

**STATE OF NEW MEXICO  
BEFORE THE  
OCCUPATIONAL HEALTH AND SAFETY REVIEW COMMISSION**

NEW MEXICO ENVIRONMENT DEPARTMENT,

Complainant,

v.

**INSPECTION NO. 1560072**

RUST MOVIE PRODUCTIONS, LLC, AND ITS  
SUCCESSORS,

Respondent.

**NOTICE OF CONTEST**

TO: Robert Genoway, Bureau Chief  
NMED Occupational Health and Safety Bureau  
P.O. Box 5469  
Santa Fe, New Mexico 87502

Compliance Program Manager  
NMED Occupational Health and Safety Bureau  
P.O. Box 5469  
Santa Fe, New Mexico 87502

Rust Movie Productions, LLC (“RMP”) hereby contests the following Citations issued by the New Mexico Environment Department (“NMED”) on April 19, 2022:

- A. Citation 1, Item 1 (Willful-Serious) (*see* ATTACHMENT A)
- i. RMP contests the alleged violation itself—the existence of the alleged conditions and/or that such conditions constitute a violation of the cited provision (50-9-5.A NMSA 1978);
  - ii. RMP contests the classification of the alleged violation;
  - iii. RMP contests the proposed penalty; and
  - iv. RMP contests the abatement and abatement date.
- B. Citation 2, Item 1 a (Other-than-Serious) (*see* ATTACHMENT B)

- i. RMP contests the alleged violation itself—the existence of the alleged conditions and/or that such conditions constitute a violation of the cited provision (29CFR 1910.157(e)(2), NMAC 11.5.2.9);
  - ii. RMP contests the classification of the alleged violation; and
  - iii. RMP contests the abatement and abatement date.
- C. Citation 2, Item 1 b (Other-than-Serious) (*see* ATTACHMENT C)
- i. RMP contests the alleged violation itself—the existence of the alleged conditions and/or that such conditions constitute a violation of the cited provision (29CFR 1910.157(e)(3), NMAC 11.5.2.9);
  - ii. RMP contests the classification of the alleged violation; and
  - iii. RMP contests the abatement and abatement date.

RMP disputes NMED’s Citations and its Summary of Investigation because its bases for the citations are factually and legally inaccurate, for the following reasons, among others:

- 1) The supposed “fire extinguisher” NMED claims should have been inspected and maintained is not a real fire extinguisher – it is a special effects device used to create fake smoke. The attempt to extend the application of a fire extinguisher regulation to a special effects device shows their misunderstanding of the film industry.
- 2) RMP was not the “employer” responsible for supervising the film set, much less for supervising specific protocols such as the maintenance and loading of weapons. The law properly permits producers to delegate such critical functions as firearm safety to experts in that field and does not place such responsibility on producers whose expertise is in arranging financing and contracting for the logistics of filming.
- 3) RMP did not “willfully” violate any safety protocol, and in fact enforced all applicable safety protocols, including:

- a. The three alleged “misfires” were properly addressed. The first was not a misfire at all and did not involve a firearm – it was a harmless noise from a special effects “popper.” The other two involved discharges of blank rounds. Contrary to NMED’s statements, none of the “misfires” violated firearm safety protocols on the set and appropriate corrective actions were taken, including safety briefings of cast and crew.
- b. All actors handling firearms received firearms training, and additional safety restrictions were implemented to protect a child actor from exposure to firearms loaded with blank ammunition.
- c. Assistant Directors were instructed by the Unit Production Manager to conduct morning safety meetings on all days firearms were used. In fact, a safety meeting was held the morning of the incident.
- d. *All personnel on the set* were instructed that they always had Stop Work Authority—the ability to cease activity during any aspect of filming *at any time* until his or her safety concerns were resolved. The union steward’s telephone number as well as the International Alliance of Theatrical Stage Employees (“IATSE”) safety hotline appeared on every daily call sheet. Further, industry guild and union representatives were always present on site, including a designated crew member from IATSE, to ensure their own safety protocols are implemented.
- e. NMED’s conclusion that the Armorer was overburdened is contradicted by substantial evidence. The Armorer had sufficient time to properly inspect and safeguard all firearms and ammunition on set, and her duties as Armorer always

took precedence over any responsibilities related to props. Costumer Designer Terese Davis (“Ms. Davis”) stated to Property Master Sarah Zachary in an October 29, 2021 communication, that “ [Ms. Guitierrez-Reed] didn’t do her job properly. And she had plenty of time to do so because we had extra time that morning while camera was f\*\*king off. So she can say what she wants about training time and all that bullshit but it’s not why she killed Halyna.” (See p. 4 of New Mexico Regional Computer Forensics Laboratory Report, Ref. No. 2021007949, dated December 7, 2021.)

