

U.S. Department of Labor Occupational Safety and Health Administration
100 Tri County Parkway, 3rd Floor North
Cincinnati, OH 45246



01/17/2024

The Martin-Brower Company, L.L.C.
and its successors
4260 Port Union Rd., Ste. 300
Fairfield, OH 45011

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 (513) 841-4132.

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 that reads "Ken Montgomery". The signature is written in a cursive style with a long horizontal stroke at the end.

Ken E. Montgomery
Area Director

Enclosures

U.S. Department of Labor

Occupational Safety and Health Administration
100 Tri County Parkway, 3rd Floor North
Cincinnati, OH 45246



Citation and Notification of Penalty

To:

The Martin-Brower Company, L.L.C.
and its successors
4260 Port Union Rd., Ste. 300
Fairfield, OH 45011

Inspection Number: 1684846

Inspection Date(s): 07/18/2023 - 01/11/2024

Issuance Date: 01/17/2024

Inspection Site:

4260 Port Union Rd., Ste. 300
Fairfield, OH 45011

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 (513) 841-4132. 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](http://www.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 01/17/2024. The conference will be held by telephone or at the OSHA office located at 100 Tri County Parkway, 3rd Floor North, Cincinnati, OH 45246 on _____ at _____.

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

CERTIFICATION OF CORRECTIVE ACTION WORKSHEET

Inspection Number: 1684846

Company Name: The Martin-Brower Company, L.L.C.
Inspection Site: 4260 Port Union Rd., Ste. 300, Fairfield, OH 45011
Issuance Date: 01/17/2024

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, 100 Tri County Parkway, 3rd Floor North, Cincinnati, OH 45246.**

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: The Martin-Brower Company, L.L.C.
Inspection Site: 4260 Port Union Rd., Ste. 300, Fairfield, OH 45011

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 ergonomic stressors that had caused, were causing, or were likely to cause musculoskeletal disorders (MSDs):

a. The Martin-Brower Company, L.L.C. - Fairfield establishment located at 4260 Port Union Road, Suite 300, in Fairfield, OH (Dry Goods Selection Area): On or about July 18, 2023, and at times continuing thereafter, the employer's employees were exposed to an ergonomic hazard which was causing or likely to cause MSDs. Employees were required to perform repetitive manual material handling lifting tasks, involving forceful exertions and awkward postures, during the Dry Goods Selection task placing them at risk for low back injuries. Specific product cases/slot areas presenting excessive risk included, but are not limited to:

- i. Diet Coke BIB / Item # 42002 / Slot ID D-E-120
- ii. Dr. Pepper BIB / Item # 486002 / Slot ID D-E-128
- iii. Sprite BIB / Item # 168002 / Slot ID D-E-134
- iv. Dasani 16.9 Oz / Item # 6842107 / Slot ID D-E-156

b. The Martin-Brower Company, L.L.C. - Fairfield establishment located at 4260 Port Union Road, Suite 300, in Fairfield, OH (Cooler Selection Area): On or about July 18, 2023, and at times continuing thereafter, the employer's employees were exposed to an ergonomic hazard which was causing or likely to cause MSDs. Employees were required to perform repetitive manual material handling lifting tasks, involving forceful exertions and awkward postures, during the Cooler Selection task placing them at risk for low back injuries. Specific product cases/slots presenting excessive risk included, but are not limited to:

- i. Cheese Slices / Item # 13297 / Slot ID R-A-122
- ii. Van RF Ice Cream / Item # 6294054 / Slot ID R-A-130
- iii. Whole Milk Bag / Item # 5255060 / Slot ID R-A-142
- iv. Buttermilk / Item # 457039 / Slot ID R-B-181

c. The Martin-Brower Company, L.L.C. - Fairfield establishment located at 4260 Port Union Road, Suite 300, in Fairfield, OH (Freezer Selection Area): On or about July 18, 2023, and at times continuing thereafter, the employer's employees were exposed to an ergonomic hazard which was causing or likely to cause MSDs. Employees were required to perform manual repetitive material handling lifting tasks, involving forceful exertions

