

April 10, 2020

Occupational Safety and  
Health Review Board  
443 Lafayette Road N.  
St. Paul, MN 55155

**Re: Commissioner v. K C Betzold Construction LLC  
Inspection No. 318148491  
Response to Petition to Vacate**

Dear Occupational Safety and Health Review Board Members:

I am counsel for the Minnesota Occupational Safety and Health Administration division (“MNOSHA”) of the Department of Labor and Industry in the above-referenced matter.

I am submitting this letter in opposition to the Petition to Vacate the Commissioner’s March 12, 2020 Final Order (“Commissioner’s Final Order”) filed by Petitioner K C Betzold Construction LLC (“Petitioner”). The Commissioner’s Final Order concluded that Petitioner’s Notice of Contest was late. Petitioner’s Petition to Vacate should be denied for two reasons. First, the Commissioner’s Final Order correctly determined that Petitioner’s Notice of Contest was late. Second, Petitioner has not demonstrated good cause to vacate the Commissioner’s Final Order, which is required by Minnesota Statutes section 182.664, subdivision 5 (2018).

### **FACTS**

On January 10, 2020, MNOSHA inspected Petitioner’s worksite located at 2980 130th Street East, Dundas, Minnesota. On January 31, 2020, MNOSHA issued a Citation and Notification of Penalty (“Citation”) for violations of occupational safety and health standards.<sup>1</sup> The first paragraph of the Citation provided the following instruction:

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 . . . .* Your contestation rights and other employer and employee rights and responsibilities are set out in the first three pages of the Citation. (Emphasis added.)

The following instruction appears on page three of the Citation:

**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

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<sup>1</sup> A copy of the Citation is attached as Exhibit A.

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 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 Statutes § 16D.17.**

Petitioner received the Citation on February 12, 2020, as evidenced by the signed receipt form.<sup>2</sup> The deadline for filing a Notice of Contest to the Citation was 4:30 p.m. on March 3, 2020. *See* Minnesota Rules, part 5210.0536, subpart 2. Petitioner did not file its Notice of Contest to the Citation until March 5, 2020.<sup>3</sup>

On March 12, 2020, Petitioner was served with a Final Order of the Commissioner.<sup>4</sup> This Final Order determined that Petitioner's Notice of Contest was late. The Commissioner's Final Order also provided Petitioner with information related to filing a Petition to Vacate the determination that its Notice of Contest was late.

On March 30, 2020, Petitioner filed a Petition to Vacate the Commissioner's Final Order.

## ARGUMENT

### **I. THE REVIEW BOARD SHOULD DENY PETITIONER'S PETITION TO VACATE BECAUSE THE COMMISSIONER'S MARCH 12, 2020, FINAL ORDER CORRECTLY DETERMINED THAT PETITIONER'S NOTICE OF CONTEST WAS LATE.**

The Commissioner's Final Order should be affirmed because the decision is correct under the facts. Petitioner's representative states that he believed the Citation was "picked up" on Friday, February 14, 2020. But Petitioner's representative received the Citation on February 12, 2020, as

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<sup>2</sup> A copy of the signed receipt form is attached as Exhibit B.

<sup>3</sup> A copy of Petitioner's Notice of Contest is attached as Exhibit C. No employee or authorized representative of employees filed a Notice of Contest.

<sup>4</sup> A copy of the Commissioner's March 12, 2020, Final Order is attached as Exhibit D.

noted on the signed receipt form.<sup>5</sup> Additional evidence that Petitioner's representative signed the receipt form and received the Citation on February 12, 2020, is that the United States Postal Service mailed back the signed receipt form the next day, February 13, 2020.<sup>6</sup> In sum, there is no evidence that Petitioner received the Citation on February 14, 2020.

The Citation clearly states, in multiple places, that a Notice of Contest must be filed within 20 calendar days of the date of receipt. There is no ambiguity in determining Petitioner's deadline for filing a Notice of Contest under these facts. Petitioner's Notice of Contest should have been filed on or before 4:30 p.m. on March 3, 2020. Instead, Petitioner filed the Notice of Contest on March 5, 2020, after the deadline had passed. The Commissioner's Final Order was factually correct, so Petitioner's Petition to Vacate must be denied.

## **II. THE REVIEW BOARD SHOULD DENY PETITIONER'S PETITION TO VACATE BECAUSE PETITIONER HAS NOT ESTABLISHED GOOD CAUSE.**

Minnesota Statutes, section 182.664, subdivision 5, states that, without a showing of good cause, the Review Board may not vacate a final order of the Commissioner. It further provides that "good cause is limited to fraud, mistake of law or fact, or newly discovered evidence." *Id.* Petitioner has not established the required good cause, so the Review Board cannot vacate the Commissioner's March 12, 2020, Final Order.

In the Petition to Vacate, Petitioner's representative argues that the Commissioner's Final Order should be vacated due to a mistake of fact. Petitioner's representative states that he believed the Citation was "picked up" on Friday, February 14, 2020, and "returned" 20 days later on March 5, 2020. That Petitioner's representative may have thought that he received the Citation on February 14, 2020, does not show a mistake of fact in the Commissioner's Final Order. The determination in the Commissioner's Final Order that Petitioner filed its Notice of Contest late is correct.

