

10/5

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

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

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OCT 06 2011

APPEAL FORM OSH Appeals Board

313169823

Inspection Number on Citation

ALL AMERICAN WINDOW CLEANING INC

Employer Name on Citation

Employer Legal Name or DBA (Optional)

21101 Pennington Lane

Address

Trabuco Canyon, CA 92679

Insp. Site: 17742 Beach Blvd, H.Bch, CA

2011-R 3 D 1 -2612

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

2. A copy of this form must be attached to each citation or notification appealed. Failure to file a completed form may result in dismissal of the appeal.

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

1. This is an Appeal from:

[  ] CITATION NO(s): 1 Item No(s): 1, 2, and 3

[  ] NOTIFICATION OF FAILURE TO ABATE ALLEGED VIOLATION  
CITATION NO(s): Item No(s):

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

2. Specific ground(s) for this appeal are: (Check all that apply)

[  ] The safety order was not violated.

[  ] The classification (i.e. serious, willful, repeat) is incorrect.

[  ] The abatement requirements are unreasonable.

[  ] Required changes [  ] Time allowed to complete changes

[  ] The proposed penalty is unreasonable.

3. Explain any other reasons for appeal or issues to be raised on appeal. Affirmative defenses must be specifically stated. Some important affirmative defenses are listed on the OSHAB website at: <http://www.dir.ca.gov/OSHAB/oshab.html>  
Please see Attachment

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OSH Appeals Board

Attachment to OSHAB Appeal Form  
Inspection Number 313169823  
Company Name: All American Window Cleaning, Inc.  
Inspection Site: 17742 Beach Blvd., Huntington Beach, CA 92647

(Citation 1, Items 1, 2, and 3)

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

**AFFIRMATIVE DEFENSES:**

- 1) Citations 1.1, 1.2, and 1.3 are duplicative;
- 2) Citation 1.1 – Log maintained by third party;
- 3) Citation 1.2 – Training and instruction provided by third party;
- 4) Citation 1.2 – Injured Employee failed to heed training and instructions due to impaired physical condition;
- 5) Citation 1.3 – Third party maintained information pertaining to the Illness & Injury Prevention Program;
- 6) Citation 1.3 – OSHA representative did not make diligent inquiry into Employer's records pertaining to heat injury prevention;
- 7) The Employer reserves the right to amend this Appeal with additional affirmative defenses.

4.

WLN

(Signature of Employer or Employer's Representative)  
{If there is any change in representation after you file your appeal, you must notify the Appeals Board in writing}

Warren L. Nelson of FISHER & PHILLIPS LLP

(Type or print name)

Attorney Representative

(Title)

2050 Main Street, Suite 1000

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

Irvine

California

92614

(City)

(State)

(Zip Code)

(949) 851-2424; (949) 212-3701

wnelson@laborlawyers.com

10/5/11

(Telephone)

(E-Mail Address)

(Date)

{All correspondence from the Appeals Board will be sent to the representative above at the address above. If there is any change in address, telephone number, and/or e-mail address after you file your appeal, you must notify the Appeals Board of the change(s). All such notifications must be in writing}

### IMPORTANT INFORMATION

- A. Use this form to appeal a Citation, Notification of Failure to Abate Alleged Violation, or Special Order/Special Action.
- B. You must complete *a separate appeal form for each citation or notification* you wish to appeal and *attach a copy of the complete citation or notification that you are appealing.*
- C. If the citation or notification being appealed includes more than one item **do not use separate appeals forms for each item.** Instead, specify the items you are appealing in the space provided in No. 1 on the front of this form. (for example, "Citation No. 1, Item Nos. 2, 5, and 8)
- D. **Be sure to sign your appeal form and provide all the information requested in No. 4 above.**
- E. Your appeal form shall be deemed not completed unless you attach a copy of each citation or notification that you are appealing, and failure to file a completed appeal form may result in dismissal of the appeal.
- F. If you or your representative change address, telephone number, and/or e-mail address, it is your responsibility to notify the Appeals Board in writing of the change(s). Otherwise the Appeals Board will continue to use the address it has on file and you risk not receiving notices or other communications from the Appeals Board. Appeals Board regulations make it the employer's obligation to notify the Appeals Board of any changes to the employer's and/or representative's contact information.
- G. Mail each completed Appeal form and citation or notification to the Occupational Safety and Health Appeals Board, 2520 Venture Oaks Way, Suite 300, Sacramento, CA 95833.
- H. Late appeals will not be accepted unless good cause is shown.

