

U.S. Department of Labor
Occupational Safety and Health Administration
950 22nd Street North
Suite 1050
Birmingham, AL 35203
Phone: (205)731-1534 FAX: (205)731-0504



Citation and Notification of Penalty

To:
DKS Structural Services, Inc dba Don Kennedy & Son
and its successors
7201 Stringfield Rd
Huntsville, AL 35807

Inspection Number: 316228519
Inspection Date(s): 01/17/2012-07/09/2012
Issuance Date: 07/09/2012

Inspection Site:
1200 Shadow Ridge Drive, SE
Huntsville, AL 35801

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.

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 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.

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.

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.

ABATEMENT CERTIFICATION

Lisa Strunk, Acting Area Director
U.S. Department of Labor - OSHA
950 22nd Street North
Suite 1050
Birmingham, AL 35203
Phone: (205)731-1534

DKS Structural Services, Inc dba Don Kennedy & Son
7201 Stringfield Rd
Huntsville, AL 35807

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____
by _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____
by _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____
by _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____
by _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____
by _____.

I attest that the information contained in this document is accurate and that the affected employees and their
representatives have been informed of the abatement activities described in this certification.

Signature

Typed or Printed Name



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with OSHA to discuss the citation(s) issued on 07/09/2012. The conference will be held at the OSHA office located at 950 22nd Street North, Suite 1050, Birmingham, AL, 35203 on _____ at _____. Employees and/or representatives of employees have a right to attend an informal conference.



Citation and Notification of Penalty

Company Name: DKS Structural Services, Inc dba Don Kennedy & Son
Inspection Site: 1200 Shadow Ridge Drive, SE, Huntsville, AL 35801

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

Section 5(a)(1) of the Occupational Safety and Health Act of 1970: The employer did not furnish to each of his employees a place of employment which were free from recognized hazards that were causing or likely to cause death or serious physical harm to his employees in that employees were exposed to struck-by, crushed-by and fall hazards:

- (a) On or about 01/16/2012 - 1200 Shadow Ridge Drive SE, Huntsville, AL, employees were lowered into an excavation using the bucket of the Caterpillar backhoe.

Among other methods, one feasible and acceptable method to correct this hazard is to not permit the use of the bucket as personnel carrier in accordance with the recommendation of the Association of Equipment Manufacturers, Safety Manual for Operating and Maintenance Personnel.

Abatement Documentation Required

Date By Which Violation Must be Abated:	07/13/2012
Proposed Penalty:	\$ 5600.00

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

29 CFR 1926.100(a): Employees were not protected by protective helmets while working in areas where there was a possible danger of head injury from impact, or from falling or flying objects, or from electrical shock and burns:

- (a) On or about 01/16/2012 - 1200 Shadow Ridge Drive SE, Huntsville, AL, employees working in the bottom of an unprotected excavation were not wearing hard hats.

Abatement Documentation Required

Date By Which Violation Must be Abated:	07/19/2012
Proposed Penalty:	\$ 4800.00



Citation and Notification of Penalty

Company Name: DKS Structural Services, Inc dba Don Kennedy & Son
Inspection Site: 1200 Shadow Ridge Drive, SE, Huntsville, AL 35801

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

29 CFR 1926.651(c)(2): A stairway, ladder, ramp or other safe means of egress was not located in trench excavations that were 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:

- (a) On or about 01/16/2012 - 1200 Shadow Ridge Drive SE, Huntsville, AL, employees were placed and removed from an excavation using a Caterpillar backhoe.

Abatement Documentation Required

Date By Which Violation Must be Abated: 07/12/2012
Proposed Penalty: \$ 56000.00

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

29 CFR 1926.652(a)(1): Each employee in an excavation was not protected from cave-ins by an adequate protective system designed in accordance with paragraph (b) or (c) of this section:

- (a) On or about 01/16/2012 - 1200 Shadow Ridge Dr SE, Huntsville, AL, employees working in an excavation approximately 15 feet deep were not protected from cave-in.

Date By Which Violation Must be Abated: 07/12/2012
Proposed Penalty: \$ 56000.00

A handwritten signature in black ink, appearing to read "Lisa Strunk", is written over a horizontal line.

Lisa Strunk
Acting Area Director



U.S. Department of Labor

Occupational Safety and Health Administration

950 22nd Street North, Suite 1050

Birmingham, Alabama 35203

Phone: (205) 731-1534 FAX: (205) 731-0504

INVOICE/ DEBT COLLECTION NOTICE

Company Name: DKS Structural Services, Inc dba Don Kennedy & Son
Inspection Site: 1200 Shadow Ridge Drive, SE, Huntsville, AL 35801
Issuance Date: 07/09/2012

Summary of Penalties for Inspection Number 316228519

Citation 1, Serious	= \$ 10400.00
Citation 2, Willful	= \$ 112000.00
TOTAL PROPOSED PENALTIES	= \$ 122400.00

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.

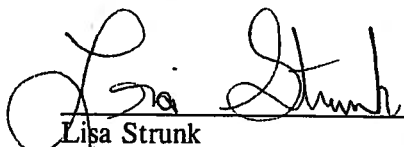
Pursuant to the Debt Collection Act of 1982 (Public Law 97-365) and regulations of the U.S. Department of Labor (29 CFR Part 20), the Occupational Safety and Health Administration is required to assess interest, delinquent charges, and administrative costs for the collection of delinquent penalty debts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



Lisa Strunk
Acting Area Director

7/9/12

Date

Corrective action, taken by you for each alleged violation should be submitted to this office on or about the abatement dates indicated on the Citation and Notification of Penalty.

If the hazards itemized on this citation(s) are not abated/corrected and a follow-up inspection is conducted, your establishment may receive a Failure to Abate Citation for the uncorrected hazards with subsequent additional monetary penalties of up to thirty (30) times the original penalty amount of the uncorrected hazards.

A work sheet has been provided to assist in providing the required abatement information. A completed copy of this work sheet should be posted at the worksite with the Citation(s).

CERTIFICATION OF CORRECTIVE ACTION WORKSHEET

Company Name: DKS Structural Services, Inc dba Don Kennedy & Son
Inspection Site: 1200 Shadow Ridge Drive, SE, Huntsville, AL 35801
Issuance Date: 07/09/2012

List the specific method of correction for each item on this citation in this package that does not read "Corrected During Inspection" and return this page with the signed Informal Settlement Agreement to: **U.S. Department of Labor - Occupational Safety and Health Administration, 950 22nd Street North, Suite 1050, Birmingham, AL 35203.**

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are approximately 20 lines visible. The paper appears to be a standard notebook page.

NAME OF COMPANY OFFICIAL

DATE _____

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 for not more than six months or both.

POSTING: A copy of the completed Corrective Action Worksheet should be posted for employee review.