

U.S. Department of Labor

Occupational Safety and Health Administration
Tampa Area Office Area Office
5807 Breckenridge Parkway, Suite Suite A
Tampa, FL 33610
Phone: 813-626-1177
Fax: 813-626-7015



March 30, 2012

Lightning Safety Alliance Corporation
Attn: Mark P. Morgan
24 Lanson Drive
Winsted, CT 06098

F.O.I.A. # 684841

Re: Freedom of Information Act Request for: Death of a Worker at Adventure Island on September 10, 2011

Dear Requestor:

Occupational Safety and Health files contain records compiled for law enforcement purposes and information contained in such records may be withheld in accordance with exemption 7 of the Freedom of Information Act (5 U.S.C. 552(b)(7)) and the Department of Labor regulation, specifically 29 CFR 70.27. The employer filed a Notice of Contest and it is currently a contested case. Therefore the requested records are not being released at this time in accordance with Exemption 7(a) [records or information that could reasonably be expected to interfere with enforcement proceedings]. You may request the records again once the litigation has been completed.

You may file an appeal of this denial with the Solicitor of Labor within 90 days from the date of this letter. The appeal must state, in writing, the grounds for appeal, including any supporting statement or arguments. To facilitate processing, you may wish to fax your appeal to: (202) 693-5538. The appeal must be addressed to: Solicitor of Labor, U.S. Department of Labor, Rm. N02428, 200 Constitution Avenue, N.W., Washington, D.C. 20210. If mailed, both the envelope, and the letter of appeal itself should be clearly marked: "Freedom of Information Act Appeal."

I, the undersigned Area Director, am responsible for this information, my title is indicated below and official address appears at the heading of this letter.

If I may be of further assistance in this matter, please contact me at the number(s) listed above.

Sincerely,

A handwritten signature in blue ink that reads "Leslie L. Grove III".

Leslie L. Grove III
Area Director

LLG/lg

U.S. Department of Labor
Occupational Safety and Health Administration
Suite A
5807 Breckenridge Parkway
Tampa, FL 33610
Phone: (813)626-1177 FAX: (813)626-7015



Citation and Notification of Penalty

To:
Adventure Island
and its successors
3605 E Bouganvillea Avenue
Tampa, FL 33612

Inspection Number: 316028653
Inspection Date(s): 09/10/2011 - 03/05/2012
Issuance Date: 03/05/2012

Inspection Site:
10001 N. McKinley Drive
Tampa, FL 33612

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 3 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.

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.

NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with OSHA to discuss the citation(s) issued on 03/05/2012. The conference will be held at the OSHA office located at Suite A, 5807 Breckenridge Parkway, Tampa, FL, 33610 on _____ at _____. Employees and/or representatives of employees have a right to attend an informal conference.



Citation and Notification of Penalty

Company Name: Adventure Island
Inspection Site: 10001 N. McKinley Drive, Tampa, FL 33612

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

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

- a) 10001 N. McKinley Drive in Tampa, FL - Employees were exposed to the hazard of being struck by lightning while working outdoors at the Adventure Island water park by not following their own procedures to shut down the rides on dates including, but not limited to, September 10, 2011. An employee was struck by lightning when employees were not informed to initiate rides shut-down procedures after the employer's strike monitoring systems indicated activity within 0 to 5 miles from the park.

Among other methods, one feasible and acceptable abatement method would be to:

1. Obtain training from the providers of the employer's existing strike monitoring systems about how to interpret strike data.
2. Review and change the existing Communications' weather procedure for lightning protection. On making such changes the employer would consider, but not limit considerations to, the following:
 - a. base shut-down decisions on the data from the existing strike monitoring systems;
 - b. rely minimally on human observation/perception of weather conditions after receiving indications from the monitoring systems of lightning overhead (0 to 5 miles from the park); supplement data from the existing monitoring systems with information from the National Oceanic and Atmospheric Administrations (NOAA's) National Weather Service advisory about incoming storm warnings and weather forecasts [<http://www.nws.noaa.gov/>];
 - c. reevaluate time required to evacuate guests from rides, especially when employees are the last to evacuate and seek shelter (For example, if a thunder (lightning) storm is traveling at 30 mph, it will travel 5 miles in just 20 minutes. Most tornadoes have wind speeds between 40 and 110 mph.);
 - d. establish a minimum time for employees to remain in shelter after the last indication of overhead lightning before starting procedure to re-open rides; and
 - e. employee input from chair intercoms around the park about inclement weather conditions. (Storms can develop in 20 to 30 minutes.)
3. Provide training to employees on the following:
 - a. new Communications' weather procedure for lightning protection;
 - b. how and when to communicate inclement weather conditions; and
 - c. enforcement procedures.

