

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

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

RECEIVED

APR 07 2010

OSH Appeals Board

APPEAL FORM

Inspection No. 313832446

2010-R6D/ -1091

Employer:

BIMBO BAKERIES USA, INC.

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

Address:

264 SOUTH SPRUCE AVENUE
SOUTH SAN FRANCISCO, CA 94080

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:

[X] CITATION NO(s) 1 Item No(s) All items are appealed.

[] 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)

[X] The safety order was not violated.

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

[X] The abatement requirements are unreasonable.

[X] Required changes [X] Time allowed to complete changes

[X] 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 in the Appeal Information Booklet or at the OSHAB website at: <http://www.dir.ca.gov/OSHAB/oshab.html>

SEE ATTACHMENT.

4.



(Signature of Employer or Employer's Representative)

{If there is any change in representation after you file your appeal, you must notify the Appeals Board in writing.}

ROBERT D. PETERSON

(Type or Print Name)

ATTORNEY AT LAW

(Title)

3300 SUNSET BOULEVARD, SUITE 110

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

ROCKLIN

(City)

CA

(State)

95677

(ZIP Code)

916/624-4551

(Telephone)

April 5, 2010

(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 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 appeal 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 changes 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, California 95833.
- H. Late appeals will not be accepted unless good cause is shown.

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ATTACHMENT TO APPEAL

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

OSH Appeals Board

This appeal raises the following affirmative defenses:

1. The Division of Occupational Safety and Health does not have jurisdiction over the subject place of employment;
 2. The inspection(s) was invalid;
 3. The citation does not give notice of the violation and/or is otherwise defective;
 4. The safety order cited is vague and/or ambiguous;
 5. The citation was not issued timely;
 6. An exception to the safety order exempts compliance;
 7. The citation does not allege a violation of that safety order which most appropriately pertains to the alleged violation;
 8. Independent employee action;
 9. It is impossible to comply with the safety order;
 10. The citation was issued to the wrong employer and/or a non-existing employer;
 11. No employee of the employer was exposed to the alleged violation.
 12. The citation does not correctly identify a location at which employees of Appellant were working.
 13. Appellant had no actual knowledge, nor, with the exercise of reasonable diligence, could have known, of the existence of the alleged violation.
 14. The employer acted with due diligence to comply with all regulatory requirements.
 15. The "serious" classification of the alleged violation is unreasonable given the fact that the citation was issued approximately six months after the date of the alleged violation.
 16. The "willful" classification of the alleged violation is unreasonable given the fact that the citation was issued approximately six months after the date of the alleged violation.
- Employer reserves the right to plead and present any and all available defenses up to and including the date of any hearing to be conducted in this matter.

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2010-R 6D/ -1092

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CITATION NO(s). Item No(s).

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

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

[X] The abatement requirements are unreasonable.

[X] Required changes

[X] Time allowed to complete changes

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This appeal raises the following affirmative defenses:

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2. The inspection(s) was invalid;

3. The citation does not give notice of the violation and/or is otherwise defective;

4. The safety order cited is vague and/or ambiguous;

5. The citation was not issued timely;

6. An exception to the safety order exempts compliance;

7. The citation does not allege a violation of that safety order which most appropriately pertains to the alleged violation;

8. Independent employee action;

9. It is impossible to comply with the safety order;

10. The citation was issued to the wrong employer and/or a non-existing employer;

11. No employee of the employer was exposed to the alleged violation.

12. The citation does not correctly identify a location at which employees of Appellant were working.

13. Appellant had no actual knowledge, nor, with the exercise of reasonable diligence, could have known, of the existence of the alleged violation.

14. The employer acted with due diligence to comply with all regulatory requirements.

15. The "serious" classification of the alleged violation is unreasonable given the fact that the citation was issued approximately six months after the date of the alleged violation.

16. The "willful" classification of the alleged violation is unreasonable given the fact that the citation was issued approximately six months after the date of the alleged violation.

Employer reserves the right to plead and present any and all available defenses up to and including the date of any hearing to be conducted in this matter.