**State of California**

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

**Inspection Number:** 313169823  
**Inspection Dates:** 03/29/2011 - 09/22/2011  
**Issuance Date:** 09/27/2011  
**CSHO ID:** Q1303  
**Optional Inspection Nbr:** 095-11



**Citation and Notification of Penalty**

**Company Name:** ALL AMERICAN WINDOW CLEANING INC  
**Inspection Site:** 17742 BEACH BLVD, HUNTINGTON BEACH, CA 92647

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

3203. Injury and Illness Prevention Program.

(b) Records of the steps taken to implement and maintain the Program shall include:

(2) Documentation of safety and health training required by subsection (a)(7) for each employee, including employee name or other identifier, training dates, type(s) of training, and training providers. This documentation shall be maintained for at least one (1) year.

EXCEPTION NO. 1: Employers with fewer than 10 employees can substantially comply with the documentation provision by maintaining a log of instructions provided to the employee with respect to the hazards unique to the employees' job assignment when first hired or assigned new duties.

**Employer, with under 10 employees, failed to implement and maintain its Injury and Illness Prevention Program in that it did not maintain a log of instructions provided to its employees with respect to hazards unique to window cleaning assignments.**

Date By Which Violation Must be Abated: 10/30/2011  
Proposed Penalty: \$ 300.00

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See pages 1 through 5 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 Santa Ana District (0950631; 4031)  
2000 East McFadden Avenue, Suite 122  
Santa Ana, CA 92705

**Inspection Number:** 313169823  
**Inspection Dates:** 03/29/2011 - 09/22/2011  
**Issuance Date:** 09/27/2011  
**CSHO ID:** Q1303  
**Optional Inspection Nbr:** 095-11



**Citation and Notification of Penalty**

**Company Name:** ALL AMERICAN WINDOW CLEANING INC  
**Inspection Site:** 17742 BEACH BLVD, HUNTINGTON BEACH, CA 92647

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

3203. Injury and Illness Prevention Program.

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

(7) Provide training and instruction:

(A) When the program is first established;

EXCEPTION: Employers having in place on July 1, 1991, a written Injury and Illness Prevention Program complying with the previously existing Accident Prevention Program in Section 3203.

(B) To all new employees;

(C) To all employees given new job assignments for which training has not previously been received;

(D) Whenever new substances, processes, procedures or equipment are introduced to the workplace and represent a new hazard;

(E) Whenever the employer is made aware of a new or previously unrecognized hazard; and,

(F) For supervisors to familiarize themselves with the safety and health hazards to which employees under their immediate direction and control may be exposed.

**Employer failed to provide training and instruction on electrical hazards to all new employees and employees given new job assignments for which training was not previously received.**

Date By Which Violation Must be Abated: 10/29/2011  
Proposed Penalty: \$ 600.00

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**State of California**

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

**Inspection Number:** 313169823  
**Inspection Dates:** 03/29/2011 - 09/22/2011  
**Issuance Date:** 09/27/2011  
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**Optional Inspection Nbr:** 095-11



**Citation and Notification of Penalty**

**Company Name:** ALL AMERICAN WINDOW CLEANING INC  
**Inspection Site:** 17742 BEACH BLVD, HUNTINGTON BEACH, CA 92647

**Citation 1 Item 3 Type of Violation: **General****

3395. Heat Injury Prevention

(f) Training.

