

BEFORE THE  
STATE OF CALIFORNIA  
OCCUPATIONAL SAFETY AND HEALTH  
APPEALS BOARD

In the Matter of the Appeal of:

HENKEL CORPORATION

Todd C. Hunt, Attorney

I.D. No. 2/2/P3364/055/2013

IMIS# 316817113

Docket No(s).

13-R2D2-3010  
through 3016

**NOTICE OF PREHEARING  
CONFERENCE**

NOTICE IS HEREBY GIVEN that a prehearing conference in the above-captioned matter will be conducted by telephone on **December 2, 2013 - 03:00 PM**. The conference call will be initiated by the undersigned Administrative Law Judge or other designee. Unless the undersigned has been otherwise advised, the call will be placed to the person and telephone number appearing on the Appeal Form and to the DOSH District Office from which the Citation issued.

The purpose of the prehearing conference is to simplify the issues, expedite the hearing and afford the parties an opportunity to participate in settlement discussions. The parties shall be prepared to discuss the issues to be presented, the scope and timing of discovery, pending and contemplated motions, a firm estimate of the length of the hearing, and any other matters that may aid in expediting the hearing or otherwise disposing of the case. (Title 8, California Code of Regulations, Section 374)

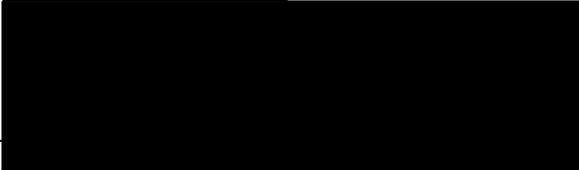
NOTICE IS HEREBY GIVEN that failure to be prepared for or to participate in the prehearing conference may result in the imposition of sanctions, inferences or other orders during the conference or during the hearing, as the Appeals Board may deem appropriate. (Title 8, California Code of Regulations, Section 374(c).)

NOTICE IS FURTHER GIVEN that if the prehearing conference does not resolve the matter it will proceed as deemed appropriate by the Board.

A party may be, but need not be, represented by an attorney at the prehearing conference. A party may also request the assistance of an interpreter for the prehearing conference; any such request should be made immediately to the person listed below.

All communications or questions regarding the prehearing conference should be directed to the undersigned, addressed to 2520 Venture Oaks Way, Suite 300, Sacramento, CA 95833, or call Sarsvati (Sarah) Patel, Sr. Typist Legal at (916)274-5779, Fax:(916)274-5785. Any party unable to participate in the prehearing conference must notify the person listed above.

A copy of this Notice of Prehearing shall be served by the employer on an authorized employee representative of affected employees by personal delivery or by postage pre-paid first class mail, or on affected employees who are not represented by an authorized employee representative by posting a copy of this notice at or near the referenced site of violation, positioned so as to be easily read by employees working in the area. *In addition, notice of this prehearing shall be served on any employee or their Representative, seriously injured or killed in an accident related to this appeal.*



DATED: October 15, 2013

Administrative Law Judge

**NOTICE TO PARTIES:** Disability accommodation is available upon request. Any person with a disability requiring an accommodation, auxiliary aid or service, or a modification of policies or procedures to ensure effective communication and access to the Occupational Safety and Health Appeals Board, should contact the Appeals Board at the above listed office or the state-wide Disability Accommodation Coordinator at 1-866-326-1616 (toll free). The state-wide Coordinator can also be reached through the California Relay Service, by dialing 711 or 1-800-735-2929 (TTY) or 1-800-855-3000 (TTY-Spanish).

Accommodations can include modifications of policies or procedures or provision of auxiliary aids or services. Accommodations include, but are not limited to, an Assistive Listening System (ALS), a Computer-Aided Transcription System or Communication Access Realtime Translation (CART), a sign language interpreter, documents in Braille, large print or on computer disk, and audio cassette recording. Accommodation requests should be made as soon as possible. Requests for an ALS or CART should be made no later than five (5) days before the hearing.

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a citizen of the United States, over the age of 18 years and not a party to the within action; my place of employment and business address is .

