

STATE OF MINNESOTA

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JUN 17 2020
DEPT. OF LABOR & INDUSTRY
LEGAL SERVICES

DEPARTMENT OF LABOR
AND INDUSTRY

Nancy J. Leppink, Commissioner,
Minnesota Department of Labor and Industry,

Complainant,

**PETITION TO VACATE FINAL ORDER
DETERMINING LATE FILING**

v.

Berry Global Films, LLC,

Inspection No. 318151537

Respondent.

**** * * * * *

Comes now the Respondent, Berry Global Films, LLC (“Berry Global” or “Respondent”), by and through counsel, and for its Petition to Vacate Final Order Determining Late Filing of Respondent’s Notice of Contest for Inspection No. 318151537, states as follows:

I. INTRODUCTION

The Minnesota Department of Labor, Occupational Safety and Health Division (“MNOSHA”) issued two (2) Citations against Berry Global on March 25, 2020.¹ (See Citation and Notification of Penalty attached as Exhibit 1). MNOSHA then sent a copy of the Citations to Berry Global, via United States Postal Service (“USPS”) certified mail (tracking number 7019 0700 0000 1466 7671), to its business address located at 2111 3rd Avenue, Mankato, MN 56001. Berry Global received MNOSHA’s letter and Citations on April 1, 2020 and timely filed its Notice of Contest on April 21, 2020. On May 18, 2020, Berry Global received MNOSHA’s Final Order Determining Late Filing stating that the Citation issued to Berry Global had become a final order because the Company’s Notice of Contest was one (1) day late.

¹ MNOSHA issued two (2) separate citations to Berry Global on March 25, 2020—Inspection No. 318151438 (Citation 1, Items 1 to 10) and Inspection No. 318151537 (Citation 1, Item 1).

As explained more fully below, Berry Global learned that MNOSHA’s certified letter and Citations were **delivered and signed for** by a USPS mail carrier on March 30, 2020 without Berry Global’s knowledge due to COVID-19 related concerns. Berry Global, however, retrieved MNOSHA’s letter and Citations from its mail box on April 1, 2020.

Accordingly, Berry Global respectfully petitions the Minnesota Occupational Safety and Health Review Board (“OSHRB”) to vacate the Commissioner's final order on the basis that unforeseen circumstances surrounding the COVID-19 pandemic prevented a timely filing of a notice of contest and constitutes good cause to set aside the Commissioner's dismissal.

II. FACTUAL BACKGROUND

Berry Global has standard operating procedures for receiving OSHA-related mail—a Mankato employee signs the certification, opens the mail and directs it to the facility’s plant safety staff.

On April 1, 2020, Jodi Oftedahl, a Berry Global employee designated to sign for certified mail, checked the Company’s mail box and immediately delivered the MNOSHA envelope with the citations to plant safety. (Affidavit of Krista DeJonge, ¶ 4, hereinafter referred to as “DeJonge Aff.,” attached as Exhibit 2.) At the time Ms. Oftedahl retrieved MNOSHA’s envelope containing the citations from the Company’s mail box, the signature portion was gone. (DeJonge Aff. ¶ 5; see attached a photograph of the MNOSHA envelope delivered to Berry Global on March 30, 2020 attached as Exhibit 3.)

Based on Berry Global’s good faith understanding that the citations were delivered to the plant on April 1, 2020, the Company then timely filed its Notice of Contest electronically on April 21, 2020 at contestation.dli@state.mn.us, and requested confirmation of receipt. (See Berry Global’s Notice of Contest for Inspection No. 318151537 attached as Exhibit 4.) When two (2)

weeks had passed with no confirmation from MNOSHA, Berry Global's counsel sent a follow up email to MNOSHA on May 8, 2020 requesting confirmation of Berry Global's Notice of Contest. (See attached Berry Global Counsel's May 8, 2020 email to MNOSHA attached as Exhibit 5.)

When another week had passed with no response from MNOSHA, Berry Global's counsel again reached out to MNOSHA on May 15, 2020, this time by telephone, to confirm receipt of Berry Global's Notice of Contest. On this date, MNOSHA finally responded stating that the Berry Global's Notice of Contest was late because it was due on April 20, 2020. Although Berry Global's counsel tried to explain that the Company received the citation on April 1, 2020, and therefore timely filed its Notice of Contest on April 21, 2020, MNOSHA claimed it was "out of their hands." Berry Global subsequently received MNOSHA's Final Order Determining Late Filing on or around May 18, 2020. (See Exhibit 6.)

Upon receipt of MNOSHA's final order, Berry Global conducted an investigation to determine the actual date of receipt of MNOSHA's certified letter. (DeJonge Aff. ¶ 6). Berry Global subsequently learned that on March 30, 2020, the day that the citations arrived at Berry Global's Mankato facility, a USPS mail carrier delivered and signed for MNOSHA's certified letter, unbeknownst to Berry Global. (DeJonge Aff. ¶ 8; see also Written Statement from USPS attached as Exhibit 7.) After signing for the certified letter, the mail carrier then placed the Citations in Berry Global's mail box. *Id.* The mail carrier allegedly signed for Berry Global's certified mail in compliance with the USPS's COVID-19 guidance. *Id.* Apparently, the USPS's COVID-19 guidance was intended to ensure that Berry Global's employee did not touch USPS equipment to lessen the possibility of transmitting COVID-19 between the mail carrier and Berry Global's employee. *Id.*

III. ARGUMENT AND AUTHORITIES

A. LEGAL STANDARDS.

Minnesota Statute § 182.661 and Minnesota Rules Chapter 5210 provides that employers have twenty (20) calendar days from the date of receipt of citations within which to file a notice of contest regarding the citation, type of violation, penalty and/or abatement date. *See* MN Stat. § 182.661, subdivision 1 and 3b; MN Rules Chapter 5210.0007. The Minnesota Statute further requires that the notice be filed on a form provided by the Minnesota DOL commissioner that can be faxed, emailed, or hand-delivered to MNOSHA. *Id.*

Final orders of MNOSHA's commissioner may be appealed to the Minnesota OSHRB by an employer within thirty (30) days following service by mail of the final order of the commissioner. *See* MN Stat. § 182.664, subdivision 5. The OSHRB may vacate a final order of the Commissioner upon a showing of "good cause," meaning "fraud, mistake of fact or law, or newly discovered evidence." *Id.*; *see also, Lennes v. Reuben Johnson & Son, Inc.*, Case No. C7-92-2320, 1993 WL 183752 at *1 (Minn. Ct. App. June 1, 1993) (unpublished) (providing that by the OSHRB's own procedural rules it may also, in special circumstance or for good cause shown, make any orders justice or the administration of the Occupational Safety and Health Act requires).

B. THE USPS'S MISHANDLING OF MNOSHA'S CERTIFIED LETTER PREVENTED BERRY GLOBAL FROM FILING A TIMELY NOTICE OF CONTEST.

There is absolutely no evidence here that Berry Global acted in bad faith or that its untimely filed Notice of Contest—submitted only one (1) day after the expiration of the 20-day contest period—had any impact on MNOSHA's proceedings. Instead, and most importantly, the evidence shows that the USPS mishandled MNOSHA's certified letter and Citations causing Berry Global to file a late Notice of Contest.

