BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:	Inspection No. **1296297**
ALLIANCE DIVERSIFIED ENTERPRISES INC **665 OPPER STREET** **ESCONDIDO, CA 92029** **Employer**	**DECISION**

Statement of the Case

Alliance Diversified Enterprises, Inc. (Employer), is an earthwork contractor. On February 15, 2018, the Division of Occupational Safety and Health (the Division), through associate safety engineer Ujitha Perera (Perera), commenced an investigation of a work site located at 915 Grape Street in San Diego, California (the job site).

On July 6, 2018, the Division cited Employer, alleging five violations of California Code of Regulations, title 8[1]: failure to adopt a Code of Safe Practices which relates to its operations; failure to make a thorough survey of the conditions of the site to determine predictable hazards to employees; failure to have telephone numbers for emergency services in the area; failure to protect employees in an excavation from cave-ins by an adequate protective system; and failure to construct sloping and benching systems in accordance with requirements.

Employer filed timely appeals of the citations. For each citation, Employer appealed the existence of the alleged violation. For Citations 2 and 3, it also appealed the classifications of the citations and the reasonableness of the penalties. Additionally, Employer asserted a series of affirmative defenses to each citation.[2]

This matter was heard by Mario L. Grimm, Administrative Law Judge (ALJ) for the Occupational Safety and Health Appeals Board (Appeals Board). The hearing was conducted on December 6 and 7, 2022, February 1 and 2, 2023, and May 17, 2023, from West Covina, California, with the parties and witnesses appearing remotely via the Zoom video platform.

[1] Unless otherwise specified, all references are to sections of California Code of Regulations, title 8.

[2] Except where discussed in this Decision, Employer did not present evidence in support of its affirmative defenses, and said defenses are therefore deemed waived. (*RNR Construction, Inc.,* Cal/OSHA App. 1092600, Denial of Petition for Reconsideration (May 26, 2017).)

Matthew McMillan, attorney with Donnell, Melgoza and Scates, LLP, represented Employer. Kathryn Woods, Staff Counsel, represented the Division. The matter was submitted on September 5, 2025.

Issues

1. Did Employer adopt a Code of Safe Practices which relates to its operations?

2. Did Employer make a thorough survey of the conditions of the site to determine predictable hazards to employees?

3. Did Employer have telephone numbers for emergency services in the area?

4. Did Employer protect employees working in an excavation from cave-ins by an adequate protective system?

5. Did Employer construct sloping and benching systems in accordance with requirements?

6. Did the Division establish a rebuttable presumption of a Serious violation for Citation 2?

7. Did Employer rebut the presumption of a Serious violation for Citation 2?

8. Was the failure to adopt a Code of Safe Practices which relates to Employer's operations properly classified as a Repeat violation?

9. Is the proposed penalty for Citation 2 calculated in accordance with the penalty-setting regulations?

Findings of Fact

1. Employer kept its Code of Safe Practices at the job site.

2. The Code of Safe Practices did not relate to excavation operations.

3. Employer's survey of the conditions of the site did not include hazards from excavation and lagging operations, such as surcharge loads, vibration due to heavy traffic, and space for operating the excavator.

4. Employer used 9-1-1 as a communication system for obtaining emergency medical services.

5. The soil in the excavation at the job site was Type B soil.

6. The slope of the excavation was greater than one-to-one (45 degrees) when Perera arrived for the inspection.

7. The hazard presented by the lack of an adequate protective system was engulfment.

8. Engulfment could have resulted in death.

9. A reasonable employer would have performed a thorough survey of the conditions at the job site, ensured sufficient space to operate the excavator, and not operated the excavator on top of the spoils pile.

10. More than 50 percent of the excavations at the job site were in violation.

11. Employer corrected the violation in Citation 2 while Perera was present for the inspection.

12. Employer had between 40 and 50 employees at the time of the inspection.

13. Employer did not have a history of Serious, Repeat, or Willful violations within the three years prior to the issuance of Citation 2.

Analysis

1. Did Employer adopt a Code of Safe Practices which relates to its operations?

Section 1509, subdivision (b), requires employers engaged in construction work to adopt a Code of Safe Practices that relates to the employer's operations:

> Every employer shall adopt a written Code of Safe Practices which relates to the employer's operations. The Code shall contain language equivalent to the relevant parts of Plate A-3 of the Appendix.

In turn, Plate A-3 contains the following parenthetical: "(This is a suggested code. It is general in nature and intended as a basis for preparation by the contractor of a code that fits his/her operations more exactly.)" It then lists 42 general safety rules that would apply to a majority of

construction sites. Following those rules are eleven rules relating to the specific area of blasting operations and eleven rules relating to roofing operations.

Citation 1, Item 1, alleges:

> Prior to and during the course of the investigation, including, but not limited to, on February 15, 2018, the employer did not adopt a written Code of Safe Practices, addressing the specific Hazards associated with excavation operations at time of inspection as required by this subsection.
>
> Employer was previously cited for a violation of this occupational safety and health standard or its equivalent standard CCR T8 1509(b), which was contain in OSHA inspection number 1117826, citation number 1, item number 2 and was affirmed as a final order on 3/24/2016, with respect to a workplace located at 1410 N. Tanager Way, Los Angeles, CA 90069.

The Division bears the burden of proving a violation by a preponderance of the evidence. (*Howard J. White, Inc*., Cal/OSHA App. 78-741, Decision After Reconsideration (Jun. 16, 1983).) "Preponderance of the evidence" is usually defined in terms of probability of truth, or of evidence that when weighed with that opposed to it, has more convincing force and greater probability of truth with consideration of both direct and circumstantial evidence and all reasonable inferences to be drawn from both kinds of evidence. (*Nolte Sheet Metal, Inc*., Cal/OSHA App. 14-2777, Decision After Reconsideration (Oct. 7, 2016).)

Here, Perera inspected the job site on February 15, 2018. There is no dispute that Employer was performing excavation operations at the job site.

Perera testified that he spoke with Foreman Karl Steinwachs (Steinwachs). Perera further testified that he asked to see Employer's Code of Safe Practices, and that Steinwachs showed him the documents photographed in Exhibits 17 and 18. Exhibit 17 is titled Code of Safe Practices and contains general housekeeping rules. It does not discuss excavation operations or hazards associated with excavation operations. (Ex. 17.) With regard to Exhibit 18, although it addresses excavation operations, it does not cover other topics. Exhibit 18 is a document for a "tailgate/toolbox safety meeting," not a Code of Safe Practices. Thus, Employer's Code of Safe Practices did not relate to its operations in the manner required by the safety order, including Plate A-3.