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: The Martin-Brower Company, L.L.C.
Inspection Site: 4260 Port Union Rd., Ste. 300, Fairfield, OH 45011

and awkward postures, during the Freezer Selection task placing them at risk for low back injuries. Specific product cases/slots presenting excessive risk included, but are not limited to:

- i. 100% Pure Beef / Item # 5086 / Slot ID F-D-109
- ii. McNuggets / Item # 407902 / Slot ID F-D-119
- iii. Mac Fries 440 / Item # 4849 / Slot ID F-B-168

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

Engineering Controls to Reduce Ergonomic Risk Factors Associated with Increased Risk of Low Back Injury:

- 1) Reduce heights of palletized goods to below employee shoulder level (48") to promote lifting in the employee power zone (close to the body, between mid-thigh and mid-chest height) through working with product vendors and/or utilizing powered industrial vehicles with clamping attachment systems to break down pallets to a safer working height prior to stowing for selection.
- 2) Utilize powered pallet jack products with forks that can be raised up enough to minimize bending and biomechanical loading when placing the first couple layers of product on the carts.
- 3) Slot higher weight, faster moving items in a manner that provides access to at least three sides of the pallets to minimize bending, extended reaches, and biomechanical loading. Present the 48" sides of the pallets to the front of the slot to reduce forward reaching and biomechanical loading when selecting in the middle or back of the pallet. Reserve flow racking for lower weight, slower moving items.
- 4) Raise pallets off of the floor with pallet risers, or other mechanical devices, to minimize bending and biomechanical loading when selecting from the bottom layers of the pallets.
- 5) Provide lightweight, sturdy, portable step stools to selectors in order to allow selectors to be in a better biomechanical position to bring forward cases on the top rows of pallets.
- 6) Work with vendors to provide hand hold cut-outs in cases for all heavier weight items.

Administrative Controls to Reduce Ergonomic Risk Factors Associated with Increased Risk of Low Back Injury:

- 1) Prohibit the lifting of multiple cases of goods at one time for higher weight items. Permit the lifting of multiple cases at one time for lower weight cases only where justified through a validated ergonomic assessment tool.

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: The Martin-Brower Company, L.L.C.
Inspection Site: 4260 Port Union Rd., Ste. 300, Fairfield, OH 45011

- 2) Reduce the duration (hours per shift) of manual material handling tasks by workers in the Dry Goods, Cooler, and Freezer areas. Methods of reducing the duration of manual material handling tasks include: (1) ensuring that staffing is adequate for demand/volume of product in the warehouse, (2) adding significant rest periods/breaks to the work shift, (3) developing and implementing an employee rotation program that rotates workers between tasks to reduce the amount and duration of lifting heavy cases during a given shift.
- 3) Reduce the frequency of lifting by workers (i.e., lifts per minute) in the Dry Goods, Cooler, and Freezer areas by re-evaluating the engineered labor standards currently in place.
- 4) Ensure that employees engage in pick-by-layer practices (vs. pyramid picking) to ensure that cases below shoulder level (48") can be slid close to employees' bodies before lifting, reducing reach distance and biomechanical loading.
- 5) Where flow racking is justified through ergonomic risk factor analysis, limit pallets becoming 'stuck' upstream of their destination point by maintaining wheels (i.e., frequently removing debris and materials caught in the wheels/rollers), ensuring brake systems are suitable and operational, and ensuring that vendors use correct and undamaged pallets.
- 6) Require restockers to remove and discard plastic wrapping from the pallets presented for selecting to ensure that it does not interfere with the selectors during lifting.

