

U.S. Department of Labor

Occupational Safety and Health Administration
Houston South Area Office
17625 El Camino Real, Suite 400
Houston, TX 77058
Phone: (281)286-0583 FAX: (281)286-6352



Citation and Notification of Penalty

To:
Texas Barge & Boat Inc

and its successors
4115 E Floodgate Rd.
Freeport, TX 77541

Inspection Site:
4115 E Floodgate Rd
Freeport, TX 77541

Inspection Number: 312928195
Inspection Date(s): 04/05/2011 - 04/05/2011

Issuance Date: 09/29/2011

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 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 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 violations which you do not contest, you should notify the U.S. Department of Labor Area Office promptly by letter that you have taken appropriate corrective action within the time frame set forth on this Citation. Please inform the Area Office in writing of the abatement steps you have taken and of their dates, together with adequate supporting documentation, e.g., drawings or photographs of corrected conditions, purchase/work orders related to abatement actions, air sampling results, etc. (Please see attached "Corrective Action Verification.")

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.

Corrective **Action** Verification

Dear Sir:

OSHA's inspections are intended to result in the abatement/correction of violations of the OSHA Act. To verify that this has been accomplished, Section 1903.19 requires that an employer certify to OSHA, within ten (10) days of the final abatement date that each item cited has been corrected.

This abatement certification letter must include the following:

Name of Employer

OSHA Inspection Number

Citation and Item Numbers to which the submission relates

The date each item was abated, specific action taken to abate each violation and appropriate documentation for the action taken. Where appropriate, this documentation should include photographs, work orders, purchase orders, personal protective equipment provided, standard operation procedures, copies of written programs, engineering controls, monitoring data, etc. Adequate supporting documentation may allow us to close the case file. **The lack of adequate documentation could result in** a follow-up inspection.

A statement that affected employees and their representatives have been informed of the abatement actions

A statement that the information submitted is accurate

The signature of the employer or the employer's authorized representative

Following is a sample format that may be used for this submittal:

Name of Employer

<u>Citation Number</u>	<u>Item No. Instance No.</u>	<u>Date Item Abated</u>	<u>Corrective Action Taken</u>
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Date this letter of submission posted _____

I certify that the information submitted is correct.

Employer or Authorized Representative



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with OSHA to discuss the citation(s) issued on _____ 09/29/2011. The conference will be held at the OSHA office located at Houston South Area Office, 17625 El Carnino Real, Suite 400, Houston, TX, 77058 on _____ at _____. Employees and/or representatives of employees have a right to attend an informal conference.



Citation and Notification of Penalty

Company Name: Texas Barge & Boat Inc.
Inspection Site: 4115 E Floodgate Rd., Freeport, TX 77541

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

29 CFR 1910.106(d)(5)(vi)(a): Storage buildings located 50 feet or less from a building or line of adjoining property that may be built upon, the exposing wall shall be a blank wall having a fire-resistance rating of at least 2 hours:

At the site, where the MEK Building which housed flammables was less than fifty feet away from the Tool Room.

Date By Which Violation Must be Abated:	Corrected During Inspection
Proposed Penalty:	\$ 3500.00

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

29 CFR 1910.106(d)(7)(i): Suitable fire control devices were not available where flammable or combustible liquids were stored:

At the MEK building, on April 2, 2011, and at times prior to, where the employer had stored flammable liquids, such as but not limited to diesel, paint thinner, and methyl ethyl ketone. The nearest fire extinguisher was located approximately 98 feet away.

Date By Which Violation Must be Abated:	Corrected During Inspection
Proposed Penalty:	\$ 3500.00



Citation and Notification of Penalty

Company Name: Texas Barge & Boat Inc.
Inspection Site: 4115 E Floodgate Rd., Freeport, TX 77541

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

29 CFR 1910.134(c)(1): The employer did not establish and implement a written respiratory protection program with worksite specific procedures:

- a) At the site, on April 2, 2011, and at times prior to, where the employer did not implement a written respiratory protection program with specific worksite procedures prior to requiring employees to wear respirators while performing cutting activities inside of PPG Tank Barge #214.
- b) At the site, on April 2, 2011, and at times prior to, where the employer did not implement a written respiratory protection program with specific worksite procedures prior to requiring employees to wear supplied air respirators while performing abrasive blasting activities on PPG Tank Barge #216.

