

U.S. Department of Labor

Occupational Safety and Health Administration



June 3, 1981

Reply to the Attention of: Federal Building
Room 208
211 W. Ferguson
Tyler, TX 75702
214 595-2438

Mr. John C. Warner, President
Tyler Pipe Industries, Inc.
P. O. Box 2027
Tyler, TX 75710

**PLAINTIFF'S
EXHIBIT**
TPI-58

Dear Mr. Warner:

Enclosed you will find citations for violations of the Occupational Safety and Health Act of 1970 (Act) which in some instances, may have accompanying proposed penalties. Also enclosed is a booklet which explains your rights and responsibilities under the Act. As indicated on page 2 of the booklet, you may request an informal conference with me during the 15 working day notice of contest period. During the informal conference, you may present any evidence or views which you believe would support an adjustment to the citation or penalty.

If you decide to request an informal conference, please complete the form at the bottom of this letter and post it next to the citations immediately after determining the time, date and place of the informal conference.

If you have any questions about the enclosed citations and penalties, I would welcome further discussion at the informal conference, and, where warranted, I am authorized to enter into an informal settlement agreement which amicably resolves this matter without any litigation or contest. If you have any questions regarding the informal conference, please contact me.

Sincerely,

C. R. HOLDER
Area Director

* * * * *

NOTICE TO EMPLOYEES

An informal conference has been scheduled with OSHA to discuss the citations issued on _____. The conference will be held at the OSHA Office located at the Federal Building, Room 208, 211 W. Ferguson, Tyler, Texas, on _____ date at _____ time.

U.S. DEPARTMENT OF LABOR
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CITATION and NOTIFICATION OF PENALTY

Tyler Area Office
208 Federal Building
Tyler, TX 75702

ISSUANCE DATE 6/3/81	OSHA NUMBER M8099-123
REGION 6	AREA 7070
PAGE 1	OF 2

TYPE OF VIOLATION(S)	CITATION NO.
OTHER	1

INSPECTION DATE:
3/26 - 4/7/81
INSPECTION SITE:
Hwy 69 N
Tyler, TX

THE LAW REQUIRES that a copy of this Citation be posted immediately in a prominent place at or near the location of the violation(s) cited below. The Citation must remain posted until the violations cited below have been corrected, or for 3 working days (excluding weekends and Federal holidays) whichever is longer.

TO: Tyler Pipe Industries, Inc.
P. O. Box 2027
Tyler, TX 75710

Attn: Mr. John C. Warner, President

PENALTIES
ARE DUE
WITHIN 15
DAYS OF
RECEIPT
OF THIS
NOTIFICATION
UNLESS
CONTESTED
(See enclosed
Booklet)

This Section May
Be Detached
Before Posting

This citation describes violations of the Occupational Safety and Health Act of 1970. The penalty(ies) listed below are based on these violations. You must correct the violations referred to in this citation by the dates listed below and pay the penalties proposed, unless within 15 working days (excluding weekends and Federal holidays) from your receipt of this citation and penalty you mail a notice of contest to the U.S. Department of Labor Area Office at the address shown above. (See the enclosed booklet which outlines your responsibilities and courses of action and should be read in conjunction with this form.)

ITEM NUMBER STANDARD, REGULATION OR SECTION OF THE ACT VIOLATED: DESCRIPTION	DATE BY WHICH VIOLATION MUST BE CORRECTED	PENALTY
The violations described in this citation are alleged to have occurred on or about the day the inspection was made unless otherwise indicated within the description given below.		
1A. 2 FR 1910.1000(c): Employee(s) were exposed to material(s) in excess of the 8-hour time weighted average limit(s) listed for that material(s) in Table Z-3 of subpart Z of 29 CFR part 1910:	11/03/81	
a. Employee exposed to dust containing crystalline silica while operating the sand slinger on the "234" pipe mold line in the north plant on April 7, 1981.		
b. Employee exposed to dust containing crystalline silica while operating the sand slinger on the "456" pipe mold line in the north plant on May 6, 1981.		
1B. 29 CFR 1910.1000(e): Feasible administrative or engineering controls were not determined and implemented to reduce employee exposure(s):	Step 1 08/03/81	
a. Employee exposed to dust containing crystalline silica while operating the sand slinger on the "234" pipe mold line in the north plant on April 7, 1981.	Step 2 11/03/81	
b. Employee exposed to dust containing crystalline silica while operating the sand slinger on the "456" pipe mold line in the north plant on May 6, 1981.		
Step 1 - Submit to the Area Director a written detailed plan of abatement outlining a schedule for the implementation of engineering and/or administrative measures to control employee exposures to hazardous substances as referenced in this citation. This plan shall include at a minimum, target dates for the following actions which should be consistent with the dates required by this citation.		
a. Evaluation of the extent and location of the hazard source;		
b. Evaluation of control measure options;		
c. Selection of optimum control measure(s);		
d. Determination of control measure design;		

