

U.S. Department of Labor
Occupational Safety and Health Administration
FEDERAL BUILDING, ROOM 613
450 MAIN STREET
HARTFORD, CT 06103
Phone: (860)240-3152 FAX: (860) 240-3155



Citation and Notification of Penalty

To:
Penney's Construction Company, LLC
and its successors
69 Fishfry Street
Hartford, CT 06120

Inspection Number: 314406406
Inspection Date(s): 07/26/2011-07/26/2011
Issuance Date: 01/20/2012
CSHO ID: F5659-
Reporting ID: 0112000

Inspection Site:
617-643 Park Street
Hartford, CT 06106

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.

Accuracy of Information - 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 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.

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 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 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 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.



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with OSHA to discuss the citation(s) issued on 01/20/2012. The conference will be held at the OSHA office located at FEDERAL BUILDING, ROOM 613, 450 MAIN STREET, HARTFORD, CT, 06103 on _____ at _____. Employees and/or representatives of employees have a right to attend an informal conference.



Citation and Notification of Penalty

Company Name: Penney's Construction Company, LLC
Inspection Site: 617-643 Park Street, Hartford, CT 06106

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

29 CFR 1926.21(b)(2): The employer did not instruct each employee in the recognition and avoidance of unsafe condition(s) and the regulation(s) applicable to his work environment to control or eliminate any hazard(s) or other exposure to illness or injury:

617-643 Park Street Sewer Pipe Repair Project: The employer did not adequately train the employees on the hazards associated with exposures to human waste, methane gas, and asphyxiates from the exhaust of the Stihl cut saw in use.

Date By Which Violation Must be Abated:
Proposed Penalty:

01/26/2012
\$ 5000.00



Citation and Notification of Penalty

Company Name: Penney's Construction Company, LLC
Inspection Site: 617-643 Park Street, Hartford, CT 06106

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

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

29 CFR 1926.95(a): Personal protective equipment, including personal protection for eyes, face, head, and extremities, protective clothing, respiratory devices, and protective shields and barriers, was not provided, used, and maintained in a sanitary and reliable condition wherever it was necessary by reason of hazards of processes or environment, chemical hazards, radiological hazards, or mechanical irritants encountered in a manner capable of causing injury or impairment in the function of any part of the body through absorption, inhalation, or physical contact:

617-643 Park Street Sewer Pipe Repair Project: Employees were exposed to the hazards of communicable diseases associated with exposure to Hepatitis A and C and fecal Coliform bacteria such as E Coli resulting from working in a trench removing and installing a sewer pipe while human waste including human feces were constantly pouring into the trench. No personal protective equipment such as face shields, disposable coveralls, or gloves were in use.

Date By Which Violation Must be Abated:	01/26/2012
Proposed Penalty:	\$ 5000.00

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

29 CFR 1926.102(a)(1): The employer did not provide eye and face protection equipment when machines or operations presented potential eye or face injury from physical, chemical, or radiation agents:

617-643 Park Street Sewer Pipe Repair Project: An employee was using a Stihl cut saw in the trench to cut the clay pipe which created sparks and sent soil flying around the trench. No personal protective equipment such as face shields or eye protection were in use.

Date By Which Violation Must be Abated:	01/26/2012
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See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



Citation and Notification of Penalty

Company Name: Penney's Construction Company, LLC
Inspection Site: 617-643 Park Street, Hartford, CT 06106

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

29 CFR 1926.651(d): Employees exposed to public vehicular traffic were not provided with, and required to wear, a warning vest or other suitable garments marked with or made of reflectorized or high-visibility material:

617-643 Park Street Sewer Pipe Replacement Project: An employee was exposed to struck-by hazards from vehicle traffic while starting and stopping two way heavily congested traffic in a heavy rain downpour without any safety vest or other reflectorized or high-visibility material.

Date By Which Violation Must be Abated:	Corrected During Inspection
Proposed Penalty:	\$ 7000.00

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

29 CFR 1926.651(g)(1)(i): Where oxygen deficiency (atmosphere containing less than 19.5 percent oxygen) or a hazardous atmosphere existed or could reasonably be expected to exist, such as in excavations in landfill areas or excavations in areas where hazardous substances are stored nearby, the atmospheres in the excavation were not tested before employees entered excavations greater than 4 feet (1.22 m) in depth:

617-643 Park Street Sewer Pipe Repair Project: Employees including the employer were exposed to potential hazardous atmospheric conditions while working in a trench with no testing done before employees entered the trench.