Other Important Controls to Assist in the Reduction of Ergonomic Risk Factors Associated with Increased Risk of Low Back Injury:

- 1) Develop and implement a written, formal Ergonomics Program / Procedure:
 - a. Perform baseline ergonomic assessments for tasks (cases, items, slots) using validated ergonomic assessment tools;
 - b. Follow-up baseline ergonomic assessments with the implementation of controls (in order of the hierarchy of controls) for tasks determined to have unacceptable MSD risk(s) based on the guidance of the assessment tools utilized;
 - c. Train workers on areas such as: (1) the principles of the employers Ergonomics Program / Procedure, (2) general risk factors for MSDs, (3) common signs and symptoms associated with MSDs, (4) the importance of early reporting of MSD signs and symptoms associated with MSDs;

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: The Martin-Brower Company, L.L.C.
Inspection Site: 4260 Port Union Rd., Ste. 300, Fairfield, OH 45011

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- d. Engage workers in the ergonomics process by inclusion into the ergonomic risk identification and control processes;
 - e. Implement program oversight and evaluation protocols to ensure that the site's Ergonomics Program / Policy is being effectively implemented; and
 - f. When performing incident investigations to determine root cause(s) of MSDs, investigate beyond immediate cause(s) (i.e., worker behaviors, worker actions) to determine true root cause(s) (i.e., any unmitigated ergonomic risk factors inherent in the design of the work environment or imbedded in the culture of the workplace).

In accordance with 29 CFR 1903.19(d), abatement certification is required for this violation (using the CERTIFICATION OF CORRECTIVE ACTION WORKSHEET), and in addition, documentation demonstrating that abatement is complete must be included with your certification. This documentation may include, but is not limited to, evidence of the purchase or repair of the equipment, photographic or video evidence, or written records.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:	March 05, 2024
Proposed Penalty:	\$16,131.00

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: 1684846
Inspection Date(s): 07/18/2023 - 01/11/2024
Issuance Date: 01/17/2024



Citation and Notification of Penalty

Company Name: The Martin-Brower Company, L.L.C.
Inspection Site: 4260 Port Union Rd., Ste. 300, Fairfield, OH 45011

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

29 CFR 1910.110(c)(5)(ii): Containers having a maximum water capacity of 2 1/2 pounds (nominal 1 pound LP-Gas capacity) are permitted to be used inside of buildings as part of approved self-contained hand torch assemblies or similar appliances.

a) On or about November 14, 2023, and times prior, in the Freezer, janitorial staff used a 20-pound (20lb water capacity) propane tank that was connected for use to the Bernzomatic Blaze Torch (Model MT455/JT855) to melt ice off of the Freezer floor. The tank exceeded the 2 and 1/2 pound maximum water capacity for a propane tank used with a torch assembly inside a building.

Date By Which Violation Must be Abated:
Proposed Penalty:

Corrected During Inspection
\$11,524.00

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: The Martin-Brower Company, L.L.C.
Inspection Site: 4260 Port Union Rd., Ste. 300, Fairfield, OH 45011

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


29 CFR 1910.176(a): Use of mechanical equipment. Where mechanical handling equipment is used, sufficient safe clearances shall be allowed for aisles, at loading docks, through doorways and wherever turns or passage must be made. Aisles and passageways shall be kept clear and in good repair, with no obstruction across or in aisles that could create a hazard. Permanent aisles and passageways shall be appropriately marked.

a) On or about November 15, 2023, and times prior, the employer did not ensure that powered industrial vehicle operators were provided safe forward clearances at the automated Rytec roll-up Freezer door nearest the Bun Room. Opposing traffic was allowed to proceed through the automated roll-up door (blind spot) in a manner that exposed drivers of powered industrial vehicles to the potential for head-on collisions/contacts. Pressure sensors installed in the travel path on the Freezer interior floor were positioned and operated in a manner that allowed for powered industrial vehicles to meet unexpectedly head on when the door rolled up under the powered industrial vehicle operating conditions allowed by the employer.

