

U.S. Department of Labor
Occupational Safety and Health Administration
4404 South Technology Drive
Sioux Falls, SD 57106



Citation and Notification of Penalty

To:
Midwest Excavating, LLC
27073 Henry Place
Sioux Falls, SD 57108

Inspection Number: 1396803
Inspection Date(s): 04/29/2019 - 04/29/2019
Issuance Date: 07/30/2019

Inspection Site:
735 East El Dorado Court
Sioux Falls, SD 57108

The violations described in this Citation and Notification of Penalty 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 penalties listed herein 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 either call to schedule an informal conference (see paragraph below) or 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 violations 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 violations cited herein 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 by calling 605-361-9566. During such an informal conference you may present any evidence or views which you believe would support an adjustment to the citations and/or penalties.

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 citations and/or proposed penalties within 15 working days after receipt, the citations and the proposed penalties 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. You can also make your payment electronically on www.pay.gov. On the left side of the pay.gov homepage, you will see an option to Search Public Forms. Type “OSHA” and click Go. From the results, click on **OSHA Penalty Payment Form**. The direct link is:

<https://www.pay.gov/paygov/forms/formInstance.html?agencyFormId=53090334>.

You will be required to enter your inspection number when making the payment. Payments can be made by credit card or Automated Clearing House (ACH) using your banking information. Payments of \$25,000 or more require a Transaction ID, and also must be paid using ACH. If you require a Transaction ID, please contact the OSHA Debt Collection Team at (202) 693-2170.

OSHA does not agree to any restrictions or conditions or endorsements put on any check, money order, or electronic payment for less than the full amount due, and will process the payments as if these restrictions or conditions 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. 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 citations issued on 07/30/2019. The conference will be held by telephone or at the OSHA office located at 4404 South Technology Drive, Sioux Falls, SD 57106 on _____ at

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

CERTIFICATION OF CORRECTIVE ACTION WORKSHEET

Inspection Number: 1396803

Company Name: Midwest Excavating, LLC
Inspection Site: 735 East El Dorado Court, Sioux Falls, SD 57108
Issuance Date: 07/30/2019

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, 4404 South Technology Drive, Sioux Falls, SD 57106**

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: Midwest Excavating, LLC
Inspection Site: 735 East El Dorado Court, Sioux Falls, SD 57108

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

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

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 (1.22m) or more in depth so as to require no more than 25 feet (7.62m) of lateral travel for employees:

- (a) **Midwest Excavating, LLC at 735 East El Dorado Court, Sioux Falls, SD 57108:** On or about and at times prior to April 29, 2019, the employer did not ensure a safe means of egress was located in an excavation over four feet in depth for employee use. An employee working within the trench excavation was not provided with egress after the stepladder was removed. This condition exposed an employee to the hazard of trench cave-in.

Abatement Note: Abatement documentation and certification are required for this item (see enclosed "Certification of Corrective Action Worksheet").

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:	08/23/2019
Proposed Penalty:	\$5304.00



Citation and Notification of Penalty

Company Name: Midwest Excavating, LLC
Inspection Site: 735 East El Dorado Court, Sioux Falls, SD 57108

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

29 CFR 1926.1053(b)(1): Where portable ladders were used for access to an upper landing surface and the ladder's length allows, the ladder side rails did not extend at least 3 feet (.9 m) above the upper landing surface being accessed:

- (a) **Midwest Excavating, LLC at 735 East El Dorado Court, Sioux Falls, SD 57108:** On or about and at times prior to April 29, 2019, the employer did not ensure the side rails of a stepladder extended at least three feet above the top of the excavation. Employees utilized a six-foot Louisville stepladder, model # FS2506, to egress a trench excavation that was approximately 7 feet and 6 inches deep. The side rails of the stepladder did not extend three feet past the sidewalk or top of the excavation.

Abatement Note: Abatement certification and documentation are required for this item (see enclosed "Certification of Corrective Action Worksheet").

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:

08/23/2019



Citation and Notification of Penalty

Company Name: Midwest Excavating, LLC
Inspection Site: 735 East El Dorado Court, Sioux Falls, SD 57108

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

29 CFR 1926.1053(b)(4): Ladders were used for purposes other than the purpose for which they were designed:

- (a) **Midwest Excavating, LLC at 735 East El Dorado Court, Sioux Falls, SD 57108:** On or about and at times prior to April 29, 2019, the employer did not ensure that the six-foot Louisville stepladder was being used in accordance with manufacturer's recommendations. The ladder was not open with the spreaders locked while employees used the ladder to access and egress a trench excavation. The ladder was closed and leaned against the sidewall of the excavation. This condition exposed employees to a fall hazard of approximately 7 feet and 6 inches within the excavation.

Abatement Note: Abatement certification and documentation are required for this item (see enclosed "Certification of Corrective Action Worksheet").

