

State of Hawaii

Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 423
HONOLULU, HI 96813
Phone: (808) 586-9116 Fax: (808) 586-9104



Certified Mail Number: 7017 3380 0000 0979 8000

Citation and Notification of Penalty

To:
National Tropical Botanical Garden
and its successors
3530 Papalina Road, ATTN: Janet Mayfield
Kalaheo, HI 96741

Inspection Number: 1318227
Inspection Date(s): 05/21/2018-05/22/2018
Issuance Date: 09/17/2018

Inspection Site:
3530 Papalina Road
Kalaheo, HI 96741

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 describes violations of the Hawaii Occupational Safety and Health (HIOSH) Law. The penalty listed herein is based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties, unless within 20 calendar days from your receipt of this Citation and Notification of Penalty, you file a contest in the manner described in the section "Employer's Right to Contest" on page 2 of this Citation and Notification of Penalty. Please refer to the enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) which outlines your rights and responsibilities and which should be read in conjunction with this Citation. Issuance of this Citation does not constitute a finding that a violation of the Law has occurred unless there is a failure to contest as allowed by Law or, if contested, the Citation is affirmed by the Hawaii Labor Relations Board (HLRB) 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 State 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 HIOSH Administrator during the 20 calendar 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. If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must 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 20 calendar 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.

Employers' Right to Contest - You have the right to contest this Citation and Notification of Penalty. You may also contest all citation items or only individual items. You may also contest the penalty and/or abatement dates without contesting the underlying violations. To contest you must submit a signed original letter of contest to the Administrator which must be postmarked or, if not mailed, received by the Administrator within 20 calendar days after you receive this Citation and Notification of Penalty. The letter of contest must be a signed original and may not be submitted by facsimile or e-mail. Address your letter of contest to the State of Hawaii Occupational Safety and Health Division at the address shown on the top of page 1 of this Citation and Notification of Penalty. Once a letter of contest is received, it becomes the jurisdiction of the HLRB. If a timely contest is not filed, the Citation and Notification of Penalty will become a final order of the Department of Labor and Industrial Relations and may not be reviewed by any court or agency.

Penalty Payment - Penalties are due within 20 calendar days of receipt of this notification unless contested. Make your check or money order payable to "Director of Budget and Finance." Please indicate the Inspection Number found on the front page on the remittance. HIOSH 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 Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification must be sent by you within 5 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 Citation 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 Section 12-51-22 to be sent to HIOSH, 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 60 days after the discrimination occurred with the Hawaii Occupational Safety and Health Division at the address shown on the top of page 1 of this Citation and Notification of Penalty.

Employer Rights and Responsibilities - The enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

Employees' Right to Contest - 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 signed original contest must be mailed to the Hawaii Occupational Safety and Health Division at the address shown on the top of page 1 of this Citation and Notification of Penalty and postmarked within 20 calendar days 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 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.

ABATEMENT CERTIFICATION

Company Name: National Tropical Botanical Garden
Inspection Site: 3530 Papalina Road Kalaheo, HI 96741

Inspection Number: 1318227
Issuance Date: 09/17/2018

List the specific method of correction for each citation item and supporting documentation as appropriate in this **Citation and Notification of Penalty** that does not state "Corrected During Inspection" and return to: **Department of Labor and Industrial Relations - Hawaii Occupational Safety and Health Division, 830 Punchbowl Street, Room 423, Honolulu, HI 96813.**

Citation _____ and Item _____ was corrected on _____
How corrected: _____

Citation _____ and Item _____ was corrected on _____
How corrected: _____

Citation _____ and Item _____ was corrected on _____
How corrected: _____

Citation _____ and Item _____ was corrected on _____
How corrected: _____

Citation _____ and Item _____ was corrected on _____
How corrected: _____

Citation _____ and Item _____ was corrected on _____
How corrected: _____

Citation _____ and Item _____ was corrected on _____
How corrected: _____

I attest that the information contained in this document is accurate and that the affected employees and their representative(s) have been informed of the abatement activities mentioned above and of their right to examine and copy this and all other abatement documents submitted to HIOSH.

Signature of the Employer or
Employer's Authorized Representative

Date

Typed or Printed Name

Title

Posting: For posting requirements please refer to Chapter 12-51, Hawaii Administrative Rules.

State of Hawaii

Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with the Hawaii Occupational Safety and Health Division (HIOSH) to discuss the Citation and Notification of Penalty issued on 09/17/2018.