(3) The employer's procedures for complying with each requirement of this standard required by subsections (f)(1)(B), (G), (H), and (I) shall be in writing and shall be made available to employees and to representatives of the Division upon request.

**Employer failed to provide the Division with requested procedures for complying with the requirements of subsections (f)(1)(B), (G), (H) and (I) as required.**

Date By Which Violation Must be Abated: 10/30/2011  
Proposed Penalty: \$ 300.00

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OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

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OCT 06 2011

APPEAL FORM OSH Appeals Board

313169823

2011-R 3 D 1 -2613

Inspection Number on Citation

ALL AMERICAN WINDOW CLEANING INC

Employer Name on Citation

Employer Legal Name or DBA (Optional)

21101 Pennington Lane

Address

Trabuco Canyon, CA 92679

Insp. Site: 17742 Beach Blvd, H.Bch, CA

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

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

1. This is an Appeal from:

[  ] CITATION NO(s): 2 \_\_\_\_\_ Item No(s): 1 \_\_\_\_\_

[  ] NOTIFICATION OF FAILURE TO ABATE ALLEGED VIOLATION  
CITATION NO(s): \_\_\_\_\_ Item No(s): \_\_\_\_\_

[  ] SPECIAL ORDER/SPECIAL ACTION NO: \_\_\_\_\_  
Item No(s): \_\_\_\_\_

2. Specific ground(s) for this appeal are: (Check all that apply)

[  ] The safety order was not violated.

[  ] The classification (i.e. serious, willful, repeat) is incorrect.

[  ] The abatement requirements are unreasonable.

[  ] Required changes [  ] Time allowed to complete changes

[  ] The proposed penalty is unreasonable.

3. Explain any other reasons for appeal or issues to be raised on appeal. Affirmative defenses must be specifically stated. Some important affirmative defenses are listed on the OSHAB website at: <http://www.dir.ca.gov/OSHAB/oshab.html>  
Please see Attachment

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

Attachment to OSHAB Appeal Form  
Inspection Number 313169823  
Company Name: All American Window Cleaning, Inc.  
Inspection Site: 17742 Beach Blvd., Huntington Beach, CA 92647

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**OCT 06 2011**

(Citation 2, Item 1)

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

**OSH Appeals Board**

**AFFIRMATIVE DEFENSES:**

- 1) Independent Employee Act;
- 2) Lack of Employer knowledge of alleged violative condition;
- 3) Abuse of discretion by Division;
  - a) Division issued multiple duplicative Citations to intimidate Employer
  - b) Division issued duplicative Citations in improper categories to intimidate Employer
  - c) Division improperly issued Citations in Willful Serious category to intimidate Employer
  - d) Division ignored and otherwise failed to consider relevant evidence presented by Employer witnesses
  - e) Division failed to disclose relevant information during investigation and otherwise allow Employer to present relevant evidence
- 4) Citation is duplicative – pertains to allegedly identical facts, actions, events considered in Citation 3.1;
- 5) Division improperly failed to consider relevant information pertaining to the impaired mental and physical condition of the injured employee due to his illegal ingestion of controlled substance(s);
- 6) Injured employee was in an impaired state under the influence of illegal controlled substance(s) and therefore, his actions were beyond the control of the Employer;
- 7) Division used coercive techniques to intimidate witnesses;
- 8) Independent failure of equipment;
- 9) The Employer is unable to pay penalties due to extreme financial hardship.
- 10) The Employer reserves the right to amend this Appeal with additional affirmative defenses.