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:

08/23/2019



Citation and Notification of Penalty

Company Name: Midwest Excavating, LLC
Inspection Site: 735 East El Dorado Court, Sioux Falls, SD 57108

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

29 CFR 1926.1060(a): The employer did not provide a training program for each employee using ladders and stairways, as necessary, which would enable each employee to recognize hazards related to ladders and stairways and train each employee in the procedures to be followed to minimize these hazards:

- (a) **Midwest Excavating, LLC at 735 East El Dorado Court, Sioux Falls, SD 57108:** On or about and at times prior to April 29, 2019, the employer did not ensure each employee was provided with a training program using ladders to train in the procedures to be followed to minimize hazards related to ladders. This condition exposed employees to a fall hazard while using a six-foot stepladder to access and egress a trench excavation.

Abatement Note: The employer shall ensure that each employee has been trained by a competent person in the following areas, as applicable:

- (a) The nature of fall hazards in the work area;
- (b) The correct procedures for erecting, maintaining, and disassembling the ladder being used;
- (c) The proper construction, use, placement, and care in handling of all stairways and ladders;
- (d) The maximum intended load-carrying capacities of ladders; and
- (e) The standards contained in this subpart.

Abatement Note: Abatement certification and documentation are required for this item (see enclosed "Certification of Corrective Action Worksheet").

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Company Name: Midwest Excavating, LLC
Inspection Site: 735 East El Dorado Court, Sioux Falls, SD 57108

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:

08/23/2019

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: Midwest Excavating, LLC
Inspection Site: 735 East El Dorado Court, Sioux Falls, SD 57108

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

Citation 2 Item 1 a 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 29 CFR 1926.652 (b) or (c):

- (a) **Midwest Excavating, LLC at 735 East El Dorado Court, Sioux Falls, SD 57108:** On or about and at times prior to April 29, 2019, the employer failed to ensure employees were protected from cave-in and struck-by hazards while working within an excavation deeper than five feet. On April 29, 2019, an employee accessed a trench excavation measuring 7 feet and 6 inches in depth with vertical walls, to repair a residential water line that had a leaking valve. The employer did not utilize a protective system to ensure employees were protected while working within the trench. This condition exposed employees to a cave-in and struck-by hazard associated with working in an unprotected trench excavation.

Abatement Note: Abatement certification and documentation are required for this item (see enclosed "Certification of Corrective Action Worksheet").

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:	08/23/2019
Proposed Penalty:	\$53039.00



Citation and Notification of Penalty

Company Name: Midwest Excavating, LLC
Inspection Site: 735 East El Dorado Court, Sioux Falls, SD 57108

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

29 CFR 1926.651(k)(2): Where the competent person found evidence of a situation that could result in possible cave-in, indications of failure of protective systems, hazardous atmospheres, or other hazardous conditions, exposed employees were not removed from the hazardous area until the necessary precautions have been taken to ensure their safety:

- (a) **Midwest Excavating, LLC at 735 East El Dorado Court, Sioux Falls, SD 57108:** On or about and at times prior to April 29, 2019, the employer did not ensure that employees were removed from an excavation that was 7 feet 6 inches in depth, 3 feet in width, and 5 feet 8 inches in length. The competent person did not identify that the trench was greater than 5 feet in depth, had vertical walls with no protective system in place, did not conduct a soil analysis, was undercut near the bottom, potential struck-by hazards, and improper ladders/usage to enter and exit the excavation. This condition exposed employees to struck-by hazards / crushing injuries associated with trench wall cave-in and fall hazards associated to improper ladder/usage.

Abatement Note: Abatement certification and documentation are required for this item (see enclosed "Certification of Corrective Action Worksheet").

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:

08/23/2019

A handwritten signature in cursive script, appearing to read "Sheila Stanley".

Sheila Stanley
Area Director

U.S. Department of Labor
Occupational Safety and Health Administration
4404 South Technology Drive
Sioux Falls, SD 57106



INVOICE / DEBT COLLECTION NOTICE

Company Name: Midwest Excavating, LLC
Inspection Site: 735 East El Dorado Court, Sioux Falls, SD 57108
Issuance Date: 07/30/2019

Summary of Penalties for Inspection Number	1396803
Citation 1, Serious	\$5304.00
Citation 2, Willful	\$53039.00
TOTAL PROPOSED PENALTIES	\$58343.00

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. You can also make your payment electronically on www.pay.gov. On the left side of the pay.gov homepage, you will see an option to Search Public Forms. Type "OSHA" and click Go. From the results, click on **OSHA Penalty Payment Form**. The direct link is <https://www.pay.gov/paygov/forms/formInstance.html?agencyFormId=53090334>. You will be required to enter your inspection number when making the payment. Payments can be made by credit card or Automated Clearing House (ACH) using your banking information. Payments of \$25,000 or more require a Transaction ID, and also must be paid using ACH. If you require a Transaction ID, please contact the OSHA Debt Collection Team at (202) 693-2170.

OSHA does not agree to any restrictions or conditions or endorsements put on any check, money order, or electronic payment 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.



Sheila Stanley
Area Director



Date