Date By Which Violation Must be Abated:	01/26/2012
Proposed Penalty:	\$ 5000.00

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



Citation and Notification of Penalty

Company Name: Penney's Construction Company, LLC
Inspection Site: 617-643 Park Street, Hartford, CT 06106

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

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

29 CFR 1926.651(j)(1): Adequate protection was not provided to protect employees from loose rock or soil that could pose a hazard by falling or rolling from an excavation face:

617-643 Park Street Sewer Repair Project: The employees were exposed to struck-by hazards while working in a 10 foot deep trench with the face walls of the trench containing loose rock and chunks of loose soil that was falling into the trench. No protection such as scaling to remove loose material was done nor protective barriers provided.

Date By Which Violation Must be Abated:	01/26/2012
Proposed Penalty:	\$ 7000.00

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

29 CFR 1926.651(j)(2): Employees were not protected from excavated or other materials or equipment that could pose a hazard by falling or rolling into excavations:

617-643 Park Street Sewer Repair Project: Employees were exposed to struck-by and crushing hazards while working in a 10 foot deep trench with the 5 foot high by 9 feet long by 6 feet wide spoil pile located at and along the north edge of the 9 foot long trench.

Date By Which Violation Must be Abated:	01/26/2012
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See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



Citation and Notification of Penalty

Company Name: Penney's Construction Company, LLC
Inspection Site: 617-643 Park Street, Hartford, CT 06106

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

29 CFR 1926.651(i)(3): The employer does not protect employees working under an undermined sidewalk, asphalt pavement, and a storm drain from struck-by and crushing hazards. Three instances of this violation were observed most recently on July 26 where a support system or any another method of protection was not provided:

1. The south edge of the trench undermined the sidewalk;
2. The storm drain (catch basin) system overhunged the trench on the north side.
3. The storm drain concrete top and the asphalt pavement were undermined on the north side of the trench.

Date by which violation must be abated: Immediately upon receipt of citation.

Pursuant to 29 CFR 1903.19(d), the employer must provide documentation that this violation has been abated within 10 calendar days of the date it receives this citation.

Date By Which Violation Must be Abated:
Proposed Penalty:

02/02/2012
\$ 70000.00

U.S. Department of Labor
Occupational Safety and Health Administration

Inspection Number: 314406406
Inspection Dates: 07/26/2011 - 07/26/2011
Issuance Date: 01/20/2012



Citation and Notification of Penalty

Company Name: Penney's Construction Company, LLC
Inspection Site: 617-643 Park Street, Hartford, CT 06106

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

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

29 CFR 1926.651(k)(2): Where the competent person finds evidence of a situation that could result in a possible cave in, indications of failure of protective systems, hazardous atmospheres, or other hazardous conditions, the competent person does not remove the exposed employees from the hazardous area until the necessary precautions are taken to ensure their safety. Instances of this violation were observed most recently on July 26 where the employer did not remove the employees from the trench that had not been tested for atmospheric conditions, had no cave-in protection nor protection from undermined sidewalk and storm drain, and no personal protection equipment were provided to prevent exposure from eye and face hazards and exposure to human waste:

Date by which violation must be abated: Immediately upon receipt of citation.

Pursuant to 29 CFR 1903.19(d), the employer must provide documentation that this violation has been abated within 10 calendar days of the date it receives this citation.

Date By Which Violation Must be Abated:	02/02/2012
Proposed Penalty:	\$ 70000.00

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

U.S. Department of Labor
Occupational Safety and Health Administration

Inspection Number: 314406406
Inspection Dates: 07/26/2011-07/26/2011
Issuance Date: 01/20/2012



Citation and Notification of Penalty

Company Name: Penney's Construction Company, LLC
Inspection Site: 617-643 Park Street, Hartford, CT 06106

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

29 CFR 1926.652(a)(1): The employer does not protect employees working in a trench without any cave-in protection in use. An instance of this violation was observed most recently on July 26 where neither sloping and benching systems nor support systems, shield systems, or other protection systems were not in use:

Date by which violation must be abated: Immediately upon receipt of citation.

Pursuant to 29 CFR 1903.19(d), the employer must provide documentation that this violation has been abated within 10 calendar days of the date it receives this citation.

Date By Which Violation Must be Abated:

02/02/2012

A handwritten signature in black ink, appearing to read "Paul Mangiafico", with a stylized flourish at the end.

PAUL MANGIAFICO
Area Director

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

U.S. Department of Labor

Occupational Safety and Health Administration
FEDERAL BUILDING, ROOM 613
450 MAIN STREET
HARTFORD, CT 06103
Phone: (860)240-3152 FAX: (860) 240-3155



INVOICE/ DEBT COLLECTION NOTICE

Company Name: Penney's Construction Company, LLC
Inspection Site: 617-643 Park Street, Hartford, CT 06106
Issuance Date: 01/20/2012

Summary of Penalties for Inspection Number 314406406

Citation 1, Serious	= \$ 29000.00
Citation 2, Willful	= \$ 140000.00
TOTAL PROPOSED PENALTIES	= \$ 169000.00

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.

