

## Wyoming Department of Workforce Services

Office of Workforce Standards and Compliance

OSHA Division

1510 E. Pershing Blvd.

Cheyenne, WY 82002

Phone: (307) 777-7786 Fax: (307) 777-3646



## Citations and Notification of Penalty

**To:**  
Simon Contractors

1103 Old Town Lane, Suite 201A  
Cheyenne, WY 82009

**Inspection Number:** 1244281  
**Inspection Date(s):** 06/30/2017-06/30/2017  
**Issuance Date:** 10/02/2017

**Inspection Site:**  
24th & Reed  
Cheyenne, WY 82001

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 Wyoming Occupational Health and Safety Act. 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 dates (excluding weekends and holidays) from your receipt of this Citation and Notification of Penalty you mail a notice of contest to the OSHA Division, at the address shown above. 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 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 Administrator during the 15 working day contest period. During the 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 Administrator within 15 working days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

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 OSHA Division Deputy Administrator 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 Health and Safety 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.) Make you check or money order payable to the applicable County Treasurer. Please indicate the Inspection Number on the remittance.

**Notification of Corrective Action** – For violations which you do not contest, you should notify the OSHA Compliance Program Manager promptly by letter that you have taken appropriate corrective action within the time frame set forth on this Citation. Please inform us 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.

**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 OSHA Compliance Program Manager at the address shown above.

**Employer Rights and Responsibilities** – The enclosed booklet outlines 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 OSHA Compliance Program Manager at the address shown above and postmarked within 15 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 its inspection and citation activity on the **Internet** under the provisions of the Electronic Freedom of Information Act. The information related to you inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at <http://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:** Simon Contractors  
**Inspection Site:** 24th & Reed Cheyenne, WY 82001

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

29 CFR 1926.651(k)(1): \*Daily inspections of excavations, the adjacent areas, and protective systems shall be made by a competent person for evidence of a situation that could result in possible cave-ins, indications of failure of protective systems, hazardous atmospheres, or other hazardous conditions. An inspection shall be conducted by the competent person prior to the start of work and as needed throughout the shift. Inspections shall also be made after every rainstorm or other hazard increasing occurrence. These inspections are only required when employee exposure can be reasonably anticipated.

Inadequate identification of hazardous conditions by the competent person along with no inspection conducted by the competent person prior to the start of the shift.

Simon Contractors was previously cited for a violation of this occupational safety and health standard or its equivalent standard 1926.651(k)(1) which was contained in OSHA inspection number 314514365, citation number 1, item number 1 issued on September 20th, 2013 with respect to a workplace located at 469 Cole Shopping Center in Cheyenne, WY.

<b><u>Date by Which Violation Must Be Abated:</u></b>	<b><u>October 26, 2017</u></b>
<b><u>Proposed Penalty:</u></b>	<b><u>\$44540.00</u></b>

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

29 CFR 1926.652(a)(1): \*Each employee in an excavation shall be protected from cave-ins by an adequate protective system designed in accordance with paragraph (b) or (c) of this section except when:

Employees were in an excavation and not protected by an adequate cave-in protection system designed in accordance with paragraph (b) or (c) of this section.

Simon Contractors was previously cited for a violation of this occupational safety and health standard or its equivalent standard 1926.652(a)(1) which was contained in OSHA inspection number 314514365, citation number 1, item number 2 issued on September 20th, 2013 with respect to a workplace located at 469 Cole Shopping Center in Cheyenne, WY.

<b><u>Date by Which Violation Must Be Abated:</u></b>	<b><u>October 26, 2017</u></b>
<b><u>Proposed Penalty:</u></b>	<b><u>\$44540.00</u></b>

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



**Citation and Notification of Penalty**

**Company Name:** Simon Contractors  
**Inspection Site:** 24th & Reed Cheyenne, WY 82001

29 CFR 1926.651(c)(2): \*Means of egress from trench excavations. A stairway, ladder, ramp or other safe means of egress shall be located in trench excavations that are 4 feet (1.22 m) or more in depth so as to require no more than 25 feet (7.62 m) of lateral travel for employees.

Employees were not provided with an adequate form of egress from the trench excavation.

<b><u>Date by Which Violation Must Be Abated:</u></b>	<b><u>October 26, 2017</u></b>
<b><u>Proposed Penalty:</u></b>	<b><u>\$7572.00</u></b>

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

29 CFR 1926.651(e): \*Exposure to falling loads. No employee shall be permitted underneath loads handled by lifting or digging equipment. Employees shall be required to stand away from any vehicle being loaded or unloaded to avoid being struck by any spillage or falling materials. Operators may remain in the cabs of vehicles being loaded or unloaded when the vehicles are equipped, in accordance with 1926.601(b)(6), to provide adequate protection for the operator during loading and unloading operations.

Employees were exposed to a falling load while working under and near an excavator that was actively digging in a trench excavation that employees were subsequently working in.

<b><u>Date by Which Violation Must Be Abated:</u></b>	<b><u>October 26, 2017</u></b>
<b><u>Proposed Penalty:</u></b>	<b><u>\$7572.00</u></b>

**Citation 2 Item 3** Type of Violation: **Serious**

29 CFR 1926.651(j)(2): \*Employees shall be protected from excavated or other materials or equipment that could pose a hazard by falling or rolling into excavations. Protection shall be provided by placing and keeping such materials or equipment at least 2 feet (.61 m) from the edge of excavations, or by the use of retaining devices that are sufficient to prevent materials or equipment from falling or rolling into excavations, or by a combination of both if necessary.

Employees were exposed to potential of falling or rolling excavated materials that were placed closer than 2 feet to the edge of the excavation.

<b><u>Date by Which Violation Must Be Abated:</u></b>	<b><u>October 26, 2017</u></b>
<b><u>Proposed Penalty:</u></b>	<b><u>\$7572.00</u></b>

**Wyoming Department of Workforce Services**  
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\*Wy. Occ. Health & Safety Rules & Regulations (Generals)

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Christian M. Graham  
OSHA Compliance Program Manager



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**PENALTY SUMMARY**

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**Company Name:** Simon Contractors  
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**Inspection Number:** 1244281  
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Citation 1 Item 1, Repeat-Serious	\$44540.00
Citation 1 Item 2, Repeat-Serious	\$44540.00
Citation 2 Item 1, Serious	\$7572.00
Citation 2 Item 2, Serious	\$7572.00
Citation 2 Item 3, Serious	\$7572.00
<b>TOTAL PROPOSED PENALTIES:</b>	<b>\$111796.00</b>

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