Despite Exhibit 17 being presented at the job site, Employer argues that Exhibit P is its Code of Safe Practices. This argument is not persuasive. First, Exhibit P was not admitted or offered into evidence. Therefore, it is not part of the fact-finding record. Second, even if Exhibit P were in evidence, the document itself suggests a strong reason to conclude it was not in effect at the job site: Exhibit P contains an acknowledgement form to be signed by employees, yet there

is no evidence that any of the employees at the job site signed the acknowledgment form. Third, to adopt is to establish, use, practice or accept.[3] The fact that Exhibit 17 was at the job site indicates that it was the Code of Safe Practices that was established and in use, and therefore adopted by Employer. Fourth, employers must keep the Code of Safe Practices at the work site, and the record does not indicate Exhibit P was kept at the job site. (§ 1509, subd. (c).) Fifth, it took approximately three months for Employer to provide the Division with a purported Code of Safe Practices that relates to excavation operations. (See Exs. 8 and S.) This delay supports an inference that Employer did not have, at the time of inspection, a Code of Safe Practices that related to the excavation operations performed at the job site. For these reasons, Employer's argument that Exhibit 17 was not its Code of Safe Practices is not persuasive.

Estoppel

Employer also argues that the Division is estopped from contending its Code of Safe Practices is deficient. Employer did not meet its burden of establishing its affirmative defense by a preponderance of the evidence.

> The essence of an estoppel is that one has, by false statements or conduct, led another to do that which he would not otherwise have done and as a result the other has suffered injury. [Citation.] The elements of an estoppel claim are: '(1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury.' [Citation.] Where the defendant is a government entity, a fifth element requires that the injury to the plaintiff's personal interest if the government is not estopped outweighs the injury to the public interest if the government is estopped. [Citation.]

(*Golden Day Schools, Inc. v. Department of Education* (1999) 69 Cal.App.4th 681, 692–693.) Moreover, simple reliance on a false statement or conduct is not enough. In order to invoke the doctrine of equitable estoppel, the reliance must be reasonable. (*Morrison v. California Horse Racing Bd.* (1988) 205 Cal.App.3d 211, 218.) "Whether reliance on a false statement or conduct is reasonable is a question of fact." (*Brown v. Chiang*, (2011) 198 Cal. App. 4th 1203, 1229.) The courts will not apply estoppel to a public agency, such as the Division, "if the result will be the frustration of a strong public policy." (*Phelps v. State Water Resources Control Bd.* (2007) 157 Cal.App.4th 89, 115).) Where the elements of estoppel are met, the Board will then weigh the equities and consider the impact on the public policy of ensuring workplace health and safety in granting an estoppel defense in a given case. (*Owens-Illinois Glass Container Inc.*, Cal/OSHA App. 09-2021, Decision After Reconsideration (June 16, 2014).)

[3] https://www.merriam-webster.com/dictionary/adopt <accessed September 26, 2025>

Employer bases its estoppel argument on the facts that the Division issued an annual permit to Employer and that one of the requirements for an annual permit is submission of the Code of Safe Practices. This argument is not persuasive. First, although Employer asserts it relied on the issuance of the annual permit, Employer did not submit any evidence of reliance or any evidence that such reliance is reasonable. Second, the evidence does not establish that the Division received and approved Exhibit 17 as part of issuing the annual permit. Indeed, Employer's argument that Exhibit P is its Code of Safe Practices supports a conclusion that Employer did not submit Exhibit 17, which is its actual Code of Safe Practices (see discussion above). Third, the Appeals Board, not the Division, must determine the legal sufficiency of the Code of Safe Practices. The estoppel cases cited by Employer relate to disputed facts. Employer has not cited authority indicating that a mistake by the Division in assessing the legal sufficiency of a document would bind the Appeals Board in reviewing the legal sufficiency of a document. For these reasons, the estoppel argument is not availing.

Accordingly, Citation 1, Item 1, is affirmed.

2. Did Employer make a thorough survey of the conditions of the site to determine predictable hazards to employees?

Section 1511, subdivision (b), requires employers to survey the conditions of a work site prior to the presence of their employees:

> Prior to the presence of its employees, the employer shall make a thorough survey of the conditions of the site to determine, so far as practicable, the predictable hazards to employees and the kind and extent of safeguards necessary to prosecute the work in a safe manner in accordance with the relevant parts of Plate A-2-a and b of the Appendix.

Plates A-2-a and A-2-b of the Appendix state:

> Each operation of a construction job should be planned in advance. Such planning is needed at all stages of the project. It should start with the estimators, prior to preparations of bids, and continue throughout the job, with superintendents and foremen doing their share. Construction planning will eliminate some accidents automatically, by creating a well-organized job. But expert planning gives special attention to safety, and thus is highly effective in making the operation safe and efficient.

The plates then outline general operational and safety topics that would apply to a majority of construction sites.

Citation 1, Item 2, alleges:

> Prior to and during the course of the investigation, including, but not limited to, on February 15, 2018, the employer did not make a thorough survey of the conditions of the work site to determine predictable hazards to employees and the kind and extent of safeguards necessary to prosecute the work in a safe manner in accordance with this subsection.

The Appeals Board has held that the inquiry is to ask whether an employer's actions to discover and address the workplace's hazards were an exercise of reasonable diligence. (*Security Paving, Inc.*, Cal/OSHA App. 13-0771, Denial of Petition for Reconsideration (Dec. 31, 2014).)

Here, the evidence consists of testimony and documentation. Perera testified that Steinwachs told him that Employer did not perform hazard identification with respect to the excavation and the lagging operations. (Hearing Record (hereinafter "H.R."), 12/7/22, at 00:22:27-00:24:01.) Steinwachs's statement carries substantial weight because he was the Foreman at the site and should be aware of the hazards at the site. Moreover, as discussed below (*infra*, § 4), the record does not indicate that Employer identified or planned for various hazards, such as operating the excavator on top of the spoils pile (surcharge loads), operating the excavator without sufficient space, and vibrations due to heavy traffic (trains and automobiles).

