

U.S. Department of Labor
Occupational Safety and Health Administration
Shattuck Office Center
138 River Road, Suite 102
Andover, MA 01810
Phone: (978)837-4460 FAX: (978) 837-4455



Citation and Notification of Penalty

To:
Massachusetts Bay Commuter Railroad Company, LLC
and its successors
70 Rear Third Ave
Somerville, MA 02143

Inspection Number: 315431940
Inspection Date(s): 04/19/2011-10/18/2011
Issuance Date: 10/18/2011

Inspection Site:
70 Rear Third Ave
Somerville, MA 02143

The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

This Citation and Notification of Penalty (this Citation) describes violations of the Occupational Safety and Health Act of 1970. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties proposed, unless within 15 working days (excluding weekends and Federal holidays) from your receipt of this Citation and Notification of Penalty you mail a notice of contest to the U.S. Department of Labor Area Office at the address shown above. Please refer to the enclosed booklet (OSHA 3000) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless this Citation is affirmed by the Review Commission or a court.

Posting - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or , if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and Federal holidays), whichever is longer. **The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.**

Informal Conference - An informal conference is not required. However, if you wish to have such a conference you may request one with the Area Director during the 15 working day contest period. During such an informal conference you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal

conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Area Director within 15 working days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 4 Notice to Employees next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

Right to Contest - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest proposed penalties and/or abatement dates without contesting the underlying violations. **Unless you inform the Area Director in writing that you intend to contest the citation(s) and/or proposed penalty(ies) within 15 working days after receipt, the citation(s) and the proposed penalty(ies) will become a final order of the Occupational Safety and Health Review Commission and may not be reviewed by any court or agency.**

Penalty Payment - Penalties are due within 15 working days of receipt of this notification unless contested. (See the enclosed booklet and the additional information provided related to the Debt Collection Act of 1982.) Make your check or money order payable to "DOL-OSHA". Please indicate the Inspection Number on the remittance.

OSHA does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

Notification of Corrective Action - For **each** violation which you do not contest, you are required by 29 CFR 1903.19 to submit an Abatement Certification to the Area Director of the OSHA office issuing the citation and identified above. The certification **must** be sent by you within **10 calendar days** of the abatement date indicated on the citation. For **Willful** and **Repeat** violations, documents (examples: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as **Serious** and the citations states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

All abatement verification documents must contain the following information: 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by 29 CFR 1903.19 to be sent to OSHA, also be posted at the location where the violation appeared and the corrective action took place.

Employer Discrimination Unlawful - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 30 days after the discrimination occurred with the U.S. Department of Labor Area Office at the address shown above.

Employer Rights and Responsibilities - The enclosed booklet (OSHA 3000) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

Notice to Employees - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the U.S. Department of Labor Area Office at the address shown above and postmarked within 15 working days (excluding weekends and Federal holidays) of the receipt by the employer of this Citation and Notification of penalty.

Inspection Activity Data - You should be aware that OSHA publishes information on its inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at WWW.OSHA.GOV. If you have any dispute with the accuracy of the information displayed, please contact this office.



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with OSHA to discuss the citation(s) issued on 10/18/2011. The conference will be held at the OSHA office located at Shattuck Office Center, 138 River Road, Suite 102, Andover, MA, 01810 on _____ at _____.

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

U.S. DEPARTMENT OF LABOR
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CERTIFICATE OF CORRECTION

The undersigned certifies that on _____, all of the violations cited on
(date)

OSHA Citation # _____ issued on _____, were corrected and that a
(date)

copy of this Certificate of Correction was posted on _____ in a manner and place
(date)

for review by affected employees.

Employer's Signature



Citation and Notification of Penalty

Company Name: Massachusetts Bay Commuter Railroad Company, LLC
Inspection Site: 70 Rear Third Ave, Somerville, MA 02143

The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for illness.

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

Section 5(a)(1) of the Occupational Safety and Health Act of 1970: The employer did not furnish employment and a place of employment which were free from recognized hazards that were causing or likely to cause death or serious physical harm to employees in that employees were exposed to the hazards of fire and bodily injury:

(a) Location - Carpenter Shop:

On or about April 16, 2011, cylinders of compressed oxygen and liquefied acetylene gas in storage along the aisle to the overhead garage door were not secured to prevent being knocked over.

