

State of California
Division of Occupational Safety and Health
1515 Clay Street, Room 1301, Box 41
Oakland, CA 94612
Telephone: (510) 622-2916



Citation and Notification of Penalty

To:
Sutter East Bay Hospitals dba ABSMC
and its successors
3232 Elm St, Ste D
Oakland, CA 94609

Inspection Number: 315320242
Inspection Date(s): 11/27/2012 05/02/2013
Issuance Date: 05/10/2013
CSHO ID: V4330
Optional Report #: 019-13
Reporting ID: 0950614

Inspection Site:
350 Hawthorne Ave
Oakland, CA 94609

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 (hereinafter Citation) is being issued in accordance with California Labor Code Section 6317 for violations that were found during the inspection/investigation. **This Citation or a copy must be prominently posted upon receipt by the employer at or near the location of each violation until the violative condition is corrected or for three working days, whichever is longer.** Violations of Title 8 of the California Code of Regulations or of the California Labor Code may result in some instances in prosecution for a misdemeanor.

YOU HAVE A RIGHT to contest this Citation and Notification of Penalty by filing an appeal with the Occupational Safety and Health Appeals Board. To initiate your appeal, you **must** contact the Appeals Board, in writing or by telephone, within 15 working days from the date of receipt of this Citation. If you miss the 15 working day deadline to appeal, the Citation and Notification of Penalty becomes a final order of the Appeals Board, not subject to review by any court or agency.

Informal Conference - You may request an informal conference with the Manager of the District Office which issued the Citation within 10 working days after receipt of the Citation. However, if the citation is appealed, you may request an informal conference at any time prior to the day of the hearing. Employers are encouraged to schedule a conference at the earliest possible time to assure an expeditious resolution of any issues. At the informal conference, you may discuss the existence of the alleged violation, classification of the violation, abatement date or proposed penalty.

Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an agreement which resolves this matter without litigation or contest.

APPEAL RIGHTS

The Occupational Safety and Health Appeals Board (Appeals Board) consists of three members appointed by the Governor. The Appeals Board is a separate entity from the Division of Occupational Safety and Health (Division) and employs experienced attorneys as administrative law judges to hear appeals fairly and impartially. To initiate an appeal from a Citation and Notification of Penalty, you must contact the Appeals Board, in writing or by telephone, within 15 working days from the date of receipt of a Citation. After you have initiated your appeal, you must then file a completed appeal form with the Appeals Board, at the address listed below, for each contested citation. Failure to file a completed appeal form with the Appeals Board may result in dismissal of the appeal. Appeal forms are available from district offices of the Division, or from the Appeals Board:

Occupational Safety and Health Appeals Board
2520 Venture Oaks Way, Suite 300
Sacramento, CA 95833
Telephone: (916) 274-5751 or (877) 252-1987
Fax: (916) 274-5785

If the Citation you are appealing alleges more than one item, you must specify on the appeal form which items you are appealing. You must also attach to the appeal form a legible copy of the Citation you are appealing.

Among the specific grounds for an appeal are the following: the safety order was not violated, the classification of the alleged violation (e.g., serious, repeat, willful) is incorrect, the abatement requirements are unreasonable or the proposed penalty is unreasonable.

Important: You must notify the Appeals Board, not the Division, of your intent to appeal within 15 working days from the date of receipt of the Citation. Otherwise, the Citation and Notification of Penalty becomes a final order of the Appeals Board not subject to review by any court or agency. An informal conference with the Division does not constitute an appeal and does not stay the 15 working day appeal period. If you have any questions concerning your appeal rights, call the Appeals Board, (916) 274-5751 or (877) 252-1987

PENALTY PAYMENT

Penalties are due within 15 working days of receipt of this Citation and Notification of Penalty unless contested. If you are appealing any item of the citation, remittance is still due on all items that are not appealed. Enclosed for your use is a Penalty Remittance Form for payment.