As stated above, Minnesota Statute § 182.664, subdivision 5, provides that the OSHRB may vacate a final order of the Commissioner upon a showing of “good cause,” meaning “fraud, mistake of fact or law, or newly discovered evidence.” As Minnesota Statute § 182.664 is modeled after the federal OSHA Act, 29 USC 659(a), federal cases regarding untimely notices of contest are instructive.

The federal Occupational Safety and Health Review Commission (“OSHRC”) allows for relief from a final order when an untimely notice of contest filing is due to “mistake, inadvertence, surprise, or excusable neglect” under FRCP 60(b)(1). The Supreme Court ruled on the meaning of “excusable neglect” in *Pioneer Investment Services Co. v. Brunswick Associates Ltd. Partnership*, 507 U.S. 380 (1993).

Pioneer stated:

With regard to [whether] a party's neglect of a deadline is excusable, . . . we conclude that the determination is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission. These included, as the Court of Appeals found, [1] the danger of prejudice to the [non-movant], [2] the length of the delay and its potential impact on judicial proceedings, [3] the reason for the delay, including whether it was within the reasonable control of the movant, and [4] whether the movant acted in good faith.

Id. at 395.

The *Pioneer* Court rejected the argument that “excusable neglect” be strictly interpreted to preclude relief upon any showing of fault on the part of the late filer. *Id.* at 388-389. Rather, the Court emphasized several times throughout its Opinion that excusable neglect for late filings should be broadly construed, as it is a “flexible” and “equitable inquiry,” and courts should “balance the interests of the affected parties.” *Id.* at 389.

The federal Review Commission has also held that the “reason for the delay, and whether it was within the reasonable control of the movant,” is a “key factor” and, in appropriate circumstances, the dispositive factor. *A. W. Ross, Inc.*, BNA OSHC 1147, 1148 (No. 9-0945, 2000); *CalHar Constr. Inc.*, 18 BNA OSHC 2151, 2153 (No. 98-0367, 2000).

Here, the reason for Berry Global’s day-late Notice of Contest is clear—the USPS mail carrier signed for the Company’s certified mail without its knowledge. Consequently, Berry Global received MNOSHA’s letter and Citations on April 1, 2020 when the documents were retrieved from the Company’s mail box, without knowing the USPS mail carrier had placed it there the day prior. Because of the USPS’s COVID-19 procedures, Berry Global had no control over when it received MNOSHA’s certified letter, despite the Company’s orderly procedures for handling important, time-sensitive mail.

The federal Review Commission has granted relief when an employer has adequate procedures in place for handling and directing the citation, but they could not be followed for unforeseeable reasons. *See, e.g., Evergreen Env’tl. Servs.*, 26 BNA OSHC 1982 (No. 16-1295, 2017) (relief granted when employer’s procedures for handling and directing the citation could not be followed due to unanticipated and extensive water damage to office where citation was located). Furthermore, in *George Harms Constr. Co. v. Chao*, 371 F.3d 156, 165 (3d Cir. 2004), the 3rd Circuit held that the employer proved excusable neglect for its late notice of contest after finding that the employer had reliable mail handling procedures and that the citation had been lost due to unforeseeable human error beyond the employer’s reasonable control. “[T]here was little beyond the established mailing procedures in place that could have been done to prevent mishandled mail.” *Id.* at 165. This is clearly the case here.

As stated previously, Berry Global's late filing of its Notice of Contest was clearly based on the USPS mishandling of the Company's certified mail (although well-intentioned and due to the COVID-19 pandemic). This information was only discovered upon receipt of the Commissioner's final order and Berry Global's subsequent investigation. Consequently, Berry Global's "late" Notice of Contest was not due to the Company's own error or mistake.

IV. CONCLUSION

This is not a case of inexcusable neglect or inadequate mailing procedures. Instead, Berry Global did not receive proper notice/service of the Citation because of the USPS's concerns with the COVID-19 pandemic. These concerns caused the USPS to take unusual (albeit understandable) precautionary measures when delivering Berry Global's certified mail. Thus, Berry Global requests that the OSHRB vacate the Commissioner's Final Order Determining Late Filing and reinstate Berry Global's Notice of Contest.

Respectfully submitted,

/s/ Todd B. Logsdon

Todd B. Logsdon

Chantell C. Foley

FISHER & PHILLIPS LLP

220 West Main Street, Suite 1700

Louisville, KY 40202

Phone: (502) 561-3990

Fax: (502) 561-3991

COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I hereby certify that on the ___ day of June, 2020, a true and correct copy of the foregoing ***Respondent's Petition to Vacate Final Order Determining Late Filing Memorandum of Law*** was served via prepaid postage U.S. Mail upon the following:

Debra Jevne, Executive Secretary
Minnesota Occupational Safety and Health Review Board
443 Lafayette Road N.
St. Paul, Minnesota 55155
Phone: 651-284-5294

-and-

Matthew P. Jobe
Department of Labor and Industry
Office of General Counsel
443 Lafayette Road N.
St. Paul, Minnesota 55155
Phone: 651-284-5018

COUNSEL FOR COMPLAINANT

/s/ Todd B. Logsdon

COUNSEL FOR RESPONDENT

Inspection No. 318151537

Exhibit 1

Minnesota Department of Labor and Industry

Occupational Safety and Health Division

443 Lafayette Road

St. Paul, MN 55155-4307

Phone: 651-284-5050 FAX: 651-284-5741

Citation and Notification of Penalty

To:

Berry Global Films LLC - Industrial Products
2111 3rd Ave
Mankato, MN 56001

Inspection Number: 318151537

OSHI ID: P1940

Optional Report No.: 02420

Inspection Date(s): 03/10/2020 - 03/11/2020

Issuance Date: 03/25/2020

Inspection Site:

1970 Excel Drive
Mankato, MN 56001

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 Minnesota Occupational Safety and Health Act of 1973 (the Act). The penalty amounts listed herein are based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties, unless within 20 calendar days from your receipt of this Citation you file a Notice of Contest with the Commissioner of the Department of Labor and Industry. Your contestation rights and other employer and employee rights and responsibilities are set out in the first three pages of this Citation. The description of alleged violations begins on page 5 of this Citation.

EMPLOYER AND EMPLOYEE RIGHTS AND RESPONSIBILITIES

Posting - The Act requires that a copy of this Citation shall be promptly posted at or near each place that an alleged violation referred to in the citation occurred or, if not practicable, in a prominent place where it will be readily visible by all affected employees. If uncontested, this Citation must remain posted until all alleged violations cited therein are corrected, or for 20 days, whichever is longer. If contested, this Citation must remain posted until the contestation is resolved.

Penalty Payment - Payment of all penalties is to be made by check or money order payable to "Minnesota Department of Labor and Industry, MNOSHA", and remitted to the Occupational Safety and Health Division at P.O. Box 64025, St. Paul, MN, 55164-0025, within 20 calendar days following receipt of this Citation. After 60 days, unpaid penalties shall increase 25 percent and shall accrue an additional interest of 10 percent per month compounded monthly until the fine is paid in full.

Effective August 1, 2003, the minimum \$25,000 penalty issued to employers with fewer than 50 employees for serious citations connected to the death of an employee may be made in five payments of \$5,000. The first \$5,000 payment is due within 20 calendar days following receipt of this Citation. The 2nd-5th payments of \$5,000 are due on the next four anniversary dates of this Citation becoming a Final Order. The Commissioner may elect to waive the 2nd-5th \$5,000 payment if in the preceding year the employer receives no citations. MNOSHA will provide written notice of the 2nd-5th payments dates or of any penalty waiver.