A decision by the Review Board that the "mistake" by Petitioner's representative as to when he received the Citation constitutes good cause would undermine the 20-day deadline for filing a Notice of Contest established by law. Any employer who filed a Notice of Contest late could claim they made some "mistake" in remembering the deadline.

MNOSHA gave clear instructions on how to contest the Citation, so Petitioner's failure to timely file the Notice of Contest "can only logically be construed as negligent and undeserving of pardon." *Secretary of Labor v. Barretto Granite Corp.*, 830 F.2d 396, 400 (1st Cir. 1987). Mere carelessness or negligence does not constitute good cause to vacate a final order of the Commissioner. *See Secretary of Labor v. Keefe Earth Boring Co.*, 14 O.S.H. Cas. (BNA) 2187, 2192 (Rev. Comm. 1991). In sum, Petitioner has not shown good cause to vacate the Commissioner's Final Order, so the Petition to Vacate should be denied.

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<sup>5</sup> See Exhibit B.

<sup>6</sup> A copy of the front of the signed receipt form addressed to MNOSHA and postmarked February 13, 2020, is attached as Exhibit E.

**CONCLUSION**

First, the Commissioner's March 12, 2020, Final Order correctly determined that Petitioner's Notice of Contest was late. Additionally, Petitioner has not demonstrated good cause to vacate the Commissioner's March 12, 2020, Final Order. Therefore, the Petition to Vacate must be denied.

Petitioner K C Betzold Construction LLC is served with a copy of this letter as stated in the enclosed Affidavit of Service.

Respectfully submitted,

s/ Matthew P. Jobe

MATTHEW P. JOBE  
General Counsel  
Office of General Counsel  
Minnesota Department of Labor and Industry  
(651) 284-5019 (main)  
(651) 284-5725 (fax)

Enclosures

cc: Kenneth C. Betzold Jr., K C Betzold Construction LLC

**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:**

K C Betzold Construction LLC

13771 Cabot Avenue

Dundas, MN 55019

**Inspection Number:** 318148491

**OSHI ID:** Y3105

**Optional Report No.:** 00520

**Inspection Date(s):** 01/10/2020

**Issuance Date:** 01/31/2020

**Inspection Site:**

2980 130th Street East

Dundas, MN 55019

*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](mailto: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](mailto: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:** 318148491  
**Inspection Date(s):** 01/10/2020  
**Issuance Date:** 01/31/2020  
**OSHI ID:** Y3105  
**Optional Report No.:** 00520

**Citation and Notification of Penalty**

**Company Name:** K C Betzold Construction LLC  
**Inspection Site:** 2980 130th Street East, Dundas, MN 55019

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

Minn. Stat. 182.653 subd. 2: The employer did not furnish to each employee, conditions of employment and a place of employment free from recognized hazards which caused or were likely to cause death or serious injury to employees:

Two employees were working from a damaged and unapproved elevated personnel work platform which was not securely attached to the lifting carriage supported by the Genie 883 telehandler.

**Date By Which Violation Must Be Abated:** **2/10/2020**  
**Penalty:** **\$1,225.00**

**Minnesota**  
**Department of Labor and Industry**  
Occupational Safety and Health Division

**Inspection Number:** 318148491  
**Inspection Date(s):** 01/10/2020  
**Issuance Date:** 01/31/2020  
**OSHI ID:** Y3105  
**Optional Report No.:** 00520

### Citation and Notification of Penalty

**Company Name:** K C Betzold Construction LLC  
**Inspection Site:** 2980 130th Street East, Dundas, MN 55019

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#### Citation 01 Item 002 Type of Violation: **Serious**

Minn. Stat. 182.653 subd. 8: A written Workplace Accident and Injury Reduction (AWAIR) Program that promotes safe and healthful working conditions and is based on clearly stated goals and objectives for meeting those goals was not established; specifically:

The employer failed to develop and implement a written Workplace Accident and Injury Reduction (AWAIR) Program.

Abatement Guidelines: The program must describe:

- 1) How managers, supervisors, and employees are responsible for implementing the program and how continued participation of management will be established, measured, and maintained;
- 2) The methods used to identify, analyze, and control new or existing hazards, conditions, and operations;
- 3) How the plan will be communicated to all affected employees so that they are informed of work-related hazards and controls;
- 4) How work place accidents will be investigated and corrective action implemented;
- 5) How safe work practices and rules will be enforced.

An employer must conduct and document a review of the work place accident and injury reduction program at least annually and document how procedures set forth in the program are met.

**Date By Which Violation Must Be Abated:** 2/24/2020  
**Penalty:** \$350.00

**Minnesota**  
**Department of Labor and Industry**  
Occupational Safety and Health Division

**Inspection Number:** 318148491  
**Inspection Date(s):** 01/10/2020  
**Issuance Date:** 01/31/2020  
**OSHI ID:** Y3105  
**Optional Report No.:** 00520

**Citation and Notification of Penalty**

**Company Name:** K C Betzold Construction LLC  
**Inspection Site:** 2980 130th Street East, Dundas, MN 55019

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**Citation 01 Item 003** Type of Violation:  **Serious**

29 CFR 1910.178(l): Operators were not trained in the safe operation of powered industrial trucks:

Two employees using a Gehl rough terrain telehandler were not trained.