Date By Which Violation Must be Abated: 11/01/2011
Proposed Penalty: \$ 4900.00



Citation and Notification of Penalty

Company Name: Texas Barge & Boat Inc.
Inspection Site: 4115 E Floodgate Rd., Freeport, TX 77541

The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for illness.

Citation 1 Item 4a Type of Violation: **Serious**

29 CFR 1910.134(d)(1)(ii): 'She employer did not select a NIOSH-certified respirator:

At the site, where an employee used 3M Organic Vapor/Acid Gas Cartridges, series #6003/07047* that had a SAS Safety Corp 8615 N95 particulate respirator taped on top of the respirator cartridges. The modified cartridges for the respirator were not NIOSH approved.

Date By Which Violation Must be Abated: 11/01/2011
Proposed Penalty: \$ 3500.00

Citation 1 Item 4b Type of Violation: **Serious**

29 CFR 1910.134(d)(3)(iii)(B)(2): The employer did not implement a change out schedule for canisters and cartridges that is based on information or data that will ensure that canisters and cartridges are changed before the end of their service life:

At the site, where the employees were using 3M half-face respirators, model #6300/07026 with 3M Organic Vapor/Acid Gas Cartridges, series #6003/07047* while performing cutting activities inside of PPG 'Sank Barge #214. There was no cartridge change schedule to notify employees to change their cartridges prior to the end-of-service life.

Date By Which Violation Must be Abated: 11/01/2011



Citation and Notification of Penalty

Company Name: Texas Barge & Boat Inc.
Inspection Site: 4115 E Floodgate Kd., Freeport, TX 77541

Citation 1 Item 4c Type of Violation: **Serious**

29 CFR 1910.134(j): The employer did not ensure that all filters, cartridges and canisters used in the workplace were labeled and color coded with the NIOSH approval label and that the label was not removed and remained legible:

At the site, where an employee used a N95 particulate respirator that was taped on top of a respirator cartridge. The respirator cartridge label was covered and did not have a legible NIOSH approved label.

Date By Which Violation Must be Abated: 11/01/2011

Citation 1 Item 5 Type of Violation: **Serious**

29 CFR 1910.134(e)(1): The employer did not 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:

- a) At the site, where employees were required to wear 3M half-face respirators, model #6300/07026 with 3M 2091 Particulate Filters while performing welding and cutting tasks on ship barges and vessels were not given a medical evaluation.
- b) At the site, where employees were required to wear 3M half-face respirators, model #6300/07026 with 3M Organic Vapor/Acid Gas Cartridges while performing welding and cutting tasks on ship barges and vessels were not given a medical evaluation.

Date By Which Violation Must be Abated: 11/01/2011
Proposed Penalty: \$ 4900.00



Citation and Notification of Penalty

Company Name: Texas Barge & Boat Inc.
Inspection Site: 4115 E Floodgate Rd., Freeport, TX 77541

Citation I Item 6 Type of Violation: **Serious**

29 CFR 1910.134(f)(2): The employer did not ensure that an employee using a tight-fitting face-piece respirator was fit tested prior to initial use of the respirator, whenever a different respirator facepiece (size, style, model or make) was used, and at least annually thereafter:

- a) At the site, where employees were required to wear 3M half-face respirators, model #6300/07026 with 3M 2091 Particulate Filters while performing welding and cutting tasks on ship barges/vessels without being fit tested prior to respirator use.
- b) At the site, where employees were required to wear 3M half-face respirators, model #6300/07026 with 3M Organic Vapor/Acid Gas Cartridges while performing welding and cutting tasks on barges/vessels without being fit tested prior to respirator use.