Among other methods, feasible means of abatement would to secure cylinders in storage as described in Compressed Gas Association Pamphlet P1-2006, Section 5.7.4.

Date By Which Violation Must be Abated:	Corrected During Inspection
Proposed Penalty:	\$ 5500.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



Citation and Notification of Penalty

Company Name: Massachusetts Bay Commuter Railroad Company, LLC
Inspection Site: 70 Rear Third Ave, Somerville, MA 02143

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

29 CFR 1910.253(b)(2)(ii): Assigned storage spaces for cylinders was not located away from elevators, stairs, or gangways where cylinders could not be knocked over or damaged by passing or falling objects, or subject to tampering by unauthorized persons:

- (a) Location - Carpenter Shop:
On or about April 19, 2011, cylinders of gases/liquids such as, but not limited to oxygen, propane, acetylene, were stored along the aisle and exposed to damage from passing equipment/vehicles.

Date By Which Violation Must be Abated: Corrected During Inspection

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

29 CFR 1910.22(a)(1): All place(s) of employment, passageways, storerooms, and service rooms were not kept clean and orderly, and in a sanitary condition:

- (a) Location - Service & Inspection:
On or about April 19, 2011, employees were exposed to slipping hazards created by spilled cleaning chemical onto the working/walking surface.
- (b) Location - Coach Shop:
On or about April 19, 2011, employees were exposed to trip and slip hazards on work platforms partially blocked with discarded pallets, other debris, hoses and oil/water spills left on the floor.
- (c) Location - Diesel Shop:
On or about April 19, 2011, employees were exposed to trip hazard due to discarded equipment parts left in aisleway.

Date By Which Violation Must be Abated: Corrected During Inspection
Proposed Penalty: \$ 5500.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



Citation and Notification of Penalty

Company Name: Massachusetts Bay Commuter Railroad Company, LLC
Inspection Site: 70 Rear Third Ave, Somerville, MA 02143

The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for illness.

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

29 CFR 1910.37(a)(2): Exit routes were not arranged so that employees would not have to travel toward a high hazard area:

(a) Location - Carpenter Shop:

On or about April 19, 2011, several cabinets used for storage of flammable/combustible chemicals were located along the path to a means of emergency exit.

(b) Location - Stores:

On or about April 19, 2011, a large cylinder of acetylene was stored directly next to the S/R office and a means of emergency exit.

Date By Which Violation Must be Abated:	Corrected During Inspection
Proposed Penalty:	\$ 5500.00

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

29 CFR 1910.37(a)(3): Exit routes were not kept free and unobstructed.

(a) Location - Carpenter Shop:

On or about April 19, 2011, the double exit door was partially blocked with flammables storage cabinet and shelving.

Date By Which Violation Must be Abated:	Corrected During Inspection
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See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



Citation and Notification of Penalty

Company Name: Massachusetts Bay Commuter Railroad Company, LLC
Inspection Site: 70 Rear Third Ave, Somerville, MA 02143

The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for illness.

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

29 CFR 1910.132(a): Protective equipment was not used when necessary whenever hazards capable of causing injury and impairment were encountered:

(a) Location - Periodic Inspection:

On or about April 19, 2011, employees were exposed to a fall of 55 inches while dumping trash from a cart into a small dumpster on the floor below.

(b) Location - Periodic Inspection:

On or about April 19, 2011, the employer did not ensure that employees dispensing and diluting corrosive cleaning chemicals used protective clothing or apron to protect from splash hazards.

Date By Which Violation Must be Abated:	10/28/2011
Proposed Penalty:	\$ 5500.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



Citation and Notification of Penalty

Company Name: Massachusetts Bay Commuter Railroad Company, LLC
Inspection Site: 70 Rear Third Ave, Somerville, MA 02143

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

29 CFR 1910.133(a)(1): Protective eye equipment was not required where there was a reasonable probability of injury that could be prevented by such equipment:

- (a) Location - Periodic Inspection:
On or about April 19, 2011, the employer did not ensure that employees dispensing and diluting corrosive cleaning chemicals used face protective equipment such as face shield for potential chemical splash hazards.