**Date By Which Violation Must Be Abated:** 2/24/2020  
**Penalty:** \$525.00

**Minnesota**  
**Department of Labor and Industry**  
Occupational Safety and Health Division

**Inspection Number:** 318148491  
**Inspection Date(s):** 01/10/2020  
**Issuance Date:** 01/31/2020  
**OSHI ID:** Y3105  
**Optional Report No.:** 00520

### Citation and Notification of Penalty

**Company Name:** K C Betzold Construction LLC  
**Inspection Site:** 2980 130th Street East, Dundas, MN 55019

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#### Citation 01 Item 004 Type of Violation: **Serious**

29 CFR 1910.1200(h)(1): Employees were not provided information and training as specified in 29 CFR 1910.1200(h)(1) and (2) on hazardous chemicals in their work area at the time of their initial assignment and whenever a new hazard was introduced into their work area:

Hazard Communication training was not provided to employees routinely exposed to hazardous substances such as: RoofKit Seam Primer and RoofKit Multi-Purpose Adhesive.

Abatement Guidelines: The employer must conduct initial and ongoing evaluations of the workplace to determine the hazardous chemicals for which there is a reasonable potential for employee exposure during the normal course of assigned work. A written program must be developed and implemented which describes how the training, availability of information, and labeling requirements will be met.

Employees must be provided with training in a manner which can be reasonably understood by them, and which addresses the required topics outlined in 1910.1200(h). Training is to be provided at the cost of the employer. Records of training must be maintained by the employer and kept for 3 years.

The training program for hazardous chemicals shall include:

- 1) the name or names of the chemical including any generic or chemical name, trade name, and commonly used name;
- 2) the level, if any and if known, at which exposure to the chemical has been restricted according to standards adopted by the commissioner, or, if no standard has been adopted, according to guidelines established by competent professional groups which have conducted research to determine the hazardous properties of potentially hazardous chemicals;
- 3) the known acute and chronic effects of exposure at hazardous levels, including routes of entry;
- 4) the known symptoms of the effects;
- 5) any potential for flammability, explosion, or reactivity of the chemical;
- 6) appropriate emergency treatment;
- 7) the known proper conditions for use of and exposure to the chemical;
- 8) procedures for cleanup of leaks and spills;
- 9) the name, phone number, and address of a manufacturer of the hazardous chemical; and
- 10) a written copy of all of the above information which shall be readily accessible in the area or areas in which the hazardous chemical is used or handled.

Records of training must be kept by the employer for three years, and at a minimum, must include:

- 1) the dates training was conducted;
- 2) the name, title, and qualifications of the person who conducted the training;
- 3) the names and job titles of employees who completed the training; and
- 4) a brief summary or outline of the information that was included in the training session.

The following is the minimum required frequency of training:

- 1) before the initial assignment to a job where there is a reasonable potential for exposure during the course of assigned work,
- 2) prior to the time an employee may be exposed to any additional hazardous chemical(s), and
- 3) training updates, to be provided no less than annually.

**Date By Which Violation Must Be Abated:**

**2/24/2020**

**Penalty:**

**\$525.00**

**Minnesota**  
**Department of Labor and Industry**  
Occupational Safety and Health Division

**Inspection Number:** 318148491  
**Inspection Date(s):** 01/10/2020  
**Issuance Date:** 01/31/2020  
**OSHI ID:** Y3105  
**Optional Report No.:** 00520

### Citation and Notification of Penalty

**Company Name:** K C Betzold Construction LLC  
**Inspection Site:** 2980 130th Street East, Dundas, MN 55019

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#### Citation 01 Item 005 Type of Violation: **Serious**

29 CFR 1926.503(a)(1) and (2): The employer did not provide a training program and assure that employees had been trained by a competent person to recognize the hazards of falling and procedures to be followed to minimize these hazards, for each employee who may be exposed to fall hazards:

Fall protection training had not been provided to employees exposed to fall hazards while performing demolition work on an aerial work platform supported by a Gehl 883 telehandler over six feet above a lower level.

Abatement Guidelines: Each employee must be trained on the following provisions:

- 1) The nature of fall hazards in the work area;
- 2) The correct procedures for erecting, maintaining, disassembling, and inspecting the fall protection systems to be used;
- 3) The use and operation of guardrail systems, personal fall arrest systems, safety net systems, warning line systems, safety monitoring systems, controlled access zones, and other protection to be used;
- 4) The role of each employee in the safety monitoring system when this system is used;
- 5) The limitations of the use of mechanical equipment during the performance of roofing work on low sloped roofs;
- 6) The correct procedures for the handling and storage of equipment and materials and the erection of overhead protection;
- 7) The role of employees in fall protection plans;
- 8) The standards contained in Subpart M.

The employer shall maintain a written certification record of this training. The written certification record shall contain the name or other identifier of the employee trained, the date(s) of the training, and the signature of the person who conducted the training or the signature of the employer. If the employer relies on training conducted by another employer or completed prior to the effective date of

this section, the certification record shall indicate the date the employer determined the prior training was adequate rather than the date of actual training.