In accordance with 29 CFR 1903.19(d), abatement certification is required for this violation (using the CERTIFICATION OF CORRECTIVE ACTION WORKSHEET), and in addition, documentation demonstrating that abatement is complete must be included with your certification. This documentation may include, but is not limited to, evidence of the purchase or repair of the equipment, photographic or video evidence, or written records.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated: **March 05, 2024**
Proposed Penalty: **\$13,828.00**



Ken E. Montgomery
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
100 Tri County Parkway, 3rd Floor North
Cincinnati, OH 45246



**INVOICE /
DEBT COLLECTION NOTICE**

Company Name: The Martin-Brower Company, L.L.C.
Inspection Site: 4260 Port Union Rd., Ste. 300, Fairfield, OH 45011
Issuance Date: 01/17/2024

Summary of Penalties for Inspection Number: 1684846

Citation 1 Item 1, Serious	\$16,131.00
Citation 1 Item 2, Serious	\$11,524.00
Citation 1 Item 3, Serious	\$13,828.00

TOTAL PROPOSED PENALTIES: \$41,483.00

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.

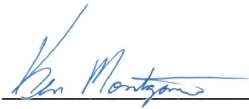
Pursuant to the Debt Collection Act of 1982 (Public Law 97-365) and regulations of the U.S. Department of Labor (29 CFR Part 20), the Occupational Safety and Health Administration is required to assess interest,

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.



Ken E. Montgomery

Area Director

1/17/2024

Date



January 17, 2024

The Martin-Brower Company, L.L.C.
Joseph Hartman (Assistant General Manager)
4260 Port Union Rd., Ste. 300
Fairfield, OH 45011

Re: Inspection #1684846 (Flow Racking Pallet Brake System Conditions – Ergonomics and Safety & Flow Racking Rollers - Safety)

Mr. Hartman,

An inspection of your workplace located at 4260 Port Union Rd., Ste. 300 in Fairfield, OH, beginning on July 18, 2023, was conducted pursuant to an ergonomics hazard referral from our Cincinnati Area Office.

As part of the inspection, injury and illness data related to empty pallet removal tasks within the flow racking systems of the Warehouse was evaluated. Trends were documented related to the manual removal of ‘jammed’ empty front pallets from flow racking systems. These trends included injuries to the back and shoulders.

From January 2020 through July 2023, there were at least 7 recordable injuries involving the manual removal of empty pallets from slots/racking systems. At least 3 of these recordable injuries contained details to document a contributing cause of the injury as the empty pallet being stuck in the rack.

The investigation determined that the condition was still an active concern in the Warehouse. Examples of functioning and damaged/inoperable flow racking pallet brake systems were documented on the floor on November 15, 2023. One example documented was a Freezer flow rack slot with a broken pallet engagement tab and another documented was a Dry Goods flow rack slot that with a pallet engagement tab that was not contacting the pallet. These conditions can result in the front pallet being picked to become entrapped between the front of the rack and the loaded pallet(s) behind. When the empty front pallet is removed by selectors at slots containing these issues, the employees need to use manual force to overcome the back-pressure imparted by the loaded pallet(s) behind in direct contact with the empty front pallet. This condition has resulted in multiple employee injuries as outlined above. Another concern with the inoperability of some flow racking pallet brake systems are reports of the back-pressure on the front pallet resulting in the unpredictable movement of the front pallet (loaded and empty), potentially exposing selectors in the picking aisles to struck-by hazards.

In addition to concerns with the flow racking braking systems, the limited inspection of the racking systems on November 15, 2023 showed evidence of pallet debris on and within some of

the flow racking roller systems serving to feed loaded pallets forward. The investigation revealed that it was not uncommon for selectors to feel the need to enter the racking systems to manually move forward pallets that become stuck due to debris in the roller systems. The investigation revealed that selectors have electively entered the racks for this purpose. The investigation revealed that the root causes for these elective actions included (1) restockers were not readily available to push forward the pallets from the rear with powered industrial vehicles as promoted by management and (2) selectors felt rushed to meet the existing labor standards. Entry into the racking systems presents caught-in-between and struck-by hazards to selectors.

We recommend that your company thoroughly re-evaluate flow rack safety in terms of the reduction of the specific ergonomic, struck-by, and caught-in-between risk factors discussed above and take the necessary steps recommended by the manufacturer to alleviate these concerns.

You may voluntarily provide the Cincinnati Area Office with progress reports on your efforts to address these concerns.

Under OSHA's current inspection protocol, we may return to your worksite in approximately one year to further examine the conditions noted above.