Employer contends that Exhibits O and T show that it performed a thorough survey in accordance with the cited safety order. With regard to Exhibit T, it is a report prepared by someone other than Employer regarding soil testing performed approximately three years before Employer worked at the site. Thus, the mere existence of the document does not support an inference that Employer performed a survey of the job site. Moreover, the evidence does not indicate that Employer reviewed and relied upon Exhibit T in evaluating the hazards to its employees. To the contrary, Exhibit T identifies hazards and conditions that Employer did not eliminate or mitigate. For instance, Exhibit T states that its data is "based on the assumption that no surcharge loading or equipment is present within 10 feet of the top of slope." (Ex. T, p. 31 (internal pagination at 25).) At the work site, there was surcharge loading and equipment within 10 feet of the top of the slope because the excavator was on top of the spoils pile. (Exs. B, D, F.) Thus, it appears that Employer did not review the hazards highlighted by Exhibit T.

For its part, Exhibit O shows that Employer performed regular inspections of the site. But these inspections are not the advance planning referenced in the safety order. These inspections are ongoing inspections once the work is underway and continuing. Moreover, although Exhibit

O covers some topics such as housekeeping and personal protective equipment, it is not "thorough" as referenced in the safety order.

In sum, Employer did not perform a survey that was thorough. Accordingly, Citation 1, Item 2, is affirmed.

3. Did Employer have telephone numbers for emergency services in the area?

Section 1512, subdivision (e), requires employers to provide for obtaining emergency medical services:

> Provision for Obtaining Emergency Medical Services. Proper equipment for the prompt transportation of the injured or ill person to a physician or hospital where emergency care is provided, or an effective communication system for contacting hospitals or other emergency medical facilities, physicians, ambulance and fire services, shall be provided. The telephone numbers of the following emergency services in the area shall be posted near the job telephone, telephone switchboard, or otherwise made available to the employees where no job site telephone exists.
>
> (1) A physician and at least one alternate if available.
> (2) Hospitals.
> (3) Ambulance services.
> (4) Fire-protection services

Citation 1, Item 3, alleges:

> Prior to and during the course of the investigation, including, but not limited to, on February 15, 2018, the employer did not have telephone numbers of emergency services in the area as required by this subsection posted or otherwise made available to the employees.

The safety order requires employers at construction projects to have either equipment for the prompt transportation of injured employees or a communication system for contacting hospitals or other emergency medical facilities, physicians, ambulance and fire services.

Here, Perera testified that at the time of the inspection Steinwachs said he uses 9-1-1 when there is an emergency. During his own testimony, Steinwachs confirmed that he uses 9-1-1. Office Manager Nancy Lund testified that Employer provides foremen with a telephone number for a triage nurse.

The Division contends that using 9-1-1 does not satisfy the safety order. In the Division's view, the safety order requires four telephone numbers, i.e., one each for a physician, a hospital, an ambulance service, and a fire protection service.

Employer argues that it satisfied the safety order by providing the telephone number for a triage nurse. Employer also argues that the safety order was created before the advent of reliable cellular phones.

Although the cited safety order does not reference 9-1-1, other safety orders in title 8 do reference 9-1-1. Section 3400, subdivision (f), requires employers to make provision for prompt medical treatment. That safety order specifies acceptable methods for compliance. One compliant method identified in that safety order is "a communication system for contacting a doctor or emergency medical service, such as access to 911 or equivalent telephone system." (§ 3400, subd. (f)(1).) Thus, title 8 recognizes 9-1-1 as an effective provision for obtaining prompt medical treatment. Additionally, section 3400 also explicitly approves an employer having "proper equipment for prompt medical transport" as a method of compliance. (*Id.*) This is significant because these two methods for complying with section 3400 are the two alternative requirements of section 1512, subdivision (e). The similarity in the plain language of the safety orders supports an inference that a method which satisfies one safety order will also satisfy the other safety order. It follows that because 9-1-1 is a satisfactory communication system for section 3400, it is also a satisfactory communication system for section 1512.

In sum, it is found that Employer used 9-1-1 as a communication system for contacting emergency services. This communication system satisfies section 1512, subdivision (e). Accordingly, Citation 1, Item 3, is vacated.

4. Did Employer protect employees working in an excavation from cave-ins by an adequate protective system?

Section 1541.1, subdivision (a), requires protection of employees while working in excavations:

> (1) Each employee in an excavation shall be protected from cave-ins by an adequate protective system designed in accordance with Section 1541.1(b) or (c) except when:
>
> (A) Excavations are made entirely in stable rock; or
>
> (B) Excavations are less than 5 feet in depth and examination of the ground by a competent person provides no indication of a potential cave-in.

The cited safety order references subdivisions (b) and (c) as providing the acceptable options for a protective system. There is no dispute that Employer did not use a support system or shield system pursuant to subdivision (c). Therefore, the issue is whether a sloping or benching system was used in accordance with subdivision (b).

The protective systems authorized by subdivision (b) of section 1541.1, relate to sloping and benching systems as follows:

> Design of sloping and benching systems. The slopes and configurations of sloping and benching systems shall be selected and constructed by the employer or his designee and shall be in accordance with the requirements of Section 1541.1(b)(1), Section 1541.1(b)(2), Section 1541.1(b)(3), or Section 1541.1(b)(4), as follows:
>
> (1) Option (1) - Allowable configurations and slopes.
> (A) Excavations shall be sloped at an angle not steeper than one and one-half horizontal to one vertical (34 degrees measured from the horizontal), unless the employer uses one of the other options listed below.
> (B) Slopes specified in Section 1541.1(b)(1)(A) shall be excavated to form configurations that are in accordance with the slopes shown for Type C soil in Appendix B to this article
>
> (2) Option (2) - Determination of slopes and configurations using Appendices A and B. Maximum allowable slopes, and allowable configurations for sloping and benching systems, shall be determined in accordance with the conditions and requirements set forth in Appendices A and B to this article.
>
> (3) Option (3) - Designs using other tabulated data.
> (A) Designs of sloping or benching systems shall be selected from and be in accordance with tabulated data, such as tables and charts.
> (B) The tabulated data shall be in written form and shall include all of the following:
> 1. Identification of the parameters that affect the selection of a sloping or benching system drawn from such data;
> 2. Identification of the limits of use of the data, to include the magnitude and configuration of slopes determined to be safe;
> 3. Explanatory information as may be necessary to aid the user in making a correct selection of a protective system from the data.
> 4. At least one copy of the tabulated data which identifies the registered professional engineer who approved the data, shall be maintained at the

jobsite during construction of the protective system. After that time the data may be stored off the jobsite, but a copy of the data shall be made available to the Division upon request.

(4) Option (4) - Design by a registered professional engineer.

(A) Sloping and benching systems not utilizing Option (1) or Option (2) or Option (3) under Section 1541.1(b) shall be stamped and signed by a registered professional engineer.