**Date By Which Violation Must Be Abated:** 2/24/2020  
**Penalty:** \$1,225.00

**Minnesota**  
**Department of Labor and Industry**  
Occupational Safety and Health Division

**Inspection Number:** 318148491  
**Inspection Date(s):** 01/10/2020  
**Issuance Date:** 01/31/2020  
**OSHI ID:** Y3105  
**Optional Report No.:** 00520

**Citation and Notification of Penalty**

**Company Name:** K C Betzold Construction LLC  
**Inspection Site:** 2980 130th Street East, Dundas, MN 55019

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**Citation 01 Item 006 Type of Violation: **Serious****

Minn. Rules 5207.1100: Each employee working from a boom-supported elevated work platform or a personnel elevating platform supported by a rough-terrain forklift was not protected from falling by the use of a personal fall arrest system or positioning device:

Two employees were not protected from falling while working from a personnel elevating platform supported by a Gehl 883 telehandler.

**Date By Which Violation Must Be Abated:** 2/4/2020  
**Penalty:** \$1,225.00

**Minnesota**  
**Department of Labor and Industry**  
Occupational Safety and Health Division

**Inspection Number:** 318148491  
**Inspection Date(s):** 01/10/2020  
**Issuance Date:** 01/31/2020  
**OSHI ID:** Y3105  
**Optional Report No.:** 00520

### Citation and Notification of Penalty

**Company Name:** K C Betzold Construction LLC  
**Inspection Site:** 2980 130th Street East, Dundas, MN 55019

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#### Citation 02 Item 001 Type of Violation: **Nonserious**

29 CFR 1910.1200(e)(1): The employer did not develop, implement, and/or maintain at the workplace a written hazard communication program which describes how the criteria specified in 29 CFR 1910.1200(f), (g), and (h) will be met:

The employer failed to develop and implement a written Hazard Communication program for employees routinely exposed to hazardous substances such as: RoofKit Seam Primer and RoofKit Multi-Purpose Adhesive.

Abatement Guidelines: The written program must be made available, upon request to employees, their designated representatives, and representatives of the Occupational Safety & Health Division and shall include:

- 1) A description of how the training, availability of information, and labeling provision will be met for hazardous chemicals.
- 2) A list of the hazardous chemicals known to be present using an identity that is referenced on the appropriate safety data sheet. The list may be compiled for the workplace as a whole or for individual work areas.
- 3) The methods the employer will use to inform employees of the hazards of non-routine tasks that involve exposure to hazardous chemicals, and the hazards associated with hazardous chemicals contained in unlabeled pipes in their work areas.
- 4) Additionally, in multiemployer workplaces where the employer produces, uses or stores hazardous chemicals in such a way that employees of other employers may be exposed, the written program shall include:

a) the methods the employer will use to provide the other employers with a copy of the safety data sheet, or to make it available at a central location in the workplace, for each hazardous chemical the other employers' employees may be exposed to while working;

b) the methods the employer will use to inform the other employers on any precautionary measures that need to be taken to protect employees during normal operating conditions and in foreseeable emergencies; and

c) the methods the employer will use to inform the other employers of the labeling system used in the workplace.

**Date By Which Violation Must Be Abated:**  
**Penalty:**

**2/24/2020**  
**\$0.00**

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.

K.C. Betzold, Owner  
KC Betzold Construction LLC  
13771 Cabot Avenue  
Dundas, MN 55019  
318148491 Y3105 00520



9590 9402 4970 9063 5442 74

2. Article Number (Transfer from service label)



7019 10700 0000 1467 J395

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  Agent  
*K.C. Betzold*  Addressee

B. Received by (Printed Name) C. Date of Delivery  
*K. Betzold* *2-12-20*

D. 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 Restricted 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"/> Signature Confirmation Restricted Delivery
<input type="checkbox"/> Insured Mail Restricted Delivery	

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

K.C. Betzold, Owner  
K C Betzold Construction LLC  
13771 Cabot Avenue  
Dundas, MN 55019  
318148491 Y3105 00520  
2980 130th Street East Dundas, MN 55019

**MNOSHA FAX RECEIVED**

**MAR - 5 2020**

**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](mailto: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 20<sup>th</sup> 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)			
01	001	<input checked="" type="checkbox"/> Citation	<input checked="" type="checkbox"/> Type of Violation	<input type="checkbox"/> Abatement Date	<input checked="" type="checkbox"/> Penalty
01	002	<input checked="" type="checkbox"/> Citation	<input checked="" type="checkbox"/> Type of Violation	<input type="checkbox"/> Abatement Date	<input checked="" type="checkbox"/> Penalty
01	003	<input checked="" type="checkbox"/> Citation	<input checked="" type="checkbox"/> Type of Violation	<input type="checkbox"/> Abatement Date	<input checked="" type="checkbox"/> Penalty
01	004	<input checked="" type="checkbox"/> Citation	<input checked="" type="checkbox"/> Type of Violation	<input type="checkbox"/> Abatement Date	<input checked="" type="checkbox"/> Penalty
01	005	<input checked="" type="checkbox"/> Citation	<input checked="" type="checkbox"/> Type of Violation	<input type="checkbox"/> Abatement Date	<input checked="" type="checkbox"/> Penalty
01	006	<input checked="" type="checkbox"/> Citation	<input checked="" type="checkbox"/> Type of Violation	<input type="checkbox"/> Abatement Date	<input checked="" type="checkbox"/> Penalty

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

This Is a Small Crew. All Persons on Jobsite are responsible competent persons. On Site Safety is discussed on every start of every Job, Before the start of every and During every new task. Safety is also Discussed before every non-Routine Task.

