

## U.S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration  
8344 E. R.L. Thornton Freeway, Suite 420  
Dallas, TX 75228  
Phone: 214-320-2400 / Fax: 214-320-2598



# Citation and Notification of Penalty

**To:**

TMT, Inc., d/b/a Whip In  
3546 Delford Circle  
Dallas, TX 75228

**Inspection Number:** 462139**Inspection Date(s):** 05/31/2012 - 05/31/2012**Issuance Date:** 11/19/2012**Inspection Site:**

1140 Interstate 30  
Mesquite, TX 75150

*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 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 must provide *abatement certification* to the Area Director of the OSHA office issuing the citation and identified above. This abatement certification is to be provided by letter within 10 calendar days after each abatement date. Abatement certification includes the date and method of abatement. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item. The abatement certification letter must be posted at the location where the violation appeared and the corrective action took place or employees must otherwise be effectively informed about abatement activities. A sample abatement certification letter is enclosed with this Citation. In addition, where the citation indicates that *abatement documentation* is necessary, evidence of the purchase or repair of equipment, photographs or video, receipts, training records, etc., verifying that abatement has occurred is required to be provided to the Area Director.

**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](http://www.osha.gov). If you have any dispute with the accuracy of the information displayed, please contact this office.



## NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with OSHA to discuss the citation(s) issued on 11/19/2012. The conference will be held at the OSHA office located at 8344 East R.L.

Thornton Freeway, Suite 420, Dallas, TX 75228 on \_\_\_\_\_ at

\_\_\_\_\_. Employees and/or representatives of employees have a right to attend an informal conference.

## CERTIFICATION OF CORRECTIVE ACTION WORKSHEET

**Inspection Number: 462139**

Company Name: TMT, Inc., d/b/a Whip In  
Inspection Site: 1140 Interstate 30, Mesquite, TX 75150  
Issuance Date: 11/19/2012

List the specific method of correction for each item on this citation in this package that does not read "Corrected During Inspection" and return to: **U.S. Department of Labor – Occupational Safety and Health Administration, 8344 East R.L. Thornton Freeway, Suite 420, Dallas, TX 75228**

Citation Number \_\_\_\_\_ and Item Number \_\_\_\_\_ was corrected on \_\_\_\_\_  
By (Method of Abatement): \_\_\_\_\_

Citation Number \_\_\_\_\_ and Item Number \_\_\_\_\_ was corrected on \_\_\_\_\_  
By (Method of Abatement): \_\_\_\_\_

Citation Number \_\_\_\_\_ and Item Number \_\_\_\_\_ was corrected on \_\_\_\_\_  
By (Method of Abatement): \_\_\_\_\_

Citation Number \_\_\_\_\_ and Item Number \_\_\_\_\_ was corrected on \_\_\_\_\_  
By (Method of Abatement): \_\_\_\_\_

Citation Number \_\_\_\_\_ and Item Number \_\_\_\_\_ was corrected on \_\_\_\_\_  
By (Method of Abatement): \_\_\_\_\_

Citation Number \_\_\_\_\_ and Item Number \_\_\_\_\_ was corrected on \_\_\_\_\_  
By (Method of Abatement): \_\_\_\_\_

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
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 of not more than 6 months or both.

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



### **Citation and Notification of Penalty**

**Company Name:** TMT, Inc., d/b/a Whip In  
**Inspection Site:** 1140 Interstate 30, Mesquite, TX 75150

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

Section 5(a)(1) of the Occupational Safety and Health Act of 1970: The employer does not furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or likely to cause death or serious physical harm to his employees in that employees are exposed to violence in the workplace:

This violation was discovered on May 31, 2012, at the workplace located at 1140 Interstate 30, Mesquite, Texas 75150; where convenience store employees, who regularly worked with money and whose job exposed to them the potential for violence in the form of assaults and/or robberies, were not protected from workplace violence that was causing or likely to cause death or serious physical harm.

Among other methods, feasible and acceptable means of abatement include, but are not limited to:

Establish and implement a workplace violence program that includes but is not limited to:

- (1) Worksite Analysis: Conduct a worksite analysis that involves a step-by-step assessment to identify environmental and operational risks for violence. The worksite analysis includes analyzing and tracking records, conducting screening surveys of workers, and analyzing workplace security to identify any incidents of workplace violence and identify hazards, conditions and situations that could expose workers to violence.
- (2) Hazard Prevention and Control: Taking into account the hazards identified in the workplace security analysis, develop, implement and ensure that measures to reduce or eliminate the likelihood of violent incidents are utilized at the worksite. These measures may include but are not limited to:
  - a. Limiting window signs to low or high locations and keeping shelving low so that workers can see incoming customers and so that police can observe what is occurring from the outside of the store;
  - b. Ensuring the customer service and cash register areas are visible from outside the establishment;