- f. NMED improperly relies on statements made by a First Assistant Camera who was not privy to other department safety protocols and procedures, nor a safety expert of any type. Further, the camera assistant was not on set the day of the incident, having walked off set over complaints about his hotel accommodations.

Copies of the relevant Citations are attached hereto as Exhibits A through C. RMP, in filing this Notice of Contest, expressly reserves any argument that it is not the responsible employer in connection with the Citations, which are the subject of this Notice of Contest.

Dated: May 10, 2022



---

PILLSBURY WINTHROP SHAW PITTMAN LLP  
Thomas L. Van Wyngarden  
Aaron S. Dyer  
Derek M. Mayor  
725 South Figueroa Street, 36<sup>th</sup> Floor  
Los Angeles, California 90017-5524  
(213) 488-3615  
tom.vanwyngarden@pillsburylaw.com  
derek.mayor@pillsburylaw.com  
**Attorneys for Rust Movie Productions, LLC**

# **ATTACHMENT A**

To RMP Notice of Contest

State of New Mexico  
Environment Department  
Occupational Health and Safety Bureau  
525 Camino de los Marquez, Suite 3  
Santa Fe NM 87505  
Phone: (505) 476-8700 Fax: (505) 476-8734



---

## Citation and Notification of Penalty

---

To:  
Rust Movie Productions, LLC  
AND ITS SUCCESSORS  
502 S. Broad St.  
Thomasville, GA 31792

**Inspection Number:** 1560072  
**Inspection Date(s):** 10/22/2021-10/25/2021  
**Issuance Date:** 04/19/2022

**Inspection Site:**  
Bonanza Creek Rd., Bonanza Creek Ranch  
Santa Fe, NM 87508

*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 Environment Department, Occupational Health and Safety Bureau at the address shown above. 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, at the request of an employer, affected employee(s), or a representative of employees, the Bureau Chief or the Bureau Chief's designee may hold an informal conference. At this conference any issues raised by an inspection, citation, proposed penalty, proposed petition for modification of the abatement date or proposed petition for variance may be discussed. Please note that an informal conference will not suspend or extend the deadline for contesting the Citation and Notification of Penalty.

When the conference is requested by an employer, an affected employee or representative shall be afforded an opportunity to participate, at the discretion of the Bureau Chief or Bureau Chief's designee. When the conference is requested by an employee or representative of employees, the employer shall be afforded an opportunity to participate, at the discretion of the Bureau Chief or Bureau Chiefs designee.

The request for an informal conference and the informal conference meeting shall not extend or modify in any manner:

1. an abatement date established in the citation;
2. the deadline for an employer to file a notice of contest;
3. any other filing deadline related to the citation; or
4. any matter pending before the bureau.

Once an employer files a notice of contest, a petition for modification of the abatement date, a request for a commission hearing, a petition for variance, or other filing with the Occupational Health and Safety Review Commission or the Environment Department, the opportunity for an informal conference is no longer available.

**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 Bureau Chief 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. It is recommended that the Notice of Contest be filed via "Certified Mail".

**Penalty Payment** - Payment of penalties are due within 15 working days of receipt of this notification unless contested. Make your check or money order payable to the Environment Department, Occupational Health and Safety Bureau. Please indicate the Inspection Number on the remittance.

OSHA does not agree to any restrictions, 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 violations that you do not contest, you must notify the Compliance Program Manager that each cited violation has been abated. To certify abatement, you should complete the "Description of Corrective Action Taken" box which follows each citation and sign the statement on the last citation page. You are not required to certify abatement if the compliance officer observed that abatement has occurred during the on-site inspection. The citation may indicate that you should submit additional documentation such as photographs, purchase orders, copies of written programs, etc. Failure to return all completed forms and documents to the Compliance Program Manager no later than 10 days after the abatement date may result in additional penalties.

You are also required to inform your employees about abatement activities by posting a copy of each document submitted to OHSB or a summary of the document near the place where the violation occurred. Documents must remain posted for 3 working days after submission to OHSB.

**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 Environment Department, Occupational Health and Safety Bureau at the address shown above.

**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 Environment Department, Occupational Health and Safety Bureau 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.

State of New Mexico  
Environment Department  
Occupational Health and Safety Bureau



525 Camino de los Marquez, Suite 3, P. O. Box 5469  
Santa Fe NM 87505  
Phone: (505) 476-8700 Fax: (505) 476-8734

**Inspection Number:** 1560072  
**Inspection Date(s):** 10/22/2021-10/25/2021  
**Issuance Date:** 04/19/2022

**Citation and Notification of Penalty**

**Company Name:** Rust Movie Productions, LLC

**Inspection Site:** Bonanza Creek Rd., Bonanza Creek Ranch Santa Fe, NM 87508

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

50-9-5.A NMSA 1978: 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 being struck by discharged rounds or projectiles when firearms were used on the set of the motion picture production.