On October 15, 2013 I served the attached Notice of Prehearing Conference by placing a true copy thereof in an envelope addressed to the persons named below at the address set out immediately below each respective name, and by sealing and depositing said envelope in the United States Mail at Sacramento, California, with postage thereon fully prepaid. There is delivery by the United States Mail at each of the places so addressed, or there is regular communication by mail between the place of mailing and each of the places so addressed:

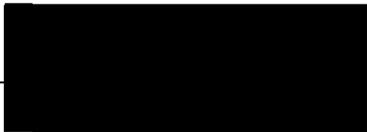
Todd C. Hunt, Attorney  
SEYFARTH SHAW LLP  
2029 Century Park East, Suite 3500  
Los Angeles, CA 90067-3021

District Manager  
DOSH - Concord  
1450 Civic Court, Suite 525  
Concord, CA 94520

Allyce Kimerling, Div.'s Legal Rep.  
DOSH - Legal Unit  
1515 Clay Street, Suite 1901  
Oakland, CA 94612

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 15, 2013 at Sacramento, California.

\_\_\_\_\_ 

DEPARTMENT OF INDUSTRIAL RELATIONS  
OCCUPATIONAL SAFETY  
AND HEALTH APPEALS BOARD

2520 VENTURE OAKS WAY, SUITE 300  
SACRAMENTO, CA 95833  
(916) 274-5751  
FAX (916) 274-5785



October 9, 2013

Todd Hunt, Attorney  
SEYFARTH AND SHAW LLP  
2029 Century Park East Suite 3500  
Los Angeles, CA 90067

Re: HENKEL CORPORATION  
13-R2D2-3010/3016

DOCKETED 10/8/2013

Dear Mr. Hunt:

Enclosed are the docketed copies of each Appeal form that you filed with the Board. The above listed docket numbers should appear on all future correspondence. A copy of any correspondence with the Appeals Board must be served on the Division of Occupational Safety and Health DOSH and any other party to the proceeding.

You are obligated to notify any affected employees or their representative that an appeal is pending and that they have a right to participate in the proceeding. You are required to post a copy of the docketed Appeal form and a Participation Notice (similar to the sample enclosed) at or near the site of the violation or in a conspicuous place where it will be readily observable by employees. In addition to posting, a copy of the Appeal form and the Participation Notice must be served on the following: 1) any authorized employee representative; and 2) any employee (or their representative) who was seriously injured or killed in an accident related to this appeal. Proof, such as a brief letter, that the forms were posted must be sent to the DOSH District Manager whose address appears on the citation.

Please direct any request for information dealing with the filing of your appeal to the above address and/or telephone number. All other communications prior to the hearing will be handled by the assigned Administrative Law Judge (ALJ) **Mary Dryovage** (916) 274-5751.

Any written motion, such as a request for subpoena, consolidation of cases, or request for party or intervenor status must be made by written motion to the ALJ named above at 2520 Venture Oaks Way, Suite 300, Sacramento, CA 95833.

Sincerely,

  
Judy Whitall-Lee  
Legal Assistant

cc: Accounting  
DOSH District Manager-Concord  
DOSH Legal Unit-Oakland

IMIS# 316817113

9/24/13

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

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

RECEIVED

SEP 30 2013

APPEAL FORM

D 2013-RAD2-3010

316817113

Inspection Number on Citation

Henkel Corporation

Employer Name on Citation

Employer Legal Name or DBA (Optional)

2450 Willow Pass Road

Address

Bay Point, California 94565

(Leave blank-Appeals Board will fill in.)

1. You only have 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): One 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)

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 on the OSHAB website at: <http://www.dir.ca.gov/OSHAB/oshab.html>

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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}

Todd C. Hunt

(Type or print name)

Attorney - Seyfarth Shaw LLP

(Title)

2029 Century Park East, Suite 3500

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

Los Angeles

California

90067

(City)

(State)

(Zip Code)

(310) 201-5207

thunt@seyfarth.com

9/18/2013

(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.

OSHAB 5/08

State of California  
Division of Occupational Safety and Health  
Cal/OSHA Concord District Office (0950622; 4028)  
1450 Civic Court, Suite 525  
Concord, CA 94520

Inspection Number: 316817113  
Inspection Dates: 04/15/2013 - 09/06/2012  
Issuance Date: 09/06/2013  
CSHO ID: P3364  
Optional Inspection Nbr: 055-13



Phone: (925) 602-6517 Fax: (925) 676-0227

**Citation and Notification of Penalty**

Company Name: Henkel Corporation  
Inspection Site: 2850 Willow Pass Rd, Bay Point, CA 94565

**RECEIVED**

**SEP 30 2013**

**OSH Appeals Board**

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

Title 8 Section 4185.

Foot-Operated Devices.