3. DATES OF POSTING AND SERVING. You must certify in Box A or B below the dates you posted and served this form. All Safety Knowledge, Communication, and Equipment is Provided.

**A. Union:** Complete part A if you have affected Employees Represented by Authorized Employee Representatives

I hereby certify that I posted fully completed copies of this form on \_\_\_\_\_ (date) 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 \_\_\_\_\_ (date) upon the authorized employee representatives of affected employees.

**B. Non-Union:** Complete part B if you have affected Employees Not Represented by Authorized Employee Representatives

I hereby certify that I posted fully completed copies of this form on 2/14/20 (date) 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.

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 MN County of Rice

Kenneth Betzold 612-598-2788  
 Name of Employer Representative, Title Phone  
Kenneth Betzold 3/2/20  
 Signature Date

Subscribed and sworn to before me  
 this 2nd day of March, 2020  
 Notary Public Amy Sue Stanton  
 My Commission expires 01-31-2023



**m DEPARTMENT OF  
LABOR AND INDUSTRY**

March 12, 2020

Kenneth Betzold  
K C Betzold Construction LLC  
13771 Cabot Avenue  
Dundas, MN 55019

Re: K C Betzold Construction LLC  
Inspection No. 318148491  
**FINAL ORDER DETERMINING LATE FILING**

Dear Mr. Betzold:

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](http://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/Marie O'Neill

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

MEO/cx

Enclosures

**EXHIBIT D**

*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.

K C Betzold Construction LLC,

Inspection No. 318148491

Respondent.

To: K C Betzold Construction LLC  
13771 Cabot Avenue  
Dundas, MN 55019

On January 31, 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 K C Betzold Construction LLC (Respondent) received the Citation on February 12, 2020. (Exhibit B). On March 5, 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 fax, 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 February 12, 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: 03/12/2020

s/ Marie O'Neill  
MARIE O'NEILL  
Attorney Reg. No. 180725  
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

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## Citation and Notification of Penalty

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**To:**  
K C Betzold Construction LLC  
13771 Cabot Avenue  
Dundas, MN 55019

**Inspection Number:** 318148491  
**OSHA ID:** Y3105  
**Optional Report No.:** 00520  
**Inspection Date(s):** 01/10/2020  
**Issuance Date:** 01/31/2020

**Inspection Site:**  
2980 130th Street East  
Dundas, MN 55019

*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.

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### 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](mailto: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](mailto: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:** 318148491  
**Inspection Date(s):** 01/10/2020  
**Issuance Date:** 01/31/2020  
**OSHI ID:** Y3105  
**Optional Report No.:** 00520

**Citation and Notification of Penalty**

**Company Name:** K C Betzold Construction LLC  
**Inspection Site:** 2980 130th Street East, Dundas, MN 55019

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

Minn. Stat. 182.653 subd. 2: The employer did not furnish to each employee, conditions of employment and a place of employment free from recognized hazards which caused or were likely to cause death or serious injury to employees:

Two employees were working from a damaged and unapproved elevated personnel work platform which was not securely attached to the lifting carriage supported by the Genie 883 telehandler.

**Date By Which Violation Must Be Abated:** 2/10/2020  
**Penalty:** \$1,225.00

**Minnesota**  
**Department of Labor and Industry**  
Occupational Safety and Health Division

**Inspection Number:** 318148491  
**Inspection Date(s):** 01/10/2020  
**Issuance Date:** 01/31/2020  
**OSHI ID:** Y3105  
**Optional Report No.:** 00520

**Citation and Notification of Penalty**

**Company Name:** K C Betzold Construction LLC  
**Inspection Site:** 2980 130th Street East, Dundas, MN 55019

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**Citation 01 Item 002 Type of Violation: **Serious****

Minn. Stat. 182.653 subd. 8: A written Workplace Accident and Injury Reduction (AWAIR) Program that promotes safe and healthful working conditions and is based on clearly stated goals and objectives for meeting those goals was not established; specifically:

The employer failed to develop and implement a written Workplace Accident and Injury Reduction (AWAIR) Program.

Abatement Guidelines: The program must describe:

- 1) How managers, supervisors, and employees are responsible for implementing the program and how continued participation of management will be established, measured, and maintained;
- 2) The methods used to identify, analyze, and control new or existing hazards, conditions, and operations;
- 3) How the plan will be communicated to all affected employees so that they are informed of work-related hazards and controls;
- 4) How work place accidents will be investigated and corrective action implemented;
- 5) How safe work practices and rules will be enforced.

An employer must conduct and document a review of the work place accident and injury reduction program at least annually and document how procedures set forth in the program are met.