14 AREA DIRECTOR
C. R. HOLDER

C.R. Holder

NOTICE TO EMPLOYEES - The law gives an employee or his representative the opportunity to object to any abatement date set for a violation if he 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 within 15 working days (excluding weekends and Federal holidays) of the receipt by the employer of this citation and penalty.

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 has been discriminated against may file a complaint no later than 30 days after the discrimination with the U.S. Department of Labor Area Office at the address shown above.

EMPLOYER RESPONSIBILITIES AND COURSES OF ACTION - The enclosed booklet outlines employer responsibilities and courses of action and should be read in conjunction with this notification.

**TOTAL PENALTY
FOR THIS
CITATION**

Make check or Money Order Payable To
"DOL-OSHA"
Indicate OSHA No.
on Remittance

U.S. DEPARTMENT OF LABOR
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CITATION and NOTIFICATION OF PENALTY
Tyler Area Office
208 Federal Building
Tyler, TX 75702

ISSUANCE DATE	OSHA NUMBER	
6/3/81	M8099-123	
REGION	AREA	PAGE
6	7070	2 OF 2

TYPE OF VIOLATION(S)	CITATION NO.
OTHER	1

INSPECTION DATE:
3/26-4/7/81
INSPECTION SITE:
Hwy 69 N
Tyler, TX

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This Section May
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TO: Tyler Pipe Industries, Inc.
P. O. Box 2027
Tyler, TX 75710

Attn: Mr. John C. Warner, President

This citation describes violations of the Occupational Safety and Health Act of 1970. The penalty(ies) listed below are based on these violations. You must correct the violations referred to in this citation by the dates listed below and pay the penalties proposed, unless within 15 working days (excluding weekends and Federal holidays) from your receipt of this citation and penalty you mail a notice of contest to the U.S. Department of Labor Area Office at the address shown above. (See the enclosed booklet which outlines your responsibilities and courses of action and should be read in conjunction with this form.)

ITEM NUMBER	STANDARD, REGULATION OR SECTION OF THE ACT VIOLATED; DESCRIPTION	DATE BY WHICH VIOLATION MUST BE CORRECTED	PENALTY
	e. Ordering and delivery of equipment and materials; f. Installation of control measures; g. Training of employees in the proper operation and maintenance of the newly implemented control measures; and h. Assurance of effective performance of control measures. 11 proposed control measures shall be approved for each particular use by a competent industrial hygienist or other technically qualified person. Ninety (90) day progress reports are required during the abatement period. step 2 - Correction shall be completed by the implementation of feasible engineering and/or administrative controls and their effectiveness at achieving compliance verified.		

AREA DIRECTOR
J. R. HOLDER

JRH

NOTICE TO EMPLOYEES - The law gives an employee or his representative the opportunity to object to any abatement date set for a violation if he 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 within 15 working days (excluding weekends and Federal holidays) of the receipt by the employer of this citation and penalty.

EMPLOYER RESPONSIBILITIES AND COURSES OF ACTION - The enclosed booklet outlines employer responsibilities and courses of action and should be read in conjunction with this notification.

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0
TOTAL PENALTY
FOR THIS
CITATION

Make check or Money
Order Payable To:
"DOL-OSHA"
Indicate OSHA No.
on Remittance

Employer Responsibilities and Courses of Action Following an OSHA Inspection



U S. Department of Labor
Occupational Safety and
Health Administration
1977

OSHA 3000

An inspection of your workplace was recently conducted in accordance with the Occupational Safety and Health Act of 1970. The inspection revealed conditions which we believe to be in violation of the Act. The detailed nature of the violation(s) and the penalties is described in the Citation and Notification of Penalty form sent with this booklet. The items listed on the enclosed citation were generally discussed with your representative by the OSHA Compliance Officer.

This booklet contains important information regarding your responsibilities and opportunities to respond to this notice. For further information not covered in the booklet, contact the OSHA Area Director at the location listed on the citation form. Please refer to the OSHA number located in the upper right-hand corner of the enclosed documents in all correspondence.

