

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

2520 Venture Oaks Way, Suite 300  
Sacramento, California 95833  
(916) 274-5751  
FAX (916) 274-5785

APR 02 2013

OSH Appeals Board

APPEAL FORM

2013-R3 D / -1131 -

Inspection No. 315531277

Employer:

DISNEYLAND RESORT

Address:

1313 SOUTH HARBOR BLVD.  
ANAHEIM, CA 92803

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

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

1. This is an Appeal from:

- CITATION NO(s) 1 Item No.(s) All items are appealed.
- 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)

- The safety order was not violated.
- The classification (i.e., serious, willful, repeat) is incorrect.
- The abatement requirements are unreasonable.
- Required changes                       Time allowed to complete changes
- 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 in the Appeal Information Booklet or at the OSHAB website at: <http://www.dir.ca.gov/OSHAB/oshab.html>

SEE ATTACHMENT.

## ATTACHMENT TO APPEAL

3. State any other reasons for appeal or issues to be raised on appeal.

This appeal raises the following affirmative defenses:

1. The citation does not give notice of the violation and/or is otherwise defective;
2. The safety order cited is vague and/or ambiguous;
3. Independent employee action;
4. No employee of Appellant was exposed to the alleged violation.
5. Appellant had no actual knowledge, nor, with the exercise of reasonable diligence, could have known, of the existence of the alleged violation.
6. Appellant acted as a reasonably prudent employer, having no reason to anticipate the existence of any hazard.
7. Appellant acted with due diligence to comply with all regulatory requirements.

Appellant reserves the right to plead and present any and all available defenses up to and including the date of any hearing to be conducted in this matter.

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.}

ROBERT D. PETERSON

(Type or Print Name)

ATTORNEY AT LAW

(Title)

3300 SUNSET BOULEVARD, SUITE 110

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

ROCKLIN

(City)

CA

(State)

95677

(ZIP Code)

916/624-4551

(Telephone)

March 28, 2013

(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 after you file your appeal, you must notify the Appeals Board of the change(s). All such notifications must be in writing}

### IMPORTANT INFORMATION

- A. Use this form to appeal a Citation, Notification of Failure to Abate Alleged Violation, or Special Order/Special Action.
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- C. If the citation or notification being appealed includes more than one item, **do not use separate appeal forms for each item.** Instead, specify the items you are appealing in the space provided in No. 1 on the front of this form (for example, "Citation No. 1, Item Nos. 2, 5 and 8.")
- D. **Be sure to sign your appeal form and provide all the information requested in No. 4, above.**
- E. Your appeal form shall be deemed not completed unless you attach a copy of each citation or notification that you are appealing, and failure to file a completed appeal form may result in dismissal of the appeal.
- F. If you or your representative changes address, telephone number, and/or e-mail address, it is your responsibility to notify the Appeals Board in writing of the change(s). Otherwise the Appeals Board will continue to use the address it has on file and you risk not receiving notices or other communications from the Appeals Board. Appeals Board regulations make it the employer's obligation to notify the Appeals Board of any changes to the employer's and/or representative's contact information.
- 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, California 95833.
- H. Late appeals will not be accepted unless good cause is shown.

**State of California**

Division of Occupational Safety and Health  
Cal/OSHA Santa Ana District (0950631; 4031)  
2000 East McFadden Avenue, Suite 122  
Santa Ana, CA 92705

**Inspection Number:** 315531277  
**Inspection Dates:** 10/10/2012 - 03/22/2013  
**Issuance Date:** 03/22/2013  
**CSHO ID:** Q1303  
**Optional Inspection Nbr:** 027-13



**Citation and Notification of Penalty**

**Company Name:** DISNEYLAND RESORT  
**Inspection Site:** 1313 S HARBOR BLVD, ANAHEIM, CA 92803

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

3203. Injury and Illness Prevention Program.

(a) Effective July 1, 1991, every employer shall establish, implement and maintain an effective Injury and Illness Prevention Program (Program). The Program shall be in writing and, shall, at a minimum:

(6) Include methods and/or procedures for correcting unsafe or unhealthy conditions, work practices and work procedures in a timely manner based on the severity of the hazard:

(A) When observed or discovered; and,

(B) When an imminent hazard exists which cannot be immediately abated without endangering employee(s) and/or property, remove all exposed personnel from the area except those necessary to correct the existing condition. Employees necessary to correct the hazardous condition shall be provided the necessary safeguards.