If you are paying electronically, please have the Penalty Remittance Form on-hand when you are ready to make your payment. The company name, index code, reporting ID, and Citation number(s) will be required in order to ensure that the payment is accurately posted to your account. Please go to www.dir.ca.gov/dosh to access the secure payment processing site.

If you are paying by check, return one copy of the Citation, along with the Notice of Proposed Penalties Sheet and the Penalty Remittance Form and mail to:

Department of Industrial Relations
Cashier, Accounting Office
P. O. Box 420603
San Francisco, CA 94142-0603

CAL/OSHA does not agree to any restrictions, conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

NOTIFICATION OF CORRECTIVE ACTION

For violations which you do not contest, you should notify the Division of Occupational Safety and Health promptly by letter that you have taken appropriate corrective action within the time frame set forth on this Citation and Notification of Penalty. Please inform the District Office listed on the Citation by submitting the CAL/OSHA Form 160 and/or 161 with the abatement steps you have taken and the date the violation was abated, together with adequate supporting documentation, e.g., drawings or photographs of corrected conditions, purchase/work orders related to abatement actions, air sampling results, etc. The adjusted penalty for serious and general violations **has already been** reduced by 50% on the presumption that the employer will correct the violations by the abatement date." **If the CAL/OSHA Form 161 is not received in the District Office within 10 days following the abatement date, the abatement credit is revoked, causing the penalty to double.**

Note: Return the CAL/OSHA Form 160/161 to the District Office listed on the Citation and as shown below:

Division of Occupational Safety and Health
1515 Clay Street, Room 1301, Box 41
Oakland, CA 94612
Telephone: (510) 622-2916

EMPLOYEE RIGHTS

Employer Discrimination Unlawful - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under Labor Code Section 6310 or 6311. An employee who believes that he/she has been discriminated against may file a complaint no later than six (6) months after the discrimination occurred with the Division of Labor Standards Enforcement.

Employee Appeals - An employee or authorized employee's representative may, within 15 working days of the issuance of a citation, special order, or order to take special action, appeal to the Occupational Safety and Health Appeals Board the reasonableness of the period of time fixed by the Division of Occupational Safety and Health (Division) for abatement. An employee appeal may be filed with the Appeals Board or with the Division. No particular format is necessary to initiate the appeal, but the notice of appeal must be in writing.

If an Employee Appeal is filed with the Division, the Division shall note on the face of the document the date of receipt, include any envelope or other proof of the date of mailing, and promptly transmit the document to the Appeals Board. The Division shall, no later than 10 working days from receipt of the Employee Appeal, file with the Appeals Board and serve on each party a clear and concise statement of the reasons why the abatement period prescribed by it is reasonable.

Employee Appeal Forms are available from the Appeals Board, or from a District Office of the Division.

Employees Participation in Informal Conference. Affected employees or their representatives may notify the District Manager that they wish to attend the informal conference. If the employer objects, a separate informal conference will be held.

DISABILITY ACCOMMODATION

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 programs of the Division of Occupational Safety and Health, should contact the Disability Accommodation Coordinator at the local district office or the Statewide Disability Accommodation Coordinator at 1-866-326-1616 (toll free). The Statewide 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 or conference.

State of California

Division of Occupational Safety and Health
Cal/OSHA District Office (0950614; 4014)
1515 Clay Street, Room 1301
Oakland, CA 94612

Inspection Number: 315320242
Inspection Dates: 11/27/2012 - 05/02/2013
Issuance Date: 05/10/2013
CSHO ID: V4330
Optional Inspection Nbr: 019-13



Phone (510) 622-2916 Fax (510) 622-2908

Citation and Notification of Penalty

Company Name: Sutter East Bay Hospitals dba ABSMC
Inspection Site: 350 Hawthorne Ave, Oakland, CA 94609

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

Title 8 CCR Section 5199. Aerosol Transmissible Diseases.

(j) Recordkeeping.

(3) Records of implementation of ATD Plan and/or Biosafety Plan.