(B) Designs shall be in written form and shall include at least the following:

1. The magnitude of the slopes that were determined to be safe for the particular project;

2. The configurations that were determined to be safe for the particular project;

3. The identity of the registered professional engineer approving the design.

(C) At least one copy of the design shall be maintained at the jobsite while the slope is being constructed. After that time the design need not be at the jobsite, but a copy shall be made available to the Division upon request.

Citation 2 alleges:

Prior to and during the course of the inspection, including, but not limited to, on February 15, 2018, the employer failed to ensure each employee in an excavation were protected from cave-ins by adequate protective system designed as required by this subsection.

Here, Employer argues it complied with all four options provided in subdivision (b).

Option 1

Option 1 requires excavations to be sloped at "an angle not steeper than one and one-half horizontal to one vertical (34 degrees measured from the horizontal)." (§ 1541.1, subd. (b)(1)(A).)

The parties presented conflicting evidence regarding the slope here. Perera testified that during his inspection he observed the slope visually and discussed it with Steinwachs. According to Perera, the slope was greater than 45 degrees, and in some portions was approximately 65 to 70 degrees. Perera further testified that Steinwachs corrected the slope during the inspection. Exhibit O is Employer's work log, which was completed by Steinwachs. The work log corroborates Perera's testimony regarding the slope on the day of the inspection. For the day of

the inspection, the log states: "Fix stockpile for OSHA." (Ex. O, p. 13.) Exhibit 9 is Employer's response to the Form 1BY. The response states: "[W]e made the encouraged changes . . . ." (Ex. 9.)

Steinwachs testified at hearing that the slope was approximately 1.5 to 1 (horizontal to vertical), which is approximately 34 degrees. Additionally, he testified that he did not decrease the slope in response to Perera's observations, but merely "brushed it" and "made it look pretty." Steinwachs further testified that a soils deputy was present each day and could observe the slope. Steinwachs could not remember the name of the soils deputy or the soils deputy's employer.

Michael Zolinski (Zolinski), one of Employer's Superintendents, testified that a soils engineer was present each day. Zolinski further testified that the soils engineer was from Leighton and Associates (Leighton), the engineering firm that prepared Exhibit T. Zolinski was not present at the site on the day of the inspection and did not identify any dates when he was present at the job site.

In weighing the evidence, the work log and the response to the Form 1BY contain strong indicators of reliability. The work log was contemporaneous to the inspection and the work performed. It states plainly that corrective action was taken in response to Perera's input. It does not dispute that a problem existed or indicate that Steinwachs performed merely cosmetic adjustments. Moreover, the work log uses similar phrasing on other days when Perera was not present: "[F]ix stockpile on east side of project." (Ex. O, p. 13.) With respect to the response to the Form 1BY, it is a plain statement that changes were made to the slope. It is a written document that Employer had time to prepare, investigate, and consider prior to issuance. Therefore, the work log and the response to the Form 1BY receive great weight.

Steinwachs' hearing testimony is much less reliable than the documentary evidence. On direct examination, many of the questions asked of Steinwachs were leading. Thus, Steinwachs was not responding to open-ended questions that would require him to rely solely on his own ability to recall what had occurred. On cross examination, Steinwachs often looked to Employer's counsel before answering. In one instance, counsel muttered an answer to Steinwachs and was instructed not to provide answers to the witness. (H.R., 5/17/23, at 02:20:34-02:20:58.) Finally, Steinwachs did not explain why his testimony (of cosmetic changes) contradicts the fixes and changes documented in the work log and the response to the Form 1BY. Thus, Steinwachs' testimony receives much less weight.

Employer's argument that a soils deputy (or engineer) visited the site daily and would have notified Employer of any problems is not persuasive. The evidence does not identify such person, and there is no documentation to substantiate the claim—e.g., contract, invoices, logs, reports, communications, business cards, etc. (Evid. Code § 412.) The only documentation of the

involvement of Leighton is the report prepared more than two years before the job. (Ex. T.) Thus, it is found that neither Leighton nor any other soils deputy (or engineer) was present for daily inspections of the slope of the excavation.

By contrast, Perera was a credible witness. He testified for more than four days, often having to repeat explanations. He maintained an overwhelmingly cooperative demeanor and was not evasive in his testimony. Moreover, the work log and the response to the 1BY corroborate Perera's testimony that corrections were made to the slope. Despite the corroboration of his testimony, Employer contends that Perera's testimony was not credible. In particular, Employer argued at hearing that Perera falsely referred to himself as a licensed professional engineer, and its brief cites the Business and Professions Code regarding who may use professional engineering titles. However, beginning with his direct examination, Perera drew a distinction between licensed and unlicensed engineers. Throughout his testimony he consistently described himself as an unlicensed engineer. This issue strengthens Perera's credibility.

The weight of the evidence establishes that the slope of the excavation exceeded 45 degrees when Perera arrived. Thus, the excavation was not in compliance with Option 1 because it was steeper than one and one-half horizontal to one vertical (34 degrees measured from the horizontal).

Option 2

Option 2 authorizes various slopes and configurations in accordance with Appendices A and B. Appendix A classifies soil into three categories. Appendix B provides the acceptable slopes and configurations based on the soil types defined in Appendix A.

Subdivision (b) of Appendix A of section 1541.1 defines three types of soil:

> Type A soil. Cohesive soils with an unconfined, compressive strength of 1.5 ton per square foot (tsf) or greater. Examples of cohesive soils are: clay, silty clay, sandy clay, clay loam and, in some cases, silty clay loam and sandy clay loam. Cemented soils such as caliche and hardpan are also considered Type A. However, no soil is Type A if:
>
> (1) The soil is fissured; or
>
> (2) The soil is subject to vibration from heavy traffic, pile driving, or similar effects; or
>
> (3) The soil has been previously disturbed; or
>
> (4) The soil is part of a sloped, layered system where the layers dip into the excavation on a slope of four horizontal to one vertical (4H:1V) or greater; or

(5) The material is subject to other factors that would require it to be classified as a less stable material.

Type B soil:

(1) Cohesive soil with an unconfined compressive strength greater than 0.5 tsf but less than 1.5 tsf; or

(2) Granular cohesionless soils including: angular gravel (similar to crushed rock), silt, silt loam, sandy loam and, in some cases, silty clay loam and sandy clay loam.

(3) Previously disturbed soils except those which would otherwise be classed as Type C soil.

