

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



## Citation and Notification of Penalty

To:  
O'Reilly Auto Parts

AND ITS SUCCESSORS  
525 W Ave D  
Lovington, NM 88260

**Inspection Site:**  
525 W. Ave. D  
Lovington, NM 88260

**Inspection Number:** 1493975  
**Inspection Date(s):** 08/05/2020-01/11/2021  
**Issuance Date:** 01/27/2021

*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, or representative of employees, the Bureau Chief or the Bureau Chiefs designee may hold an informal conference. At this conference any issues raised by an inspection, citation, proposed penalty, proposed petition for modification of abatement date or proposed petition for variance may be discussed. If you intend to request an informal conference, take care to schedule it early enough to allow time to contest after the informal conference discussion, should you decide to do so.

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 Chiefs 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

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

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-** 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 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 violations which you do not contest, you should notify the Occupational Health and Safety Bureau (OHSB) 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 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.

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Occupational Health and Safety Bureau



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**Inspection Number:** 1493975  
**Inspection Date(s):** 08/05/2020-01/11/2021  
**Issuance Date:** 01/27/2021

### **Citation and Notification of Penalty**

**Company Name:** O'Reilly Auto Parts  
**Inspection Site:** 525 W. Ave. D Lovington, NM 88260

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

50-9-5.A NMSA 1978, the Occupational Health and Safety Act: 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 worked in the presence of others without adequate precautions to prevent transmission of the novel coronavirus SARS-CoV-2 during the declared emergency of the COVID-19 (the disease caused by SARS-CoV-2) pandemic:

Store employees were exposed to the hazard of COVID -19 illness when working in close proximity to one another in the sales area of the O'Reilly Auto Parts store due to failure by management to contain the virus. Store management did not implement effective methods to ensure symptomatic employees were removed from the workplace such as screening employees for COVID-19 symptoms.

O'Reilly corporate policy required that management screen each employee prior to their workday. One of the three questions asked is specific in probing whether the employee had experienced any symptoms within the prior 14 days, including a cough. The Public Health Order, issued by the New Mexico Department of Health Cabinet Secretary on May 15, 2020, directed essential businesses including retailers who generate the majority of their revenue from the sale of automobile repair products, such as O'Reilly, to screen employees before they enter the workplace each day (verbally or with a written form or text-based or other app). Employees who are experiencing symptoms related to COVID-19 were not directed to obtain free testing through the Department of Health, and to self quarantine away from the workplace.

**PROOF OF ABATEMENT:**

Date Corrected:

Describe Corrective Action:

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

**February 11, 2021**

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

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**Citation and Notification of Penalty**

**Company Name:** O'Reilly Auto Parts  
**Inspection Site:** 525 W. Ave. D Lovington, NM 88260

**Proposed Penalty:**

**\$121,413.60**

State of New Mexico  
Environment Department  
Occupational Health and Safety Bureau



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### **Citation and Notification of Penalty**

**Company Name:** O'Reilly Auto Parts  
**Inspection Site:** 525 W. Ave. D Lovington, NM 88260

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

50-9-5.A NMSA 1978, the Occupational Health and Safety Act: 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 worked in the presence of others without adequate precautions to prevent transmission of the novel coronavirus SARS-CoV-2 during the declared emergency of the COVID-19 (the disease caused by SARS-CoV-2) pandemic:

Store employees were exposed to the hazard of COVID -19 illness when shared delivery vehicles which O'Reilly Auto Parts employees were using were not properly cleaned and sanitized. Store management did not follow proper cleaning and disinfection protocol before allowing delivery drivers to utilize two vehicles shared by employees that tested positive for COVID-19 within days after use.

O'Reilly corporate policy required that management clean and sanitize delivery vehicles and vehicle components, such as keys, door handles, steering wheel and shifter, armrests and console, turn signal and all dash control knobs (radio, lights, temperature control. etc.), and push to talk radio a minimum of every four hours throughout the work day. The Public Health Order, issued by the New Mexico Department of Health Cabinet Secretary on May 15, 2020, directed essential businesses including retailers who generate the majority of their revenue from the sale of automobile repair products, such as O'Reilly, to clean and disinfect high-touch items/areas once every two hours (or more frequently).

**PROOF OF ABATEMENT:**

Date Corrected:

Describe Corrective Action:

State of New Mexico  
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### **Citation and Notification of Penalty**

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

**February 11, 2021**  
**\$121,413.60**

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

A handwritten signature in black ink, appearing to read "G. Marquez", is written over a horizontal line. To the right of the signature, the letters "For" are written in a smaller, cursive hand.

Gregory J. Marquez  
Program Manager

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## INVOICE

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**Company Name:** O'Reilly Auto Parts  
**Inspection Site:** 525 W. Ave. D Lovington, NM 88260  
**Issuance Date:** 01/27/2021

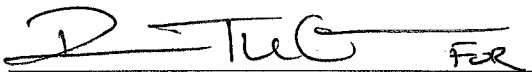
**Summary of Penalties for Inspection Number:** 1493975

|                                    |                     |
|------------------------------------|---------------------|
| Citation 1 Item 1, Willful-Serious | \$121,413.60        |
| Citation 1 Item 2, Willful-Serious | \$121,413.60        |
| <b>TOTAL PROPOSED PENALTIES:</b>   | <b>\$242,827.20</b> |

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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 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.

  
\_\_\_\_\_  
FER  
Gregory J. Marquez, Program Manager

1-29-2021  
\_\_\_\_\_  
Date