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ATTORNEYS AT LAW

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OUR FILE NUMBER:

014493.00010  
11661450.1

October 23, 2013

**VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

**RECEIVED**

OCT 25 2013

**OSH Appeals Board**

CHW

STAT CONF 11/8/13

PH 1/13/13

# 3/11/14

Filing Clerk  
CAL-OSHA APPEALS BOARD  
2520 Venture Oaks Way, Ste. 300  
Sacramento, CA 95833

**Re: Employer Name: CLP Resources, Inc.**  
**Inspection Dates: 3/5/2013 - 9/4/2013**  
**Inspection Site: 10400 Helios Way, Santa Margarita, CA 93453**  
**Inspection No.: 313388563**  
**Docket Nos.: 2013-R4D7-3196 through 3198**  
**Issuance Date: 9/4/2013**  
**CSHO ID: Y0393**

Dear Clerk:

I am enclosing the original and a copy of the *Amended* Appeals to:

- 1. Citation No. 2, Item No. 1;
- 2. Citation No. 3, Item No. 1; and
- 3. Citation No. 4, Item No. 1.

Please return the conformed copies reflecting the date the *Amended* Appeals are received, and return the conformed copies to me in the self-addressed, stamped envelope provided.

Thank you for your anticipated courtesy and cooperation.

Very truly yours,

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

Julie A. Garcia  
Assistant to Eugene F. McMenamain  
/jag

Enclosures: Appeals to Citations 2, 3 and 4

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

2520 Venture Oaks Way, Suite 300

Sacramento, CA 95833

(916) 274-5751

FAX (916) 274-5785

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OCT 2 5 2013

OSH Appeals Board

AMENDED APPEAL FORM

313388563

Inspection Number on Citation

DOCKET 2013-R4D7-3196

(Leave blank-Appeals Board will fill in.)

CLP Resources, Inc.

Employer Name on Citation

1. You only have 15 working days from receipt of a citation to appeal.

Employer Legal Name or DBA (Optional)

2. A copy of this form must be attached to each citation or notification appealed. Failure to file a completed form may result in dismissal of the appeal.

6615 South Rural Road, Suite 107

Address

Tempe, AZ 95253

FIRST READ IMPORTANT INFORMATION ON THE REVERSE SIDE THEN COMPLETE ONE APPEAL FORM FOR EACH CITATION

1. This is an Appeal from:

[ X ] CITATION NO(s): 2 Item No(s): 1

[ ] NOTIFICATION OF FAILURE TO ABATE ALLEGED VIOLATION CITATION NO(s): Item No(s):

[ ] SPECIAL ORDER/SPECIAL ACTION NO: Item No(s):

2. Specific ground(s) for this appeal are: (Check all that apply)

[ X ] The safety order was not violated.

[ X ] The classification (i.e., serious, willful, repeat) is incorrect.

[ ] The abatement requirements are unreasonable.

[ ] Required changes [ ] Time allowed to complete changes

[ X ] The proposed penalty is unreasonable.

3. Explain any other reasons for appeal or issues to be raised on appeal. Affirmative defenses must be specifically stated. Some important affirmative defenses are listed on the OSHAB website at: http://www.dir.ca.gov/OSHAB/oshab.html

1. Lack of Employer Knowledge.

2. Independent Employee Act.

3. Exposing Employer Defense: Exposing Employer exercised reasonable diligence to protect employees from hazards. The hazard was a latent hazard of short duration and transitory in nature that the employer could not and did not recognize to exist despite a reasonable investigation. The hazard was created by, and known only to, sub-tier contractors.
4. Citation fails to describe violation with reasonable particularity and is vague and ambiguous.
5. Logical Time Defense.
6. Statute of Limitations.
7. Employer exercised due diligence to identify, control and abate serious hazards, including but not limited to all high hazard operations at the jobsite with regard to all jobsite personnel and sub-tier contractors through the utilization of extensive monitoring and oversight of jobsite operations.
8. Division failed to tender Form IBY timely.

4.

  
 (Signature of Employer or Employer's Representative)

{If there is any change in representation after you file your appeal, you must notify the Appeals Board in writing}

Eugene F. McMenamain, Esq.

(Type or print name)

Attorney for Employer

(Title)

ATKINSON, ANDELSON, LOYA, RUUD & ROMO, 12800 Center Court Drive, Suite #300

(Address) {Address where all communications from the Appeals Board will be sent}

Cerritos,

CA

90703

(City)

(State)

(Zip Code)

(562) 653-3200

emcmenamain@aalrr.com

October 23, 2013

(Telephone)

(E-Mail Address)

(Date)

{All correspondence from the Appeals Board will be sent to the representative above at the address above. If there is any change in address, telephone number, and/or e-mail address after you file your appeal, you must notify the Appeals Board of the change(s). All such notifications must be in writing}

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- G. Mail each completed Appeal form and citation or notification to the Occupational Safety and Health Appeals Board, 2520 Venture Oaks Way, Suite 300, Sacramento, CA 95833.
- H. Late appeals will not be accepted unless good cause is shown.