Employer Action Required

As an employer, you may take the following courses of action:

1. If you agree to the Citation and Notification of Penalty, (a) correct the condition by the date set in the citation and (b) pay the penalty, if one is proposed.
2. If you do not agree, within 15 working days, you may elect to contest any or all of the following:
 - Citation
 - Penalty
 - Abatement date

For details, see the section on *How to Contest*.

Posting Requirements

The citation or a copy of it must be posted at or near the place each violation occurred. It must remain posted for 3 working days or until the violation is corrected, whichever is longer. (*Saturdays, Sundays and Federal holidays are not counted as working days.*)

Letter of Corrective Action

For violations you do not contest, you should promptly notify the OSHA Area Director by letter that you have taken corrective action within the time frame set forth on the citation.

The notification should include the specific action taken with regard to each violation and the date the action was taken.

Where the citation permits a longer period for abatement, periodic progress reports should be filed.

Penalty Payment

The penalties itemized on the enclosed Citation and Notification of Penalty are payable within 15 working days of receipt. However, if you contest the citation or penalty in good faith, payment of penalties for those items contested is suspended until the Occupational Safety and Health Review Commission reviews your case and issues a final order. The Review Commission is an independent agency and is not a part of the U.S. Department of Labor. The final order of the Commission will either uphold, modify, or eliminate the penalties. However, penalties for items not contested are due within 15 working days. For further details, see the section on *How to Contest*.

Payment should be made by check or money order, payable to the order of **DOL-OSHA**. Payment should be sent to the OSHA Area Office listed on the Citation and Notification of Penalty. Please indicate on your payment the OSHA number from the upper right-hand corner of the Citation and Notification of Penalty.

Informal Conference and Settlement

Before deciding whether to file a notice of contest, you may request an informal conference with the OSHA Area Director to discuss the Citation and Notification of Penalty. You may use this opportunity to:

- Obtain a better explanation of the violations cited;
- Obtain a more complete understanding of the specific standards which apply;
- Discuss ways to correct the violations;
- Discuss problems with abatement dates;

- Discuss problems concerning employee safety practices; and
- Obtain answers to any other questions you may have.

You are encouraged to take advantage of the opportunity to have an informal conference if you foresee any difficulties in complying with any part of the citation. Please note that any informal conference will not extend your 15 working day period to file a Notice of Contest.

If you do not contest within 15 working days, your citation will become a final order. Nevertheless, you still may contact the OSHA Area Director for information and assistance on how to abate your violation. However, the OSHA Area Director may not amend or change any citation or penalty which has become a final order. He or she may only advise you on abatement methods or extend the time you need to abate the violation (see *Petition for Modification of Abatement*).

After you file a Notice of Contest, your case is in litigation. If you wish to settle the case, you may contact the OSHA Area Director who will give you the name of the attorney for OSHA who will be handling your case. All settlements of contested cases are negotiated between you and the attorney, according to the rules of procedure of the Occupational Safety and Health Review Commission.

How to Contest

Any employer who wishes to contest must notify the OSHA Area Director (in writing) within 15 working days after receipt of the penalty notification. "Working days" are Monday through Friday, excluding Federal holidays. This written notification is called a "Notice of Contest."

Your contest must be made in good faith. A contest filed solely to avoid your responsibilities of abatement or payment of penalties will not be considered a good faith contest.

Your Notice of Contest must clearly describe what is being contested—the citation, the penalty, the abatement date, or any combination. In addition, your notice should state whether all the items (violations) on the citation, or just specific violations, are being contested, [e.g. "I wish to contest the citation and penalty issued for items 3 and 4 of the citation issued June 27, 1976."]

A proper contest of any item(s) suspends your obligation to abate and pay until the item(s) contested has been judicially resolved. If only the penalty is contested, the abatement requirements must be met. If only some items on the citation are contested, the other items must be corrected and the corresponding penalties paid.

The Contest Process

If the Notice of Contest has been filed within the required 15 working days, the OSHA Area Director forwards your case to the Occupational Safety and Health Review Commission, an independent agency. The Commission assigns the case to an administrative law judge.

Generally, a hearing will be scheduled to be held in a public place as close as possible to the employer's workplace. Both you and your employees may participate in the hearing. You may either represent yourself or be represented by an attorney. The hearing will involve all of the elements of a trial, including examination and cross-examination of witnesses. The administrative law judge may affirm, modify, or eliminate any contested item of the citation or penalty.