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



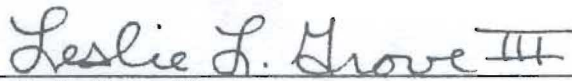
Citation and Notification of Penalty

Company Name: Adventure Island
Inspection Site: 10001 N. McKinley Drive, Tampa, FL 33612

-
4. Provide a copy of new procedures to employees and a consistent copy for the reference guide at Communications' Base.
 5. Implement an effective enforcement program for all employees on weather procedures to be followed. Review the content of the existing procedure to assure that it adequately addresses, but is not limited to, the following:
If outdoors:
 - a. stay away from water pools and avoid contact with the water;
 - b. do not take refuge under any tall, isolated object, such as a tent or tree. (Standing under a group of trees, shorter than others in the area, is better than being in the open.);
 - c. avoid metal fences, clothes lines, metal pipes, rails, telephone poles and other conductors;
 - d. put down any object that might conduct electricity, such as a rake, hoe, or shovel; and
 - e. seek low ground, preferably a ditch or gully.If indoors:
 - a. keep clear of windows;
 - b. turn off televisions and other electrical appliances; and
 - c. postpone showers.

ABATEMENT DOCUMENTATION REQUIRED

Date By Which Violation Must be Abated: 04/07/2012
Proposed Penalty: \$ 7000.00



Leslie L. Grove III
Area Director

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

U.S. Department of Labor
Occupational Safety and Health Administration
Suite A
5807 Breckenridge Parkway
Tampa, FL 33610
Phone: 813-626-1177 FAX: 813-626-7015



INVOICE/ DEBT COLLECTION NOTICE

Company Name: Adventure Island
Inspection Site: 10001 N. McKinley Drive, Tampa, FL 33612
Issuance Date: 03/05/2012

Summary of Penalties for Inspection Number 316028653

Citation 1, Serious = \$ 7000.00
TOTAL PROPOSED PENALTIES = \$ 7000.00

To avoid additional charges, please remit payment promptly to this Area Office for the total amount of the uncontested penalties summarized above. Please make your check or money order payable to: "DOL-OSHA", and submit to 5807 Breckenridge Parkway, Suite A, Tampa, FL 33610-4249. Please indicate OSHA's Inspection Number (indicated above) on the remittance.

OSHA does not agree to any restrictions or conditions or endorsements put on any check or money order for less than full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements 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 the 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 with 24 hours and will be shown on your regular account statement. You will not receive your original check back. The bank will destroy your original check, but will keep a copy of it. If the EFT cannot be completed because of insufficient funds or closed account, the bank will attempt to make the transfer up to two (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 four percent (4%). Interest will accrue from the date on which the penalty amounts (as proposed or adjusted) become a final order of the Occupational Safety and

Health Review Commission (that is, 15 working days from your receipt of the Citation and Notification of Penalty), unless you file a notice of contest. Interest charges will be waived if the full amount owed is paid within 30 calendar days of the final order.

Delinquent Charges. A debt is considered delinquent if it has not been paid within one month (30 calendar days) of the penalty due date or if a satisfactory payment arrangement has not been made. If the debt remains delinquent for more than 90 calendar days, a delinquent charge of six percent (6%) per annum will be assessed accruing from the date that the debt became delinquent.

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

Leslie L. Grove III

Leslie L. Grove III
Area Director

3/5/2012

Date

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

GUIDELINES FOR PREPARING A NOTIFICATION OF CORRECTIVE ACTION

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.

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.

NOTE: NON-CERTIFICATION OF ABATEMENT CAN RESULT IN ADDITIONAL PENALTIES BEING ASSESSED!

