

U.S. Department of Labor Occupational Safety and Health Administration
1033 La Posada
Suite 375
Austin, TX 78752



09/15/2023

Holmes Foods, Inc.
and its successors
101 South Liberty Avenue
Nixon, TX 78140

Dear Employer:

Enclosed you will find citations for violations of the Occupational Safety and Health Act of 1970 (the Act) which may have accompanying proposed penalties. Also enclosed is a booklet entitled, "Employer Rights and Responsibilities Following an OSHA Inspection", (OSHA 3000-04R) revised 2018, which explains your rights and responsibilities under the Act. If you have any questions about the enclosed citations and penalties, I would welcome further discussions in person or by telephone. Please contact me at (512) 374-0271.

You will note on page 6 of the booklet that, for violations which you do not contest, you must (1) notify this office promptly by letter that you have taken appropriate corrective action within the time set forth on the citation; and (2) pay any penalties assessed. Please inform me of the abatement steps you have taken and of their dates together with adequate supporting documentation; e.g., drawings or photographs of corrected conditions, purchase/work orders related to abatement actions, air sampling results. This information will allow us to close the case.

As indicated on page 3 of the booklet, you may request an informal conference with me during the 15-working-day notice of contest period. During such an informal conference you may present any evidence or views which you believe would support an adjustment to the citation or the penalty.

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must 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 the citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete the attached notice at the bottom of this letter and post it next to the Citations as soon as the time, date and the place of the informal conference have been determined. Be sure to bring to the conference with you any and all supporting documentation of existing conditions as well as of 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.

You should be aware that OSHA publishes information on its inspection and citation activity on the Internet under the provisions of 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.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Monica', with a long horizontal flourish extending to the right.

Monica Munoz
Area Director

Enclosures

U.S. Department of Labor
Occupational Safety and Health Administration
1033 La Posada
Suite 375
Austin, TX 78752



Citation and Notification of Penalty

To:
Holmes Foods, Inc.
and its successors
101 South Liberty Avenue
Nixon, TX 78140

Inspection Number: 1657075
Inspection Date(s): 03/15/2023 - 09/15/2023
Issuance Date: 09/15/2023

Inspection Site:
101 South Liberty Avenue
Nixon, TX 78140

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 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 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 by calling (512) 374-0271. 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. You can also make your payment electronically at www.pay.gov. At the top of the pay.gov homepage, type "OSHA" in the Search field and select Search. From **OSHA Penalty Payment Form** search result, select Continue. 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 citation(s) issued on 09/15/2023. The conference will be held by telephone or at the OSHA office located at 1033 La Posada, Suite 375, Austin, TX 78752 on _____ at _____.

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

CERTIFICATION OF CORRECTIVE ACTION WORKSHEET

Inspection Number: 1657075

Company Name: Holmes Foods, Inc.
Inspection Site: 101 South Liberty Avenue, Nixon, TX 78140
Issuance Date: 09/15/2023

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, 1033 La Posada, Suite 375, Austin, TX 78752.**

Citation Number 1 and Item Number 1 was corrected on _____
By (Method of Abatement): _____

Citation Number 1 and Item Number 2 was corrected on _____
By (Method of Abatement): _____

Citation Number 1 and Item Number 3 was corrected on _____
By (Method of Abatement): _____

Citation Number 1 and Item Number 4 was corrected on **Corrected During Inspection**
By (Method of Abatement): _____

Citation Number 1 and Item Number 5 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: Holmes Foods, Inc.
Inspection Site: 101 South Liberty Avenue, Nixon, TX 78140

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

Section 5(a)(1) of the Occupational Safety and Health Act of 1970: The employer did not furnish employment and a place of employment which were free from recognized hazards that were causing or likely to cause death or serious physical harm to employees in that employees were required to perform tasks resulting in stressors that had caused, were causing, and were likely to cause musculoskeletal disorders (MSDs):

a) Stack-off Area: On or about March 15, 2023, and at times prior to and continuing thereafter, employees were required to repeatedly lift boxes of chicken products weighing between 46 - 81lbs from the conveyor to the pallet, from floor level to eight product tiers high. The frequency and duration of lifts, weights of the boxes, repetitive motions, and awkward postures placed employees at risk for low back injuries.