(E) Records of decisions not to transfer a patient to another facility for AII for medical reasons shall be documented in the patient's chart, and a summary shall be provided to the Plan administrator providing only the name of the physician determining that the patient was not able to be transferred, the date and time of the initial decision and the date, time and identity of the person(s) who performed each daily review. The summary record, which shall not contain a patient's individually identifiable medical information, shall be retained for three years.

Violation:

On and before the Cal/OSHA inspection, in the employer's intensive care and cardio-pulmonary units, airborne infectious disease (AirID) suspected cases were placed in rooms that were not airborne infection isolation rooms (AIIR). The employer did not create and retain records of the decisions not to transfer these patients to another facility for AII for medical reasons.

Date By Which Violation Must be Abated: 06/12/2013
Proposed Penalty: \$ 425.00

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
Cal/OSHA District Office (0950614; 4014)
1515 Clay Street, Room 1301
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Citation and Notification of Penalty

Company Name: Sutter East Bay Hospitals dba ABSMC
Inspection Site: 350 Hawthorne Ave, Oakland, CA 94609

Citation 1 Item 2 Type of Violation: General

Title 8 CCR Section 5143. General Requirements of Mechanical Ventilation Systems.

(a) Design and Operation. The construction, installation, inspection, testing, and maintenance of exhaust systems shall conform to all requirements of Article 107. Additional guidance may be obtained from the American National Standard Fundamentals Governing the Design and Operation of Local Exhaust Systems, ANSI Z9.2-1971 and the Standard for the Installation of Blower and Exhaust Systems, NFPA No. 91-1973.

(5) The ventilation rate of every mechanical ventilation system used to prevent harmful exposure shall be tested after initial installation, alterations, or maintenance, and at least annually, by means of a pitot traverse of the exhaust duct or equivalent measurements. Records of these tests shall be retained for at least five years.

Reference Title 8 CCR Section 5199. Aerosol Transmissible Diseases.

(e) Engineering and Work Practice Controls, and Personal Protective Equipment.

(5) AirID cases or suspected cases shall be identified, and except in field operations and in settings where home health care or home-based hospice care is being provided, these individuals shall be:

(D) Specific requirements for AII rooms and areas.

5. Ventilation systems for AII rooms or areas shall be constructed, installed, inspected, operated, tested, and maintained in accordance with Section 5143, General Requirements of Mechanical Ventilation Systems, of these orders. Inspections, testing and maintenance shall be documented in writing, in accordance with subsection (j)(3)(F).

Violation:

On and before the Cal/OSHA inspection, the ventilation rates of the mechanical ventilation systems for the airborne infection isolation room in the employer's intensive care and cardio-pulmonary units were not tested annually or after maintenance or alterations.

Date By Which Violation Must be Abated: 06/12/2013
Proposed Penalty: \$ 1060.00

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
Cal/OSHA District Office (0950614; 4014)
1515 Clay Street, Room 1301
Oakland, CA 94612

Inspection Number: 315320242
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CSHO ID: V4330
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Citation and Notification of Penalty

Company Name: Sutter East Bay Hospitals dba ABSMC
Inspection Site: 350 Hawthorne Ave, Oakland, CA 94609

Citation 1 Item 3 Type of Violation: General

Title 8 CCR Section 5199. Aerosol Transmissible Diseases.

(e) Engineering and Work Practice Controls, and Personal Protective Equipment.

(5) AirID cases or suspected cases shall be identified, and except in field operations and in settings where home health care or home-based hospice care is being provided, these individuals shall be:

(D) Specific requirements for AII rooms and areas.

3. Negative pressure shall be visually demonstrated by smoke trails or equally effective means daily while a room or area is in use for AII.

Violation:

On and before the Cal/OSHA inspection, the employer did not ensure that negative pressure was visually demonstrated by smoke trails or equally effective means daily while AII rooms, such as Room #4182, were in use for AirID suspected cases.