State of California  
Division of Occupational Safety and Health  
Bakersfield District Office (0950647; 4029)  
7718 Meany Avenue  
Bakersfield, CA 93308-5110

Inspection Number: 313388563  
Inspection Dates: 03/05/2013 - 09/04/2013  
Issuance Date: 09/04/2013  
CSHO ID: Y0393  
Optional Inspection Nbr: 029-13



Citation and Notification of Penalty

**RECEIVED**  
**OCT 25 2013**

Company Name: CLP Resources Inc.  
Inspection Site: 10400 Helios Way, Santa Margarita, CA 93453

Citation 2 Item 1 Type of Violation: Serious

**OSH Appeals Board**

5141. Control of Harmful Exposure to Employees

(a) Engineering Controls. Harmful exposures shall be prevented by engineering controls whenever feasible

**VIOLATION:**

During and/or prior to the time of inspection, the employer did not implement effective engineering controls to control exposures to airborne dust, in order to limit exposures to coccidioides, the spore that causes Valley Fever (Coccidioidomycosis), a serious and potentially fatal disease. Coccidioides spores are known to be present in the soils of this area. The employer conducted work activities that involved considerable disturbance of the soils. Although the site's Dust Management Plan included engineering controls, during and/or prior to the time of the inspection the engineering controls that were not effectively implemented included, but were not limited to:

- a. The employer did not effectively provide watering methods to stabilize airborne dusts. Insufficient water was available, and water was often not applied to the off-road areas. Watering methods, quantities, and frequency were not sufficient to minimize airborne dust in all areas where employees were exposed.
- b. The employer did not ensure that all spoils piles were tarped or otherwise stabilized.
- c. The employer did not implement other effective soil stabilization measures such as minimizing the area of exposed bare dirt to the immediate areas being worked, the application of soil stabilizers, and the prompt re-vegetation of completed areas.

Date By Which Violation Must be Abated: 09/14/2013  
Proposed Penalty: \$ 5060.00

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

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

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Sacramento, CA 95833

(916) 274-5751

FAX (916) 274-5785

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OCT 2 5 2013

OSH Appeals Board

AMENDED APPEAL FORM

313388563

Inspection Number on Citation

DOCKET 2013-R4D7-3197

(Leave blank-Appeals Board will fill in.)

CLP Resources, Inc.

Employer Name on Citation

1. You only have 15 working days from receipt of a citation to appeal.

Employer Legal Name or DBA (Optional)

2. A copy of this form must be attached to each citation or notification appealed. Failure to file a completed form may result in dismissal of the appeal.

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Tempe, AZ 95253

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[ ] SPECIAL ORDER/SPECIAL ACTION NO: Item No(s):

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[ X ] The safety order was not violated.

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[ ] The abatement requirements are unreasonable.

[ ] Required changes [ ] Time allowed to complete changes

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1. Lack of Employer Knowledge.

2. Independent Employee Act.

3. Exposing Employer Defense: Exposing Employer exercised reasonable diligence to protect employees from hazards. The hazard was a latent hazard of short duration and transitory in nature that the employer could not and did not recognize to exist despite a reasonable investigation. The hazard was created by, and known only to, sub-tier contractors.
4. Citation fails to describe violation with reasonable particularity and is vague and ambiguous.
5. Logical Time Defense.
6. Statute of Limitations.
7. Employer exercised due diligence to identify, control and abate serious hazards, including but not limited to all high hazard operations at the jobsite with regard to all jobsite personnel and sub-tier contractors through the utilization of extensive monitoring and oversight of jobsite operations.
8. Division failed to tender Form IBY timely.



4.

(Signature of Employer or Employer's Representative)

{If there is any change in representation after you file your appeal, you must notify the Appeals Board in writing}

Eugene F. McMenamín, Esq.

(Type or print name)

Attorney for Employer

(Title)

ATKINSON, ANDELSON, LOYA, RUUD & ROMO, 12800 Center Court Drive, Suite #300

(Address) {Address where all communications from the Appeals Board will be sent}

Cerritos, CA 90703

(City)

(State)

(Zip Code)

(562) 653-3200

emcmenamín@aalrr.com

October 23, 2013

(Telephone)

(E-Mail Address)

(Date)

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State of California  
Division of Occupational Safety and Health  
Bakersfield District Office (0950647; 4029)  
7718 Meany Avenue  
Bakersfield, CA 93308-5110

Inspection Number: 313388563  
Inspection Dates: 03/05/2013 - 09/04/2013  
Issuance Date: 09/04/2013  
CSHO ID: Y0393  
Optional Inspection Nbr: 029-13



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OCT 2 5 2013

OSH Appeals Board

Citation and Notification of Penalty

Company Name: CLP Resources Inc.  
Inspection Site: 10400 Helios Way, Santa Margarita, CA 93453

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

5141. Control of Harmful Exposure to Employees

(b) Administrative Controls. Whenever engineering controls are not feasible or do not achieve full compliance, administrative controls shall be implemented if practicable

VIOLATION:

During and/or prior to the time of inspection, the employer did not implement effective administrative controls as included in the site's Dust Management Plan, in order to minimize exposure to Coccidioides, the spore that causes Valley Fever (Coccidioidomycosis), a serious and potentially fatal disease. Coccidioides spores are known to be present in the soils of the area.