Notification of Corrective Action - Progress reports on correction of alleged violations not immediately abated as observed by the occupational safety and health investigator shall be submitted on the Progress Report form provided with this Citation. Written progress reports must be mailed to the address shown on the top of page 1 of this Citation by the latest abatement date on the citation, or within 30 days after receipt of the citation, whichever is earlier. Reports must state the specific corrective action taken on each cited item, the date of such action and the anticipated abatement date of uncompleted items. Additional written progress reports shall be submitted every thirty days until the items are fully abated. Facsimile (FAX) transmittal is acceptable.

All alleged violations not contested must be corrected by the abatement date specified in this Citation. A followup inspection may be made for the purpose of ascertaining that the employer has corrected the alleged violations and posted this Citation as required by the Act. Failure to correct an alleged violation by the abatement date on this Citation may result in further penalties for each day the alleged violation has not been corrected.

Petition for Modification of Abatement Date (PMA) - If, due to factors beyond reasonable control, compliance cannot be achieved by the abatement day on the citation, the employer may file a Petition for Modification of Abatement Date (PMA) to obtain an extension of the abatement time period. The PMA must be in writing and received at the address shown on the top of page 1 of this Citation prior to the expiration of the abatement date on the citation. Facsimile (FAX) transmittal of a PMA is acceptable. A copy of the PMA must be posted for ten days in the location where this Citation is posted. A copy of the PMA must also be served upon authorized employee representatives.

The employer's written petition must describe:

- 1) The action that has been taken so far to achieve compliance;
- 2) The amount of additional time needed for compliance;
- 3) The reasons why additional time is needed;
- 4) A description of the interim steps that will be taken to safeguard employees against the cited hazard;
- 5) A statement that employees have been notified of the PMA filing.

Employees have the right to file a written objection to the Commissioner regarding the employer's PMA request. A copy of the objection must be served on the employer within 10 days of the employer's posting of the PMA. The employee objection must be received by the Commissioner within 15 days of the employer's PMA request. Facsimile (FAX) transmittal is acceptable.

Employer Right to Contest - The employer has the right to a hearing to contest any or all parts of this Citation. If the employer wishes to contest, the employer must fully complete and notarize the attached NOTICE OF CONTEST AND SERVICE TO AFFECTED EMPLOYEES (Notice of Contest form) and file it with the Commissioner at the address shown on the top of page 1 of this Citation within 20 calendar days of receiving the citation.

Important: To be considered filed, all parts of the Notice of Contest form must be completed and the completed form must be deposited in the United States mail and postmarked, or otherwise timely received by the Commissioner at the above address within 20 calendar days after the date this Citation is received by the employer. You may also file electronically at (contestation.dli@state.mn.us), by facsimile (FAX), or by hand-delivering the completed form to the Department, if received no later than 4:30 p.m. on the 20th calendar day. If the employer fails to file the Notice of Contest form on time, this Citation and Notification of Penalty becomes a final order of the Commissioner which is not subject to review by any court or agency and the Occupational Safety and Health Division may file and enforce the penalty as a district court judgment without further notice or additional proceedings pursuant to Minnesota Statute § 16D.17.

Employee Right to Contest - An employee or authorized representative of employees has the right to a hearing to contest this Citation by filing a letter with the Commissioner of the Department of Labor and Industry at the address shown on page 1 within 20 calendar days of the employer's receipt of this Citation.

Important: To be considered filed, an employee letter of contest must be deposited in the United States mail and postmarked, or otherwise timely received by the Commissioner at the above address within 20 calendar days after the date this Citation is received by the employer. You may also file electronically at (contestation.dli@state.mn.us), by facsimile (FAX), or by hand-delivering the completed form to the Department, if received no later than 4:30 p.m. on the 20th calendar day. If the employee fails to file a letter of contest on time, this Citation and Notification of Penalty becomes a final order of the Commissioner which is not subject to review by any court or agency and the Occupational Safety and Health Division may file and enforce the penalty as a district court judgment without further notice or additional proceedings pursuant to Minnesota Statute § 16D.17.

Employee Right to Party Status - Affected employees or their authorized employee representatives may elect to participate as parties in the formal contested case hearing by filing written notice with the Commissioner at the address shown above at least 45 days before the start of the hearing. The notice must contain the employees' names, addresses, authorized employee representatives, if any, and a statement that they are affected employees of the cited employer.

Employer Discrimination Unlawful - Employees who believe that they have been discharged or otherwise discriminated against by any person because the employees have exercised any right authorized under the provisions of Minnesota Statutes §§ 182.65 to 182.674, may, within 30 days after such alleged discrimination occurs, file a complaint with the Commissioner of the Department of Labor and Industry at the address shown above, alleging the discriminatory act.

PENALTY INFORMATION

Types of Violations - There are 5 types of violations that may be cited by MNOSHA. They are: Nonserious, Serious, Willful, Repeat and Failure to Abate.

Penalties - In cases not involving the death of an employee, the law allows the following maximum penalties: Nonserious, \$7,000; Serious, \$7,000; Willful, \$70,000; Repeat, \$70,000; and Failure to Abate, \$7,000 per day the violation remains unabated. If a Willful or Repeat violation caused or contributed to the death of an employee, however, MNOSHA is compelled by law to assess the employer a total non-negotiable penalty of at least \$50,000 for all citations connected to the employee's death. If there are no Willful or Repeat violations among the violations that caused or contributed to the employee's death, MNOSHA must assess the employer a non-negotiable penalty of at least \$25,000 for each citation connected to the employee's death. The following violations are not subject to these minimums and will be processed according to MNOSHA's ordinary penalty system: (a) any serious violations issued to an employer with fewer than 50 employees when the victim of a workplace fatality owned a controlling interest in the business unless the Commissioner determines that a fine shall be assessed, and (b) any violations found during a fatality investigation but determined not to be connected to the death of an employee.

Credits - A penalty for a violation may be credited by as much as 95 percent, depending on the employer's good faith (up to 30%), size of business (up to 55%), and previous violation history (up to 10%). The penalties which appear on the Citation and Notification of Penalty have been reduced by the credits described.

Minnesota
Department of Labor and Industry
Occupational Safety and Health Division

Inspection Number: 318151537
Inspection Date(s): 03/10/2020 - 03/11/2020
Issuance Date: 03/25/2020
OSHI ID: P1940
Optional Report No.: 02420

Citation and Notification of Penalty

Company Name: Berry Global Films LLC - Industrial Products
Inspection Site: 1970 Excel Drive, Mankato, MN 56001

Citation 01 Item 001 Type of Violation: **Serious**

29 CFR 1910.219(e)(3)(i): Vertical or inclined belt(s) were not enclosed by guard(s) conforming to the requirements specified at 29 CFR 1910.219(m) and (o):

The vertical belt and pulley on the Beck winder, was not fully enclosed by adequate guarding.

Date By Which Violation Must Be Abated: 4/18/2020
Penalty: \$1,400.00

Nancy J. Leppink, Commissioner
MN Department of Labor and Industry

Inspection No. 318151537

Exhibit 2

STATE OF MINNESOTA

DEPARTMENT OF LABOR
AND INDUSTRY

Nancy J. Leppink, Commissioner,
Minnesota Department of Labor and Industry,

AFFIDAVIT OF
KRISTA DEJONGE

Complainant,

v.

