

U.S. Department of Labor

Occupational Safety and Health Administration
444 Regency Parkway Drive
Suite 303
Omaha, NE 68114



Citation and Notification of Penalty

To:

Thiele Dairy
and its successors
84925 515 Ave
Clearwater, NE 68726

Inspection Number: 1329663**Inspection Date(s):** 07/11/2018 -**Issuance Date:** 12/13/2018**Inspection Site:**

857th Rd and 514th Ave
Clearwater, NE 68726

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 402-553-0171. 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 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 citation(s) issued on 12/13/2018. The conference will be held by telephone or at the OSHA office located at 444 Regency Parkway Drive, Suite 303, Omaha, NE 68114 on _____ at

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

CERTIFICATION OF CORRECTIVE ACTION WORKSHEET

Inspection Number: 1329663

Company Name: Thiele Dairy
Inspection Site: 857th Rd and 514th Ave, Clearwater, NE 68726
Issuance Date: 12/13/2018

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, 444 Regency Parkway Drive, Suite 303, Omaha, NE 68114**

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: Thiele Dairy

Inspection Site: 857th Rd and 514th Ave, Clearwater, NE 68726

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

29 CFR 1910.151(b): There was neither an infirmary, clinic, or hospital used for the treatment of all injured employees in near proximity to the workplace nor a person or persons adequately trained to render first aid:

The employer is failing to protect employees from the hazards associated with agricultural work at locations not near a hospital and employees are not trained to render first aid. This was most recently documented at 857th Rd and 514th St, Clearwater, Nebraska on or about July 9, 2018 and July 5, 2018 when employees had been working in grain storage bins and the nearest medical facility (Antelope Memorial Hospital) was 17 miles away (approx. 20 minutes). Employees had not been trained to perform and render first aid.

Abatement certification and abatement documentation is required for this violation. The documentation should include written verification of abatement, applicable measurements or monitoring results, and photographs or videos which you believe will be helpful. The abatement certification sheet is enclosed with the citation.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:

01/09/2019

Proposed Penalty:

\$9054.00



Citation and Notification of Penalty

Company Name: Thiele Dairy

Inspection Site: 857th Rd and 514th Ave, Clearwater, NE 68726

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

29 CFR 1910.272(d): The employer did not develop and implement an emergency action plan meeting the requirements contained in 1910.38(a):

The employer is failing to protect its employees from the hazards associated with grain bin entries. This was most recently documented at 857th and 514 Ave, Clearwater, Nebraska on July 9, 2018 and July 5, 2018 when employees were working in and around grain storage bins and an emergency action plan was not created to establish emergency responder reporting procedures, emergency exit routes, establish who will perform critical operations, methods of employee accountability, and the performance of rescue and medical duties.

Abatement certification and abatement documentation is required for this violation. The documentation should include written verification of abatement, applicable measurements or monitoring results, and photographs or videos which you believe will be helpful. The abatement certification sheet is enclosed with the citation.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:

01/09/2019

Proposed Penalty:

\$9054.00



Citation and Notification of Penalty

Company Name: Thiele Dairy

Inspection Site: 857th Rd and 514th Ave, Clearwater, NE 68726

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 3 a Type of Violation: **Serious**

29 CFR 1910.272(e)(2): Employees assigned special tasks in the grain handling facility, such as bin entry and handling of flammable or toxic substances, were not provided training to perform these tasks safely:

The employer is failing to protect employees by not providing training to help identify the hazards associated with grain storage bin entries. This was most recently documented at 857th Rd and 514th St, Clearwater, Nebraska on or about July 9, 2018 and July 5, 2018 when employees had entered grain bins to perform clean up tasks and they had not received training to identify and avoid the hazards associated with this activity. During the July 9 2018 bin entry the sweep auger was operating which resulted in the fatality of one employee.