This hazard was recognized by the employer and the film industry by way of "safety bulletins" published by the "Industry Wide Labor-Management Safety Committee," specifically, "Safety Bulletin #1, Recommendations for Safety with Firearms and Use of 'Blank Ammunition'."

Among others, one feasible and acceptable abatement method is to ensure that the provisions of the "Industry Wide Labor-Management Safety Committee," "Safety Bulletin #1, Recommendations for Safety with Firearms and Use of 'Blank Ammunition'," are fully implemented and effectively enforced by production management.

**PROOF OF ABATEMENT:**

Date Corrected:
Describe Corrective Action:

**Date By Which Violation Must be Abated:**  
**Proposed Penalty:**

**May 13, 2022**  
**\$136,793.00**



State of New Mexico  
Environment Department  
Occupational Health and Safety Bureau



525 Camino de los Marquez, Suite 3, P. O. Box 5469  
Santa Fe NM 87505  
Phone: (505) 476-8700 Fax: (505) 476-8734

**Inspection Number:** 1560072  
**Inspection Date(s):** 10/22/2021-10/25/2021  
**Issuance Date:** UNKNOWN

**Citation and Notification of Penalty**

**Company Name:** Rust Movie Productions, LLC  
**Inspection Site:** Bonanza Creek Rd., Bonanza Creek Ranch Santa Fe, NM 87508

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

50-9-5.A NMSA 1978: 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 being struck by discharged rounds or projectiles when firearms were used on the set of the motion picture production.

This hazard was recognized by the employer and the film industry by way of "safety bulletins" published by the "Industry Wide Labor-Management Safety Committee," specifically, "Safety Bulletin #1, Recommendations for Safety with Firearms and Use of 'Blank Ammunition'."

Among others, one feasible and acceptable abatement method is to ensure that the provisions of the "Industry Wide Labor-Management Safety Committee," "Safety Bulletin #1, Recommendations for Safety with Firearms and Use of 'Blank Ammunition'," are fully implemented and effectively enforced by production management.

PROOF OF ABATEMENT:

Date Corrected:

Describe Corrective Action:

**Date By Which Violation Must be Abated:**  
**Proposed Penalty:**

**May 13, 2022**  
**\$136,793.00**

# **ATTACHMENT B**

To RMP Notice of Contest

State of New Mexico  
Environment Department  
Occupational Health and Safety Bureau



525 Camino de los Marquez, Suite 3  
Santa Fe NM 87505  
Phone: (505) 476-8700 Fax: (505) 476-8734

**Inspection Number:** 1560072  
**Inspection Date(s):** 10/22/2021-10/25/2021  
**Issuance Date:** 04/19/2022

**Citation and Notification of Penalty**

**Company Name:** Rust Movie Productions, LLC  
**Inspection Site:** Bonanza Creek Rd., Bonanza Creek Ranch Santa Fe, NM 87508

---

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

NMAC 11.5.2.9

29 CFR 1910.157(e)(2): Portable extinguishers or hose used in lieu thereof under paragraph (d)(3) of this section shall be visually inspected monthly.

The Employer did not ensure that all portable fire extinguishers were subject to a monthly inspection to identify discrepancies or loss of function. An extinguisher had not been annually inspected since 2017.

**PROOF OF ABATEMENT:**

Date Corrected:

Describe Corrective Action:

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

**May 13, 2022**

**Proposed Penalty:**

**\$0.00**

State of New Mexico  
Environment Department  
Occupational Health and Safety Bureau



525 Camino de los Marquez, Suite 3  
Santa Fe NM 87505  
Phone: (505) 476-8700 Fax: (505) 476-8734

**Inspection Number:** 1560072  
**Inspection Date(s):** 10/22/2021-10/25/2021  
**Issuance Date:** 04/19/2022

**Citation and Notification of Penalty**

**Company Name:** Rust Movie Productions, LLC  
**Inspection Site:** Bonanza Creek Rd., Bonanza Creek Ranch Santa Fe, NM 87508

---

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

NMAC 11.5.2.9

29 CFR 1910.157(e)(2): Portable extinguishers or hose used in lieu thereof under paragraph (d)(3) of this section shall be visually inspected monthly.

The Employer did not ensure that all portable fire extinguishers were subject to a monthly inspection to identify discrepancies or loss of function. An extinguisher had not been annually inspected since 2017.