(4) Soil that meets the unconfined compressive strength or cementation requirements for Type A, but is fissured or subject to vibration; or

(5) Dry rock that is not stable; or

(6) Material that is part of a sloped, layered system where the layers dip into the excavation on a slope less steep than four horizontal to one vertical (4H:1V), but only if the material would otherwise be classified as Type B.

Type C soil:

(1) Cohesive soil with an unconfined compressive strength of 0.5 tsf or less; or

(2) Granular soils including gravel, sand, and loamy sand; or

(3) Submerged soil or soil from which water is freely seeping; or

(4) Submerged rock that is not stable, or

(5) Material in a sloped, layered system where the layers dip into the excavation or a slope of four horizontal to one vertical (4H:1V) or steeper.

Subdivision (c)(4) of Appendix B requires sloping systems to be in accordance with Figure B-1. Figure B-1 provides:

Soil or rock type	Maximum allowable slopes (h:v) for excavations less than 20 feet deep
Stable rock	Vertical (90 deg.)
Type A	3/4:1 (53 deg.)
Type B	1:1 (45 deg.)
Type C	1 1/2:1 (34 deg.)

Here, Perera testified that he examined the soil while at the work site. According to Perera, he observed the soil visually. He also picked up soil in his hand and rolled it in his

fingers. Perera concluded that the soil was Type C. Perera further testified that he asked Steinwachs about the soil type, and Steinwachs stated the soil was Type B/C.

Perera further testified that train tracks ran along the east side of the job site and automobile lanes ran along the north side of the job site. He further testified that trains and automobiles passed by while he was present at the job site. Perera testified that passing trains and automobiles subject the soil to vibrations that increase the chance of a cave-in. Perera further testified that the excavator on the spoils pile subjects the slope to vibrations that increase the chance of a cave-in.

Employer contends the soil was likely Type A, but Type B at worst.

Here, several important facts disqualify the soil from being Type A. First, the slope was made from the pile of spoils from the excavation. The slope being a pile of spoils means the soil was previously disturbed soil. Previously disturbed soil disqualifies the soil from being Type A. (§ 1541.1, Appendix A, subd (b).) Moreover, the excavator and the passing trains and automobiles subject the soil to heavy vibrations. These vibrations disqualify the soil from being Type A. (*Id.*)

Although Exhibit T contains detailed soil testing results, these results receive limited weight on the issue of the soil type at the time of the inspection. The report itself emphasizes that soil conditions can change over time and that Leighton must be present to observe the soil to determine whether it has changed. Here, the excavation and the inspection occurred more than two years after the testing documented in Exhibit T. Moreover, it is found that Leighton was not present to monitor the soil type.

With respect to Perera's evaluation of the soil type, it is important that he was willing to accept Steinwachs' assessment that the soil was Type B/C. Title 8 does not recognize Type B/C. Thus, it is inferred that Perera was willing to accept that the soil was Type B. Because the Division was willing to accept the soil as Type B, and because Type A is excluded, it is found that the soil was Type B.

Because the soil was Type B, the slope was required to be no greater than 45 degrees. (§ 1541.1, Appendix B, Table B-1.) The slope exceeded 45 degrees when Perera arrived. Thus, the excavation was not in compliance with Option 2.

Option 3

Option 3 authorizes sloping or benching systems selected from and in accordance with tabulated data, such as tables and charts, which has been approved by a registered professional engineer.

Here, Employer asserts it complied with tabulated data in Exhibit T. Employer does not cite the relevant pages of Exhibit T, nor does it identify the data contained therein.

Importantly, Exhibit T explicitly states that its data is "based on the assumption that no surcharge loading or equipment is present within 10 feet of the top of slope." (p. 31 (internal pagination at 25).) At the work site, there was surcharge loading and equipment within 10 feet of the top of the slope because the excavator was on top of the spoils pile. (Exs. B, D, F.) Moreover, Exhibit T explicitly states its limitations: "Changes in subsurface conditions can and do occur over time. Therefore, the findings, conclusions, and recommendations presented in this report can be relied upon only if Leighton has the opportunity to observe the subsurface conditions during grading and construction of the project, in order to confirm that our preliminary findings are representative for the site." (p. 44 (internal pagination at 38).) As discussed above, it is found that Leighton was not present. Because Employer was not in compliance with the parameters of Exhibit T, Employer was not in compliance with Option 3.

Option 4

Option 4 authorizes sloping or benching systems that are stamped and signed by a registered professional engineer.

Here, Employer asserts it followed the stamped and signed design of a registered professional engineer. Employer does not cite the relevant page of Exhibit T and does not identify the specifications it followed.

Importantly, Exhibit T explicitly states that its data is "based on the assumption that no surcharge loading or equipment is present within 10 feet of the top of slope." (p. 31 (internal pagination at 25).) At the work site, there was surcharge loading and equipment within 10 feet of the top of the slope because the excavator was on top of the spoils pile. (Exs. B, D, F.) Moreover, Exhibit T explicitly states its limitations: "Changes in subsurface conditions can and do occur over time. Therefore, the findings, conclusions, and recommendations presented in this report can be relied upon only if Leighton has the opportunity to observe the subsurface conditions during grading and construction of the project, in order to confirm that our preliminary findings are representative for the site." (p. 44 (internal pagination at 38).) As discussed above, it is found

that Leighton was not present. Because Employer was not in compliance with the parameters of Exhibit T, Employer was not in compliance with Option 4.

In sum, Employer was not in compliance with any of the four options provided by section 1541.1, subdivision (a). Accordingly, the evidence establishes the violation in Citation 2.

5. Did Employer construct sloping and benching systems in accordance with requirements?

Citation 3 cites Employer for a violation of section 1541.1, subdivision (b). As discussed in the context of Citation 2, subdivision (b) of section 1541.1 provides requirements for sloping and benching systems in excavations.

Citation 3 alleges:

> Prior to and during the course of the inspection, including, but not limited to, on February 15, 2018, the employer failed to select and construct slopes and configurations of sloping and benching systems in accordance with the requirements of this subsection.

The Appeals Board may set aside a violation if it is substantially identical or duplicative of another violation and is not needed to effectuate abatement. (*Adia Personnel Services*, Cal/OSHA App. 90-1015, Decision After Reconsideration (Mar. 12, 1992).)