Sincerely,

A handwritten signature in blue ink that reads "Ken Montgomery". The signature is written in a cursive style with a long horizontal stroke at the end.

Ken E. Montgomery
Area Director



January 17, 2024

The Martin-Brower Company, L.L.C.
Joseph Hartman (Assistant General Manager)
4260 Port Union Rd., Ste. 300
Fairfield, OH 45011

Re: Inspection #1684846 (Fry Cart Process Ergonomics)

Mr. Hartman,

An inspection of your workplace located at 4260 Port Union Rd., Ste. 300 in Fairfield, OH, beginning on July 18, 2023, was conducted pursuant to an ergonomics hazard referral from our Cincinnati Area Office.

As part of the inspection, your facility's Fry Cart Process, established in May of 2023 within the Cooler Dock Area for the downstacking pallets of 38 lb. cases of fries to delivery carts, was evaluated. At the time of our evaluation, the process involved the coordinated manual downstacking of numerous pallets each containing 54 cases of fries (6 levels high) to store carts each containing 24 cases of fries (5 levels high). Based on our evaluation of this process, it has been confirmed that nearly all workers performing this work are at an increased risk of incurring lifting-related low back injury when performing these manual lifting/lowering tasks involving 38 lb. fry cases. Although the focus of our evaluation was on low back injury risk, risk factors relative to the upper arms and shoulders were also observed during the process.

This process should be re-evaluated, and feasible engineering and administrative controls applied to reduce the risk to workers.

Evaluation Summary/Overview

The evaluation included: (1) a review of your company's injury and illness records, (2) private employee interviews, (3) management interviews, (4) photographs and video taken during the on-site portion of the inspection, and (5) application of the Revised NIOSH Lifting Equation.¹

On July 20, 2023, multiple iterations of the Fry Cart Process were observed, measured, and recorded for off-site analysis.

Analysis Methodology - The Revised NIOSH Lifting Equation

Due to concerns involving the risk factor of excessive forces being placed on the low back during lifting, a risk analysis assessment was performed using the Revised NIOSH Lifting Equation.¹

The Applications Manual for the Revised NIOSH Lifting Equation was published in 1993, and later updated in 2021, as a tool for determining a safe weight limit, or Recommended Weight Limit (RWL), for a specific lifting task or set of lifting tasks. The RWL is defined for a specific set of task conditions as the weight of load that nearly all healthy workers can perform over a substantial period (i.e., up to 8 hours) without an increased risk of developing lifting-related low back disorders. Six different factors are accounted for when determining the RWL for lifting and lowering loads. These six factors are as follows:

1. Horizontal location of the load relative to the lower spine;
2. Vertical location of the load relative to the floor;
3. Vertical distance the load travels during the lifting/lowering task;
4. Frequency and duration of the lifting activity;
5. Asymmetry (lifts requiring twisting or rotation of the trunk or body); and
6. Quality of the worker's grip on the load

Even under ideal manual lifting conditions, the maximum RWL achievable through the Revised NIOSH Lifting Equation is 51 lbs.

The calculated RWL can then be compared to the actual weight being lifted under those specified conditions to determine a Lifting Index (LI). The LI provides the relative estimate of the level of physical stress associated with a manual lifting task. This estimate of level of physical stress is determined from the relationship of the weight of the load being lifted and the RWL, specifically the $LI = \text{Load weight} \div \text{RWL}$. The magnitude of the LI can then be used to estimate the percentage of the workforce that is likely to be at risk for developing lifting-related low back disorders. The RWL and LI are based on the concept that the risk of lifting-related low back disorders increases as the demands of the lifting task increase.

Within the Applications Manual for the Revised NIOSH Lifting Equation, NIOSH interprets the impact of exceeding a LI of 1.0 as follows:

1. It is likely that lifting tasks with a $LI > 1.0$ pose an increased risk for lifting-related low back disorders for some fraction of the workforce. Therefore, the goal should be to design all lifting jobs to achieve a $LI \leq 1.0$.
2. Nearly all workers will be at an increased risk of a work-related injury when performing highly stressful lifting tasks (i.e., lifting tasks with a $LI > 3.0$).
3. The greater the LI, the smaller the fraction of workers capable of safely sustaining the level of activity.