Please Reply To The Attention Of: Keith Piercy

Adventure Island
10001 N. McKinley Drive,
Tampa, FL 33612

The hazard referenced in **Inspection Number 316028653** for the violation identified as:

EXAMPLE: Citation No. 1, Item 1, Instance (a) was corrected on January 1, 2001, by installing a lower blade guard on the Radial Arm Saw.

The hazard referenced in Inspection Number _____ for the violation identified as Citation _____ and Item _____ was corrected on _____ by the following method: _____.

The hazard referenced in Inspection Number _____ for the violation identified as Citation _____ and Item _____ was corrected on _____ by the following method: _____.

The hazard referenced in Inspection Number _____ for the violation identified as Citation _____ and Item _____ was corrected on _____ by the following method: _____.

The hazard referenced in Inspection Number _____ for the violation identified as Citation _____ and Item _____ was corrected on _____ by the following method: _____.

The hazard referenced in Inspection Number _____ for the violation identified as Citation _____ and Item _____ was corrected on _____ by the following method: _____.

I attest that the information contained in this document is accurate and that the affected employees and their representatives have been informed of the abatement activities described in this certification.

Signature

Typed or Printed Name

CONSTANGY
BROOKS & SMITH, LLP

SUITE 2400
230 PEACHTREE STREET, NW
ATLANTA, GEORGIA 30303-1557
TELEPHONE (404) 525-8622 • FACSIMILE (404) 525-6955
www.constangy.com

March 28, 2012

VIA FACSIMILE (813-626-7015) and REGULAR US MAIL

Mr. Leslie L. Grove, III
Area Director
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
5807 Breckenridge Parkway
Suite A
Tampa, FL 33610

Re: Adventure Island
Inspection No. 316028653

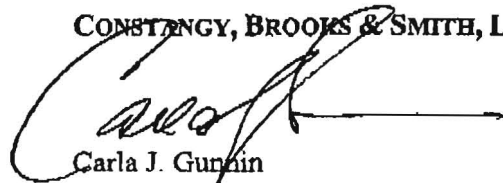
Dear Mr. Grove:

Please accept this letter as our client's Notice of Contest of the Citation issued as a result of Inspection No. 316028653 to **SeaWorld Parks & Entertainment LLC d/b/a/ Adventure Island**. Specifically, Adventure Island contests Serious Citation 1, Item 1, including all of the allegations contained in the Citation, the characterization of the alleged violation, as well as the proposed penalties and abatement dates.

As you are aware, we met with Keith Piercy on March 22, 2012 for an informal conference. From our understanding during that meeting, Mr. Piercy was going to speak with you to find out what the settlement opportunities are for this case. We would like to continue to try to resolve the case, but due to the deadline for contest being today, we are submitting this contest. Please ask that the Solicitor's Office continue to help facilitate negotiations prior to filing the Complaint in this case.

Sincerely,

CONSTANGY, BROOKS & SMITH, LLP



Carla J. Gurin

CJG:mmv

CONSTANGY

BROOKS & SMITH, LLP

The Employers' Law Firm, Since 1946

SUITE 2400
230 PEACHTREE STREET, NW
ATLANTA, GEORGIA 30303-1557
TELEPHONE: (404) 525-8622 • FACSIMILE: (404) 525-6955

FAX COVER SHEET
PRIVILEGED and CONFIDENTIAL

DATE: March 28, 2012

WE ARE TRANSMITTING: 2 PAGES (including this cover sheet)

PLEASE DELIVER TO: Mr. Leslie L. Grove, III

FAX NUMBER: 813-626-7015

CONFIRMING PHONE NUMBER: _____

FROM: Carla J. Gunnin

Adventure Island

RE: Inspection No: 316028653

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL: (404) 525-8622

MESSAGE:

Please see the attached

ORIGINAL OF DOCUMENT WILL BE SENT BY:

First Class Mail Hand Delivery Overnight Mail No other transmittal will be sent

CONFIDENTIALITY NOTE: The information contained in this facsimile is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone, and return the original message to us at the above address via the U.S. Postal Service. Anyone so cooperating will be reimbursed for any reasonable expense incurred. Thank you.

ALABAMA CALIFORNIA FLORIDA GEORGIA ILLINOIS MASSACHUSETTS MISSOURI
NEW JERSEY NORTH CAROLINA SOUTH CAROLINA TENNESSEE TEXAS VIRGINIA