**Date By Which Violation Must Be Abated:** 2/24/2020  
**Penalty:** \$350.00

**Minnesota**  
**Department of Labor and Industry**  
Occupational Safety and Health Division

**Inspection Number:** 318148491  
**Inspection Date(s):** 01/10/2020  
**Issuance Date:** 01/31/2020  
**OSHI ID:** Y3105  
**Optional Report No.:** 00520

**Citation and Notification of Penalty**

**Company Name:** K C Betzold Construction LLC  
**Inspection Site:** 2980 130th Street East, Dundas, MN 55019

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**Citation 01 Item 003 Type of Violation: **Serious****

29 CFR 1910.178(l): Operators were not trained in the safe operation of powered industrial trucks:

Two employees using a Gehl rough terrain telehandler were not trained.

**Date By Which Violation Must Be Abated:** 2/24/2020  
**Penalty:** \$525.00

**Minnesota**  
**Department of Labor and Industry**  
 Occupational Safety and Health Division

**Inspection Number:** 318148491  
**Inspection Date(s):** 01/10/2020  
**Issuance Date:** 01/31/2020  
**OSHI ID:** Y3105  
**Optional Report No.:** 00520

### Citation and Notification of Penalty

**Company Name:** K C Betzold Construction LLC  
**Inspection Site:** 2980 130th Street East, Dundas, MN 55019

#### Citation 01 Item 004 Type of Violation: **Serious**

29 CFR 1910.1200(h)(1): Employees were not provided information and training as specified in 29 CFR 1910.1200(h)(1) and (2) on hazardous chemicals in their work area at the time of their initial assignment and whenever a new hazard was introduced into their work area:

Hazard Communication training was not provided to employees routinely exposed to hazardous substances such as: RoofKit Seam Primer and RoofKit Multi-Purpose Adhesive.

Abatement Guidelines: The employer must conduct initial and ongoing evaluations of the workplace to determine the hazardous chemicals for which there is a reasonable potential for employee exposure during the normal course of assigned work. A written program must be developed and implemented which describes how the training, availability of information, and labeling requirements will be met.

Employees must be provided with training in a manner which can be reasonably understood by them, and which addresses the required topics outlined in 1910.1200(h). Training is to be provided at the cost of the employer. Records of training must be maintained by the employer and kept for 3 years.

The training program for hazardous chemicals shall include:

- 1) the name or names of the chemical including any generic or chemical name, trade name, and commonly used name;
- 2) the level, if any and if known, at which exposure to the chemical has been restricted according to standards adopted by the commissioner, or, if no standard has been adopted, according to guidelines established by competent professional groups which have conducted research to determine the hazardous properties of potentially hazardous chemicals;
- 3) the known acute and chronic effects of exposure at hazardous levels, including routes of entry;
- 4) the known symptoms of the effects;
- 5) any potential for flammability, explosion, or reactivity of the chemical;
- 6) appropriate emergency treatment;
- 7) the known proper conditions for use of and exposure to the chemical;
- 8) procedures for cleanup of leaks and spills;
- 9) the name, phone number, and address of a manufacturer of the hazardous chemical; and
- 10) a written copy of all of the above information which shall be readily accessible in the area or areas in which the hazardous chemical is used or handled.

Records of training must be kept by the employer for three years, and at a minimum, must include:

- 1) the dates training was conducted;
- 2) the name, title, and qualifications of the person who conducted the training;
- 3) the names and job titles of employees who completed the training; and
- 4) a brief summary or outline of the information that was included in the training session.

The following is the minimum required frequency of training:

- 1) before the initial assignment to a job where there is a reasonable potential for exposure during the course of assigned work,
- 2) prior to the time an employee may be exposed to any additional hazardous chemical(s), and
- 3) training updates, to be provided no less than annually.

**Date By Which Violation Must Be Abated:** 2/24/2020  
**Penalty:** \$525.00

**Minnesota**  
**Department of Labor and Industry**  
Occupational Safety and Health Division

**Inspection Number:** 318148491  
**Inspection Date(s):** 01/10/2020  
**Issuance Date:** 01/31/2020  
**OSHL ID:** Y3105  
**Optional Report No.:** 00520

**Citation and Notification of Penalty**

**Company Name:** K C Betzold Construction LLC  
**Inspection Site:** 2980 130th Street East, Dundas, MN 55019

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**Citation 01 Item 005 Type of Violation: **Serious****

29 CFR 1926.503(a)(1) and (2): The employer did not provide a training program and assure that employees had been trained by a competent person to recognize the hazards of falling and procedures to be followed to minimize these hazards, for each employee who may be exposed to fall hazards:

Fall protection training had not been provided to employees exposed to fall hazards while performing demolition work on an aerial work platform supported by a Gehl 883 telehandler over six feet above a lower level.

Abatement Guidelines: Each employee must be trained on the following provisions:

- 1) The nature of fall hazards in the work area;
- 2) The correct procedures for erecting, maintaining, disassembling, and inspecting the fall protection systems to be used;
- 3) The use and operation of guardrail systems, personal fall arrest systems, safety net systems, warning line systems, safety monitoring systems, controlled access zones, and other protection to be used;
- 4) The role of each employee in the safety monitoring system when this system is used;
- 5) The limitations of the use of mechanical equipment during the performance of roofing work on low sloped roofs;
- 6) The correct procedures for the handling and storage of equipment and materials and the erection of overhead protection;
- 7) The role of employees in fall protection plans;
- 8) The standards contained in Subpart M.