Berry Global Films, LLC,

Inspection Nos. 318151438 and 318151537

Respondent.

**** * * * * *

Before me, the undersigned officer duly authorized to administer oaths, appeared Krista DeJonge who after being first duly sworn, states as follows:

1. My name is Krista DeJonge. I am the Environmental Health and Safety Manager for Berry Global Films, LLC ("Berry Global") in the captioned matter, at its Mankato facility.
2. I make this Affidavit in connection with the captioned action.
3. On March 25, 2020, the Minnesota Department of Labor, Occupational Safety and Health Division ("MNOSHA"), issued to Berry Global citations in Inspections Nos 318151438 and 318151537.
4. Berry Global received said citations on April 1, 2020. Specifically, Jodi Oftedahl, a Berry Global employee designated to sign for certified mail, checked the Company's mail box and immediately delivered the MNOSHA envelope with the citations to plant safety. Therefore, Berry Global had until April 21, 2020 to file its notice of contest.
5. At the time, Ms. Oftedahl retrieved MNOSHA's envelope containing the citations on April 1, 2020, the signature portion of the certified mail receipt was gone.
6. On May 18, 2020, Berry Global received MNOSHA's Final Order Determining Late Filing of Respondent's Notices of Contest for Inspection Nos. 318151438 and 318151537.

Inspection No. 318151537

Exhibit 3

Minnesota OSHA Division
Suite 400
443 Lafayette Road
St Paul MN 55155-4307

REGISTERED MAIL



7014 0700 0000 1466 7671

REGISTERED MAIL
FIRST CLASS PERMIT NO. 5008
MINNAPOLIS, MN 55401
POSTAGE WILL BE PAID BY ADDRESSEE
NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES
\$008.60



ZIP 55001
0411110276966

Krista DeLonge, EHS Manager
Berry Global Films LLC
2111 3rd Ave
Mankato, MN 56001



FIRST-CLASS MAIL

NEOPOST

03/25/2020

US POSTAGE

\$008.60⁰⁰



ZIP 56001
041M10276866

1

CERTIFIED MAIL



7019 0700 0000 1466 7671



Inspection No. 318151537

Exhibit 4

**Minnesota
Department of Labor and Industry**

Occupational Safety and Health Division
443 Lafayette Road North
St. Paul, MN 55155-4307

Phone: 1-800-DIAL-DLI (1-800-342-5354)
(651) 284-5050
FAX: (651) 284-5741
www.dli.mn.gov

Inspection Number 318151537	OSHI ID P1940	Optional Report No.: 02420
Employer's Name and Mailing Address: Berry Global Films LLC 2111 3rd Ave. Mankato, MN 56001		

NOTICE OF CONTEST AND SERVICE TO AFFECTED EMPLOYEES

PURPOSE OF THIS FORM

If you have received a Citation and Notification of Penalty from the Minnesota Occupational Safety and Health Division (MNOSHA) and you wish to contest any part of the Citation, including the penalty, you must complete this form. **For your contest to be valid, you must file this form within 20 calendar days of the date the employer received the Citation.**

If you only wish to obtain an extension of time to correct the violation, you may file a Petition for Modification of Abatement Date according to the instructions on the Citation and Notification of Penalty.

By filing this Notice of Contest form, you are initiating a formal contested case proceeding before an administrative law judge of the parts of the Citation and Notification of Penalty you are contesting. This form must be filed in good faith and not solely for delay or avoidance of penalties.

HOW TO FILE THIS FORM

- This Notice of Contest form must be filed with the Commissioner of the Department of Labor and Industry at the above address **within 20 calendar days** after the date the employer received the Citation and Notification of Penalty. To be considered filed, all parts of the Notice of Contest form must be completed and the completed form must be mailed and postmarked, **within 20 calendar days** after the date the employer received the Citation and Notification of Penalty. You may also file electronically (at contestation.dli@state.mn.us), by facsimile (FAX), or by hand-delivering the completed form to the Department, if received **no later than 4:30 p.m. on the 20th calendar day**.
- If you fail to file the fully completed Notice of Contest form on time, the Citation and Notification of Penalty becomes a final order of the Commissioner that is not subject to review by any court or agency.

APPEAL PROCESS

Upon receipt of a timely filed Notice of Contest form, MNOSHA will contact you and schedule a date, time and location for an informal conference. The purpose of the informal conference is to allow you to discuss with a MNOSHA representative the Citation and Notification of Penalty and the basis for your contest. The goal of the informal conference is to reach an early resolution of the contest. If you and MNOSHA are unable to reach a resolution at the informal conference then the contest will proceed to a formal contested case hearing.

COMPLETING THIS FORM

1. HOW TO IDENTIFY THE INSPECTION BEING CONTESTED.

Complete the box at the top of this form using the Inspection Number, OSHI ID, Optional Report Number and Employer's Mailing Address from the Citation and Notification of Penalty being contested.

2. HOW TO CONTEST THE CITATION AND NOTIFICATION OF PENALTY.

Indicate in the boxes on the next page which part(s) of the Citation and Notification of Penalty you wish to contest. Identify the citations you are contesting by indicating the citation and item numbers. Then indicate which part(s) of each item is being contested. Finally, state your reasons for contesting in the space provided below the boxes.

- Check the box CITATION if you wish to contest that the violation occurred.
- Check the box TYPE OF VIOLATION if you wish to contest the characterization of the violation as non-serious, serious, willful or repeat.
- Check the box ABATEMENT DATE if you wish to contest the date by which you must abate the violation.
- Check the box PENALTY if you wish to contest the amount of the penalty.

FAILURE TO CHECK ANY PART WILL RESULT IN THAT PART OF THE CITATION BECOMING A FINAL ORDER OF THE COMMISSIONER THAT IS NOT REVIEWABLE BY ANY COURT OR AGENCY.

CITATION NUMBER	ITEM NUMBER	(check all that apply)			
1	1	<input checked="" type="checkbox"/> Citation	<input checked="" type="checkbox"/> Type of Violation	<input checked="" type="checkbox"/> Abatement Date	<input checked="" type="checkbox"/> Penalty
		<input type="checkbox"/> Citation	<input type="checkbox"/> Type of Violation	<input type="checkbox"/> Abatement Date	<input type="checkbox"/> Penalty
		<input type="checkbox"/> Citation	<input type="checkbox"/> Type of Violation	<input type="checkbox"/> Abatement Date	<input type="checkbox"/> Penalty
		<input type="checkbox"/> Citation	<input type="checkbox"/> Type of Violation	<input type="checkbox"/> Abatement Date	<input type="checkbox"/> Penalty
		<input type="checkbox"/> Citation	<input type="checkbox"/> Type of Violation	<input type="checkbox"/> Abatement Date	<input type="checkbox"/> Penalty
		<input type="checkbox"/> Citation	<input type="checkbox"/> Type of Violation	<input type="checkbox"/> Abatement Date	<input type="checkbox"/> Penalty

REASONS FOR CONTEST: (Additional sheets may be attached as necessary, and they will be considered part of this form.)

Berry Global contests that it violated the standards cited in each citation item; Berry Global contests the classification of the citation items; Berry Global contests the abatement date; and Berry Global contests the penalty amounts.

3. **DATES OF POSTING AND SERVING.** You must certify in Box A or B below the dates you posted and served this form.