Abatement certification and abatement documentation is required for this violation. The documentation should include written verification of abatement, applicable measurements or monitoring results, and photographs or videos which you believe will be helpful. The abatement certification sheet is enclosed with the citation.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:

01/09/2019

Proposed Penalty:

\$9054.00



Citation and Notification of Penalty

Company Name: Thiele Dairy

Inspection Site: 857th Rd and 514th Ave, Clearwater, NE 68726

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

29 CFR 1910.272(g)(5): The employee acting as an observer for bin, tank, or silo entry operations in the grain handling facility was not trained in rescue procedures, including notification methods for obtaining additional assistance:

The employer is failing to protect employees by not training the bin entry safety observer on rescue procedures and notification procedures in the event of an injury or mishap. This was most recently documented at 857th Rd and 514th St, Clearwater, Nebraska on or about July 5, 2018 when employees had entered the North grain bin and the safety observer had not received training in rescue procedures and in obtaining emergency assistance in the event of an incident.

Abatement certification and abatement documentation is required for this violation. The documentation should include written verification of abatement, applicable measurements or monitoring results, and photographs or videos which you believe will be helpful. The abatement certification sheet is enclosed with the citation.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:

01/09/2019



Citation and Notification of Penalty

Company Name: Thiele Dairy

Inspection Site: 857th Rd and 514th Ave, Clearwater, NE 68726

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

29 CFR 1910.272(g)(1)(i): The employer did not issue a permit for entering bins, silos or tanks in the grain handling facility before the employees entered the bins, silos, or tanks:

The employer is failing to ensure employees performing grain bin entry activities are protected from hazards including but not limited to engulfment, asphyxiation, and amputation. This was most recently documented at 857th Rd and 514th Ave, Clearwater Nebraska on or about July 5, 2018 and July 9, 2018 when employees entered grain storage bins but the employer had failed to ensure an entry permit was completed certifying the provisions of 1910.272(g) had been implemented prior to entry. The employer allowed entries into the North and South bins without the permitting process being initiated and completed.

Abatement certification and abatement documentation is required for this violation. The documentation should include written verification of abatement, applicable measurements or monitoring results, and photographs or videos which you believe will be helpful. The abatement certification sheet is enclosed with the citation.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:

01/09/2019

Proposed Penalty:

\$9054.00



Citation and Notification of Penalty

Company Name: Thiele Dairy

Inspection Site: 857th Rd and 514th Ave, Clearwater, NE 68726

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

29 CFR 1910.272(g)(1)(ii): Prior to entry, all mechanical, electrical, hydraulic, and pneumatic equipment which presented a danger to employees inside grain storage structures in the grain handling facility were not disconnected, locked out and tagged:

The employer is failing to ensure employees are protected from amputation and struck-by hazards when conducting grain storage bin entry activities. This was most recently documented at 857th Rd and 514th Ave, Clearwater, Nebraska during the following 2 instances:

- A) Or about July 5, 2018, 3 employees entered the North grain storage bin to remove residual corn and the bin had not been made safe for entry. Both the under-bin and sweep augers were not de-energized.
- B) On July 9, 2018, an employee entered the South grain storage bin to clean residual corn. During this bin entry, the augers were not de-energized resulting in the employee receiving a fatal laceration.

Abatement certification and abatement documentation is required for this violation. The documentation should include written verification of abatement, applicable measurements or monitoring results, and photographs or videos which you believe will be helpful. The abatement certification sheet is enclosed with the citation.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:

01/09/2019

Proposed Penalty:

\$9054.00



Citation and Notification of Penalty

Company Name: Thiele Dairy

Inspection Site: 857th Rd and 514th Ave, Clearwater, NE 68726

Citation 1 Item 6 Type of Violation: **Serious**

29 CFR 1910.272(g)(1)(iii): The atmosphere within a bin, silo, or tank in the grain handling facility was not tested for the presence of combustible gases, vapors, and toxic agents prior to employee entry:

The employer is failing to ensure employees are protected from the hazard of asphyxiation and/or toxic substances during grain storage bin entry operations. This was most recently documented at 857th Rd and 514th Ave, Clearwater, Nebraska on or about July 5, 2018 and on July 9, 2018 when the employer had employees perform grain bin entries in the North and South bins without testing the atmosphere prior to entry.