**On or before October 3, 2012 the employer failed to implement and/or failed to ensure implementation of the required elements of an Injury and Illness Prevention Program including but not limited to:**

**1. The employer failed to establish and implement effective methods for correcting unsafe conditions on the Space Mountain attraction including but not limited to failure to protect employees from injury caused by moving attraction vehicles.**

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

**04/24/2013**  
**\$ 7650.00**

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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.

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

2520 Venture Oaks Way, Suite 300  
Sacramento, California 95833  
(916) 274-5751  
FAX (916) 274-5785

APR 02 2013

OSH Appeals Board

APPEAL FORM

Inspection No. 315531277

2013-R 3 D 1 -1132

Employer:

DISNEYLAND RESORT

Address:

1313 SOUTH HARBOR BLVD.  
ANAHEIM, CA 92803

- 1. You have only 15 working days from receipt of a citation to appeal.
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FIRST READ IMPORTANT INFORMATION ON THE REVERSE SIDE THEN COMPLETE ONE APPEAL FORM FOR EACH CITATION

1. This is an Appeal from:

- CITATION NO(s) 2 Item No.(s) All items are appealed.
- 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)

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2. The safety order cited is vague and/or ambiguous;
3. Independent employee action;
4. No employee of Appellant was exposed to the alleged violation.
5. Appellant had no actual knowledge, nor, with the exercise of reasonable diligence, could have known, of the existence of the alleged violation.
6. Appellant acted as a reasonably prudent employer, having no reason to anticipate the existence of any hazard.
7. Appellant acted with due diligence to comply with all regulatory requirements.

Appellant reserves the right to plead and present any and all available defenses up to and including the date of any hearing to be conducted in this matter.

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.}

ROBERT D. PETERSON

(Type or Print Name)

ATTORNEY AT LAW

(Title)

3300 SUNSET BOULEVARD, SUITE 110

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

ROCKLIN

(City)

CA

(State)

95677

(ZIP Code)

916/624-4551

(Telephone)

March 28, 2013

(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 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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**State of California**

Division of Occupational Safety and Health  
Cal/OSHA Santa Ana District (0950631; 4031)  
2000 East McFadden Avenue, Suite 122  
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**Inspection Number:** 315531277  
**Inspection Dates:** 10/10/2012 - 03/22/2013  
**Issuance Date:** 03/22/2013  
**CSHO ID:** Q1303  
**Optional Inspection Nbr:** 027-13



**Citation and Notification of Penalty**

**Company Name:** DISNEYLAND RESORT  
**Inspection Site:** 1313 S HARBOR BLVD, ANAHEIM, CA 92803

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

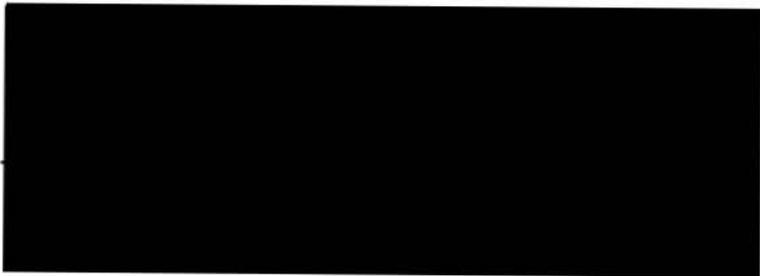
3314. The Control of Hazardous Energy for the Cleaning, Repairing, Servicing, Setting-Up, and Adjusting Operations of Prime Movers, Machinery and Equipment, Including Lockout/Tagout.

(c) Cleaning, Servicing and Adjusting Operations.

(1) If the machinery or equipment must be capable of movement during this period in order to perform the specific task, the employer shall minimize the hazard by providing and requiring the use of extension tools (eg., extended swabs, brushes, scrapers) or other methods or means to protect employees from injury due to such movement. Employees shall be made familiar with the safe use and maintenance of such tools, methods or means, by thorough training.