Here, Citation 3 cites Employer for the same lack of cave-in protection that was cited in Citation 2. On their face, the two citations allege violations of different subdivisions of section 1541.1. Citation 2 cites subdivision (a), while Citation 3 cites subdivision (b). However, the Appeals Board has already identified the "interdependence" of these two subdivisions. (*PCL Civil Constructors, Inc.*, *supra*, Cal/OSHA App. 93-2373.) The Appeals Board has established that subdivision (a) of section 1541.1 incorporates subdivision (b). (*PCL Civil Constructors, Inc.*, Cal/OSHA App. 93-2373, Decision After Reconsideration (Mar. 4, 1999).) Subdivision (a) establishes a general requirement to protect employees working in an excavation, while subdivision (b) specifies acceptable protection methods.

The present case exhibits the "interdependence" between subdivision (a) and subdivision (b). The analysis of Citation 2 relies upon determining whether Employer complied with subdivision (b) even though Citation 2 alleges a violation of subdivision (a). (*Supra*, § 4.) Thus, both Citation 2 and Citation 3 depend on whether Employer complied with subdivision (b) of section 1541.1.

The parties did not address whether the two citations require distinct abatements. Since both citations depend on whether Employer complied with subdivision (b), then abatement to comply with subdivision (b) would abate both citations.

In sum, Citation 3 is duplicative of Citation 2 and is not needed to effectuate abatement, which warrants setting aside Citation 3. (*Adia Personnel Services*, *supra*, Cal/OSHA App. 90-1015.) Accordingly, Citation 3 is vacated.

6. Did the Division establish a rebuttable presumption of a Serious violation for Citation 2?

Labor Code section 6432, subdivision (a), defines a Serious violation as follows:

> There shall be a rebuttable presumption that a "serious violation" exists in a place of employment if the division demonstrates that there is a realistic possibility that death or serious physical harm could result from the actual hazard created by the violation. The demonstration of a violation by the division is not sufficient by itself to establish that the violation is serious. The actual hazard may consist of, among other things:
>
> (1) A serious exposure exceeding an established permissible exposure limit.
> (2) The existence in the place of employment of one or more unsafe or unhealthful practices, means, methods, operations, or processes that have been adopted or are in use.

With respect to the term "realistic possibility," the Appeals Board has defined it to mean a prediction that is within the bounds of human reason, not pure speculation. (*A. Teichert & Son, Inc. dba Teichert Aggregates*, Cal/OSHA App. 11-1895, Decision After Reconsideration (Aug. 21, 2015), citing *Janco Corporation*, Cal/OSHA App. 99-565, Decision After Reconsideration (Sep. 27, 2001).)

"Serious physical harm" is any injury or illness occurring in the place of employment that results in:

> (1) Inpatient hospitalization for purposes other than medical observation.
> (2) The loss of any member of the body.
> (3) Any serious degree of permanent disfigurement.
> (4) Impairment sufficient to cause a part of the body or the function of an organ to become permanently and significantly reduced in efficiency on or off the job, including, but not limited to, depending on the severity, second-degree or

worse burns, crushing injuries including internal injuries even though skin surface may be intact, respiratory illnesses, or broken bones.

(Lab. Code § 6432, subd. (e).)

The violation in Citation 2 is the failure to have adequate protection against cave-ins for employees working in excavations. Perera testified that the hazard created by the violation is engulfment. (H.R., 12/7/22, at 02:23:15-02:23:49.) Perera further testified that engulfment can result in death. (*Id*.) Employer did not dispute that the hazard created by the violation is engulfment, or that engulfment can result in death. Thus, it is found that there was a realistic possibility that death could have resulted from the failure to have adequate protection against cave-ins. Accordingly, the Division established a rebuttable presumption that Citation 2 is a Serious violation.

7. Did Employer rebut the presumption of a Serious violation for Citation 2?

Labor Code section 6432, subdivision (c), provides that an employer may rebut the presumption that a Serious violation exists by "demonstrating that the employer did not know and could not, with the exercise of reasonable diligence, have known of the presence of the violation." In order to satisfactorily rebut the presumption, the employer must demonstrate both:

(1) The employer took all the steps a reasonable and responsible employer in like circumstances should be expected to take, before the violation occurred, to anticipate and prevent the violation, taking into consideration the severity of the harm that could be expected to occur and the likelihood of that harm occurring in connection with the work activity during which the violation occurred. Factors relevant to this determination include, but are not limited to, those listed in subdivision (b) [; and]

(2) The employer took effective action to eliminate employee exposure to the hazard created by the violation as soon as the violation was discovered.

(Lab. Code, § 6432, subd. (c).)

Labor Code section 6432, subdivision (b), provides that the following factors may be taken into account: (i) Training for employees and supervisors relevant to preventing employee exposure to the hazard or to similar hazards; (ii) Procedures for discovering, controlling access to, and correcting the hazard or similar hazards; (iii) Supervision of employees exposed or potentially exposed to the hazard; and (iv) Procedures for communicating to employees about the employer's health and safety rules and programs.

An employer bears the burden of rebutting the presumption established by the Division as to a Serious violation. (*Kaiser Steel Corporation*, Cal/OSHA App. 75-1135, Decision After Reconsideration (Jun. 21, 1982).) The knowledge of its foreman is attributable to the employer. (*Dick Miller, Inc.*, Cal/OSHA App. 13-0578, Denial of Petition for Reconsideration (Mar. 5, 2014).)

The violation in Citation 2 is the failure to have adequate protection against cave-ins for employees working in excavations. The actual hazard created by the violation was exposing employees to engulfment from a cave-in.

Severity of the harm

As discussed above, it is found that the potential harm from a cave-in includes death. Thus, the potential harm from the violation is severe.

Likelihood of the harm

As discussed above, it is found that there was a realistic possibility of death. The parties did not present additional evidence regarding the likelihood of harm.

Reasonable steps to anticipate and prevent the violation

In light of the severity and the likelihood of harm here, an employer should be expected to take immediate action to anticipate and prevent the violation. These steps include site surveys, planning to ensure sufficient space for operating an excavator, not operating an excavator on top of a spoils pile, and immediately removing any employees working in the excavation.

Employer's actions

Employer did not have a plan to effect a compliant slope in light of the constraints of the job site. Steinwachs told Perera that he did not have enough room to slope the excavation. Thus, although Employer took some action to slope the excavation prior to the inspection, the efforts were limited by the amount of space Steinwachs had to operate the excavator.

Steinwachs was the foreman. He knew or should have known the soil type and the slope of the excavation. Indeed, he did know the soil type and informed Perera that it was Type B/C. His knowledge and actions are attributable to Employer. (*Dick Miller, Inc.*, *supra*, Cal/OSHA App. 13-0578.) Therefore, Employer did not take all the steps a reasonable and responsible employer in like circumstances should be expected to take to anticipate and prevent the violation.