<p>A. Union: Complete part A if you have affected Employees Represented by Authorized Employee Representatives</p> <p>I hereby certify that I posted fully completed copies of this form on _____ at the locations where the Citation and Notification of Penalty is required to be posted; and I served fully completed copies of this form on _____ upon the authorized employee representatives of affected employees.</p>
<p>B. Non-Union: Complete part B if you have affected Employees Not Represented by Authorized Employee Representatives</p> <p>I hereby certify that I posted fully completed copies of this form on <u>4/21/20</u> at the locations where the Citation and Notification of Penalty is required to be posted and that I do not have any affected employees who are represented by authorized employee representatives.</p>

4. **OATH.** The employer completing this form must **sign** and have **notarized** the following statement.

I SWEAR THAT THE INFORMATION PROVIDED ON THIS FORM AND ATTACHED TO THIS FORM IS ACCURATE AND TRUTHFUL TO THE BEST OF MY KNOWLEDGE.

State of KY County of Jefferson

Todd B. Logsdon, Attorney
 Name of Employer Representative, Title
 502-561-3971
 Phone
 Todd B. Logsdon
 Signature
 4/21/20
 Date

Subscribed and sworn to before me
 this 21st day of April 2020
 Notary Public Angela Y. Marshall
 My Commission expires Sept. 29, 2021
ANGELA Y. MARSHALL
NOTARY #585662
STATE-AT-LARGE, KENTUCKY

Inspection No. 318151537

Exhibit 5

From: Foley, Chantell
Sent: Friday, May 8, 2020 8:41 AM
To: contestation.dli@state.mn.us
Cc: Logsdon, Todd; Cusack, Cathy
Subject: FW: RE: Berry Global, Inc. MNOSHA Citations - Notices of Contest for Inspection Nos. 318151438 and 318151537
Attachments: 318151438 Berry Global Notice of Contest.pdf; 318151537 Berry Global Notice of Contest.pdf

Good morning.

Just following up regarding the below email and Berry Global, Inc.'s Notices of Contests (attached) filed via electronic mail on April 21, 2020. Please confirm receipt. Also, please direct all future correspondence and documents to the attention of Todd B. Logsdon (tlogsdon@fisherphillips.com) and myself.

We look forward to working with you to resolve this matter.

Thanks,
Chantell Foley



Chantell C. Foley

Attorney at Law

Fisher & Phillips LLP

220 West Main Street | Suite 1700 | Louisville, KY 40202

cfoley@fisherphillips.com | O: (502) 561-3969 | C: (859) 312-2783

vCard | Bio | Website *On the Front Lines of Workplace LawSM*

This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error, then immediately delete this message.

From: Foley, Chantell
Sent: Tuesday, April 21, 2020 12:35 PM
To: contestation.dli@state.mn.us
Cc: Logsdon, Todd <tlogsdon@fisherphillips.com>; Cusack, Cathy <ccusack@fisherphillips.com>
Subject: RE: Berry Global, Inc. MNOSHA Citations - Notices of Contest for Inspection Nos. 318151438 and 318151537

To Whom it May Concern,

Berry Global, Inc. has retained Fisher & Phillips LLP to represent it with respect to the above-referenced MNOSHA inspections. Please see attached Berry Global's Notices of Contest of all citations, proposed penalties and abatement dates issued as a result of the referenced inspections. Please direct all future correspondence and documents to the attention of Todd B. Logsdon (tlogsdon@fisherphillips.com) and myself.

Please let us know if you have any questions.

Thanks,
Chantell Foley



Chantell C. Foley

Attorney at Law

Fisher & Phillips LLP

220 West Main Street | Suite 1700 | Louisville, KY 40202

cfoley@fisherphillips.com | O: (502) 561-3969 | C: (859) 312-2783

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Inspection No. 318151537

Exhibit 6

**mn DEPARTMENT OF
LABOR AND INDUSTRY**

RECEIVED
MAY 18 2020

May 15, 2020

Todd B. Logsdon & Chantell C. Foley
Fisher & Phillips LLP
220 West Main Street, Suite 1700
Louisville, KY 40202

Re: Berry Global Films, LLC
Inspection No. 318151537
FINAL ORDER DETERMINING LATE FILING

Dear Mr. Logsdon and Ms. Foley:

The Department has issued a Final Order Determining Late Filing related to this inspection by the Occupational Safety and Health Division (MNOSHA). It is attached to this letter.

You have the right to file a Petition to Vacate this Final Order Determining Late Filing. The procedures for filing a Petition to Vacate are explained in Minnesota Statutes § 182.664, subdivision 5 (2018), and Minnesota Rules, parts 5215.0700 and 5215.5350, which are available at www.revisor.mn.gov. As the statute and rules clearly state, any Petition to Vacate must be filed within 30 days following service by mail of this Final Order Determining Late Filing. If you would like to appear before the OSH Review Board, you may make a request for oral argument in the Petition to Vacate.

The statute sets forth the grounds under which the Board may grant a Petition to Vacate this Final Order. The Board may only vacate this Final Order upon a showing of good cause. Good cause is limited to fraud, mistake of fact or law, or newly discovered evidence. At this time, the Board may only review the determination that the Notice of Contest was late.

The Petition to Vacate must be filed with the Board by mail or personal delivery to: Debra Jevne, Executive Secretary, OSH Review Board, 443 Lafayette Road N., St. Paul, Minnesota, 55155. Additionally, a copy of the Petition to Vacate must be served on the Department by mail or personal delivery to: Occupational Safety and Health Division, Department of Labor & Industry, 443 Lafayette Road N., St. Paul, Minnesota 55155.

This letter does not constitute legal advice.

Sincerely,

s/ Matthew P. Jobe

General Counsel for the
Occupational Safety and Health Division
Minnesota Department of Labor and Industry
(651) 284-5019

MPJ/cx

Enclosures

cc: Berry Global Films, LLC

Equal Opportunity Employer

STATE OF MINNESOTA

DEPARTMENT OF LABOR
AND INDUSTRY

Nancy J. Leppink, Commissioner,
Minnesota Department of Labor and Industry,

Complainant,

FINAL ORDER DETERMINING
LATE FILING

v.

Berry Global Films, LLC,

Inspection No. 318151537

Respondent.

To: Berry Global Films, LLC

On March 25, 2020, the Occupational Safety and Health Division, on behalf of Nancy J. Leppink, Commissioner, Minnesota Department of Labor and Industry, issued a Citation and Notification of Penalty (Citation) in this inspection. (Exhibit A). The certified mail return receipt indicates that Berry Global Films, LLC (Respondent) received the Citation on March 30, 2020. (Exhibit B). On April 21, 2020, the Department of Labor and Industry received a copy of the Notice of Contest and Service to Affected Employees (Notice of Contest) form, via email, stating Respondent was contesting the Citation. (Exhibit C).

Minnesota Statutes § 182.661, subdivisions 1 & 3b (2018), and Minnesota Rules, part 5210.0007 (2017), require that a notice of contest and certification of service be filed on a form provided by the commissioner and postmarked, faxed, emailed, or hand-delivered within twenty (20) calendar days from the date the Citation was received. This requirement is clearly stated on both the Citation and the Notice of Contest form that were received by the employer on March 30, 2020. Respondent did not properly file a completed Notice of Contest within the 20-day time period, so the Notice of Contest was late. As a result, the Citation is final.