The employer shall maintain a written certification record of this training. The written certification record shall contain the name or other identifier of the employee trained, the date(s) of the training, and the signature of the person who conducted the training or the signature of the employer. If the employer relies on training conducted by another employer or completed prior to the effective date of

01112020 001101 011

this section, the certification record shall indicate the date the employer determined the prior training was adequate rather than the date of actual training.

**Date By Which Violation Must Be Abated:** 2/24/2020  
**Penalty:** \$1,225.00

**Minnesota**  
**Department of Labor and Industry**  
Occupational Safety and Health Division

**Inspection Number:** 318148491  
**Inspection Date(s):** 01/10/2020  
**Issuance Date:** 01/31/2020  
**OSHI ID:** Y3105  
**Optional Report No.:** 00520

**Citation and Notification of Penalty**

**Company Name:** K C Betzold Construction LLC  
**Inspection Site:** 2980 130th Street East, Dundas, MN 55019

**Citation 01 Item 006 Type of Violation: **Serious****

Minn. Rules 5207.1100: Each employee working from a boom-supported elevated work platform or a personnel elevating platform supported by a rough-terrain forklift was not protected from falling by the use of a personal fall arrest system or positioning device:

Two employees were not protected from falling while working from a personnel elevating platform supported by a Gehl 883 telehandler.

**Date By Which Violation Must Be Abated:** 2/4/2020  
**Penalty:** \$1,225.00

**Minnesota**  
**Department of Labor and Industry**  
Occupational Safety and Health Division

**Inspection Number:** 318148491  
**Inspection Date(s):** 01/10/2020  
**Issuance Date:** 01/31/2020  
**OSHI ID:** Y3105  
**Optional Report No.:** 00520

**Citation and Notification of Penalty**

**Company Name:** K C Betzold Construction LLC  
**Inspection Site:** 2980 130th Street East, Dundas, MN 55019

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**Citation 02 Item 001 Type of Violation: **Nonserious****

29 CFR 1910.1200(e)(1): The employer did not develop, implement, and/or maintain at the workplace a written hazard communication program which describes how the criteria specified in 29 CFR 1910.1200(f), (g), and (h) will be met:

The employer failed to develop and implement a written Hazard Communication program for employees routinely exposed to hazardous substances such as: RoofKit Seam Primer and RoofKit Multi-Purpose Adhesive.

Abatement Guidelines: The written program must be made available, upon request to employees, their designated representatives, and representatives of the Occupational Safety & Health Division and shall include:

- 1) A description of how the training, availability of information, and labeling provision will be met for hazardous chemicals.
- 2) A list of the hazardous chemicals known to be present using an identity that is referenced on the appropriate safety data sheet. The list may be compiled for the workplace as a whole or for individual work areas.
- 3) The methods the employer will use to inform employees of the hazards of non-routine tasks that involve exposure to hazardous chemicals, and the hazards associated with hazardous chemicals contained in unlabeled pipes in their work areas.
- 4) Additionally, in multiemployer workplaces where the employer produces, uses or stores hazardous chemicals in such a way that employees of other employers may be exposed, the written program shall include:
  - a) the methods the employer will use to provide the other employers with a copy of the safety data sheet, or to make it available at a central location in the workplace, for each hazardous chemical the other employers' employees may be exposed to while working;
  - b) the methods the employer will use to inform the other employers on any precautionary measures that need to be taken to protect employees during normal operating conditions and in foreseeable emergencies; and
  - c) the methods the employer will use to inform the other employers of the labeling system used in the workplace.

03112020 09470471 .0000

**Date By Which Violation Must Be Abated:**

**2/24/2020**

**Penalty:**

**\$0.00**

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

419 418 417 416 415 414 413 412 411 410 409 408 407 406 405 404 403 402 401 400 399 398 397 396 395 394 393 392 391 390 389 388 387 386 385 384 383 382 381 380 379 378 377 376 375 374 373 372 371 370 369 368 367 366 365 364 363 362 361 360 359 358 357 356 355 354 353 352 351 350 349 348 347 346 345 344 343 342 341 340 339 338 337 336 335 334 333 332 331 330 329 328 327 326 325 324 323 322 321 320 319 318 317 316 315 314 313 312 311 310 309 308 307 306 305 304 303 302 301 300 299 298 297 296 295 294 293 292 291 290 289 288 287 286 285 284 283 282 281 280 279 278 277 276 275 274 273 272 271 270 269 268 267 266 265 264 263 262 261 260 259 258 257 256 255 254 253 252 251 250 249 248 247 246 245 244 243 242 241 240 239 238 237 236 235 234 233 232 231 230 229 228 227 226 225 224 223 222 221 220 219 218 217 216 215 214 213 212 211 210 209 208 207 206 205 204 203 202 201 200 199 198 197 196 195 194 193 192 191 190 189 188 187 186 185 184 183 182 181 180 179 178 177 176 175 174 173 172 171 170 169 168 167 166 165 164 163 162 161 160 159 158 157 156 155 154 153 152 151 150 149 148 147 146 145 144 143 142 141 140 139 138 137 136 135 134 133 132 131 130 129 128 127 126 125 124 123 122 121 120 119 118 117 116 115 114 113 112 111 110 109 108 107 106 105 104 103 102 101 100 99 98 97 96 95 94 93 92 91 90 89 88 87 86 85 84 83 82 81 80 79 78 77 76 75 74 73 72 71 70 69 68 67 66 65 64 63 62 61 60 59 58 57 56 55 54 53 52 51 50 49 48 47 46 45 44 43 42 41 40 39 38 37 36 35 34 33 32 31 30 29 28 27 26 25 24 23 22 21 20 19 18 17 16 15 14 13 12 11 10 9 8 7 6 5 4 3 2 1