Accordingly, Employer did not rebut the presumption that Citation 2 is properly classified as a Serious violation.

8. Was the failure to adopt a Code of Safe Practices which relates to Employer's operations properly classified as a Repeat violation?

The Division classified Citation 1, Item 1, as a Repeat violation. Section 334, subdivision (b), defines a Repeat violation as follows:

> Repeat Violation - is a violation where the employer has abated or indicated abatement of an earlier violation occurring within the state for which a citation was issued, and upon a later inspection, the Division finds a violation of a substantially similar regulatory requirement and issues a citation within a period of five years immediately following the latest of: (1) the date of the final order affirming the existence of the previous violation cited in the underlying citation; or (2) the date on which the underlying citation became final by operation of law. For violations other than those classified as repeat regulatory, the subsequent violation must involve essentially similar conditions or hazards

The Repeat classification of Citation 1, Item 1, is premised on prior citations issued pursuant to the Division's inspection number 1117826. (Ex. 4.) Citation 1, Item 2, of the prior inspection cited section 1509, subdivision (b), requiring employers to have a written Code of Safe Practices which relates to their operations. Employer indicated abatement of that citation on March 28, 2016. (Ex. 5.)

Perera testified that Employer did not appeal Citation 1, Item 2, of inspection number 1117826. Employer did not offer evidence to contradict Perera's testimony. The lack of evidence from Employer is significant because it would have knowledge and possession of any appeal documents for the citation. (Evid. Code § 412.) Thus, it is found that Employer did not appeal Citation 1, Item 2, of inspection number 1117826.

Although the abatement form establishes that Employer had received the citation by March 28, 2016, the evidence does not establish the exact date that Employer received the citation. However, the citation was issued on March 11, 2016. Therefore, the citation became final by operation of law on April 1, 2016, or later. (§ 359, subd. (d); Lab. Code § 6601.) The present citation was issued on July 6, 2018. Therefore, it was issued within a period of five years following the date on which the underlying citation became final by operation of law.

Accordingly, Citation 1, Item 1, is properly classified as a Repeat violation.

9. Is the proposed penalty for Citation 2 calculated in accordance with the penalty-setting regulations?

Penalties calculated in accordance with the penalty-setting regulations set forth in sections 333 through 336 are presumptively reasonable and will not be reduced absent evidence that the amount of the proposed civil penalty was miscalculated, the regulations were improperly applied, or that the totality of the circumstances warrant a reduction. (*RNR Construction, Inc.*, *supra,* Cal/OSHA App. 1092600, citing *Stockton Tri Industries, Inc.*, Cal/OSHA App. 02-4946, Decision After Reconsideration (Mar. 27, 2006).)

The Appeals Board has held that "while there is a presumption of reasonableness to the penalties proposed by the Division in accordance with the Director's regulations, the presumption does not immunize the Division's proposal from effective review by the Board . . . ." (*DPS Plastering, Inc*., Cal/OSHA App. 00-3865, Decision After Reconsideration (Nov. 17, 2003).) Nor does the presumptive reasonableness of the penalty calculated in accordance with the penalty-setting regulations relieve the Division of its duty to offer evidence in support of its determination of the penalty since the Appeals Board has historically required proof that a proposed penalty is, in fact, calculated in accordance with the penalty-setting regulations. (*Plantel Nurseries*, Cal/OSHA App. 01-2346, Decision After Reconsideration (Jan. 8, 2004); *RII Plastering, Inc*, Cal/OSHA App. 00-4250, Decision After Reconsideration (Oct. 21, 2003).)

The Appeals Board has held that when the Division does not provide evidence to support its proposed penalty, it is appropriate that an employer be given the maximum credits and adjustments provided under the penalty-setting regulations such that the minimum penalty provided under the regulations for the violation is assessed. (*RII Plastering, Inc*, *supra*, Cal/OSHA App. 00-4250.)

The Division submitted its Proposed Penalty Worksheet showing the penalty calculations. (Ex. 2.) Perera testified about the calculation of the penalties. Employer did not present evidence or argument that the penalties were calculated improperly.

The base penalty for a Serious violation is $18,000. (§ 336, subd. (c).) The base penalty is then adjusted for Extent and Likelihood. (*Id.*)

Extent

Section 335, subdivision (a)(2)(ii), in relevant part, provides:

When the safety order violated does not pertain to employee illness or disease, Extent shall be based upon the degree to which a safety order is violated. It is related to the ratio of the number of violations of a certain order to the number of possibilities for a violation on the premises or site. It is an indication of how widespread the violation is. Depending on the foregoing, Extent is rated as follows:

> LOW --When an isolated violation of the standard occurs, or less than 15% of the units are in violation.
> MEDIUM --When occasional violation of the standard occurs or 15-50% of the units are in violation.
> HIGH --When numerous violations of the standard occur, or more than 50% of the units are in violation.

Here, Perera testified that Extent was rated as High because "the trench was not protected so that's one out of one unit so that's more than 50 percent." (H.R., 12/7/22, at 03:10:05-03:10:40.) Employer did not offer evidence or argument on the issue of Extent. Thus, it is found that more than 50 percent of the units were in violation. Therefore, the Extent is rated as High. When Extent is High, 25 percent of the base penalty is added to the penalty. (§ 336, subd. (c)(1).)

Likelihood

Section 335, subdivision (a)(3), provides as follows:

> Likelihood is the probability that injury, illness or disease will occur as a result of the violation. Thus, Likelihood is based on (i) the number of employees exposed to the hazard created by the violation, and (ii) the extent to which the violation has in the past resulted in injury, illness or disease to the employees of the firm and/or industry in general, as shown by experience, available statistics or records. Depending on the above two criteria, Likelihood is rated as:
> LOW, MODERATE OR HIGH.

Here, Perera rated the Likelihood as Moderate. However, the Division did not submit evidence of the extent to which the violation has in the past resulted in injury, illness or disease to the employees of the firm and/or industry in general, as shown by experience, available statistics or records. Thus, the Division did not establish the probability that injury, illness, or disease will occur as a result of the violation. As set forth above, Employer is afforded maximum credit for Likelihood for Citation 2. (*RII Plastering, Inc*, *supra*, Cal/OSHA App. 00-4250.) Therefore, the Likelihood rating is modified to Low. When Likelihood is Low, 25 percent of the base penalty is subtracted from the penalty. (§ 336, subd. (c)(1).)