All foot-operated devices (i.e., treadles, pedals, levers, bars, valves, and switches) shall be protected from unintended operation, if such operation creates a hazard:

During the period up to and including April 15, 2013, the employer failed to protect the foot-operated pedals used at the Cowles Mixers, numbers 1, 3, 4 and 5 in the mixing room from unintended operation during production of adhesives, which exposed employees to the hazard of contacting unguarded rotating shafts operating up to 350 RPM.

|   |           |
|---|-----------|
| Date By Which Violation Must be Abated: | Abated    |
| Proposed Penalty:                       | \$ 700.00 |

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

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

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SEP 30 2013

APPEAL FORM

2013-R2D2-3011

316817113

Inspection Number on Citation

Henkel Corporation

Employer Name on Citation

Employer Legal Name or DBA (Optional)

2450 Willow Pass Road

Address

Bay Point, California 94565

(Leave blank- Appeals Board will fill in.)

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

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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 on the OSHAB website at: <http://www.dir.ca.gov/OSHAB/oshab.html>

Lack of Employer Knowledge

No evidence of a willful or intentional failure to comply with the law

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}

Todd C. Hunt

(Type or print name)

Attorney - Seyfarth Shaw LLP

(Title)

2029 Century Park East, Suite 3500

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

Los Angeles

California

90067

(City)

(State)

(Zip Code)

(310) 201-5207

thunt@seyfarth.com

9/18/2013

(Telephone)

(E-Mail Address)

(Date)

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State of California  
Division of Occupational Safety and Health

Inspection Number: 316817113  
Inspection Dates: 04/15/2013-09/06/2013



Cal/OSHA Concord District Office (0950622; 4028)  
1450 Civic Court, Suite 525  
Concord, CA 94520

Issuance Date: 09/06/2013  
CSHO ID: P3364  
Optional Inspection Nbr: 055-13

Phone: (925) 602-6517 Fax: (925) 676-0227

RECEIVED  
SEP 30 2013

Citation and Notification of Penalty

OSH Appeals Board

Company Name: Henkel Corporation  
Inspection Site: 2850 Willow Pass Rd, Bay Point, CA 94565

Citation 2 Item 1 Type of Violation: Willful Serious/Accident-Related

Title 8 Section 3203(a)

Injury and Illness Prevention Program

(4) Identification and Evaluation of Hazards: Include procedures for identifying and evaluating work place hazards including scheduled periodic inspections to identify unsafe conditions and work practices. Inspections shall be made to identify and evaluate hazards.

- (A) When the Program is first established;
- (B) Whenever new substances, processes, procedures, or equipment are introduced to the workplace that represent a new occupational safety and health hazard; and
- (C) Whenever the employer is made aware of a new or previously unrecognized hazard

(6) Correction of Hazards:

- (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.

During the period up to and including April 15, 2013, the Employer failed to effectively implement its Injury and Illness Prevention Program by:

- 1) The Employer failed to identify or evaluate the workplace hazard created by its modification of the original design of the shaft guard on the Myers mixer, Serial #E-60-1349. This modification reduced the guard from one that fully enclosed the shaft to a partial guard that exposed employees to the hazard of contacting the shaft, which rotated at approximately 350 RPM during production of adhesives;
- 2) The Employer failed to identify or evaluate the workplace hazard created by the reduction in size of the manufacturer-recommended 300 gallon mixing drum used with the Myers mixer to 55 gallons, which increased employee exposure to the unguarded rotating shaft by reducing the distance from employees' bodies to the mixer shaft from approximately 42 inches to approximately 12 inches;

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

**State of California**  
Division of Occupational Safety and Health

**Inspection Number:** 316817113  
**Inspection Dates:** 04/15/2013 - 09/06/2013



Cal/OSHA Concord District Office (0950622; 4028)  
1450 Civic Court, Suite 525  
Concord, CA 94520

**Issuance Date:** 09/06/2013  
**CSHO ID:** P3364  
**Optional Inspection Nbr:** 055-13

Phone: (925) 602-6517 Fax: (925) 676-0227

**RECEIVED**  
**SEP 30 2013**

**Citation and Notification of Penalty**

**Company Name:** Henkel Corporation  
**Inspection Site:** 2850 Willow Pass Rd, Bay Point, CA 94565

**OSH Appeals Board**

3) The Employer failed to correct the hazard of unguarded shafts on the Cowles Mixers numbered 1 through 5, despite the provision in section 5.2.2 of its IIPP, entitled Hazard identification and Correction, which requires the identification, evaluation and correction of hazards. This hazard of unguarded shafts had been previously identified by the Employer but was never effectively corrected prior to a fatal accident on April 15, 2013 in which an employee became caught on the unguarded Myers mixer shaft.