**On or before 10/3/2012, the employer failed to create effective means or methods to protect employees from injury from vehicles traveling on the rail at the Space Mountain attraction, whose movement was necessary during the "Burn In" servicing procedure. As a result on 10/3/2012 an employee was seriously injured when he was struck by a moving attraction vehicle.**

Date By Which Violation Must be Abated: 04/09/2013  
Proposed Penalty: \$ 22500.00



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

ROBERT D. PETERSON  
LAW CORPORATION

ROBERT D. PETERSON  
DAVID W. DONNELL  
MADELINE KIM SCATES

3300 SUNSET BOULEVARD, SUITE 110  
SUNSET WHITNEY RANCH  
ROCKLIN, CALIFORNIA 95677

OF COUNSEL  
RONALD E. MEDEIROS  
MANUEL M. MELGOZA

TELEPHONE (916) 624-4551  
FACSIMILE (916) 624-9473  
WWW.OSHALAW.NET

March 28, 2013

PHOTOGRAPH

APR 02 2013

Occupational Safety and Health Appeals Board  
2520 Venture Oaks Way, Suite 300  
Sacramento, CA 95833

OSH Appeals Board

Re: Disneyland Resort  
Inspection No. 315531277  
Cal/OSHA Citations Issued March 22, 2013

Greetings:

Enclosed for filing of the originals and return of the endorsed copies in the envelope provided are two Appeals, a Notice of Appearance and Appellant's Request for Identity of Witnesses and Production of Documents and Things regarding the above-entitled matter.

Sincerely



Jill Hendrick  
for Robert D. Peterson

Enclosures

cc/encs: Disneyland Resort  
Richard Fazlollahi, District Manager

1 Robert D. Peterson (State Bar 56004)  
2 Robert D. Peterson Law Corporation  
3 3300 Sunset Boulevard, Suite 110  
4 Rocklin, CA 95677  
5 (916) 624-4551

6 Attorney for Appellant,  
7 Disneyland Resort

RECEIVED

APR 02 2013

OSH Appeals Board

8 **BEFORE THE**  
9 **OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD**  
10 **DEPARTMENT OF INDUSTRIAL RELATIONS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Appeal of:

Docket No. *(Undocketed)*

13 Disneyland Resort,

14 Inspection No. 315531277

15 Appellant.

**NOTICE OF APPEARANCE**

16 \_\_\_\_\_  
17 The undersigned is counsel of record for Appellant in the above-  
18 entitled matter. Please direct all pleadings and correspondence to the  
19 undersigned at the address shown above.

20  
21  
22 March 28, 2013



23 Robert D. Peterson  
24 Attorney for Appellant  
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1 hearing in this proceeding; and

2 3. Provide a separate list identifying by name, title, and address  
3 any individual the Division may call to testify as an expert witness; and

4 4. Provide a separate list identifying by name, title and address  
5 any individual the Division intends to call for the purpose of attempting to  
6 establish any element of the "serious" classification of any violation alleged in  
7 this proceeding.

8 5. If, subsequent to providing any list in response to the above  
9 requests, it is determined by the Division that additional persons should be  
10 identified on any such list, Appellant is to be immediately provided an updated  
11 list identifying those additional persons. This is a continuing request throughout  
12 the completion of these proceedings.

13 6. Appellant requests the Division produce for inspection and  
14 copying the following documents or things on or before *April 28, 2013*, at the  
15 office of Appellant's counsel at 3300 Sunset Boulevard, Suite 110, Rocklin,  
16 California 95677:

17 a. Any and all statements, written or otherwise, of any  
18 individual, including but not limited to parties or witnesses, which statements  
19 may have been prepared as a result of this matter, whether or not such  
20 statements are intended or expected to be introduced into evidence;

21 b. Any and all writings, statements, documents, reports, or  
22 matters of a similar nature prepared during or as a result of any investigation of  
23 this matter, whether or not expected to be introduced into evidence;

24 c. Any and all written statements pertaining to the subject  
25 matter of the proceeding made by any person, whether or not expected to be  
26 introduced into evidence;

27 d. Any and all writings which, on any occasion, existed within  
28 any Division inspection or investigation file in this matter, including text and

1 digital materials, prepared by any person, whether or not prepared as a result of  
2 this proceeding, whether or not expected to be introduced into evidence;