Results - Revised NIOSH Lifting Equation

The calculated LIs for the following manual lifting conditions in the Fry Cart Process at the origin of the lift (pallet) are:

Task	Average Resulting Lifting Index (LI) @ Origin
Pallet Level 6 – Front of Pallet	2.6 (n=6)
Pallet Level 6 – Middle of Pallet	3.5 (n=3)
Pallet Level 5 – Front of Pallet	2.3 (n=6)
Pallet Level 5 – Middle of Pallet	3.3 (n=2)
Pallet Level 4 – Front of Pallet	2.0 (n=6)
Pallet Level 4 – Middle of Pallet	2.1 (n=2)
Pallet Level 3 – Front of Pallet	1.7 (n=5)
Pallet Level 2 – Front of Pallet	1.7 (n=3)
Pallet Level 2 – Middle of Pallet	4.0 (n=2)
Pallet Level 1 – Front of Pallet	2.4 (n=3)
Average	2.4 (n=38)

The calculated LIs for the following manual lifting/lowering conditions in the Fry Cart Process at the destination of the lift (cart) are:

Task	Average Resulting Lifting Index (LI) @ Destination
Cart Level 1 – Front of Cart	2.5 (n=8)
Cart Level 1 – Middle/Back of Cart	4.5 (n=1)
Cart Level 2 – Front of Cart	1.9 (n=4)
Cart Level 2 – Middle/Back of Cart	3.0 (n=2)
Cart Level 3 – Front of Cart	1.8 (n=4)
Cart Level 3 – Middle/Back of Cart	3.4 (n=1)
Cart Level 4 – Front of Cart	2.6 (n=9)
Cart Level 4 – Middle/Back of Cart	3.5 (n=2)
Cart Level 5 – Front of Cart	3.7 (n=5)
Cart Level 5 – Middle/Back of Cart	4.5 (n=2)
Average	2.8 (n=38)

Conclusions - Revised NIOSH Lifting Equation Results

Calculated LI values >3.0 are significant indicators of elevated risk for the development of low back disorders and/or injury for nearly all members of the workforce. This means that the weights being lifted are greater than three times what is recommended to prevent low back disorders and/or injury for these lifting conditions.

Calculated LI values between 1.0 and 3.0 are indicators of elevated risk for the development of low back disorder and/or injury for some fraction of the workforce. This means that the weights being lifted are up to three times what is recommended to prevent

low back disorders/and or injury for these lifting conditions.

For the origin of the lifts at the pallets, the highest LI's occurred at the postural extremes of the tasks (i.e., outside of each worker's 'power zone'), specifically at the middle of the top two levels of the pallets and at the middle of the bottom two levels of the pallets.

For the destination of the lifts at the carts, the highest LI's also occurred at the postural extremes of the tasks (i.e., outside of each worker's 'power zone'), specifically at the middle/back of the carts.

Contributing factors to these elevated LIs were (in order of descending magnitude):

- The horizontal distances that the cases were maintained from the spine during lifting from the pallets to the carts.
- The frequency of lifting cases in lifts/min when considering the duration of the workday spent lifting.
- The vertical distance from waist level, when reaching to the upper two levels of the pallets (Levels 5 and 6) and the upper two levels of the carts (Levels 4 and 5) during lifting.
- The vertical distance from waist level, when reaching to the lowest level of the pallets (Level 1).
- Twisting of the torso and asymmetric loading of the spine.
- The lack of good hand holds (i.e., cut outs) on the cases.