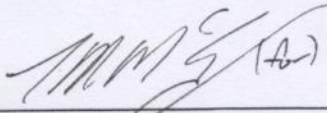
Pursuant to the Debt Collection Act of 1982 (Public Law 97-365) and regulations of the U.S. Department of Labor (29 CFR Part 20), the Occupational Safety and Health Administration is required to assess interest, delinquent charges, and administrative costs for the collection of delinquent penalty debts 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% effective October 1, 2009. 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.



PAUL MANGIAFICO
Area Director

1-20-12

Date

**OSHA Significant Enforcement Action Notification
Region I – Hartford, Connecticut Area Office**

Company: Penney's Construction Company, LLC
Hartford, Connecticut
Safety Inspection #314406406

Penalty: \$169,000

Six-month statute of limitations: January 25, 2012

Inspection: This inspection was initiated as a NEP-Trench referral from the Hartford Area Director who had witnessed employees disappearing into a trench. Two employees were working in a 10 foot deep trench without any cave-in protection, while repairing a sewer line. After OSHA posted an Imminent Danger Notice onsite, the employer repeatedly sent his employees into the trench, and also entered the trench himself. The Area Director determined that it was warranted to depart from the general penalty policy referenced in the FOM Chapter 6. Therefore no size reduction will be applied in this case in order to achieve the appropriate deterrent effect. Penney's Construction Company's Worker Compensation Insurance policy was verified with the State of Connecticut Workers Compensation Commission at the time of this inspection.

Violations: Safety Inspection #314406406

Two Willful - \$140,000 – Hazards associated with undermining a sidewalk and a storm drain catch basin while working in an excavation, failure to remove employees from hazardous conditions in the trench, and failure to provide shoring, or cave-in protection.
5 Serious - \$29,000 – Personal protective equipment, eye and face protection, exposure to vehicle traffic, failure to test for atmospheric hazards in excavation, potential falling rocks or chunks of soil, additional spoil piles hazards.

Number of Employees: 3

Union(s): None.

Severe Violator Enforcement Program: Yes.

Reason: Two High Gravity Willful violations of High Emphasis Hazards.

Congressional parties: Senator Joseph Lieberman, (ID)
Senator Richard Blumenthal (D)
Congressman John Larson (D-1st)

Media Interest Anticipated: No

**NATIONAL
MEMO**

VIOLATION SUMMARY
Penney's Construction Company, LLC
Safety Inspection # 314406406

ITEM	STANDARD	DESCRIPTION	GBP/ADJ FACTORS	PENALTY
SERIOUS:				
1-1	1926.21(b)(2)	The employer did not adequately train employees of hazards related to the work, and present at the worksite.	\$5,000/None	\$5,000
1-2a	1926.95(a)	PPE equipment such as gloves, coveralls, and face shields were not provided for employees repairing an active sewer line.	\$5,000/None	\$5,000
1-2b	1926.102(a)(1)	The employer did not provide eye and face protection for employees using a gas powered cutoff saw.	\$5,000/None	Grouped
1-3	1926.651(d)	High-visibility or a reflectorized garment was not worn while an employee directed vehicular traffic on a public way.	\$7,000/None	\$7,000
1-4	1926.651(g)(1)(i)	Excavation with a sewer line was not tested for hazardous atmospheres.	\$5,000/None	\$5,000
1-5(a)	1926.651(j)(1)	Loose rocks and large chunks of soil were falling into the trench.	\$7,000/None	\$7,000
1-5(b)	1926.651(j)(2)	Soil piles were not kept back at least 2 feet from the edge of the trench.	\$7,000/None	Grouped
WILLFUL:				
2-1	1926.651(i)(3)	A sidewalk and storm drain catch basin was undermined and not supported.	\$70,000/None	\$70,000
2-2(a)	1926.651(k)(2)	The competent person did not remove employees from the hazardous trench.	\$70,000/None	\$70,000
2-2(b)	1926.652(a)(1)	The employer allowed employees to work in a 10	\$70,000/None	Grouped

**PENALTY
TABLE**

		foot deep trench without any cave-in protection.		
TOTAL SERIOUS VIOLATIONS (5):				\$29,000
TOTAL WILLFUL VIOLATIONS (2):				\$140,000
TOTAL PENALTIES FOR INSPECTION #314406406:				\$169,000