3 e. Any and all writings and reports made by a representative of  
4 the Division pertaining to the above-entitled matter, including field notes,  
5 scratch notes, each and every State of California form including, but not limited  
6 to, the Cal/OSHA 1, Cal/OSHA 1A, Cal/OSHA 1B, Cal/OSHA 1BX,  
7 Cal/OSHA 1BY, OSHA 94, Cal/OSHA 1E, Cal/OSHA 1H and Cal/OSHA 1HX,  
8 Cal/OSHA 7, OSHA 167C, Cal/OSHA 20, Cal/OSHA 36(s), OSHA-170,  
9 Cal/OSHA 170A, Cal/OSHA 170AX, and all related documents, each and every  
10 laboratory note and/or document, which pertain in any degree to the above-  
11 entitled matter;

12 f. Investigative reports made by or on behalf of the Division  
13 pertaining to the subject matter of the proceeding, to the extent that such reports  
14 (1) contain the names and addresses of witnesses or of persons having personal  
15 knowledge of the acts, omissions or events which are the basis of the  
16 proceeding, or (2) reflect matters perceived by the investigator in the course of  
17 his/her investigation, or (3) contain or include by attachment any statement or  
18 writing described in (1) to (6), inclusive, above, or any summary thereof.

19 g. If a "repeat" citation is alleged, any document, including any  
20 computer printout or digital document which sets forth any record or history of  
21 any previous citations issued to Appellant upon which the alleged "repeat"  
22 characterization of the citation is based, and also those documents relied upon  
23 by the Division in support of the "repeat" characterization of the alleged  
24 violation, including any certification of the proof or accuracy of such  
25 documents.

26 h. Any and all photographs taken by any person which are in  
27 the possession of the Division and which relate to the subject matter of this  
28 proceeding, whether or not expected to be introduced into evidence;

1 i. Any and all photographs taken by any person, whether or not  
2 in the possession of the Division, which relates to the subject matter of this  
3 proceeding, whether or not expected to be introduced into evidence;

4 j. Any and all drawings, graphs, or charts prepared by any  
5 person and which relate to or which will be used in support of the violations in  
6 contest herein.

7 k. Any and all audio and video recordings prepared by any  
8 person as a result of any inspection or investigation of this matter, whether or  
9 not expected to be introduced into evidence.

10 For the purpose of this request and pursuant to Title 8, CCR  
11 § 372.1, "statements" include written statements by any person, signed or  
12 otherwise authenticated, stenographic, mechanical, electrical or other recordings  
13 or transcripts thereof, of oral statements by any person, and written reports or  
14 summaries of such oral statements.

15 These requests are continuing requests throughout the completion  
16 of these proceedings so that any person, or any witnesses or any statements,  
17 documents, reports, photographs, or items referenced in paragraphs (a) to (k),  
18 inclusive, above, of this document that are actually or constructively obtained  
19 after initial compliance with this request, shall be disclosed and made available  
20 forthwith.

21  
22 March 28, 2013



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Robert D. Peterson  
Attorney for Appellant

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**DECLARATION OF SERVICE BY MAIL**

I am a citizen of the United States and employed in Placer County, California. I am over the age of 18 years and am not a party to this action; my business address is 3300 Sunset Boulevard, Suite 110, Rocklin, California 95677. On April 1, 2013, I served a copy of the within Notice of Appearance and Appellant's Request for Identity of Witnesses and Production of Documents and Things by depositing the original and one copy of the above document in a box or other facility regularly maintained by FedEx, in an envelope or package designated by FedEx (Airbill No. 799416385918) with delivery fees paid or provided for as follows:

Occupational Safety and Health Appeals Board  
2520 Venture Oaks Way, Suite 300  
Sacramento, CA 95833

I further declare that on March 28, 2013, I served a copy of the within Notice of Appearance and Appellant's Request for Identity of Witnesses and Production of Documents and Things by following ordinary business practice, placing true copies thereof enclosed in a sealed envelope with postage fully prepaid, for collection and mailing with the United States Postal Service where it would be deposited for first class delivery in the United States mail that same day in the ordinary course of business, addressed as follows:

Richard Fazlollahi, District Manager  
Division of Occupational Safety and Health  
2000 East McFadden Avenue, Suite 122  
Santa Ana, CA 92705

I declare under penalty of perjury that the foregoing is true and correct. Executed at Rocklin, California, on April 1, 2013.



Jill Hendrick