The informal conference will be at the HIOSH office located at:

830 PUNCHBOWL STREET, ROOM 423
HONOLULU, HI 96813

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



Citation and Notification of Penalty

Company Name: National Tropical Botanical Garden
Inspection Site: 3530 Papalina Road Kalaheo, HI 96741

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

29 CFR 1910.38(a)(2) [Refer to chapter 12-60-50(a), HAR]: An employer must have an emergency action plan whenever an OSHA standard in this part requires one.

An emergency action plan should include at a minimum:

- 1) Procedures for reporting a fire or other emergency;
- 2) Procedures for emergency evacuation, including type of evacuation and exit route assignments;
- 3) Procedures to be followed by employees who remain to operate critical operations before they evacuate;
- 4) Procedures to account for all employees after evacuation;
- 5) Procedures to be followed by employees performing rescue or medical duties;
- 6) The name or job title of every employee who may be contacted by employees who need more information about the plan or an explanation of their duties under the plan.

Establishment, Main service road

- 1) The employer did not have an emergency action plan ensuring that employees knew what procedure to follow in case of an emergency such as when an employee is seriously injured.
- 2) Instead of calling 911, a co-worker responding to the incident made multiple attempts to call management, causing a delay.
- 3) Emergency vehicles had to be escorted through a gate and were then given improper directions, delaying them three to five minutes.
- 4) The employer had no designated muster area in case of fire.

An employee engaged in landscaping activities lost control of his Scag Cheetah rider mower while mowing on the Upper Spur Road. The employee and his machine travelled down an adjacent 20-degree, 36-foot six-inch long grassy slope, hitting and tumbling over the top edge of a stone retaining wall at the bottom of the slope, landing six feet below on the Main Service Road. The employee was not wearing his seatbelt and was ejected from the mower sustaining fatal injuries when the mower landed on top of him.

Date by Which Violation Must Be Abated:
Proposed Penalty:

22/10/2018
\$11,408.00



Citation and Notification of Penalty

Company Name: National Tropical Botanical Garden
Inspection Site: 3530 Papalina Road Kalaheo, HI 96741

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

29 CFR 1910.132(d)(2) [Refer to chapter 12-60-50(a), HAR]: The employer shall verify that the required workplace hazard assessment has been performed through a written certification that identifies the workplace evaluated; the person certifying that the evaluation has been performed; the date(s) of the hazard assessment; and, which identifies the document as a certification of hazard assessment.

National Tropical Botanical Garden - The employer's workplace hazard assessment did not identify hazards that rider mower operators could be exposed to, including slope hazards and of not using the seatbelt in conjunction with the roll over protection bar. An employee engaged in landscaping activities had lost control of his Scag Cheetah rider mower on the Upper Spur road and was pulled down an adjacent 20-degree, 36-foot six-inch long grassy slope, hitting and tumbling over the top edge of a stone retaining wall at the bottom of the slope. The employee was not wearing his seatbelt and was ejected from the mower sustaining fatal injuries when the mower landed on top of him on the Main Service Road, six feet below.

Date by Which Violation Must Be Abated:
Proposed Penalty:

22/10/2018
\$11,408.00

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

12-60-2(a)(3), HAR: Every employer shall provide safe work places and practices by elimination or reduction of existing or potential hazards. Elimination of existing or potential hazards by design, process substitution, or other appropriate methods is preferred because it eliminates the need for further employee protection. When elimination is not feasible, reduction of existing or potential hazards to acceptable levels, using methods such as engineering or administrative controls, isolation, or guarding, shall be promptly used. When these methods are inadequate to reach acceptable levels, personal protective equipment shall be provided and used.

Main service road and Upper Spur road

The employer had no mechanism in place to monitor and ensure that employees engaged in landscaping activities were using their seatbelt as required, while operating the Scag rider mower.

The employer had no way of measuring the slope of hills to make sure that the rider mowers were not used on



Citation and Notification of Penalty

Company Name: National Tropical Botanical Garden
Inspection Site: 3530 Papalina Road Kalaheo, HI 96741

hills with more than a 15 degree slope, or near drop-offs.

The employee told a civilian first responder that after he lost control of the rider mower on the Upper Spur road, the mower pulled him down the 20-degree, 36-foot six-inch long grassy slope, hitting and tumbling over the top edge of a 6-foot-high stone retaining wall.