Control Options

Engineering Control Ideas

- Working with product supply vendors to deliver a certain volume of fry cases to your facility on 'Euro style' pallets so that downstacking from pallets to carts is no longer necessary.
- Reduce heights of pallets of fry cases through working with product supply vendors and/or utilizing powered industrial vehicles with clamping attachment systems to break down pallets to a safer working height. Ensure that these pallets are presented at a level no higher than Level 4. In the alternative, consider permanent lifting platform stations (work cells) that surround three sides of the pallets to raise the worker for better access to the upper levels of the pallets. It may be necessary to include a pallet lift table to raise the pallet for unloading of the bottom levels if the raised lifting platform idea is pursued. Lift tables may also be necessary to raise the height of the carts for ease of transfer. Lift tables

with indexing features are available to reduce horizontal reaching.

- Working with product supply vendors to reduce case weight.

Administrative Control Ideas

- The establishment of detailed, baseline ergonomic risk evaluations and abatement development services performed by experienced outside, third parties. Such services are available through entities including insurance companies and private consultation service companies.
- Reducing the frequency and duration of lifting for individual employees engaged in Fry Cart Process by limiting the pace of work through policy, by adding significant rest breaks in between sessions of lifting, and/or by adding workers for these tasks.
- Reducing heights of loaded fry carts by limiting stacking to cart Level 4 and prohibiting stacking to cart Level 5.
- Ensure that employees engage in pick-by-layer practices to ensure that cases below shoulder level (48") can be slid close to employees' bodies before lifting, reducing reach distance and biomechanical loading. Utilize the same concept in reverse for case placement on carts.
- Providing ergonomic awareness training so that workers can:
 - Recognize workplace ergonomic risk factors and understand the general methods of controlling them;
 - Identify the signs and symptoms of ergonomic-related injuries and disorders that may result from exposure to ergonomic risk factors;
 - Understand the process the employer is using to address and control risk factors, the employee's role in the process, and ways employees can actively participate; and
 - Know the procedures for reporting ergonomic risk factors and resulting work-related ergonomic injuries and illnesses (including signs and symptoms of developing injuries and illnesses).

Conclusion

Our investigation determined well recognized ergonomic risk factors that warrant your attention.

You may voluntarily provide the Cincinnati Area Office with progress reports on your

efforts to address these concerns.

Under OSHA's current inspection protocol, we may return to your worksite in approximately one year to further examine the conditions noted above.

Sincerely,

A handwritten signature in blue ink that reads "Ken Montgomery". The signature is written in a cursive style with a long horizontal stroke at the end.

Ken E. Montgomery
Area Director

References

¹ NIOSH Publication 94-110 “Applications Manual for the Revised NIOSH Lifting Equation”

Resources

OSHA’s Safety and Health Topics page on Ergonomics

NIOSH Publication 2007-131 “Ergonomic Guidelines for Manual Material Handling”

NIOSH Publication 97-117 “Elements of Ergonomics Programs: A Primer Based on Workplace Evaluations of Musculoskeletal Disorders”



January 17, 2024

The Martin-Brower Company, L.L.C.
Joseph Hartman (Assistant General Manager)
4260 Port Union Rd., Ste. 300
Fairfield, OH 45011

Re: Inspection #1684846 (Transportation Ergonomics)

Mr. Hartman,

An inspection of your workplace located at 4260 Port Union Rd., Ste. 300 in Fairfield, OH, beginning on July 18, 2023, was conducted pursuant to an ergonomics hazard referral from our Cincinnati Area Office.

As part of the inspection, injury and illness data related to route delivery operations associated with facility assigned Transportation activities was evaluated. Significant trends were documented related to manual cart pushing/pulling at stores on the delivery routes. These trends included injuries to shoulders, knees, necks, and backs.

From January 2020 through July 2023, there were at least 9 recordable back injuries, 4 recordable shoulder/neck injuries, and 3 recordable knee injuries related to cart pushing/pulling in Transportation. Risk factors associated with these injuries included store delivery zone conditions (ramps, inclines, snow/ice, etc.), cart wheel conditions, and heavy loads.

Review of your company's ergonomics program revealed recent efforts in June and July of 2023 to add resources to facility cart repair operations and training/coaching on the reduction of shrink wrapped 'tails'. There did not appear, however, to be any formal evaluation of store conditions (i.e., transitions, inclines, snow/ice removal, concrete maintenance, etc.) to help identify hazardous pushing/pulling conditions at store sites, nor any formal communication mechanism to the store sites to reduce/eliminate identified hazardous conditions.