Abatement certification and abatement documentation is required for this violation. The documentation should include written verification of abatement, applicable measurements or monitoring results, and photographs or videos which you believe will be helpful. The abatement certification sheet is enclosed with the citation.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:

01/09/2019

Proposed Penalty:

\$9054.00



Citation and Notification of Penalty

Company Name: Thiele Dairy
Inspection Site: 857th Rd and 514th Ave, Clearwater, NE 68726

Citation 1 Item 7 Type of Violation: **Serious**

29 CFR 1910.272(g)(3): In the grain handling facility an observer, equipped to provide assistance, was not stationed outside the bin, silo, or tank being entered by an employee:

The employer is failing to ensure employees are protected from the hazards associated with grain storage bin entries. This was most recently documented at 857th Rd and 514th Ave, Clearwater, Nebraska on or about July 9, 2018 when an employee entered a grain bin and he did not have a safety observer to provide assistance in the event of an emergency.

Abatement certification and abatement documentation is required for this violation. The documentation should include written verification of abatement, applicable measurements or monitoring results, and photographs or videos which you believe will be helpful. The abatement certification sheet is enclosed with the citation.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:	01/09/2019
Proposed Penalty:	\$9054.00



Citation and Notification of Penalty

Company Name: Thiele Dairy

Inspection Site: 857th Rd and 514th Ave, Clearwater, NE 68726

Citation 1 Item 8 Type of Violation: **Serious**

29 CFR 1910.272(g)(4): The employer did not provide equipment for rescue operations, which was specifically suited for the bin, silo, or tank being entered:

The employer is failing to ensure rescue equipment suited for the grain storage bin was available on site during bin entry operations exposing the employees to the hazards associated with grain bin entry such as but not limited to engulfment, asphyxiation, and mechanical hazards. This was most recently documented at 857th Rd and 514th Ave, Clearwater, Nebraska on or about July 5th and July 9th, 2018 when the employer had employees perform a grain bin entries into the North and South grain storage bins without rescue equipment available on site.

Abatement certification and abatement documentation is required for this violation. The documentation should include written verification of abatement, applicable measurements or monitoring results, and photographs or videos which you believe will be helpful. The abatement certification sheet is enclosed with the citation.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:

01/09/2019

Proposed Penalty:

\$9054.00

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

Inspection Number: 1329663
Inspection Date(s): 07/11/2018 -
Issuance Date: 12/13/2018



Citation and Notification of Penalty

Company Name: Thiele Dairy

Inspection Site: 857th Rd and 514th Ave, Clearwater, NE 68726

Citation 2 Item 1 Type of Violation: **Other-than-Serious**

29 CFR 1904.39(a)(1): The employer did not report within 8-hours the death of an employee resulting from a work-related incident:

The employer failed to report a fatality within the 8 hour reporting period. This was most recently documented at 857th and 514 Ave, Clearwater, Nebraska when a fatality occurred on July 9, 2018 at 6:43PM and it was not reported to the Omaha Area Office until 10:20PM on July 10, 2018.

Date By Which Violation Must be Abated:
Proposed Penalty:

01/10/2019
\$6467.00

A handwritten signature in black ink, appearing to read "Dawn Craig for", written over a horizontal line.

Jeff Funke
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
444 Regency Parkway Drive
Suite 303
Omaha, NE 68114



INVOICE / DEBT COLLECTION NOTICE

Company Name: Thiele Dairy
Inspection Site: 857th Rd and 514th Ave, Clearwater, NE 68726
Issuance Date: 12/13/2018

Summary of Penalties for Inspection Number	1329663
Citation 1, Serious	\$72432.00
Citation 2, Other-than-Serious	\$6467.00
TOTAL PROPOSED PENALTIES	\$78899.00

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.

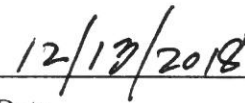
Pursuant to the Debt Collection Act of 1982 (Public Law 97-365) and regulations of the U.S. Department of Labor (29 CFR Part 20), the Occupational Safety and Health Administration is required to assess interest, delinquent charges, and administrative costs for the collection of delinquent penalty debts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


Jeff Funke
Area Director


Date