Date By Which Violation Must be Abated: 11/01/2011
Proposed Penalty: \$ 3500.00



Citation and Notification of Penalty

Company Name: Texas Barge & Boat Inc.
Inspection Site: 4115 E Floodgate Rd., Freeport, TX 77541

Citation 1 Item 7 Type of Violation: **Serious**

29 CFR 1910.134(h)(2)(i): Respirators were not stored to protect them from damage, contamination, dust, sunlight, extreme temperatures, excessive moisture, and damaging chemicals and were not packed or stored to prevent deformation of the facepiece and exhalation valve:

- a) At the site, where employees were storing their 3M half-face respirators, model #6300/07026 in their personal vehicles. The respirators were used by employees performing welding and cutting tasks on ship barges/vessels.
- b) At the site, where an employee stored his 3M half-face respirators, model #6300/07026 in the building, on the east wall, where paint thinner and MEK were reclaimed. The respirator was used by an employee operating the reclaiming machine.

Date By Which Violation Must be Abated: 11/01/2011
Proposed Penalty: \$ 3500.00



Citation and Notification of Penalty

Company Name: Texas Barge & Boat Inc.
Inspection Site: 4115 E Floodgate Rd., Freeport, TX 77541

The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for illness.

Citation 1 Item 8a Type of Violation: **Serious**

29 CFR 1910.134(i)(1)(ii): The employer did not ensure that the compressed breathing air met the requirements for Grade D breathing air described in ANSI/Compressed Gas Association Commodity Specification for Air, G-7.1-1989:

At the site, where employees who were performing abrasive blasting activities on a barge were breathing compressed air that wits trot grade D breathing air as specified in ANSI/Compressed Gas Association Commodity Specification for Air, G-7.1-1989. The air was obtained from an Ingersoll Rand Air Compressor, model #750.

Date By Which Violation Must bc Abated: 11/01/2011
Proposed Penalty: \$ 4900.00

Citation 1 Item 8b Type of Violation: **Serious**

29 CFK 1910.134(i)(7): Oil lubricated compressor(s) used to supply breathing air did not have a high-temperature or carbon monoxide alarm(s) or both:

At the site, where the employer did not ensure that Ingersoll Rand Air Compressor was not equipped with a high-temperature or carbon monoxide alarm while employees were performing sand blasting activities on tank barge PPG #216.

Date By Which Violation Must be Abated: 11/01/2011



Citation and Notification of Penalty

Company Name: Texas Barge & Boat Inc.
Inspection Site: 4115 E Floodgate Kd., Freeport, TX 77541

Citation 1 Item 9 Type of Violation. **Serious**

29 CFR 1910.134(k)(1): The employer did not ensure that each employee could demonstrate knowledge as required in paragraphs (k)(1)(i)(vii) of this section:

At the site, where an employees are required to wear respirators. Employees used respirator cartridges that had a N95 respirator filter taped on top of the cartridge while performing cutting activities inside of PPG Tank Barge #214, employees stored respirators in cars and out in the open, and employees used air-line respirators without the proper air supply.

Date By Which Violation Must be Abated: 11/01/2011
Proposed Penalty: \$ 4900.00

Citation 1 Item 10 Type of Violation: **Serious**

29 CFR 1910.1200(e)(1)(i): The written hazard communication program did not include a list of the hazardous chemicals known to be present using an identity that was referenced on the appropriate material safety data sheet: az

At the site, where the employer had developed a hazardous chemical inventory list that was not complete. The employer did not include Chemtane on the hazardous chemical inventory list.

Date By Which Violation Must be Abated: 11/01/2011
Proposed Penalty: \$ 3500.00



Citation and Notification of Penalty

Company Name: Texas Barge & Boat Inc.
Inspection Site: 4115 E Floodgate Rd., Freeport, TX 77541

Citation 1 Item 11 Type of Violation: **Serious**

29 CFR 1910.1200(g)(8): The employer did not ensure that material safety data sheets (MSDSs) were readily accessible to the employees in their work area during each work shift:

At the site, where the employer did not ensure the MSDSs were readily accessible to employees during their work shift. *The employer maintained the MSDSs in the company's main office and in the cleaning facility office.*

Date By Which Violation Must be Abated: 11/01/2011
Proposed Penalty: \$ 2100.00

The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for illness.