On March 05, 2013 employees were exposed to high wind and high dust conditions. CLP Resources Inc. did not initiate corrective measures, nor remove employees working in high wind conditions whereby visible emissions were observed above 20 percent opacity and at other times when engineering controls were not effective.

Date By Which Violation Must be Abated:

09/14/2013

Proposed Penalty:

\$ 5060.00

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

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

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(916) 274-5751

FAX (916) 274-5785

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OCT 25 2013

OSH Appeals Board

AMENDED APPEAL FORM

313388563

Inspection Number on Citation

DOCKET 2013-R4D7-3198

(Leave blank-Appeals Board will fill in.)

CLP Resources, Inc.

Employer Name on Citation

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Employer Legal Name or DBA (Optional)

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8. Division failed to tender Form IBY timely.



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(Signature of Employer or Employer's Representative)  
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Eugene F. McMenamain, Esq.  
 (Type or print name)

Attorney for Employer  
 (Title)

ATKINSON, ANDELSON, LOYA, RUUD & ROMO, 12800 Center Court Drive, Suite #300  
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 Cerritos, CA 90703

(City)	(State)	(Zip Code)
(562) 653-3200	emcmenamain@aalrr.com	October 23, 2013
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**State of California**

Division of Occupational Safety and Health  
Bakersfield District Office (0950647; 4029)  
7718 Meany Avenue  
Bakersfield, CA 93308-5110

Inspection Number: 313388563  
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Citation and Notification of Penalty

Company Name: CLP Resources Inc.  
Inspection Site: 10400 Helios Way, Santa Margarita, CA 93453

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

5144. Respiratory Protection.

(c) Respiratory protection program. This subsection requires the employer to develop and implement a written respiratory protection program with required worksite-specific procedures and elements for required respirator use. The program must be administered by a suitably trained program administrator. In addition, certain program elements may be required for voluntary use to prevent potential hazards associated with the use of the respirator. The Small Entity Compliance Guide contains criteria for the selection of a program administrator and a sample program that meets the requirements of this subsection. Copies of the Small Entity Compliance Guide will be available from the Occupational Safety and Health Administration's Office of Publications, Room N 3101, 200 Constitution Avenue, NW, Washington, DC, 20210 (202-219-4667).

(1) In any workplace where respirators are necessary to protect the health of the employee or whenever respirators are required by the employer, the employer shall establish and implement a written respiratory protection program with worksite-specific procedures. The program shall be updated as necessary to reflect those changes in workplace conditions that affect respirator use. The employer shall include in the program the following provisions, as applicable:

- (A) Procedures for selecting respirators for use in the workplace;
- (B) Medical evaluations of employees required to use respirators;
- (C) Fit testing procedures for tight-fitting respirators;
- (D) Procedures for proper use of respirators in routine and reasonably foreseeable emergency situations;
- (E) Procedures and schedules for cleaning, disinfecting, storing, inspecting, repairing, discarding, and otherwise maintaining respirators;

See pages 1 through 4 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: CLP Resources Inc.  
Inspection Site: 10400 Helios Way, Santa Margarita, CA 93453

(F) Procedures to ensure adequate air quality, quantity, and flow of breathing air for atmosphere-supplying respirators;

(G) Training of employees in the respiratory hazards to which they are potentially exposed during routine and emergency situations;

(H) Training of employees in the proper use of respirators, including putting on and removing them, any limitations on their use, and their maintenance; and

(I) Procedures for regularly evaluating the effectiveness of the program.

**VIOLATION:**

During and/or prior to the time of inspection, the employer did not effectively evaluate and implement a written respiratory protection program to protect the employees from exposure to coccidioides spores, which cause Valley Fever (Coccidioidomycosis), a serious and potentially fatal disease. Coccidioides spores are known to be present in the soils of this area. The employer conducted work activities that involved considerable disturbance of the soils. During and/or prior to the time of the inspection, the employer did not develop and implement a respiratory protection program that met the requirements of this standard:

- a. The employer did not evaluate respiratory hazards in the workplace to determine operations in which exposure to Coccidioides spores required respiratory protection, and did not establish clear policies for the use of respirators. Employees worked in areas where airborne dusts were generated due to work operations or wind, without the use of respiratory protection.
- b. Employees used non-approved devices (dust masks) rather than respirators during high-wind events. These devices do not provide adequate respiratory protection.
- c. The employer did not evaluate the effectiveness of the site's respiratory protection program, despite receiving reports of diagnosed cases of Valley Fever among employees working at the site.

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**State of California**

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