceptable abatement methods to correct this hazard:

- (1) Follow the American National Standards Institute/Industrial Truck Standards Development Foundation's (ANSI/ITSDF B56.1-2009) Safety Standards for Low Lift and High Lift Trucks, Part II, Section 4.17, Elevating Personnel as applicable.
- (2) Follow the Owner/Operator Manual for the Raymond Walkie Reach Model RRS30, Safety Guideline.
- (3) Use the available engineered platform (which meets ANSI/ITSDF B56.1-2009) for elevating employees.
- (4) Use ladders or portable stairs to access the material which is elevated.
- (5) Use a powered industrial vehicle to retrieve material from the racking and bring it down to the lower level, were employees would not be exposed to a fall hazard.

Certification, and documentation/evidence of abatement is required.

Certification of abatement is required by 29 CFR Part 1903 and is to be submitted within ten (10) calendar days after the abatement date.

Date By Which Violation Must be Abated:	09/29/2011
Proposed Penalty:	\$ 63000.00

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: Mega Marts, LLC dba Pick 'N Save
Inspection Site: 12735 West Capitol Drive, Brookfield, WI 53005

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

29 CFR 1910.178(l): Operators were not trained in the safe operation of powered industrial trucks:

- (a) The employer failed to ensure that each employee operating the Raymond Walkie Reach Model RRS30 and the Crown Electric Pallet Jack Model PW3520-60 were trained on the limitations, capacities, travel, and operation of the powered industrial vehicles. This exposed the employees, operating the powered industrial vehicles and the employees working in the area where they are being used, to struck-by and crushing hazards.

Certification, and documentation/evidence of abatement is required.

Certification of abatement is required by 29 CFR Part 1903 and is to be submitted within ten (10) calendar days after the abatement date.

Date By Which Violation Must be Abated:	09/23/2011
Proposed Penalty:	\$ 63000.00


George Yoksas
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
310 West Wisconsin Avenue, Suite 1180
Milwaukee, WI 53203
Phone: (414)297-3315 FAX: (414)297-4299



INVOICE/ DEBT COLLECTION NOTICE

Company Name: Mega Marts, LLC dba Pick 'N Save
Inspection Site: 12735 West Capitol Drive, Brookfield, WI 53005
Issuance Date: 09/19/2011

Summary of Penalties for Inspection Number 315120360

Citation 1, Willful	= \$ 126000.00
TOTAL PROPOSED PENALTIES	= \$ 126000.00

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 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.

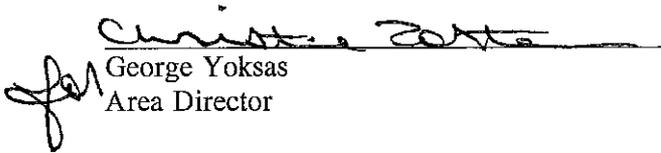
Pursuant to the Debt Collection Act of 1982 (Public Law 97-365) and regulations of the U.S. Department of Labor (29 CFR Part 20), the Occupational Safety and Health Administration is required to assess interest, delinquent charges, and administrative costs for the collection of delinquent penalty debts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


George Yoksas
Area Director

9/19/11
Date



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with OSHA to discuss the citation(s) issued on 09/19/2011. The conference will be held at the OSHA office located at 310 West Wisconsin Avenue, Suite 1180, Milwaukee, WI, 53203 on _____ at _____. Employees and/or representatives of employees have a right to attend an informal conference.