Date By Which Violation Must be Abated: 05/20/2013
Proposed Penalty: \$ 635.00

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
Cal/OSHA District Office (0950614; 4014)
1515 Clay Street, Room 1301
Oakland, CA 94612

Inspection Number: 315320242
Inspection Dates: 11/27/2012 - 05/02/2013
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Citation and Notification of Penalty

Company Name: Sutter East Bay Hospitals dba ABSMC
Inspection Site: 350 Hawthorne Ave, Oakland, CA 94609

Citation 1 Item 4 Type of Violation: General

Title 8 CCR Section 5199. Aerosol Transmissible Diseases.

(g) Respiratory Protection.

(4) The employer shall provide, and ensure that employees use, a respirator selected in accordance with subsection (g)(3) and Section 5144 when the employee:

(B) Is present during the performance of procedures or services for an AirID case or suspected case;

Reference Title 8 CCR Section 5199. Aerosol Transmissible Diseases.

(g) Respiratory Protection.

(3) Respirator selection.

(B) Effective September 1, 2010, the employer shall provide a powered air purifying respirator (PAPR) with a High Efficiency Particulate Air (HEPA) filter(s), or a respirator providing equivalent or greater protection, to employees who perform high hazard procedures on AirID cases or suspected cases and to employees who perform high hazard procedures on cadavers potentially infected with ATPs, unless the employer determines that this use would interfere with the successful performance of the required task or tasks. This determination shall be documented in accordance with the ATD Plan and shall be reviewed by the employer and employees at least annually in accordance with subsection (d)(3).

Violation:

On or before the Cal/OSHA inspection, the employer did not ensure employees use a powered air purifying respirator (PAPR) with a High Efficiency Particulate Air (HEPA) filter(s), or a respirator providing equivalent or greater protection, to employees who perform high hazard procedures on AirID suspected cases. Employees of the employer were not using PAPRs, or a respirator providing equivalent or greater protection, when performing intubation on suspect AirID cases in the ICU and CPU.

Date By Which Violation Must be Abated: 06/12/2013
Proposed Penalty: \$ 850.00

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
Cal/OSHA District Office (0950614; 4014)
1515 Clay Street, Room 1301
Oakland, CA 94612

Inspection Number: 315320242
Inspection Dates: 11/27/2012-05/02/2013
Issuance Date: 05/10/2013
CSHO ID: V4330
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Phone (510) 622-2916 Fax (510) 622-2908

Citation and Notification of Penalty

Company Name: Sutter East Bay Hospitals dba ABSMC
Inspection Site: 350 Hawthorne Ave, Oakland, CA 94609

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

Title 8 CCR Section 5199. Aerosol Transmissible Diseases.

(e) Engineering and Work Practice Controls, and Personal Protective Equipment.

(5) AirID cases or suspected cases shall be identified, and except in field operations and in settings where home health care or home-based hospice care is being provided, these individuals shall be:

(B) Placed in an AII room or area or transferred to a facility with AII rooms or areas. The employer shall ensure that this placement or transfer is effected in a timely manner.

1. Transfers within facility. Transfers to airborne infection isolation rooms or areas within the facility shall occur within 5 hours of identification. If there is no AII room or area available within this time, the employer shall transfer the individual to another suitable facility in accordance with subsection (e)(5)(B)2.

2. Transfers to other facilities. Transfers to other facilities shall occur within 5 hours of identification, unless the employer documents, at the end of the 5- hour period, and at least every 24 hours thereafter, each of the following:

a. The employer has contacted the local health officer.

b. There is no AII room or area available within that jurisdiction.

c. Reasonable efforts have been made to contact establishments outside of that jurisdiction, as provided in the Plan.

d. All applicable measures recommended by the local health officer or the Infection Control PLHCP have been implemented.

e. All employees who enter the room or area housing the individual are provided with, and use, appropriate personal protective equipment and respiratory protection in accordance with subsection (g) and Section 5144, Respiratory Protection of these orders.