**State of California**

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Cal/OSHA Santa Ana District (0950631; 4031)  
2000 East McFadden Avenue, Suite 122  
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**Inspection Number:** 313169823  
**Inspection Dates:** 03/29/2011-09/22/2011  
**Issuance Date:** 09/27/2011  
**CSHO ID:** Q1303  
**Optional Inspection Nbr:** 095-11



**Citation and Notification of Penalty**

**Company Name:** ALL AMERICAN WINDOW CLEANING INC  
**Inspection Site:** 17742 BEACH BLVD, HUNTINGTON BEACH, CA 92647

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

2946. Provisions for Preventing Accidents Due to Proximity to Overhead Lines.

(a) General. No person, firm, or corporation, or agent of same, shall require or permit any employee to perform any function in proximity to energized high-voltage lines; to enter upon any land, building, or other premises and there engage in any excavation, demolition, construction, repair, or other operation; or to erect, install, operate, or store in or upon such premises any tools, machinery, equipment, materials, or structures (including scaffolding, house moving, well drilling, pile driving, or hoisting equipment) unless and until danger from accidental contact with said high-voltage lines has been effectively guarded against.

**Employer required its employee to conduct window cleaning operations in proximity to energized high voltage lines without taking any effective measures to ensure that danger from accidental contact had been guarded against. On 3/29/2011, this resulted in the death of an employee when he made accidental contact with a 12000 volt electrical line with his aluminum window cleaning equipment, a Tucker Pole.**

Date By Which Violation Must be Abated: ABATED  
Proposed Penalty: \$ 67500.00

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

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APPEAL FORM OSH Appeals Board

313169823

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Employer Name on Citation

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Insp. Site: 17742 Beach Blvd, H.Bch, CA

2011-R 3 D 1 -2614

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1. This is an Appeal from:

[  ] CITATION NO(s): 3 Item No(s): 1

[  ] NOTIFICATION OF FAILURE TO ABATE ALLEGED VIOLATION  
CITATION NO(s): Item No(s):

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

2. Specific ground(s) for this appeal are: (Check all that apply)

[  ] The safety order was not violated.

[  ] The classification (i.e. serious, willful, repeat) is incorrect.

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\_\_\_\_\_

\_\_\_\_\_

Attachment to OSHAB Appeal Form  
Inspection Number 313169823  
Company Name: All American Window Cleaning, Inc.  
Inspection Site: 17742 Beach Blvd., Huntington Beach, CA 92647

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OSH Appeals Board

(Citation 3, Item 1)

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

AFFIRMATIVE DEFENSES:

- 1) Independent Employee Act;
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- 6) Injured employee was in an impaired state under the influence of illegal controlled substance(s) and therefore, his actions were beyond the control of the Employer;
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Cal/OSHA Santa Ana District (0950631; 4031)  
2000 East McFadden Avenue, Suite 122  
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**Inspection Number:** 313169823  
**Inspection Dates:** 03/29/2011 - 09/22/2011  
**Issuance Date:** 09/27/2011  
**CSHO ID:** Q1303  
**Optional Inspection Nbr:** 095-11



**Citation and Notification of Penalty**

**Company Name:** ALL AMERICAN WINDOW CLEANING INC  
**Inspection Site:** 17742 BEACH BLVD, HUNTINGTON BEACH, CA 92647

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

2946. Provisions for Preventing Accidents Due to Proximity to Overhead Lines.

(b) Clearances or Safeguards Required. Except where overhead electrical distribution and transmission lines have been de-energized and visibly grounded, the following provisions shall be met:

(2) The operation, erection, handling, or transportation of tools, machinery, materials, structures, scaffolds, or the moving of any house or other building, or any other activity where any parts of the above or any part of an employee's body will come closer than the minimum clearances from energized overhead lines as set forth in Table 1 shall be prohibited.

Nominal voltage (Phase to Phase)	Minimum Required Clearance (Feet)
600..... 50,000	6

**Employer failed to ensure that equipment, (Tucker Pole), being handled by its employee to clean windows on a three story office building could maintain a clearance of at least 6 feet between the equipment and a 12000 volt electrical line. On 3/29/2011 a Tucker Pole in use by its employee contacted the live electrical line, resulting in the electrocution death of the employee.**

Date By Which Violation Must be Abated:

ABATED

Proposed Penalty:

\$ 67500.00

T. R. Johns / Richard Fazlollahi  
Compliance Officer/District Manager

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.