Dated: May 15, 2020

s/ Matthew P. Jobe
Attorney Reg. No. 0395447
Department of Labor and Industry
Office of General Counsel
443 Lafayette Road N.
St. Paul, Minnesota 55155

Minnesota Department of Labor and Industry
Occupational Safety and Health Division
443 Lafayette Road
St. Paul, MN 55155-4307
Phone: 651-284-5050 FAX: 651-284-5741

Citation and Notification of Penalty

To:
Berry Global Films LLC - Industrial Products
2111 3rd Ave
Mankato, MN 56001

Inspection Number: 318151537
OSHI ID: P1940
Optional Report No.: 02420
Inspection Date(s): 03/10/2020 - 03/11/2020
Issuance Date: 03/25/2020

Inspection Site:
1970 Excel Drive
Mankato, MN 56001

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 Minnesota Occupational Safety and Health Act of 1973 (the Act). The penalty amounts listed herein are based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties, unless within 20 calendar days from your receipt of this Citation you file a Notice of Contest with the Commissioner of the Department of Labor and Industry. Your contestation rights and other employer and employee rights and responsibilities are set out in the first three pages of this Citation. The description of alleged violations begins on page 5 of this Citation.

EMPLOYER AND EMPLOYEE RIGHTS AND RESPONSIBILITIES

Posting - The Act requires that a copy of this Citation shall be promptly posted at or near each place that an alleged violation referred to in the citation occurred or, if not practicable, in a prominent place where it will be readily visible by all affected employees. If uncontested, this Citation must remain posted until all alleged violations cited therein are corrected, or for 20 days, whichever is longer. If contested, this Citation must remain posted until the contestation is resolved.

Penalty Payment - Payment of all penalties is to be made by check or money order payable to "Minnesota Department of Labor and Industry, MNOSHA", and remitted to the Occupational Safety and Health Division at P.O. Box 64025, St. Paul, MN, 55164-0025, within 20 calendar days following receipt of this Citation. After 60 days, unpaid penalties shall increase 25 percent and shall accrue an additional interest of 10 percent per month compounded monthly until the fine is paid in full.

Effective August 1, 2003, the minimum \$25,000 penalty issued to employers with fewer than 50 employees for serious citations connected to the death of an employee may be made in five payments of \$5,000. The first \$5,000 payment is due within 20 calendar days following receipt of this Citation. The 2nd-5th payments of \$5,000 are due on the next four anniversary dates of this Citation becoming a Final Order. The Commissioner may elect to waive the 2nd-5th \$5,000 payment if in the preceding year the employer receives no citations. MNOSHA will provide written notice of the 2nd-5th payments dates or of any penalty waiver.

Notification of Corrective Action - Progress reports on correction of alleged violations not immediately abated as observed by the occupational safety and health investigator shall be submitted on the Progress Report form provided with this Citation. Written progress reports must be mailed to the address shown on the top of page 1 of this Citation by the latest abatement date on the citation, or within 30 days after receipt of the citation, whichever is earlier. Reports must state the specific corrective action taken on each cited item, the date of such action and the anticipated abatement date of uncompleted items. Additional written progress reports shall be submitted every thirty days until the items are fully abated. Facsimile (FAX) transmittal is acceptable.

All alleged violations not contested must be corrected by the abatement date specified in this Citation. A followup inspection may be made for the purpose of ascertaining that the employer has corrected the alleged violations and posted this Citation as required by the Act. Failure to correct an alleged violation by the abatement date on this Citation may result in further penalties for each day the alleged violation has not been corrected.

Petition for Modification of Abatement Date (PMA) - If, due to factors beyond reasonable control, compliance cannot be achieved by the abatement day on the citation, the employer may file a Petition for Modification of Abatement Date (PMA) to obtain an extension of the abatement time period. The PMA must be in writing and received at the address shown on the top of page 1 of this Citation prior to the expiration of the abatement date on the citation. Facsimile (FAX) transmittal of a PMA is acceptable. A copy of the PMA must be posted for ten days in the location where this Citation is posted. A copy of the PMA must also be served upon authorized employee representatives.

The employer's written petition must describe:

- 1) The action that has been taken so far to achieve compliance;
- 2) The amount of additional time needed for compliance;
- 3) The reasons why additional time is needed;
- 4) A description of the interim steps that will be taken to safeguard employees against the cited hazard;
- 5) A statement that employees have been notified of the PMA filing.

Employees have the right to file a written objection to the Commissioner regarding the employer's PMA request. A copy of the objection must be served on the employer within 10 days of the employer's posting of the PMA. The employee objection must be received by the Commissioner within 15 days of the employer's PMA request. Facsimile (FAX) transmittal is acceptable.

Employer Right to Contest - The employer has the right to a hearing to contest any or all parts of this Citation. If the employer wishes to contest, the employer must fully complete and notarize the attached NOTICE OF CONTEST AND SERVICE TO AFFECTED EMPLOYEES (Notice of Contest form) and file it with the Commissioner at the address shown on the top of page 1 of this Citation within 20 calendar days of receiving the citation.

Important: To be considered filed, all parts of the Notice of Contest form must be completed and the completed form must be deposited in the United States mail and postmarked, or otherwise timely received by the Commissioner at the above address within 20 calendar days after the date this Citation is received by the employer. You may also file electronically at (contestation.dli@state.mn.us), by facsimile (FAX), or by hand-delivering the completed form to the Department, if received no later than 4:30 p.m. on the 20th calendar day. If the employer fails to file the Notice of Contest form on time, this Citation and Notification of Penalty becomes a final order of the Commissioner which is not subject to review by any court or agency and the Occupational Safety and Health Division may file and enforce the penalty as a district court judgment without further notice or additional proceedings pursuant to Minnesota Statute § 16D.17.

Employee Right to Contest - An employee or authorized representative of employees has the right to a hearing to contest this Citation by filing a letter with the Commissioner of the Department of Labor and Industry at the address shown on page 1 within 20 calendar days of the employer's receipt of this Citation.

Important: To be considered filed, an employee letter of contest must be deposited in the United States mail and postmarked, or otherwise timely received by the Commissioner at the above address within 20 calendar days after the date this Citation is received by the employer. You may also file electronically at (contestation.dli@state.mn.us), by facsimile (FAX), or by hand-delivering the completed form to the Department, if received no later than 4:30 p.m. on the 20th calendar day. If the employee fails to file a letter of contest on time, this Citation and Notification of Penalty becomes a final order of the Commissioner which is not subject to review by any court or agency and the Occupational Safety and Health Division may file and enforce the penalty as a district court judgment without further notice or additional proceedings pursuant to Minnesota Statute § 16D.17.

Employee Right to Party Status - Affected employees or their authorized employee representatives may elect to participate as parties in the formal contested case hearing by filing written notice with the Commissioner at the address shown above at least 45 days before the start of the hearing. The notice must contain the employees' names, addresses, authorized employee representatives, if any, and a statement that they are affected employees of the cited employer.

Employer Discrimination Unlawful - Employees who believe that they have been discharged or otherwise discriminated against by any person because the employees have exercised any right authorized under the provisions of Minnesota Statutes §§ 182.65 to 182.674, may, within 30 days after such alleged discrimination occurs, file a complaint with the Commissioner of the Department of Labor and Industry at the address shown above, alleging the discriminatory act.

PENALTY INFORMATION

Types of Violations - There are 5 types of violations that may be cited by MNOSHA. They are: Nonserious, Serious, Willful, Repeat and Failure to Abate.