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

**Abated**  
**\$ 70000.00**

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

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

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SEP 3 0 2013

APPEAL FORM OSH Appeals Board

2013-R2D2-3012

316817113

Inspection Number on Citation

Henkel Corporation

Employer Name on Citation

Employer Legal Name or DBA (Optional)

2450 Willow Pass Road

Address

Bay Point, California 94565

I

(Leave blank-Appeals Board will fill in.)

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Lack of Employer Knowledge

Independent Employee Action

4.

[Redacted Signature]

(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}

Todd C. Hunt

(Type or print name)

Attorney - Seyfarth Shaw LLP

(Title)

2029 Century Park East, Suite 3500

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

Los Angeles

California

90067

(City)

(State)

(Zip Code)

(310) 201-5207

thunt@seyfarth.com

9/18/2013

(Telephone)

(E-Mail Address)

(Date)

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Issuance Date: 09/06/2013  
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Optional Inspection Nbr: 055-13



**RECEIVED**  
SEP 30 2013

Phone: (925) 602-6517 Fax: (925) 676-0227

**Citation and Notification of Penalty**

Company Name: Henkel Corporation  
Inspection Site: 2850 Willow Pass Rd, Bay Point, CA 94565

**OSH Appeals Board**

**Citation 3 Item 1 Type of Violation: Serious/Accident-Related**

**Title 8 Section 3314(g)(1)**

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

(g) Hazardous Energy Control Procedures. A hazardous energy control procedure shall be developed and utilized by the employer when employees are engaged in the cleaning, repairing, servicing, setting-up or adjusting of prime movers, machinery and equipment.

(1) The procedure shall clearly and specifically outline the scope, purpose, authorization, rules, and techniques to be utilized for the control of hazardous energy, and the means to enforce compliance, including but not limited to, the following:

- (A) A statement of the intended use of the procedure;
- (B) The procedural steps for shutting down, isolating, blocking and securing machines or equipment to control hazardous energy;
- (C) The procedural steps for the placement, removal and transfer of lockout devices and tagout devices and responsibilities; and,
- (D) The requirements for testing a machine or equipment, to determine and verify the effectiveness of lockout devices, tagout devices and other hazardous energy control devices.

During the period up to and including April 15, 2013, the Employer failed to develop and utilize a procedure that outlined the techniques to be utilized to control hazardous energy while employees scraped the unguarded rotating shafts on the Cowles mixers, #1 to 5, to facilitate mixing of adhesives. The scraping was a necessary cleaning step to conform to the Employer's mixing specifications.

|   |             |
|---|-------------|
| Date By Which Violation Must be Abated: | Abated      |
| Proposed Penalty:                       | \$ 25000.00 |

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

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

RECEIVED  
SEP 30 2013

APPEAL FORM OSH Appeals Board

2013-R2D2-3013

D

(Leave blank- Appeals Board will fill in.)

316817113

Inspection Number on Citation

Henkel Corporation

Employer Name on Citation

Employer Legal Name or DBA (Optional)

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Address

Bay Point, California 94565

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

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Lack of Employer Knowledge

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}

Todd C. Hunt

(Type or print name)

Attorney - Seyfarth Shaw LLP

(Title)

2029 Century Park East, Suite 3500

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

Los Angeles

California

90067

(City)

(State)

(Zip Code)

(310) 201-5207

thunt@seyfarth.com

9/18/2013

(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}

### IMPORTANT INFORMATION

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- D. **Be sure to sign your appeal form and provide all the information requested in No. 4 above.**
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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  
Cal/OSHA Concord District Office (0950622; 4028)  
1450 Civic Court, Suite 525  
Concord, CA 94520

Inspection Number: 316817113  
Inspection Dates: 04/15/2013-09/06/2013  
Issuance Date: 09/06/2013  
CSHO ID: P3364  
Optional Inspection Nbr: 055-13



Phone: (925) 602-6517 Fax: (925) 676-0227

**Citation and Notification of Penalty**

**RECEIVED**  
**SEP 3 0 2013**

Company Name: Henkel Corporation  
Inspection Site: 2850 Willow Pass Rd, Bay Point, CA 94565

**OSH Appeals Board**

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

Title 8 Section 3328(b)

Machinery and Equipment.

Machinery and equipment in service shall be inspected and maintained as recommended by the manufacturer where such recommendations are available:

During the period up to and including April 15, 2013, the Employer failed to inspect and maintain the Model H800 Myers Mixer, Serial #E60-1349, in accordance with the manufacturer's recommendations as detailed in its "Manual for Installation, Operation and Maintenance of Mixer or Dispenser" as follows:

- a) Employer failed to inspect the mixer shaft to ensure proper shaft tolerances before starting the mixer;
- b) Employer failed to inspect the mixer for trueness of the shaft to prevent warpage and ensure safe rotation of the shaft.