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



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- c. Placing curved mirrors at hallway intersections or concealed areas;
- d. Maintaining adequate lighting inside and outside the establishment;
- e. Using door detectors so that workers are alerted when someone enters the store;
- f. Having height markers on exit doors to help witnesses provide more accurate descriptions of assailants;
- g. Installing, regularly maintaining, and ensuring employees use alarm systems and other security devices, panic buttons, handheld alarms or noise devices, cellular phones and private channel radios where risk is apparent or may be anticipated;
- h. Arranging for a reliable response system when an alarm is triggered;
- i. Installing fences and other structures to direct the flow of customer traffic into and around the store;
- j. Controlling access to the store with door entry (buzzer) systems;
- k. Installing physical barriers such as bullet-resistant enclosures with pass-through windows between customers and workers;
- l. Installing wider counters to increase the distance between customers and workers;
- m. Prohibit transactions with large bills (over \$20). If this is not practical, cash levels should be kept as low as practical;
- n. When possible, increase staffing levels at stores with a history of robbery or assaults, or located in high crime areas;
- o. Establish rules and practices to ensure that workers can walk to garbage areas and outdoor storage areas without increasing their risk of assault;

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- p. Establish liaison with local police and state prosecutors. Report all incidents of violence. Give police physical layouts of facilities to expedite investigations;
- q. Require workers to report all assaults or threats to a supervisor or manager. Keep log books and reports of such incidents to help determine any necessary actions to prevent recurrences.

(3) Safety and Health Training: Develop and implement training and education to ensure that all staff members are aware of potential security hazards and how to protect themselves and their coworkers through established policies and procedures. The training may include but not be limited to:

- a. An overview of the potential risk of assault;
- b. The workplace violence prevention policy;
- c. The concept of "universal precautions for violence," which refers to the concept that violence should be expected but can be avoided or mitigated through proper precautionary preparation;
- d. The specific hazards associated with their jobs and worksite to help them minimize their risk of assault and injury;
- e. Information on worksite specific potential hazards and instructions on how to control those hazards;
- f. Proper use of security measures and engineering controls designed to reduce risk, including the location and operation of safety devices such as alarm systems, along with required maintenance schedules and procedures;
- g. Early recognition of escalating behavior or recognition of warning signs of situations that may lead to assaults;
- h. Behavioral strategies such as conflict resolution and aggression management techniques to defuse tense situations and reduce the likelihood of a violent outcome;

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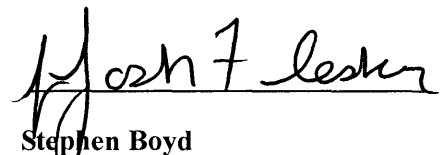
- i. Guidance to limit workers from intervening in workplace altercations whenever possible unless enough staff or emergency response teams and security personnel are available;
- j. Emergency action procedures to be followed in the event of a robbery or violent incident;
- k. Policies and procedures for reporting the incident to the proper authorities, as well as recordkeeping.

At a minimum, training should be provided annually. Workers who forget safety measures should be retrained. New, reassigned, temporary and visiting workers should receive the same training as permanent staff.

Pursuant to 29 CFR 1903.19, within ten (10) calendar days of the abatement date, the employer must provide documentation showing that it is in compliance with the standard, including describing the steps it is taking to ensure that employees are protected from workplace violence.

**ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM**

Date By Which Violation Must be Abated:	12/11/2012
Proposed Penalty:	\$4900.00

  
**Stephen Boyd**  
Area Director

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8344 E. R.L. Thornton Freeway  
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## INVOICE / DEBT COLLECTION NOTICE

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**Company Name:** TMT, Inc. , dba Whip In  
**Inspection Site:** 1140 Interstate 30, Mesquite, TX 75150  
**Issuance Date:** 11/19/2012

<b>Summary of Penalties for Inspection Number</b>	<b>462139</b>
<b>Citation 1, Serious</b>	<b>\$4900.00</b>
<b>TOTAL PROPOSED PENALTIES</b>	<b>\$4900.00</b>

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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 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 or conditions do not exist.

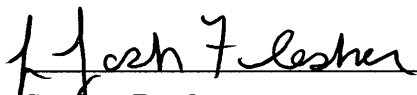
If a personal check is issued, it will be converted into an electronic fund transfer (EFT). This means that our bank will copy your check and use the account information on it to electronically debit your account for the amount of the check. The debit from your account will then usually occur within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

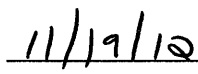
Pursuant to the Debt Collection Act of 1982 (Public Law 97-365) and regulations of the U.S. Department of Labor (29 CFR Part 20), the Occupational Safety and Health Administration is required to assess interest, delinquent charges, and administrative costs for the collection of delinquent penalty debts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

  
\_\_\_\_\_  
Stephen Boyd  
Area Director

  
\_\_\_\_\_  
Date