EXCEPTIONS to subsection (e)(5)(B):

(1) Where the treating physician determines that transfer would be detrimental to a patient's condition, the patient need not be transferred. In that case the facility shall ensure that employees use respiratory protection when entering the room or area housing the individual. The patient's condition shall be reviewed at least every 24 hours to determine if transfer is safe, and the determination shall be recorded as described in the Plan in accordance with (d)(2)(G). Once transfer is determined to be safe, transfer must be made within the time period set forth in subsection (e)(5)(B).

(2) Where it is not feasible to provide AII rooms or areas to individuals suspected or confirmed to be infected with or carriers of novel or unknown ATPs, the employer shall provide other effective control measures to

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
Cal/OSHA District Office (0950614; 4014)
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Oakland, CA 94612

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Citation and Notification of Penalty

Company Name: Sutter East Bay Hospitals dba ABSMC
Inspection Site: 350 Hawthorne Ave, Oakland, CA 94609

reduce the risk of transmission to employees, which shall include the use of respiratory protection in accordance with subsection (g) and Section 5144, Respiratory Protection of these orders.

Violation:

On and before the Cal/OSHA inspection, in the employer's ICU and CPU, the employer did not ensure AirID suspected cases be placed in an AII room or area or transferred to a facility with AII rooms or areas. Between the period November 15, 2012 and January 15, 2013, the employer placed at least 23 AirID suspected cases in 17 different rooms within the ICU and CPU that were not airborne infection isolation rooms (AII rooms).

Date By Which Violation Must be Abated: 05/20/2013
Proposed Penalty: \$ 70000.00

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
Cal/OSHA District Office (0950614; 4014)
1515 Clay Street, Room 1301
Oakland, CA 94612

Inspection Number: 315320242
Inspection Dates: 11/27/2012 - 05/02/2013
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Citation and Notification of Penalty

Company Name: Sutter East Bay Hospitals dba ABSMC
Inspection Site: 350 Hawthorne Ave, Oakland, CA 94609

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

Title 8 CCR Section 5199. Aerosol Transmissible Diseases.

(e) Engineering and Work Practice Controls, and Personal Protective Equipment.

(5) AirID cases or suspected cases shall be identified, and except in field operations and in settings where home health care or home-based hospice care is being provided, these individuals shall be:

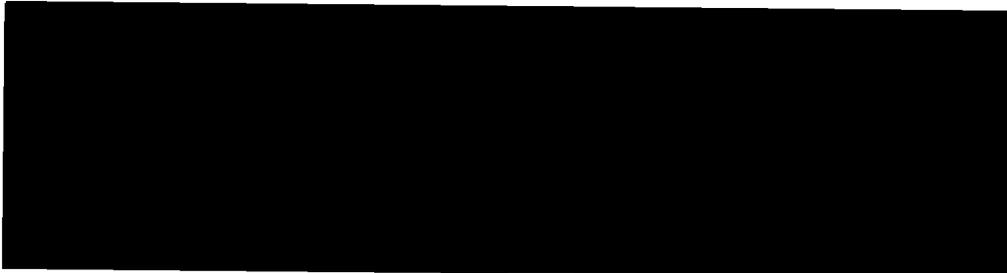
(D) Specific requirements for All rooms and areas.

2. Negative pressure shall be maintained in All rooms or areas. The ventilation rate shall be 12 or more air changes per hour (ACH). The required ventilation rate may be achieved in part by using in-room high efficiency particulate air (HEPA) filtration or other air cleaning technologies, but in no case shall the outdoor air supply ventilation rate be less than six ACH. Hoods, booths, tents and other local exhaust control measures shall comply with Guidelines for Preventing the Transmission of Mycobacterium tuberculosis in Health-Care Settings.

Violation:

On and before the Cal/OSHA inspection, the employer did not ensure AirID suspected cases be placed in an All room or area or transferred to a facility with All rooms or areas. The employer repeatedly placed AirID suspected cases in an All room (Room #4182) that was not maintained at negative pressure and did not have a ventilation rate of 12 or more air changes per hour, with at least six air changes per hour from an outdoor air supply.