Date By Which Violation Must be Abated:  
Proposed Penalty:

Abated  
\$ 3375.00

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

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

RECEIVED  
SEP 30 2013

APPEAL FORM OSH Appeals Board

2013-R2D2 - 3014

316817113

Inspection Number on Citation

(Leave blank-Appeals Board will fill in.)

Henkel Corporation

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.

2450 Willow Pass Road

Address

Bay Point, California 94565

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): Five 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)

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 on the OSHAB website at: <http://www.dir.ca.gov/OSHAB/oshab.html>

Lack of Employer Knowledge

Independent Employee Action

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}

Todd C. Hunt

(Type or print name)

Attorney - Seyfarth Shaw LLP

(Title)

2029 Century Park East, Suite 3500

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

Los Angeles

California

90067

(City)

(State)

(Zip Code)

(310) 201-5207

thunt@seyfarth.com

9/18/2013

(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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OSHAB 5/08

State of California  
Division of Occupational Safety and Health  
Cal/OSHA Concord District Office (0950622; 4028)  
1450 Civic Court, Suite 525  
Concord, CA 94520

Inspection Number: 316817113  
Inspection Dates: 04/15/2013 - 09/06/2013  
Issuance Date: 09/06/2013  
CSHO ID: P3364  
Optional Inspection Nbr: 055-13



Phone: (925) 602-6517 Fax: (925) 676-0227

RECEIVED

SEP 30 2013

Citation and Notification of Penalty

Company Name: Henkel Corporation  
Inspection Site: 2850 Willow Pass Rd, Bay Point, CA 94565

OSH Appeals Board

Citation 5 Item 1 Type of Violation: Serious/Accident-Related

Title 8, Section 3383(c).  
Body Protection.

(c) Clothing appropriate for the work being done shall be worn. Loose sleeves, tails, ties, lapels, cuffs, or other loose clothing which can be entangled in moving machinery shall not be worn.

During the period up to and including April 15, 2013, the Employer failed to ensure that the employees wore clothing appropriate for their work producing adhesives in the Cowles mixers as follows:

- a) On or about April 15, 2013 an Employee sustained fatal injuries while working on the Model H800 Myers Mixer, Serial E60-1349, (Cowles Number 2) when his coverall sleeve caught on the unguarded mixer shaft rotating at approximately 350 RPM, and he was unable to free himself;
- b) Employer did not ensure that the sleeves on employee coveralls fit tightly in order to preclude their being caught on the unguarded rotating shafts on the Cowles Mixers numbers 1, 3, 4 and 5 during production of adhesives.

Date By Which Violation Must be Abated:  
Proposed Penalty:

Abated  
\$ 25000.00

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

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

RECEIVED  
SEP 3 0 2013

APPEAL FORM OSH Appeals Board  
2013-R2D2-3015

316817113

Inspection Number on Citation

(Leave blank- Appeals Board will fill in.)

Henkel Corporation

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.

2450 Willow Pass Road

Address

Bay Point, California 94565

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CITATION NO(s): Six 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)

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 on the OSHAB website at: <http://www.dir.ca.gov/OSHAB/oshab.html>

Lack of Employer Knowledge

Independent Employee Action

No evidence of a willful or knowing violation of the law

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}

Todd C. Hunt

(Type or print name)

Attorney - Seyfarth Shaw LLP

(Title)

2029 Century Park East, Suite 3500

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

Los Angeles

California

90067

(City)

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(Zip Code)

(310) 201-5207

thunt@seyfarth.com

9/18/2013

(Telephone)

(E-Mail Address)

(Date)

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State of California  
Division of Occupational Safety and Health  
Cal/OSHA Concord District Office (0950622; 4028)  
1450 Civic Court, Suite 525  
Concord, CA 94520

Inspection Number: 316817113  
Inspection Dates: 04/15/2013 - 09/06/2013  
Issuance Date: 09/06/2013  
CSHO ID: P3364  
Optional Inspection Nbr: 055-13



Phone: (925) 602-6517 Fax: (925) 676-0227

RECEIVED  
SEP 30 2013

Citation and Notification of Penalty

Company Name: Henkel Corporation  
Inspection Site: 2850 Willow Pass Rd, Bay Point, CA 94565

OSH Appeals Board

Citation 6 Item 1 Type of Violation: Willful Serious/Accident Related

Title 8 Section 4002(a).