Among other methods, we recommend implementing a process-based approach with the following feasible and acceptable methods of abatement, which would eliminate or materially reduce the hazard:

1. Perform a worksite analysis to recognize and identify existing manual handling hazards in the workplace (including but not limited to analyzing whether the weights of products contribute to ergonomic hazards) and develop an effective ergonomics program. Conduct an ergonomic assessment by a certified professional ergonomist, or other qualified professional. An analysis should include an assessment with validated methods. Periodic ergonomic surveys of employees and risk assessment of processes in the workplace should be conducted at appropriate intervals or when changes to the work may change the ergonomic risk, to evaluate effectiveness of controls.
2. Training and education for exposed employees, including methods to evaluate the effectiveness of the training. Re-training should be done annually, or as operations change. Training should be done in a manner understandable by all employees (in a language that they speak) and address hazards associated with the work they perform, early recognition of musculoskeletal injuries and illnesses, the ergonomic risk factors associated with their job(s), and how to prevent MSDs.
3. The following engineering, administrative, and work practice controls are feasible and will materially reduce the hazard at this workplace.
 - Implement job rotation to reduce strain-related repetitive lifting.
 - Based on the ergonomic assessment, consider implementing team lifts where other measures will not address the stressors from repetitive lifting.
 - Use a zero-lift table (i.e., a pallet lift) for lines 2,4 and 5, which have products weighing more than 50lbs.

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: 1657075
Inspection Date(s): 03/15/2023 - 09/15/2023
Issuance Date: 09/15/2023



Citation and Notification of Penalty

Company Name: Holmes Foods, Inc.
Inspection Site: 101 South Liberty Avenue, Nixon, TX 78140

-
- Leave sufficient space around each pallet so employees can easily walk to the sides and back of the pallet to place loads instead of reaching across.
 - Double stack pallets to reduce lifts above shoulder height.
 - Develop and implement a medical management system that includes healthcare providers who are trained in the diagnosis and treatment of musculoskeletal disorders

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated: October 06, 2023
Proposed Penalty: \$15,625.00

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: 1657075
Inspection Date(s): 03/15/2023 - 09/15/2023
Issuance Date: 09/15/2023



Citation and Notification of Penalty

Company Name: Holmes Foods, Inc.
Inspection Site: 101 South Liberty Avenue, Nixon, TX 78140

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

29 CFR 1910.133(a)(1): The employer did not ensure that each affected employee uses appropriate eye or face protection when exposed to eye or face hazards from flying particles, molten metal, liquid chemicals, acids or caustic liquids, chemical gases or vapors, or potentially injurious light radiation.

On or about March 15, 2023, employees worked around peroxyacetic acid acetyl hydroperoxide (PAA) in liquid form without wearing appropriate eye protection, exposing the employees to hazards such as eye irritation and eye damage.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:	October 06, 2023
Proposed Penalty:	\$6,696.00

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: Holmes Foods, Inc.
Inspection Site: 101 South Liberty Avenue, Nixon, TX 78140

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

29 CFR 1910.147(c)(4)(i): Procedures were not developed, documented and utilized for the control of potentially hazardous energy when employees were engaged in activities covered by this section:

- (a) On or about March 16, 2023, and at times prior thereto, employees performed servicing and maintenance in the Stackoff Area on the CV-TEK Corr-vac Mark III bagger machine without the employer developing procedures to isolate all energy sources, exposing the employees to the hazards of unexpected startup.
- (b) On or about March 16, 2023, and at times prior thereto, employees performed servicing and maintenance in the Dapec Room on the Pacmac 9500 Bagger Serial No. 9500BLH831 without the employer developing procedures to isolate all energy sources, exposing the employees to the hazards of unexpected startup.
- (c) On or about March 16, 2023, and at times prior thereto, employees performed servicing and maintenance in the Dapec Room on the JBT Ultracat injector Serial No. 2189 without the employer developing procedures to isolate all energy sources, exposing the employees to the hazards of unexpected startup.
- (d) On or about March 16, 2023, and at times prior thereto, employees performed servicing and maintenance in the Cut Up Room on three Linco Poultry BAADER Cut Up machines without the employer developing procedures to isolate all energy sources, exposing the employees to the hazards of unexpected startup.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:	October 06, 2023
Proposed Penalty:	\$13,394.00

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: Holmes Foods, Inc.
Inspection Site: 101 South Liberty Avenue, Nixon, TX 78140

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

29 CFR 1910.219(c)(4)(i): Unguarded projecting shaft end(s) did not present a smooth edge and end and projected more than one half the diameter of the shaft:

- a) On or about March 15, 2023, and at times prior thereto, a wash tank in the Cut-up Room had two projecting shaft ends that were more than one half the diameter of the shafts, exposing employees to the hazard of being caught by the shaft ends.
- b) On or about March 15, 2023, and at times prior thereto, a conveyor in the Back Dock had a projecting shaft end that was more than one half the diameter of the shaft, exposing employees to the hazard of being caught by the shaft end.

Date By Which Violation Must be Abated:	Corrected During Inspection
Proposed Penalty:	\$8,929.00

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: Holmes Foods, Inc.
Inspection Site: 101 South Liberty Avenue, Nixon, TX 78140


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

29 CFR 1910.219(f)(3): Sprocket wheels and chains which were seven (7) feet or less above floors or platforms were not enclosed:

- a. On or about March 15, 2023, and at times prior thereto, employees were working on line one in close proximity to a Linco Poultry Machine Wing and Thigh Cutter machine number 106680601 which had a rotating chain and sprocket, exposing employees to the hazard of being caught-in the chain.
- b. On or about March 15, 2023, and at times prior thereto, employees were working on line two in close proximity to a Linco Poultry Machine Wing and Thigh Cutter machine number 102120601 which had a rotating chain and sprocket, exposing employees to the hazard of being caught-in the chain.
- c. On or about March 15, 2023, and at times prior thereto, employees were working on line three in close proximity to a Linco Poultry Machine Wing and Thigh Cutter machine number 108380603 which had a rotating chain and sprocket, exposing employees to the hazard of being caught-in the chain.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated: **October 06, 2023**
Proposed Penalty: **\$15,625.00**



Monica Munoz
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
1033 La Posada
Suite 375
Austin, TX 78752



**INVOICE /
DEBT COLLECTION NOTICE**

Company Name: Holmes Foods, Inc.
Inspection Site: 101 South Liberty Avenue, Nixon, TX 78140
Issuance Date: 09/15/2023

Summary of Penalties for Inspection Number: 1657075

Citation 1 Item 1, Serious	\$15,625.00
Citation 1 Item 2, Serious	\$6,696.00
Citation 1 Item 3, Serious	\$13,394.00
Citation 1 Item 4, Serious	\$8,929.00
Citation 1 Item 5, Serious	\$15,625.00

TOTAL PROPOSED PENALTIES: **\$60,269.00**

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 at www.pay.gov. At the top of the [pay.gov](http://www.pay.gov) homepage, type "OSHA" in the Search field and select Search. From the **OSHA Penalty Payment Form** search result, select Continue. 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.

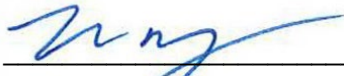
If a personal check is issued, it will be converted into an electronic fund transfer (EFT). This means that our bank will copy your check and use the account information on it to electronically debit your account for the amount of the check. The debit from your account will then usually occur within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



Monica Munoz

Area Director

September 15, 2023

Date