Date By Which Violation Must be Abated: 05/20/2013
Proposed Penalty: \$ 70000.00



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
1515 Clay Street, Room 1301, Box 41
Oakland, CA 94612
Telephone: (510) 622-2916

NOTICE OF PROPOSED PENALTIES

Company Name: Sutter East Bay Hospitals dba ABSMC
Inspection Site: 350 Hawthorne Ave, Oakland, CA 94609
Mailing Address: 3232 Elm St, Ste D, Oakland, CA 94609

Issuance Date: 05/10/2013

Reporting ID: 0950614
Index Code: 4014

Summary of Penalties for Inspection Number 315320242

Citation 1, General	= \$ 2970.00
Citation 2, Willful	= \$ 70000.00
Citation 3, Willful	= \$ 70000.00
TOTAL PROPOSED PENALTIES	= \$ 142970.00

Penalties are due within 15 working days of receipt of this notification unless contested. If you are appealing any item of this citation, remittance is still due on all items that are not appealed. Enclosed for your use is a Penalty Remittance Form.

If you are paying electronically: Please have this form on-hand when you are ready to make your payment. The company name, index code, reporting ID and Citation number(s) will be required to ensure that the payment is accurately posted to your account. Please go to www.dir.ca.gov/dosh to access the secure payment processing site.

If you are paying by check: Mail this Notice of Proposed Penalties, the Penalty Remittance Form, along with a copy of the Citation and Notification of Penalty to:

DEPARTMENT OF INDUSTRIAL RELATIONS
CASHIER, ACCOUNTING OFFICE
P. O. BOX 420603
SAN FRANCISCO, CA 94142-0603

CAL/OSHA does not agree to any restrictions, conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions or endorsements do not exist.

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OCCUPATIONAL SAFETY AND HEALTH - CALIFORNIA OSHA
Cashier, Accounting Office
P.O. Box 420603
San Francisco, CA 94142-0603
Phone (415) 703-4291 or (415) 703-4295 FAX (415) 703-3037

PENALTY REMITTANCE FORM

CIVIL PENALTY INFORMATION INSPECTION NUMBER 315320242 REPORTING ID 0950614 INDEX CODE 4014

ESTABLISHMENT NAME Sutter East Bay Hospitals dba ABSMC

CONTACT PERSON _____

PHONE NO. _____

FAX NO. _____

SITE ADDRESS

350 Hawthorne Ave. Oakland

MAILING ADDRESS

3232 Elm St. Ste D. Oakland, CA, 94609

CITATION INFORMATION (Penalties are due within 15 working days of receipt of this notification unless contested. If you are appealing any item of this citation, remittance is still due on all items that are not appealed.)

Payment is for the following Citation Items: (e.g. Citation 1, Items 1-5; Citation 3)

TYPE OF PAYMENT ENCLOSED

CHECK OR MONEY ORDER INFORMATION

CHECK ENCLOSED IN THE AMOUNT OF

\$ _____

MONEY ORDER ENCLOSED IN THE AMOUNT OF

\$ _____

(Please make check or money order payable to CAL/OSHA and mail to the Cashier, Accounting Office, at the above address. Reference the Inspection Number on the "memo" portion of your check or money order.)

Go to www.dir.ca.gov/dosh to access the on-line third party secure payment processing site
OR Complete this section and fax to (415) 703-3037 **CREDIT CARD INFORMATION**

CREDIT CARD NO. _____

EXPIRATION DATE _____

CREDIT

(Visa, MC, Amex, etc.)

SECURITY CODE: _____

(last 3 digits on back of card)

(4 digits on front of Amex card)

NAME OF CARDHOLDER _____

SIGNATURE _____

EMAIL ADDRESS _____

CARDHOLDER PHONE NO. _____

FAX NO. _____

AMOUNT OF PAYMENT \$ _____

FOR OFFICE USE ONLY -----

AUTHORIZATION NO. _____

DATE PROCESSED _____

PROCESSED BY _____

Please call (415) 703-4291 or (415) 703-4295 or complete the information above and fax to (415) 703-3037

Ca/OSHA-2 PRF REV 6/10