Moving Parts of Machinery or Equipment.

All machines, parts of machines, or component parts of machines which create hazardous revolving, reciprocating, running, shearing, punching, pressing, squeezing, drawing, cutting, rolling, mixing or similar action, including pinch points and shear points, not guarded by the frame of the machine(s) or by location, shall be guarded.

- a) On or about April 15, 2013, an employee sustained fatal injuries while producing adhesives on the Model H800 Myers Mixer, Serial #E60-1349 when he came into contact with the unguarded rotating shaft at 300 to 350 RPM and was unable to free himself.
- b) During the period up to and including April 15, 2013, the employer failed to install guards for the vertical shafts on the Cowles Mixers 1, 3, 4, 5 that rotate up to 350 RPM during production of adhesives.

Date By Which Violation Must be Abated:  
Proposed Penalty:

Abated  
\$ 70000.00

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

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

RECEIVED  
SEP 30 2013

APPEAL FORM

2013-R<sub>2</sub>D<sub>2</sub> - 3016

316817113

Inspection Number on Citation

(Leave blank-Appeals Board will fill in.)

Henkel Corporation

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.

2450 Willow Pass Road

Address

Bay Point, California 94565

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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

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Lack of Employer Knowledge

Independent Employee Action

4.

(Signature of Employer or Employer's Representative)

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Todd C. Hunt

(Type or print name)

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

Los Angeles

California

90067

(City)

(State)

(Zip Code)

(310) 201-5207

thunt@seyfarth.com

9/18/2013

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Cal/OSHA Concord District Office (0950622; 4028)  
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Concord, CA 94520

Inspection Number: 316817113  
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Issuance Date: 09/06/2013  
CSHO ID: P3364  
Optional Inspection Nbr: 055-13



Phone: (925) 602-6517 Fax: (925) 676-0227

RECEIVED

SEP 3 0 2013

Citation and Notification of Penalty

Company Name: Henkel Corporation  
Inspection Site: 2850 Willow Pass Rd, Bay Point, CA 94565

OSH Appeals Board

Citation 7 Item 1 Type of Violation: Serious

Title 8, Section 4186(b)

Maintenance and Use of Point of Operation Tools and Guards

(b) All point of operation guards shall be properly set up, adjusted and maintained in safe and efficient working condition in conformance with Figure G-8 and Table G-3 or other guard configurations which will prevent the operator's hand from entering the point of operation:

For the period up to and including April 15, 2013, the employer failed to properly set up and maintain the point of operation guard for the H800 Myer mixer, Serial #E-60-1349, in such a manner as to prevent the operator's hands from entering the point of operation while adding powered material to the batch.

Date By Which Violation Must be Abated:

Proposed Penalty:

Abated  
\$ 6750.00



Compliance Officer/District Manager

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

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA )

3 COUNTY OF Los Angeles )

ss

4 I am a resident of the State of California, over the age of eighteen years, and not a party to the  
5 within action. My business address is 2029 Century Park East, Suite 3500, Los Angeles, California  
90067-3021. On September 27, 2013, I served the within document(s):

6 **APPEAL FORM (CITATION NO. ONE)**

7  I sent such document from facsimile machines (310) 201-5219 on September 27, 2013. I certify  
8 that said transmission was completed and that all pages were received and that a report was  
9 generated by said facsimile machine which confirms said transmission and receipt. I, thereafter,  
mailed a copy to the interested party(ies) in this action by placing a true copy thereof enclosed in  
sealed envelope(s) addressed to the parties listed below.

10  by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid,  
11 in the United States mail at Los Angeles, California, addressed as set forth below.

12  by personally delivering the document(s) listed above to the person(s) at the address(es) set forth  
below.

13  by placing the document(s) listed above, together with an unsigned copy of this declaration, in a  
14 sealed envelope or package provided by an overnight delivery carrier with postage paid on  
account and deposited for collection with the overnight carrier at Los Angeles, California,  
15 addressed as set forth below.

16 Occupational Safety and Health Appeals Board  
17 2520 Venture Oaks Way, Ste. 300  
18 Sacramento, CA 95833

Allyce Kimerling  
DOSH - Legal Unit  
Division's Legal Unit  
1515 Clay Street, Suite 1901  
Oakland, CA 94612

19  
20 I am readily familiar with the firm's practice of collection and processing correspondence for  
21 mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with  
22 postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party  
served, service is presumed invalid if postal cancellation date or postage meter date is more than one day  
after date of deposit for mailing in affidavit.