We recommend, in addition to your company's efforts to improve cart maintenance, the development and implementation of a formal delivery route push/pull risk assessment and risk communication process. This process should include elements such as worker surveys, injury and illness record review, formal store delivery zone evaluations looking for risk factors able to be corrected by the store, formal communication to stores of identified risk factors and methods of correction, and push/pull force measurement studies under field conditions.

You may voluntarily provide the Cincinnati Area Office with progress reports on your efforts to address these concerns.

Under OSHA's current inspection protocol, we may return to your worksite in approximately one year to further examine the conditions noted above.

Sincerely,

A handwritten signature in blue ink that reads "Ken Montgomery". The signature is written in a cursive style with a long horizontal stroke at the end.

Ken E. Montgomery
Area Director

Resources

OSHA's Safety and Health Topics page on Ergonomics

NIOSH Publication 2007-131 "Ergonomic Guidelines for Manual Material Handling"

NIOSH Publication 97-117 "Elements of Ergonomics Programs: A Primer Based on Workplace Evaluations of Musculoskeletal Disorders"

NIOSH Publication 96-109 "Ergonomic Intervention for the Soft Drink Beverage Delivery Industry"

Weston et al. *An Objective Set of Guidelines for Pushing and Pulling*. Spine Research Institute, The Ohio State University, Columbus, OH.



January 17, 2024

The Martin-Brower Company, L.L.C.
Joseph Hartman (Assistant General Manager)
4260 Port Union Rd., Ste. 300
Fairfield, OH 45011

Re: Inspection #1684846 (Recommendations – Temporary Staffing Agency Employee
Recordkeeping & Freezer Floor Conditions)

Mr. Hartman:

An OSHA inspection was conducted at your workplace located at 4260 Port Union Rd., Ste. 300, Fairfield, OH, beginning on July 18, 2023. Based on this inspection, the following recommendations are being provided to enhance employee safety and health:

1. At the beginning of the inspection, your facility communicated that it was not aware of the requirement to record work-related injuries or illnesses meeting the OSHA recordability criteria and incurred by temporary staffing agency employees supervised by your management, such as the employees being utilized in the Fry Cart and Bun Loading processes.

This requirement can be found in 29 CFR 1904.31(b)(2), which states:

“If I obtain employees from a temporary help service, employee leasing service, or personnel supply service, do I have to record an injury or illness occurring to one of those employees? You must record these injuries and illnesses if you supervise these employees on a day-to-day basis.”

Continue to review injury and illness information available to your company for these processes utilizing temporary employees to determine if any reported injuries or illnesses meet OSHA’s general recordability criteria. Coordination with the temporary staffing agencies supplying these workers may be necessary. OSHA standards require an establishment to update OSHA 300 Forms during their five-year retention period.

2. It was determined that employees and powered industrial vehicles are occasionally exposed to slick floors in the Freezer due to uncontrolled ice buildup resulting in employee slips and falls and temporary loss of control (skidding/sliding) of power industrial vehicles.

Ensure that ice buildup is diligently removed and that the causes of the ice buildup are

addressed in order to be compliant with various OSHA standards such as:

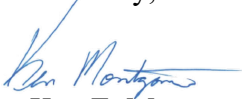
29 CFR 1910.22(a)(3) which states:

“Walking-working surfaces are maintained free of hazards such as sharp or protruding objects, loose boards, corrosion, leaks, spills, snow, and ice.”

Please also note that 29 CFR 1910.178(n)(10) requires powered industrial truck drivers to slow down for wet and slippery floors.

OSHA welcomes any reported your efforts to reduce the above-mentioned exposures. If you have any questions concerning this matter, please contact this office.

Sincerely,

A handwritten signature in blue ink that reads "Ken E. Montgomery". The signature is written in a cursive style with a horizontal line extending from the end.

Ken E. Montgomery
Area Director