Date By Which Violation Must be Abated: 10/28/2011

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

29 CFR 1910.138(a): Appropriate hand protection was not selected and used when employees' hands were exposed to hazards such as skin absorption of hazardous substances, severe cuts or lacerations, severe abrasions, punctures, chemical burns, thermal burns, and harmful temperature extremes:

- (a) Location - Periodic Inspection:
On or about April 19, 2011, the employer did not ensure that employees dispensing and diluting corrosive cleaning chemicals used the appropriate protective gloves.

Date By Which Violation Must be Abated: 10/28/2011



Citation and Notification of Penalty

Company Name: Massachusetts Bay Commuter Railroad Company, LLC
Inspection Site: 70 Rear Third Ave, Somerville, MA 02143

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

29 CFR 1910.146(g)(1): The employer did not provide training so that all employees whose work was regulated by 29 CFR 1910.146, Permit required confined spaces, acquired the understanding, knowledge, and skills necessary for the safe performance of the duties assigned:

(a) Location - Trucks Shop:

On or about June 30, 2011, employees required to enter the "drop pits", designated by the employer as permit-required confined spaces, to perform cleaning duties were not provided required training as entrants.

Date By Which Violation Must be Abated: 11/04/2011
Proposed Penalty: \$ 5500.00

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

29 CFR 1910.176(b): Material stored in tiers was not stacked, blocked, interlocked and limited in height so that it was stable and secure against sliding or collapse:

(a) Location - Periodic Inspection:

On or about April 19, 2011, chemical drums, old batteries and bundles of waste paper were not stored in a stable and secure manner to prevent falling.

Date By Which Violation Must be Abated: Corrected During Inspection
Proposed Penalty: \$ 4400.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



Citation and Notification of Penalty

Company Name: Massachusetts Bay Commuter Railroad Company, LLC
Inspection Site: 70 Rear Third Ave, Somerville, MA 02143

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

29 CFR 1910.212(a)(1): Machine guarding was not provided to protect operator(s) and other employees from hazard(s) created by rotating parts:

(a) Location - Diesel 4:

On or about April 19, 2011, the rotating unused portion of the blade on the Dayton horizontal band saw was not guarded to prevent accidental contact.

(b) Location - Carpentry Shop:

On or about July 14, 2011, the rotating unused/non-working portion of the blade on the vertical band saw was not adjusted to minimize the exposed blade.

Date By Which Violation Must be Abated:	10/25/2011
Proposed Penalty:	\$ 5500.00

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

29 CFR 1910.253(b)(4)(iii): Oxygen cylinders in storage were not separated from fuel gas cylinders or combustible materials (especially oil or grease), a minimum distance of 20 feet (6.1 m) or by a noncombustible barrier at least 5 feet (1.5 m) high having a fire resistance rating of at least one half hour:

(a) Location - Carpenter Shop:

On or about April 16, 2011, cylinders of acetylene and oxygen were stored together along the aisle to the garage door.

Date By Which Violation Must be Abated:	Corrected During Inspection
Proposed Penalty:	\$ 5500.00



Citation and Notification of Penalty

Company Name: Massachusetts Bay Commuter Railroad Company, LLC
Inspection Site: 70 Rear Third Ave, Somerville, MA 02143

Citation 1 Item 9 Type of Violation: **Serious**

29 CFR 1910.1030(f)(2)(i): Hepatitis B vaccination was not made available after the employee had received the training required in 29 CFR 1910.1030(g)(2)(vii)(I) or within 10 working days of initial assignment to employees who had occupational exposure to blood or other potentially infectious materials:

(a) Location - S&I:

On or about April 19, 2011, employees potentially exposed to bloodborne pathogens during commuter train car cleaning were not offered hepatitis B vaccination.

Date By Which Violation Must be Abated:	12/02/2011
Proposed Penalty:	\$ 7000.00



Citation and Notification of Penalty

Company Name: Massachusetts Bay Commuter Railroad Company, LLC
Inspection Site: 70 Rear Third Ave, Somerville, MA 02143

The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for illness.