**PROOF OF ABATEMENT:**

Date Corrected:

Describe Corrective Action:

**Date By Which Violation Must be Abated:**  
**Proposed Penalty:**

**May 13, 2022**  
**\$0.00**

# **ATTACHMENT C**

To RMP Notice of Contest

State of New Mexico  
Environment Department  
Occupational Health and Safety Bureau



525 Camino de los Marquez, Suite 3  
Santa Fe NM 87505  
Phone: (505) 476-8700 Fax: (505) 476-8734

**Inspection Number:** 1560072  
**Inspection Date(s):** 10/22/2021-10/25/2021  
**Issuance Date:** 04/19/2022

**Citation and Notification of Penalty**

**Company Name:** Rust Movie Productions, LLC  
**Inspection Site:** Bonanza Creek Rd., Bonanza Creek Ranch Santa Fe, NM 87508

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

NMAC 11.5.2.9

29 CFR 1910.157(e)(3): The employer shall assure that portable fire extinguishers are subjected to an annual maintenance check. Stored pressure extinguishers do not require an internal examination. The employer shall record the annual maintenance date and retain this record for one year after the last entry or the life of the shell, whichever is less.

The Employer did not ensure that all portable fire extinguishers on set had received an annual maintenance check as required. The fire extinguisher on the Special Effects cart had not been checked since 2017.

**PROOF OF ABATEMENT:**

Date Corrected:
Describe Corrective Action:

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

**May 13, 2022**

**Proposed Penalty:**

**\$0.00**

I attest that all corrective actions contained in this document are accurate and affected employees have been informed of the abatement.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

State of New Mexico  
Environment Department  
Occupational Health and Safety Bureau



525 Camino de los Marquez, Suite 3  
Santa Fe NM 87505  
Phone: (505) 476-8700 Fax: (505) 476-8734

**Inspection Number:** 1560072  
**Inspection Date(s):** 10/22/2021-10/25/2021  
**Issuance Date:** 04/19/2022

**Citation and Notification of Penalty**

**Company Name:** Rust Movie Productions, LLC  
**Inspection Site:** Bonanza Creek Rd., Bonanza Creek Ranch Santa Fe, NM 87508

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

NMAC 11.5.2.9

29 CFR 1910.157(e)(3): The employer shall assure that portable fire extinguishers are subjected to an annual maintenance check. Stored pressure extinguishers do not require an internal examination. The employer shall record the annual maintenance date and retain this record for one year after the last entry or the life of the shell, whichever is less.

The Employer did not ensure that all portable fire extinguishers on set had received an annual maintenance check as required. The fire extinguisher on the Special Effects cart had not been checked since 2017.

**PROOF OF ABATEMENT:**

Date Corrected:

Describe Corrective Action:

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

**May 13, 2022**

**Proposed Penalty:**

**\$0.00**

I attest that all corrective actions contained in this document are accurate and affected employees have been informed of the abatement.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

State of New Mexico  
Environment Department  
Occupational Health and Safety Bureau



525 Camino de los Marquez, Suite 3  
Santa Fe NM 87505  
Phone: (505) 476-8700 Fax: (505) 476-8734

**Inspection Number:** 1560072  
**Inspection Date(s):** 10/22/2021-10/25/2021  
**Issuance Date:** 04/19/2022

**Citation and Notification of Penalty**

**Company Name:** Rust Movie Productions, LLC

**Inspection Site:** Bonanza Creek Rd., Bonanza Creek Ranch Santa Fe, NM 87508

---

**Robert Genoway**

Digitally signed by Robert Genoway  
Date: 2022.04.19 16:14:05 -06'00'

Robert Genoway, Bureau Chief



State of New Mexico  
Environment Department  
Occupational Health and Safety Bureau  
525 Camino de los Marquez, Suite 3  
Santa Fe NM 87505  
Phone: (505) 476-8700 Fax: (505) 476-8734



---

## INVOICE

---

**Company Name:** Rust Movie Productions, LLC

**Inspection Site:** Bonanza Creek Rd, Bonanza Creek Ranch  
Santa Fe, NM 87508

**Issuance Date:** 04/19/2022

**Summary of Penalties for Inspection Number:** 1560072

Citation 1 Item 1, Willful-Serious	\$136,793.00
Citation 2 Item 1a, Other-than-Serious	\$0.00
Citation 2 Item 1b, Other-than-Serious	\$0.00

---

**TOTAL PROPOSED PENALTIES:** **\$136,793.00**

---

Please remit payment promptly to this office for the total amount of the uncontested penalties summarized above. Make your check or money order payable to: Environment Department, Occupational Health and Safety Bureau. Please indicate OHSB's Inspection Number (indicated above) on the remittance.

OHSB does not agree to any restrictions, 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.

**Robert Genoway** Digitally signed by Robert Genoway  
Date: 2022.04.19 16:14:26 -06'00'

Robert Genoway, Bureau Chief

\_\_\_\_\_  
Date