23 I declare under penalty of perjury under the laws of the State of California that the above is true  
and correct.

24 Executed on September 27, 2013, at Los Angeles, California.

25 

26 Laura Thixton

**PROOF OF SERVICE**

STATE OF CALIFORNIA

)  
) ss  
)

COUNTY OF Los Angeles

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 2029 Century Park East, Suite 3500, Los Angeles, California 90067-3021. On September 27, 2013, I served the within document(s):

**APPEAL FORM (CITATION NO. TWO)**

I sent such document from facsimile machines (310) 201-5219 on September 27, 2013. I certify that said transmission was completed and that all pages were received and that a report was generated by said facsimile machine which confirms said transmission and receipt. I, thereafter, mailed a copy to the interested party(ies) in this action by placing a true copy thereof enclosed in sealed envelope(s) addressed to the parties listed below.

by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as set forth below.

by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

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

Allyce Kimerling  
DOSH - Legal Unit  
Division's Legal Unit  
1515 Clay Street, Suite 1901  
Oakland, CA 94612

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 27, 2013, at Los Angeles, California.

Laura Thixton

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA )

3 COUNTY OF Los Angeles )

ss

4 I am a resident of the State of California, over the age of eighteen years, and not a party to the  
5 within action. My business address is 2029 Century Park East, Suite 3500, Los Angeles, California  
90067-3021. On September 27, 2013, I served the within document(s):

6 **APPEAL FORM (CITATION NO. THREE)**

7  I sent such document from facsimile machines (310) 201-5219 on September 27, 2013. I certify  
8 that said transmission was completed and that all pages were received and that a report was  
9 generated by said facsimile machine which confirms said transmission and receipt. I, thereafter,  
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15 addressed as set forth below.

16 Occupational Safety and Health Appeals Board  
17 2520 Venture Oaks Way, Ste. 300  
18 Sacramento, CA 95833

Allyce Kimerling  
DOSH - Legal Unit  
Division's Legal Unit  
1515 Clay Street, Suite 1901  
Oakland, CA 94612

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after date of deposit for mailing in affidavit.

23 I declare under penalty of perjury under the laws of the State of California that the above is true  
and correct.

24 Executed on September 27, 2013, at Los Angeles, California.

25 \_\_\_\_\_  
26   
27 Laura Thixton  
28

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA

)  
) ss  
)

3 COUNTY OF Los Angeles

4 I am a resident of the State of California, over the age of eighteen years, and not a party to the  
5 within action. My business address is 2029 Century Park East, Suite 3500, Los Angeles, California  
90067-3021. On September 27, 2013, I served the within document(s):

6 **APPEAL FORM (CITATION NO. FOUR)**

7  I sent such document from facsimile machines (310) 201-5219 on September 27, 2013. I certify  
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16 Occupational Safety and Health Appeals Board  
17 2520 Venture Oaks Way, Ste. 300  
18 Sacramento, CA 95833

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and correct.

24 Executed on September 27, 2013, at Los Angeles, California.

25 

26 \_\_\_\_\_  
Laura Thixton

**PROOF OF SERVICE**

STATE OF CALIFORNIA

COUNTY OF Los Angeles

)  
) ss  
)

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 2029 Century Park East, Suite 3500, Los Angeles, California 90067-3021. On September 27, 2013, I served the within document(s):

**APPEAL FORM (CITATION NO. FIVE)**

I sent such document from facsimile machines (310) 201-5219 on September 27, 2013. I certify that said transmission was completed and that all pages were received and that a report was generated by said facsimile machine which confirms said transmission and receipt. I, thereafter, mailed a copy to the interested party(ies) in this action by placing a true copy thereof enclosed in sealed envelope(s) addressed to the parties listed below.

by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as set forth below.

by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

by placing the document(s) listed above, together with an unsigned copy of this declaration, in a sealed envelope or package provided by an overnight delivery carrier with postage paid on account and deposited for collection with the overnight carrier at Los Angeles, California, addressed as set forth below.

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

Allyce Kimerling  
DOSH - Legal Unit  
Division's Legal Unit  
1515 Clay Street, Suite 1901  
Oakland, CA 94612

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 27, 2013, at Los Angeles, California.