Once the administrative law judge has ruled, any party to the case may request a further review by the Review Commission itself. Any of the three commissioners also may, on his own motion, bring the case before the Commission for review. If the Commission issues its own ruling, that ruling may be appealed to the U.S. Circuit Court of Appeals for the circuit in which the case arose.

Petition for Modification of Abatement

Abatement dates are assigned on the basis of the best available information at the time the citation is issued. When uncontrollable events or other circumstances prevent meeting a date, a petition for modification of abatement may be appropriate.

This procedure is used when the 15 working day contest period has expired and you have not contested the citation. It may be used when you have not been able to meet the abatement requirements of the citation due to circumstances beyond your control. If you have made a good faith effort to comply, you may file a petition for modification of abatement with the OSHA Area Director.

A petition for modification of abatement date must be in writing and must be submitted no later than one working day after the abatement date. It must include all of the following information:

1. Steps you have taken so far in an effort to achieve compliance, and dates of those steps.
2. Additional time period you need to comply.
3. Why you need additional time.
4. Interim steps you are taking to safeguard your employees against the

cited hazard during the abatement period.

5. A statement that the petition has been posted with the date of posting and, if appropriate, a statement that the petition has been served on an authorized representative of affected employees. The petition must remain posted for 10 working days, during which your employees may file an objection.

A petition for modification of abatement may be granted or opposed by the OSHA Area Director. If the petition for modification of abatement is opposed, it becomes a contested case before the Review Commission. Further information on petitions for modification of abatement dates may be obtained from the OSHA Area Office.

Follow-up Inspection and Failure to Abate

A follow-up inspection may be conducted to verify that you have:

- Posted the citation as required, and
- Corrected the violations as required in the citation.

The Act provides for penalties for failure to post the citations and for failure to correct violations. Also, you have a continuing responsibility to comply with the Act. Any new violations discovered during a follow-up inspection will be cited.

In order to achieve abatement by the date set forth in the citation, abatement efforts must be promptly initiated.

Providing false information on your efforts to abate is punishable under the Act.

Employee Courses of Action

Employees or their authorized representatives may contest any or all of the abate-

ment dates set for violations, if they believe them to be unreasonable. Employees have 15 working days from the date the employer receives the Citation and Notification of Penalty to contest. The citation which you must post advises them to contact the OSHA Area Director if they wish to contest. The filing of an employee contest does not suspend your obligation to abate.

Employer Discrimination Unlawful

The Act also provides that no employer shall discharge or discriminate against an employee who has exercised his rights under this law. Complaints from employees who believe they have been discriminated against will be investigated by the Occupational Safety and Health Administration. If the investigation discloses probable violations of employee rights, court action may follow.

Loans to Assist in Abatement

The Act authorizes the Small Business Administration (SBA) to make loans to enable small businesses to meet OSHA standards. This help is available if SBA determines that the employer is likely to suffer substantial economic injury without the assistance.

To obtain a loan after an inspection, you must furnish SBA with a copy of the citation(s). SBA then refers the application to the OSHA Area Office that conducted the inspection. That office will consult with SBA concerning the proposed use of loan funds.

Further loan information is available from the OSHA Area Director or your local SBA office. The OSHA booklet, *SBA Loans for OSHA Compliance* (OSHA 2005), available from the OSHA Area Director, lists addresses and telephone numbers of SBA offices.

Types of Violations

Willful—A violation where either: (1) the employer committed an intentional and knowing violation of the Act or (2) though the employer was not intentionally violating the Act, he or she was aware that a hazardous condition existed and acted in careless disregard of employer responsibilities under the Act.

Serious—A violation where an accident or illness could occur which would most likely result in death or serious physical harm, unless the employer did not know or could not have known of the violation.

Other—A violation that has a direct relationship to job safety and health, but which is not a serious violation.

Repeated—A violation of the same OSHA standard for which an employer has been previously cited and which has become a final order.

De Minimis Notice

A notice that has no direct or immediate relationship to job safety and health. Citations requiring abatement are not issued, and penalties are not proposed.

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U.S. DEPARTMENT OF LABOR
AREA DIRECTOR, OSHA
U.S. DEPARTMENT OF LABOR
ROOM 208 FEDERAL BLDG.
211 W. FERGUSON STREET
TYLER, TEXAS 75702
OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, \$300

Mr. John C. Warner, President
Tyler Pipe Industries, Inc.
P. O. Box 2027
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