Accordingly, the base penalty ($18,000) is increased by 25 percent for Extent and reduced by 25 percent for Likelihood. These adjustments to the base penalty result in a Gravity-Based Penalty of $18,000.

Penalty Adjustments - Good Faith

Section 335, subdivision (c), provides:

> Good Faith of the Employer is based upon the quality and extent of the safety program the employer has in effect and operating. It includes the employer's awareness of Cal/OSHA, and any indications of the employer's desire to comply with the Act, by specific displays of accomplishments. Depending on such safety programs and the efforts of the employer to comply with the Act, Good Faith is rated as: GOOD--Effective safety program; FAIR--Average safety program; POOR--No effective safety program.

Section 336, subdivision (d)(2), provides that the Gravity-Based Penalty shall be reduced by 30 percent for a rating of Good, 15 percent for a rating of Fair, and zero percent for a rating of Poor.

In determining the rating for Good Faith, the Appeals Board considers the employer's attitude toward safety of its employees, as well as peculiar circumstances affecting the application of safety orders, and the employer's experience. A determination that the employer did not intend to disregard its employees' safety may be taken into consideration for potential reduction of penalties. (*Watkins Contracting, Inc.*, Cal/OSHA App. 93-1021, Decision After Reconsideration (Sep. 24, 1997), citing *Wunschel and Small, Inc.*, Cal/OSHA App. 78-1203, Decision After Reconsideration (Feb. 29, 1984).)

Perera testified that he rated Good Faith as Fair because Employer corrected the hazard while he was present. Additionally, the evidence indicates that Employer was aware of some safety orders and attempted to comply with them. For instance, Employer had a safety program, a Code of Safe Practices, personal protective equipment, excavation sloping, and more. However, there were multiple violations at the job site, including a Serious violation and having a non-compliant Code of Safe Practices. Moreover, Employer has a history of prior violations. Based on these considerations, the safety program was not fully effective and is not be rated as Good.

Accordingly, the Good Faith rating is Fair, and Employer is entitled to a 15 percent reduction to the Gravity-Based Penalty.

Size

Section 335, subdivision (b), and section 336, subdivision (d)(1), provide that adjustment may be made for Size when an employer has 100 employees or fewer:

10 or fewer employees	40% of the Gravity-based Penalty shall be subtracted
11-25 employees	30% of the Gravity-based Penalty shall be subtracted
26-60 employees	20% of the Gravity-based Penalty shall be subtracted
61-100 employees	10% of the Gravity-based Penalty shall be subtracted
More than 100 employees	No adjustment shall be made

Perera testified that he had received evidence indicating that Employer had 40 to 50 employees. (H.R., 12/7/22, 03:13:52-03:16:40; Exs. 6, 7.) Thus, it is found that Employer had 40 to 50 employees at the time of the inspection. Accordingly, the Gravity-Based Penalty shall be reduced by 20 percent. (§ 336, subd. (d)(1).)

History

Section 335, subdivision (d), and section 336, subdivision (d)(3), provide that adjustment may be made for an employer's history of violations in the past three years:

Good	10% of the Gravity-based Penalty shall be subtracted
Fair	5% of the Gravity-based Penalty shall be subtracted
Poor	No adjustment shall be made.

Here, the Division rated Employer's history of violations as Poor. However, at hearing, the parties stipulated that Employer is entitled to a five percent History credit. (H.R., 2/1/23, 00:00:40-00:02:44.) This stipulation is accepted, and the History rating is modified to Fair. Accordingly, the Gravity-Based Penalty shall be reduced by five percent.

In sum, Employer is entitled to credits of 15 percent for Good Faith, 20 percent for Size, and five percent for History. Application of these adjustment factors results in a reduction of the

Gravity-Based Penalty by 40 percent. Forty percent of $18,000 is $7,200. Accordingly, the Adjusted Penalty is $10,800.

Abatement Credit

Section 336, subdivision (e), provides for a penalty reduction of 50 percent where the employer abates the Serious violation at the time of the initial visit during an inspection and prior to the issuance of a citation. Application of the 50 percent abatement credit is not discretionary. It must be applied wherever it is not prohibited. (*Luis E. Avila dba E & L Avila Labor Contractors*, Cal/OSHA App. 00-4067, Decision After Reconsideration (Aug. 26, 2003).)

Here, Employer corrected the slope of the excavation while Perera was present. Thus, the Adjusted Penalty shall be reduced by 50 percent.

Accordingly, the assessed penalty is $5,400.

Conclusions

The evidence supports a finding that Employer failed to adopt a Code of Safe Practices that relates to the work being performed. The violation was properly classified as General. The proposed penalty is reasonable.

The evidence supports a finding that Employer failed to make a thorough survey of the conditions of the site prior to the presence of its employees. The violation was properly classified as General. The proposed penalty is reasonable.

The evidence does not support a finding that Employer failed to have an effective communication system for obtaining emergency services.

The evidence supports a finding that Employer failed to have adequate protection from cave-ins for employees working in an excavation. The violation was properly classified as Serious. The proposed penalty is modified to $5,400.

The evidence does not support a finding that section 1541.1, subdivisions (b) and (c), provide a separate safety order independent of section 1541.1, subdivision (a).

Order

It is hereby ordered that Citation 1, Item 1, is affirmed and a penalty of $1,800 is assessed.

It is hereby ordered that Citation 1, Item 2, is affirmed and a penalty of $485 is assessed.

It is hereby ordered that Citation 1, Item 3, is vacated.

It is hereby ordered that Citation 2 is affirmed and a penalty of $5,400 is assessed.

It is hereby ordered that Citation 3 is vacated.

It is further ordered that the penalties indicated above shall be assessed as set forth in the attached Summary Table.

/s/ Judge Mario L. Grimm

Dated: 10/03/2025

Mario L. Grimm
Administrative Law Judge

The attached decision was issued on the date indicated therein. If you are dissatisfied with the decision, you have thirty days from the date of service of the decision in which to petition for reconsideration. Your petition for reconsideration must fully comply with the requirements of Labor Code sections 6616, 6617, 6618 and 6619, and with California Code of Regulations, title 8, section 390.1. **For further information, call: (916) 274-5751.**

If no petition is filed, the penalty amount set forth in the Summary Table is due and payable 30 days after the Order or Decision is issued. If the Appeals Board approved a payment plan, all payments are due in accordance with the dates indicated in the Summary Table. If a Petition for Reconsideration is filed, no payment should be made until the final outcome of the appeal.