  
\_\_\_\_\_  
Laura Thixton

**PROOF OF SERVICE**

STATE OF CALIFORNIA

)  
) ss  
)

COUNTY OF Los Angeles

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 2029 Century Park East, Suite 3500, Los Angeles, California 90067-3021. On September 27, 2013, I served the within document(s):

**APPEAL FORM (CITATION NO. SIX)**

I sent such document from facsimile machines (310) 201-5219 on September 27, 2013. I certify that said transmission was completed and that all pages were received and that a report was generated by said facsimile machine which confirms said transmission and receipt. I, thereafter, mailed a copy to the interested party(ies) in this action by placing a true copy thereof enclosed in sealed envelope(s) addressed to the parties listed below.

by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as set forth below.

by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

by placing the document(s) listed above, together with an unsigned copy of this declaration, in a sealed envelope or package provided by an overnight delivery carrier with postage paid on account and deposited for collection with the overnight carrier at Los Angeles, California, addressed as set forth below.

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

Allyce Kimerling  
DOSH - Legal Unit  
Division's Legal Unit  
1515 Clay Street, Suite 1901  
Oakland, CA 94612

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 27, 2013, at Los Angeles, California.



Laura Thixton

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA )  
3 COUNTY OF Los Angeles ) ss

4 I am a resident of the State of California, over the age of eighteen years, and not a party to the  
5 within action. My business address is 2029 Century Park East, Suite 3500, Los Angeles, California  
90067-3021. On September 27, 2013, I served the within document(s):

6 **APPEAL FORM (CITATION NO. SEVEN)**

7  I sent such document from facsimile machines (310) 201-5219 on September 27, 2013. I certify  
8 that said transmission was completed and that all pages were received and that a report was  
9 generated by said facsimile machine which confirms said transmission and receipt. I, thereafter,  
mailed a copy to the interested party(ies) in this action by placing a true copy thereof enclosed in  
sealed envelope(s) addressed to the parties listed below.

10  by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid,  
11 in the United States mail at Los Angeles, California, addressed as set forth below.

12  by personally delivering the document(s) listed above to the person(s) at the address(es) set forth  
below.

13  by placing the document(s) listed above, together with an unsigned copy of this declaration, in a  
14 sealed envelope or package provided by an overnight delivery carrier with postage paid on  
account and deposited for collection with the overnight carrier at Los Angeles, California,  
addressed as set forth below.

15  
16 Occupational Safety and Health Appeals Board Allyce Kimerling  
17 2520 Venture Oaks Way, Ste. 300 DOSH - Legal Unit  
Sacramento, CA 95833 Division's Legal Unit  
18 1515 Clay Street, Suite 1901  
Oakland, CA 94612

19  
20 I am readily familiar with the firm's practice of collection and processing correspondence for  
21 mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with  
22 postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party  
served, service is presumed invalid if postal cancellation date or postage meter date is more than one day  
after date of deposit for mailing in affidavit.

23 I declare under penalty of perjury under the laws of the State of California that the above is true  
and correct.

24 Executed on September 27, 2013, at Los Angeles, California.

25 \_\_\_\_\_  
26   
27 Laura Thixton  
28

DEPARTMENT OF INDUSTRIAL RELATIONS  
OCCUPATIONAL SAFETY  
AND HEALTH APPEALS BOARD

2520 VENTURE OAKS WAY, SUITE 300  
SACRAMENTO, CA 95833  
(916) 274-5751  
FAX (916) 274-5785



September 25, 2013

Todd Hunt, Attorney  
SEYFARTH AND SHAW LLP  
2029 Century Park East Suite 3500  
Los Angeles, CA 90067

RE: HENKEL CORPORATION

IMIS# 316817113

Dear Mr. Hunt:

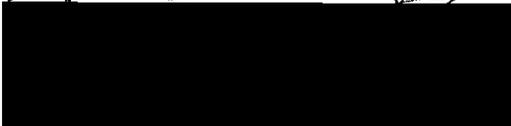
The Occupational Safety and Health Appeal Board received your telephone call on September 24, 2013, indicating your intention to appeal the citation(s), notification(s), or order(s) issued by the Division of Occupational Safety and Health.

A completed Appeal Form must be filed for each citation, notification, or order that you are appealing. Please indicate on the Appeal Form what action by the Division is being appealed and the grounds upon which the appeal is based. Attach a copy of the citation(s) you are appealing to your completed Appeal form(s). You should keep copies for your records.

If you do not postmark, mail, or deliver the completed Appeal form(s) and the appealed citation(s) to the Appeals Board at 2520 Venture Oaks Way, Suite 300, Sacramento, CA 95833 by October 4, 2013, your appeal may be dismissed.

If your appeal meets all the legal requirements, it will be docketed upon receipt of your Appeal form(s) and citation(s). Docketed copies of each timely appeal will be sent to you.

Sincerely,

  
Office Assistant

cc: DOSH District Manager - Concord

2-2-P3364-055-2013