The employee was ejected from the mower which landed on top of him, on the main service road, six feet below. While still conscious the employee told the civilian first responder that he had not been wearing his seatbelt. This employee received fatal injuries.

On the day of the incident the civilian first responder observed another employee, a working foreman, who was operating the rider mower and was not using his seat belt, as he was moving the mower out of the way of the emergency vehicles.

Date by Which Violation Must Be Abated:
Proposed Penalty:

22/10/2018
\$11,408.00

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

12-60-2(b)(1)(A), HAR: The employer shall institute and maintain an effective safety and health program to identify, evaluate and control workplace hazards. Employer safety and health programs which were developed prior to the promulgation of this standard may be used to satisfy this requirement so long as they meet the criteria for an acceptable program set forth in (B) below.

Establishment - **The employer did not institute and maintain an effective written safety and health program.** The employer's policies and procedures did not include the conduct of site surveys at the various locations where the landscaping equipment and machinery would be operated.

The employer did not evaluate the hazards that could effect the safe operation of the rider mower operators.

The employer's safety and health program showed that the employer had not attempted to evaluate and control the hazards faced by rider mower operators working on and near sloped areas.



Citation and Notification of Penalty

Company Name: National Tropical Botanical Garden
Inspection Site: 3530 Papalina Road Kalaheo, HI 96741

The employees were exposed to moving equipment hazards with the potential to sustain serious bodily injuries.

An employee engaged in landscaping activities had lost control of his Scag Cheetah rider mower on the Upper Spur road and was pulled down an adjacent 20-degree, 36-foot six-inch long grassy slope, hitting and tumbling over the top edge of a stone retaining wall at the bottom of the slope. The employee was not wearing his seatbelt and was ejected from the mower sustaining fatal injuries when the mower landed on top of him on the main service road, six feet below.

Date by Which Violation Must Be Abated:
Proposed Penalty:

22/10/2018
\$11,408.00

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

12-60-2(b)(2)(B), HAR: The employer shall ensure that practices are understood by all employees and are underscored through training, positive reinforcement, correction of unsafe performance, and, if necessary, through a clearly defined and communicated disciplinary system.

National Tropical Botanical Garden - The employer did not ensure that safe rider mower operation practices were understood by rider mower operators. The employer did not ensure that the rider mower operators had read and understood the instructions and warnings from the Scag rider mower operation manual. The employer did not have the correct operator`s manual. The employer had the operator`s manual for a different model and did not have the manual for the 61 inch deck version. The employer did not correct the unsafe activity of mowing less that two mower widths from drop offs.

An employee engaged in landscaping activities had lost control of his Scag Cheetah rider mower on the Upper Spur road and was pulled down a nearby 20-degree, 36-foot six-inch long grassy slope, hitting and tumbling over the top edge of a stone retaining wall at the bottom of the slope. The employee was not wearing his seatbelt and was ejected from the mower sustaining fatal injuries when the mower landed on top of him on the Main Service road, six feet below.

Date by Which Violation Must Be Abated:
Proposed Penalty:

22/10/2018
\$11,408.00

State of Hawaii

Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division

Inspection Number: 1318227
Inspection Date: 05/21/2018-05/22/2018
Issuance Date: 09/17/2018



Citation and Notification of Penalty

Company Name: National Tropical Botanical Garden
Inspection Site: 3530 Papalina Road Kalaheo, HI 96741

NORMAN AHU
Administrator

State of Hawaii

Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 423
HONOLULU, HI 96813
Phone: (808) 586-9116 Fax: (808) 586-9104



SUMMARY OF PENALTIES

Company Name: National Tropical Botanical Garden
Inspection Site: 3530 Papalina Road Kalaheo, HI 96741
Issuance Date: 09/17/2018

Summary of Penalties for Inspection Number: 1318227

Citation 1 Item 1, Serious	\$11,408.00
Citation 1 Item 2, Serious	\$11,408.00
Citation 1 Item 3, Serious	\$11,408.00
Citation 1 Item 4, Serious	\$11,408.00
Citation 1 Item 5, Serious	\$11,408.00
TOTAL PENALTIES:	\$57,040.00

Make check or money order payable to the "**Director of Budget and Finance.**" Please indicate the *inspection number and dba, if company name is different, on the remittance.* A fee of \$25.00 will be charged for any returned checks.