Penalties - In cases not involving the death of an employee, the law allows the following maximum penalties: Nonserious, \$7,000; Serious, \$7,000; Willful, \$70,000; Repeat, \$70,000; and Failure to Abate, \$7,000 per day the violation remains unabated. If a Willful or Repeat violation caused or contributed to the death of an employee, however, MNOSHA is compelled by law to assess the employer a total non-negotiable penalty of at least \$50,000 for all citations connected to the employee's death. If there are no Willful or Repeat violations among the violations that caused or contributed to the employee's death, MNOSHA must assess the employer a non-negotiable penalty of at least \$25,000 for each citation connected to the employee's death. The following violations are not subject to these minimums and will be processed according to MNOSHA's ordinary penalty system: (a) any serious violations issued to an employer with fewer than 50 employees when the victim of a workplace fatality owned a controlling interest in the business unless the Commissioner determines that a fine shall be assessed, and (b) any violations found during a fatality investigation but determined not to be connected to the death of an employee.

Credits - A penalty for a violation may be credited by as much as 95 percent, depending on the employer's good faith (up to 30%), size of business (up to 55%), and previous violation history (up to 10%). The penalties which appear on the Citation and Notification of Penalty have been reduced by the credits described.

Minnesota
Department of Labor and Industry
Occupational Safety and Health Division

Inspection Number: 318151537
Inspection Date(s): 03/10/2020 - 03/11/2020
Issuance Date: 03/25/2020
OSHI ID: P1940
Optional Report No.: 02420

Citation and Notification of Penalty

Company Name: Berry Global Films LLC - Industrial Products
Inspection Site: 1970 Excel Drive, Mankato, MN 56001

Citation 01 Item 001 Type of Violation: **Serious**

29 CFR 1910.219(e)(3)(i): Vertical or inclined belt(s) were not enclosed by guard(s) conforming to the requirements specified at 29 CFR 1910.219(m) and (o):

The vertical belt and pulley on the Beck winder, was not fully enclosed by adequate guarding.

Date By Which Violation Must Be Abated: 4/18/2020
Penalty: \$1,400.00

Nancy J. Leppink, Commissioner
MN Department of Labor and Industry

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

Krista DeJonge, EHS Manager
 Berry Global Films LLC
 2111 3rd Ave
 Mankato, MN 56001
 318151438 P1940 02320 - Films LLC
 318151537 P1940 02420 - Industrial Products



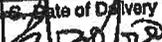
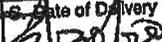
9590 9402 5179 9122 8695 35

2. Article Number (Transfer from service label)

7019 0700 0000 1466 7671

COMPLETE THIS SECTION ON DELIVERY

A. Signature  Agent
 Addressee

B. Received by (Printed Name)  C. Date of Delivery 

Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type
- | | |
|--|---|
| <input type="checkbox"/> Adult Signature | <input type="checkbox"/> Priority Mail Express® |
| <input type="checkbox"/> Adult Signature Restricted Delivery | <input type="checkbox"/> Registered Mail™ |
| <input type="checkbox"/> Certified Mail® | <input type="checkbox"/> Registered Mail Restricted Delivery |
| <input type="checkbox"/> Certified Mail Restricted Delivery | <input type="checkbox"/> Return Receipt for Merchandise |
| <input type="checkbox"/> Collect on Delivery | <input type="checkbox"/> Signature Confirmation™ |
| <input type="checkbox"/> Collect on Delivery Restricted Delivery | <input type="checkbox"/> Signature Confirmation Restricted Delivery |
| <input type="checkbox"/> Insured Mail | |
| <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500) | |

Domestic Return Receipt

**Minnesota
Department of Labor and Industry**

Occupational Safety and Health Division
443 Lafayette Road North
St. Paul, MN 55155 4307

Phone: 1-800-DIAL-DLI (1-800-342-5354)
(651) 284-5050
FAX: (651) 284-5741
www.dli.mn.gov

Inspection Number 318151537	OSHI ID P1940	Optional Report No.: 02420
Employer's Name and Mailing Address: Berry Global Films LLC 2111 3rd Ave. Mankato, MN 56001		
		APR 21 2020
NOTICE OF CONTEST AND SERVICE TO AFFECTED EMPLOYERS		MINNESOTA OSH DIVISION

PURPOSE OF THIS FORM

If you have received a Citation and Notification of Penalty from the Minnesota Occupational Safety and Health Division (MNOSHA) and you wish to contest any part of the Citation, including the penalty, you must complete this form. For your contest to be valid, you must file this form within 20 calendar days of the date the employer received the Citation.

If you only wish to obtain an extension of time to correct the violation, you may file a Petition for Modification of Abatement Date according to the instructions on the Citation and Notification of Penalty.

By filing this Notice of Contest form, you are initiating a formal contested case proceeding before an administrative law judge of the parts of the Citation and Notification of Penalty you are contesting. This form must be filed in good faith and not solely for delay or avoidance of penalties.

HOW TO FILE THIS FORM

- This Notice of Contest form must be filed with the Commissioner of the Department of Labor and Industry at the above address within 20 calendar days after the date the employer received the Citation and Notification of Penalty. To be considered filed, all parts of the Notice of Contest form must be completed and the completed form must be mailed and postmarked, within 20 calendar days after the date the employer received the Citation and Notification of Penalty. You may also file electronically (at contestation.dli@state.mn.us), by facsimile (FAX), or by hand-delivering the completed form to the Department, if received no later than 4:30 p.m. on the 20th calendar day.
- If you fail to file the fully completed Notice of Contest form on time, the Citation and Notification of Penalty becomes a final order of the Commissioner that is not subject to review by any court or agency.

APPEAL PROCESS

Upon receipt of a timely filed Notice of Contest form, MNOSHA will contact you and schedule a date, time and location for an informal conference. The purpose of the informal conference is to allow you to discuss with a MNOSHA representative the Citation and Notification of Penalty and the basis for your contest. The goal of the informal conference is to reach an early resolution of the contest. If you and MNOSHA are unable to reach a resolution at the informal conference then the contest will proceed to a formal contested case hearing.

COMPLETING THIS FORM

1. HOW TO IDENTIFY THE INSPECTION BEING CONTESTED.

Complete the box at the top of this form using the Inspection Number, OSHI ID, Optional Report Number and Employer's Mailing Address from the Citation and Notification of Penalty being contested.

2. HOW TO CONTEST THE CITATION AND NOTIFICATION OF PENALTY.

Indicate in the boxes on the next page which part(s) of the Citation and Notification of Penalty you wish to contest. Identify the citations you are contesting by indicating the citation and item numbers. Then indicate which part(s) of each item is being contested. Finally, state your reasons for contesting in the space provided below the boxes.

- Check the box CITATION if you wish to contest that the violation occurred.
- Check the box TYPE OF VIOLATION if you wish to contest the characterization of the violation as non-serious, serious, willful or repeat.
- Check the box ABATEMENT DATE if you wish to contest the date by which you must abate the violation.
- Check the box PENALTY if you wish to contest the amount of the penalty.

FAILURE TO CHECK ANY PART WILL RESULT IN THAT PART OF THE CITATION BECOMING A FINAL ORDER OF THE COMMISSIONER THAT IS NOT REVIEWABLE BY ANY COURT OR AGENCY.