<b>SENDER: COMPLETE THIS SECTION</b>		<b>COMPLETE THIS SECTION ON DELIVERY</b>	
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>		<p>A. Signature <input checked="" type="checkbox"/> Agent  <input checked="" type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <i>K. C. Betzold</i> C. Date of Delivery <i>5-12-20</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes          If YES, enter delivery address below: <input type="checkbox"/> No</p>	
<p>K.C. Betzold, Owner          K C Betzold Construction LLC          13771 Cabot Avenue          Dundas, MN 55019          318148491 Y3105 00520</p>  <p>9590 9402 4970 9063 5442 74</p>		<p>3. Service Type</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Adult Signature</li> <li><input type="checkbox"/> Adult Signature Restricted Delivery</li> <li><input type="checkbox"/> Certified Mail®</li> <li><input type="checkbox"/> Collect on Delivery</li> <li><input type="checkbox"/> Collect on Delivery Restricted Delivery</li> <li><input type="checkbox"/> Insured Mail (up to \$500)</li> <li><input type="checkbox"/> Insured Mail Restricted Delivery</li> <li><input type="checkbox"/> Priority Mail Express®</li> <li><input type="checkbox"/> Registered Mail™</li> <li><input type="checkbox"/> Registered Mail Restricted Delivery</li> <li><input type="checkbox"/> Return Receipt for Merchandise</li> <li><input type="checkbox"/> Signature Confirmation™</li> <li><input type="checkbox"/> Signature Confirmation Restricted Delivery</li> </ul>	
<p>2. Article Number (Transfer from service label)</p> <p>7019 0700 0000 1467 1395</p>		<p>Domestic Return Receipt</p>	

**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

K.C. Betzold, Owner  
 K C Betzold Construction LLC  
 13771 Cabot Avenue  
 Dundas, MN 55019  
 318148491 Y3105 00520  
 2980 130th Street East Dundas, MN

**MNOSHA FAX RECEIVED**

**MAR - 5 2020**

**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](mailto: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 20<sup>th</sup> 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)			
01	001	<input checked="" type="checkbox"/> Citation	<input checked="" type="checkbox"/> Type of Violation	<input type="checkbox"/> Abatement Date	<input checked="" type="checkbox"/> Penalty
01	002	<input checked="" type="checkbox"/> Citation	<input checked="" type="checkbox"/> Type of Violation	<input type="checkbox"/> Abatement Date	<input checked="" type="checkbox"/> Penalty
01	003	<input checked="" type="checkbox"/> Citation	<input checked="" type="checkbox"/> Type of Violation	<input type="checkbox"/> Abatement Date	<input checked="" type="checkbox"/> Penalty
01	004	<input checked="" type="checkbox"/> Citation	<input checked="" type="checkbox"/> Type of Violation	<input type="checkbox"/> Abatement Date	<input checked="" type="checkbox"/> Penalty
01	005	<input checked="" type="checkbox"/> Citation	<input checked="" type="checkbox"/> Type of Violation	<input type="checkbox"/> Abatement Date	<input checked="" type="checkbox"/> Penalty
01	006	<input checked="" type="checkbox"/> Citation	<input checked="" type="checkbox"/> Type of Violation	<input type="checkbox"/> Abatement Date	<input checked="" type="checkbox"/> Penalty

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

This Is a Small Crew. All Persons on Jobsite are responsible competent persons. On Site Safety is discussed on every start of every Job, Before the start of every and During every new task. Safety is also Discussed before every non-Routine Task.

3. DATES OF POSTING AND SERVING. You must certify in Box A or B below the dates you posted and served this form. All Safety Knowledge, Communication, and Equipment is Provided.

A. Union: Complete part A if you have affected Employees Represented by Authorized Employee Representatives

I hereby certify that I posted fully completed copies of this form on \_\_\_\_\_ (date) 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 \_\_\_\_\_ (date) upon the authorized employee representatives of affected employees.

B. Non-Union: Complete part B if you have affected Employees Not Represented by Authorized Employee Representatives

I hereby certify that I posted fully completed copies of this form on 2/14/20 (date) 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.

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 MIU County of Rue

Kenneth Betzold 612-598-2768  
 Name of Employer Representative, Title Phone  
Kenneth Betzold 3/2/20  
 Signature Date

Subscribed and sworn to before me  
 this 2nd day of March, 2020  
 Notary Public [Signature]  
 My Commission expires 01-31-2023





USPS TRACKING#



9590 9402 4976 9063 5442 74



First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

United States  
Postal Service

FEB

Sender: Please print your name, address, and ZIP+4® in this box\*

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



