

**BEFORE THE  
STATE OF CALIFORNIA  
OCCUPATIONAL SAFETY AND HEALTH  
APPEALS BOARD**

In the Matter of the Appeal of:

**MARQUES GENERAL ENGINEERING, INC.  
200 S. HARDING BLVD.  
ROSEVILLE, CA 95678**

**Employer**

Inspection No.

**1581944**

**DECISION**

**Statement of the Case**

Marques General Engineering, Inc. (Employer) is an underground construction contractor. From March 7, 2022, to June 9, 2022, the Division of Occupational Safety and Health (the Division), through Associate Safety Engineer Lance Chi, conducted an inspection of Employer's worksite at Donner Lane and Red Lake Way, Lincoln, CA 95648 (the worksite).

On June 16, 2022, the Division issued two citations to Employer, alleging two violations of the California Code of Regulations, title 8.<sup>1</sup> Citation 1, Item 1, alleges that Employer failed to maintain safety and health training records. Citation 2, Item 1, alleges that Employer failed to provide traffic control at work sites that encroach upon public streets or highways.

Employer filed a timely appeal of each citation on the ground that the safety order was not violated. For Citation 2, Employer also asserted that the classification was incorrect, and the proposed penalty was unreasonable. Employer also raised multiple affirmative defenses.<sup>2</sup>

Prior to the hearing, the parties presented partial settlement terms of Citation 1, Item 1, to the assigned Administrative Law Judge. The settlement of Citation 1, Item 1, was approved and a partial settlement order was issued.

This matter was heard by Administrative Law Judge Ka H. Leung for the California Occupational Safety and Health Appeals Board (Appeals Board) on June 17 and 18, 2025. Attorney Perry Poff of Donnell, Melgoza & Scates LLP represented Employer. Jordan Davis, Staff Counsel, represented the Division. The matter was submitted on August 29, 2025.

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<sup>1</sup> Unless otherwise specified, all references are to California Code of Regulations, title 8.

<sup>2</sup> 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).)

### Issues

1. Did the Division establish that the worksite was located on or encroached upon public roads?

### Findings of Fact

1. Employer's worksite was not located on and did not encroach upon public roads.

### Analysis

#### **1. Did the Division establish that the worksite was located on or encroached upon public roads?**

The Division issued Citation 2, Item 1, under section 1598, subdivision (a), which provides:

#### Traffic Control for Public Streets and Highways

Where a hazard exists to employees because of traffic or haulage conditions at work sites that encroach upon public streets or highways, a system of traffic controls in conformance with "California Manual on Uniform Traffic Control Devices for Streets and Highways, January 13, 2012." Which is herein incorporated by reference and referred to as the "Manual", published by the State Department of Transportation, shall be required so as to abate the hazard.

The Division's alleged violation description reads:

Prior to and during the course of the investigation, including, but not limited to March 7, 2022, the employer failed to provide traffic controls to abate the hazard in accordance with this section.

The Division bears the burden of proving, by a preponderance of the evidence, that a cited safety order was violated. (*Lone Pine Nurseries*, Cal/OSHA App. 00-2817, Decision After Reconsideration (Oct. 30, 2001).) The Appeals Board applies a reliability-based evidentiary standard in its proceedings, offering more flexibility than the strict mechanical rules of the Evidence Code. The Appeals Board must rely on "the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs" (§376.2), ensuring it meets the necessary reliability standard. (*Sweetheart Cup Company*, Cal/OSHA App. 95-979, Decision After Reconsideration (Nov. 5, 1999).)

On February 17, 2022, Employer's employees were working on a manhole at the intersection of Donner Lane and Red Lake Way in Lincoln, California, when a cement truck ran

over one of them. The Division alleged Employer failed to deploy traffic controls per the Manual and issued Citation 2, Item 1, as a Serious Accident-Related citation under section 1598, subdivision (a). The parties dispute whether the worksite encroached on public streets or highways, a prerequisite for the application of section 1598.

The title of section 1598 makes clear that the safety order applies to public streets and highways. Section 1598, subdivision (a), incorporates the Manual, which defines a “Public Road” as one under “the jurisdiction of and maintained by a public agency and open to public travel.” (Exh. 12, p. 87). Under Government Code section 6252, subdivision (d), “public agency” means any state or local agency. Title 8 contains no alternate definition.

The Division presented no evidence that the worksite was maintained by a public agency. Employer’s Director of Safety, Gregg Huwes, testified that the worksite was not city maintained, did not encroach on city roads, and therefore the City of Lincoln did not require a traffic control plan. By contrast, when previous work was performed on the community’s outer area that affected Highway 193, the city required such a plan. Huwes’ testimony was corroborated by a Lincoln Police Department report stating the incident was not state highway related and describing the worksite as “private roads.” Although Division inspector Lance Chi initially disagreed with this description, he ultimately confirmed the worksite was private roads.

The Division’s closing brief contends the worksite was on public roads because it was open to public travel. Yet, several witnesses credibly testified that the worksite had construction zone signage at its entrances, was blocked by barriers, and saw no public traffic. Thus, the Division has not proven the worksite was more likely than not open to public travel. Even if the worksite was open to public travel, the Division still fails to satisfy the Manual’s requirement that a public road be both maintained by a public agency and open to public travel.

Because the Division failed to prove that the worksite encroached on or was located on a public road, section 1598, subdivision (a), does not apply. Citation 2, Item 1, is vacated.

### **Conclusion**

The evidence does not support a finding that Employer violated section 1598, subdivision (a).

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**Order**

It is hereby ordered that Citation 2, Item 1, is vacated.

Dated: 09/24/2025

/s/ Ka H. Leung  
Ka H. Leung  
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.