CITATION NUMBER	ITEM NUMBER	(check all that apply)			
1	1	<input checked="" type="checkbox"/> Citation	<input checked="" type="checkbox"/> Type of Violation	<input checked="" type="checkbox"/> Abatement Date	<input checked="" type="checkbox"/> Penalty
		<input type="checkbox"/> Citation	<input type="checkbox"/> Type of Violation	<input type="checkbox"/> Abatement Date	<input type="checkbox"/> Penalty
		<input type="checkbox"/> Citation	<input type="checkbox"/> Type of Violation	<input type="checkbox"/> Abatement Date	<input type="checkbox"/> Penalty
		<input type="checkbox"/> Citation	<input type="checkbox"/> Type of Violation	<input type="checkbox"/> Abatement Date	<input type="checkbox"/> Penalty
		<input type="checkbox"/> Citation	<input type="checkbox"/> Type of Violation	<input type="checkbox"/> Abatement Date	<input type="checkbox"/> Penalty
		<input type="checkbox"/> Citation	<input type="checkbox"/> Type of Violation	<input type="checkbox"/> Abatement Date	<input type="checkbox"/> Penalty

REASONS FOR CONTEST: (Additional sheets may be attached as necessary, and they will be considered part of this form.)

Berry Global contests that it violated the standards cited in each citation item; Berry Global contests the classification of the citation items; Berry Global contests the abatement date; and Berry Global contests the penalty amounts.

3. DATES OF POSTING AND SERVING. You must certify in Box A or B below the dates you posted and served this form.

<p>A. Union: Complete part A if you have affected Employees Represented by Authorized Employee Representatives</p> <p>I hereby certify that I posted fully completed copies of this form on _____ at the locations where the Citation and Notification of Penalty is required to be posted; and I served fully completed copies of this form on _____ upon the authorized employee representatives of affected employees.</p>
<p>B. Non-Union: Complete part B if you have affected Employees Not Represented by Authorized Employee Representatives</p> <p>I hereby certify that I posted fully completed copies of this form on <u>4/21/20</u> at the locations where the Citation and Notification of Penalty is required to be posted and that I do not have any affected employees who are represented by authorized employee representatives.</p>

4. OATH. The employer completing this form must sign and have notarized the following statement.

I SWEAR THAT THE INFORMATION PROVIDED ON THIS FORM AND ATTACHED TO THIS FORM IS ACCURATE AND TRUTHFUL TO THE BEST OF MY KNOWLEDGE.

State of KY County of Jefferson

Todd B. Logsdon, Attorney 502-561-3971
 Name of Employer Representative, Title Phone
 Todd B. Logsdon 4/21/20
 Signature Date

Subscribed and sworn to before me
 this 21st day of April 2020
 Notary Public Angela Y. Marshall
 My Commission expires Sept. 29, 2021

ANGELA Y. MARSHALL
 NOTARY #585662
 STATE-AT-LARGE, KENTUCKY

04222020 000326.003

Jones, Tonya (DLI)

From: / Foley, Chantell <cfoley@fisherphillips.com>
Sent: / Tuesday, April 21, 2020 11:35 AM
To: MN_DLI_Contestation
Cc: Logsdon, Todd; Cusack, Cathy
Subject: RE: Berry Global, Inc. MNOSHA Citations - Notices of Contest for Inspection Nos. 318151438 and 318151537
Attachments: 318151438 Berry Global Notice of Contest.pdf; 318151537 Berry Global Notice of Contest.pdf

This message may be from an external email source.

Do not select links or open attachments unless verified. Report all suspicious emails to Minnesota IT Services Security Operations Center.

To Whom it May Concern,

Berry Global, Inc. has retained Fisher & Phillips LLP to represent it with respect to the above-referenced MNOSHA inspections. Please see attached Berry Global's Notices of Contest of all citations, proposed penalties and abatement dates issued as a result of the referenced inspections. Please direct all future correspondence and documents to the attention of Todd B. Logsdon (tlogsdon@fisherphillips.com) and myself.

Please let us know if you have any questions.

Thanks,
Chantell Foley



Chantell C. Foley

Attorney at Law

Fisher & Phillips LLP

220 West Main Street | Suite 1700 | Louisville, KY 40202

cfoley@fisherphillips.com | O: (502) 561-3969 | C: (859) 312-2783

[vCard](#) | [Bio](#) | [Website](#) *On the Front Lines of Workplace Law™*

This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error, then immediately delete this message.

Inspection No. 318151537

Exhibit 7

RE: Signature Confirmation

Stewart, David - Mankato, MN <David.F.Stewart@usps.gov>

Mon 5/18/2020 1:20 PM

To: Krista DeJonge <kristadejonge@berryglobal.com>

Our carrier did in fact sign for and deliver this certified letter under our COVID19 guidance. This insures the customer is not touching USPS equipment so it lessens the possibility of passing along COVID19 to either party.

I hope this explains the situation.

Sincerely,

David F. Stewart



Supervisor Customer Services
851 SUMMIT AVE
MANKATO MN 56001-9997
(507) 625-2199

From: Krista DeJonge [mailto:kristadejonge@berryglobal.com]

Sent: Monday, May 18, 2020 12:58 PM

To: Stewart, David - Mankato, MN <David.F.Stewart@usps.gov>

Subject: [EXTERNAL] Re: Signature Confirmation

CAUTION: This email originated from outside USPS. **STOP and CONSIDER** before responding, clicking on links, or opening attachments.

Hi David,

Thank you so much for sending this over.

May we also have a statement from you, showing that the carrier did sign for our letter due to COVID-19 precautions.

Krista DeJonge, GSP
EHS Manager
Berry Global
Mankato, MN 56001
Office: (507) 386-4449
Cell: (616) 566-9690
KristaDeJonge@berryglobal.com

From: Stewart, David - Mankato, MN <David.F.Stewart@usps.gov>

Sent: Monday, May 18, 2020 11:26 AM

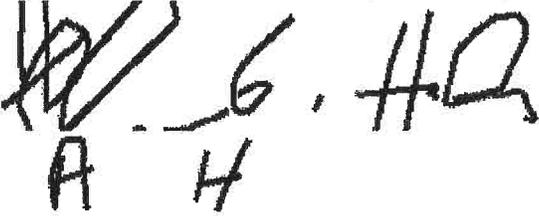
To: Krista DeJonge <kristadejonge@berryglobal.com>

Subject: Signature Confirmation

As requested, here is the signature confirmation for your certified mail.

This item was delivered on 03/30/2020 at 14:10:00

[< Return to Tracking Number View](#)

Signature	 A H
Address	711 3rd Av.

David F. Stewart



Supervisor Customer Services
851 SUMMIT AVE
MANKATO MN 56001-9997
(507) 625-2199

Disclaimer

Berry Plastics is now Berry Global. Our email addresses have changed from @berryplastics.com to @berryglobal.com. Please update your contact information.

This E-mail (including attachments) is confidential and the property of Berry Global, Inc. and its subsidiaries (collectively, "Berry"). If you are not the intended recipient, reading, copying, disclosure or any action or forbearance based on the E-mail is prohibited. Berry retains all copyright and other intellectual property rights and objects to misuse. IF YOU HAVE RECEIVED THIS E-MAIL IN ERROR, IMMEDIATELY CONTACT THE SENDER TO SO ADVISE OF THE ERROR AND PERMANENTLY DELETE THIS E-MAIL.