Citation 1 Item 10a Type of Violation: **Serious**

29 CFR 1910.1200(f)(5)(i): The employer did not ensure that each container of hazardous chemicals in the workplace was labeled, tagged or marked with the identity of the hazardous chemical(s) contained therein:

- (a) Location: Pipe Shop
On or about April 19, 2011, the parts cleaner station was not labeled with its chemical contents identity.
- (b) Location: Diesel Shop 3:
On or about April 19, 2001, a five (5) gallon container of kerosene was not labeled with its chemical contents identity.
- (c) Location: Service & Inspection 1, wash:
On or about April 19, 2011, a large tote was not labeled with its chemical contents identity.

Date By Which Violation Must be Abated:	10/28/2011
Proposed Penalty:	\$ 4400.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



Citation and Notification of Penalty

Company Name: Massachusetts Bay Commuter Railroad Company, LLC
Inspection Site: 70 Rear Third Ave, Somerville, MA 02143

Citation 1 Item 10b Type of Violation: **Serious**

29 CFR 1910.1200(f)(5)(ii): The employer did not ensure that each container of hazardous chemicals in the workplace was labeled, tagged or marked with the appropriate hazard warnings:

(a) Location - Diesel Shop 3:

On or about April 19, 2011, a five (5) gallon container of kerosene was not labeled with its chemical hazard warnings.

(b) Location - Service & Inspection 1, wash:

On or about April 19, 2011, a large container of wash chemical was labeled with its hazard warnings.

Date By Which Violation Must be Abated: 10/28/2011



Jeffrey A. Erskine
Area Director

U.S. Department of Labor

Occupational Safety and Health Administration

Shattuck Office Center

138 River Road, Suite 102

Andover, MA 01810

Phone: (978)837-4460 FAX: (978)837-4455



INVOICE/ DEBT COLLECTION NOTICE

Company Name: Massachusetts Bay Commuter Railroad Company, LLC
Inspection Site: 70 Rear Third Ave, Somerville, MA 02143
Issuance Date: 10/18/2011

Summary of Penalties for Inspection Number 315431940

Citation 1, Serious = \$ 54,300.00
TOTAL PROPOSED PENALTIES = \$ 54,300.00

To avoid additional charges, please remit payment promptly to this Area Office for the total amount of the uncontested penalties summarized above. Make your check or money order payable to:

"DOL-OSHA". Please indicate OSHA's Inspection Number (indicated above) on the remittance.

OSHA does not agree to any restrictions or conditions put on any check or money order for less than the full amount due and will cash the check or money order as if these restrictions or conditions do not exist.

If a personal check is issued, it will be converted into an electronic fund transfer (EFT). This means that our bank will copy your check and use the account information on it to electronically debit your account for the amount of the check. The debit from your account will then usually occur within 24 hours and will be shown on your regular account statement. You will not receive your original check back. The bank will destroy your original check, but will keep a copy of it. If the EFT cannot be completed because of insufficient funds or closed account, the bank will attempt to make the transfer up to 2 times.

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

Interest. Interest charges will be assessed at an annual rate determined by the Secretary of the Treasury on all penalty debt amounts not paid within one month (30 calendar days) of the date on which the debt amount becomes due and payable (penalty due date). The current interest rate is 5%. Interest will accrue from the date on which the penalty amounts (as proposed or adjusted) become a final order of the Occupational Safety and Health Review Commission (that is, 15 working days from your receipt of the Citation and Notification of Penalty), unless you file a notice of contest. Interest charges will be waived if the full amount owed is paid within 30 calendar days of the final order.

Delinquent Charges. A debt is considered delinquent if it has not been paid within one month (30 calendar days) of the penalty due date or if a satisfactory payment arrangement has not been made. If the debt remains delinquent for more than 90 calendar days, a delinquent charge of six percent (5%) per annum will be assessed accruing from the date that the debt became delinquent.

Administrative Costs. Agencies of the Department of Labor are required to assess additional charges for the recovery of delinquent debts. These additional charges are administrative costs incurred by the Agency in its attempt to collect an unpaid debt. Administrative costs will be assessed for demand letters sent in an attempt to collect the unpaid debt.



Jeffrey A. Erskine
Area Director

10-18-2011
Date