Citation 1 Item 12a Type of Violation: **Serious**

29 CFR 1910.1200(h)(1): The employer did not provide employees with effective information and training on hazardous chemicals in their work area at the time of their *initial* assignment or whenever a new physical or health hazard the employees have not previously been trained about was introduced into their work area.

At the site, on April 2, 2011, and at times prior to, where the employer did not ensure that employees were effectively trained on the hazardous chemicals in their work area.

Date By Which Violation Must be Abated: 11/01/2011
Proposed Penalty: \$ 4900.00



Citation and Notification of Penalty

Company Name: Texas Barge & Boat Inc.
Inspection Site: 4115 E Floodgate Rd., Freeport, TX 77541

Citation I Item 12b Type of Violation: **Serious**

29 CFR 1910.1200(h)(2)(ii): Employees were not informed of any operations in their work area where hazardous chemicals are present:

At the site, where the employer did not ensure that employees were trained on the protective measures, appropriate emergency procedures, and personal protective equipment that are to be used in the event of exposure to Chemtane. Employees used Chemtane to cut steel plates from the *bottom* of tank barge PPG 214.

Date By Which Violation Must be Abated: 11/01/2011

Citation 1 Item 13 Type of Violation: **Serious**

29 CFR 1915.97(b): The employer did not ensure that there were adequate washing facilities for employees engaged in the application of paints or coatings or in other operations where contaminants can, by ingestion or absorption, be detrimental to the health of the employees

At the site, where the employer did not ensure that employees were provided with hand washing facilities in the dry dock area. Employees were unable to wash their hands after performing cutting activities on tank barge PPG 214 using Chemtane fuel gas.

Date By Which Violation Must be Abated: 11/01/2011
Proposed Penalty: \$ 4200.00



Citation and Notification of Penalty

Company Name: Texas Barge & Boat Inc.
Inspection Site: 4115 E Floodgate Rd., Freeport, TX 77541

Citation 1 Item 14 Type of Violation: **Serious**

29 CFR 1915.152(b): The employer did not assess its work activity to determine whether there are hazards present, or likely to be present, which necessitate the employee's use of PPE. When such hazards were present, or likely to be present.

At the worksite, on April 2, 2011, where employees were engaged in activities such as but not limited to welding, grinding, cutting, sandblasting, and sanding.

Date By Which Violation Must be Abated: 11/01/2011
Proposed Penalty: \$ 4900.00

Citation 1 Item 15 Type of Violation: **Serious**

29 CFR 1915.152(f)(1) The employer did not provide the protective equipment, including personal protective equipment (PPE), used to comply with this part, at no cost to employees.

At the site, where the employer charged employees for personal protective equipment such as, but not limited to hard hats, safety glasses, and welding gloves. Employees performed tasks such as, but not limited to, cutting, welding, grinding, abrasive blasting, and sanding.

Date By Which Violation Must be Abated: 11/01/2011
Proposed Penalty: \$ 4900.00



MARK R. BRIGGS
Area Director

U.S. Department of Labor

Occupational Safety and Health Administration
Houston South Area Office
17625 El Camino Real, Suite 400
Houston, TX 77058
Phone: (281)286-0583 FAX: (281)286-6352



INVOICE/ DEBT COLLECTION NOTICE

Company Name: Texas Barge & Boat Inc.
Inspection Site: 4115 E Floodgate Rd., Freeport, TX 77541
Issuance Date: 09/29/2011

Summary of Penalties for Inspection Number 312928195

Citation 1, Serious = \$ **61600.00**
TOTAL PROPOSED PENALTIES = \$ **61600.00**

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.

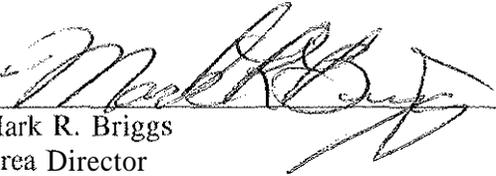
If a personal check is issued, it will be converted into an electronic fund transfer (EFT). This means that our bank will copy your check and use the account information on it to electronically debit your account for the amount of the check. The debit from your account will then usually occur within 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 4%. 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.



Mark R. Briggs
Area Director



Date