

DEPARTMENT OF INDUSTRIAL RELATIONS
OCCUPATIONAL SAFETY
AND HEALTH APPEALS BOARD

2520 VENTURE OAKS WAY, SUITE 300
SACRAMENTO, CA 95833
(916) 274-5751
FAX (916) 274-5785



April 24, 2014

Fred Walter, Attorney
WALTER & PRINCE LLP
1270 Healdsburg Avenue, Suite 201
Healdsburg, CA 95448

Re: BUTLER AMUSEMENTS INC
14-R2D5-1413/1415

DOCKETED: 04-22-14

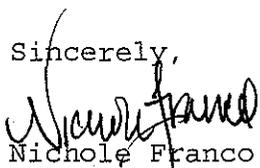
Dear Mr. Walter:

Enclosed are the docketed copies of each Appeal form that you filed with the Board. The above listed docket numbers should appear on all future correspondence. A copy of any correspondence with the Appeals Board must be served on the Division of Occupational Safety and Health DOSH and any other party to the proceeding.

You are obligated to notify any affected employees or their representative that an appeal is pending and that they have a right to participate in the proceeding. You are required to post a copy of the docketed Appeal form and a Participation Notice (similar to the sample enclosed) at or near the site of the violation or in a conspicuous place where it will be readily observable by employees. In addition to posting, a copy of the Appeal form and the Participation Notice must be served on the following: 1) any authorized employee representative; and 2) any employee (or their representative) who was seriously injured or killed in an accident related to this appeal. Proof, such as a brief letter, that the forms were posted must be sent to the DOSH District Manager whose address appears on the citation.

Please direct any request for information dealing with the **filing** of your appeal to the above address and/or telephone number. All other communications prior to the hearing will be handled by the assigned Administrative Law Judge (ALJ) **Kevin Reedy** (916) 274-5751.

Any written motion, such as a request for subpoena, consolidation of cases, or request for party or intervenor status must be made by written motion to the ALJ named above at **2520 Venture Oaks Way, Suite 300, Sacramento, CA 95833**.

Sincerely,

Nicholè Franco
Office Technician

cc: Accounting
DOSH District Manager-Fresno
DOSH Legal Unit-Oakland

IMIS# 316727502

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

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

RECEIVED
APR 21 2014

APPEAL FORM OSH Appeals Board

316727502
Inspection Number on Citation

2014-R 2D5 -1413

Butler Amusements Inc.
Employer Name on Citation

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

Employer Legal Name or DBA (Optional)
3003 SW 153 Dr Suite 205
Address

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.

Beaverton, OR 97006

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
- 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>
SEE ADDENDUM

Cal/OSHAB APPEAL re: Butler Amusements Inc.
Inspection No.: 316727502
Docket No.:

RECEIVED
APR 21 2014

OSHA Appeals Board

ADDENDUM TO APPEAL

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

Statute of limitations; lack of jurisdiction; lack of due process; no consent to inspect; lack of reasonable promptness; lack of particularity; vagueness; safety order violates the law.

Substantial compliance; isolated incident; "logical time"; greater hazard; financial hardship; economic infeasibility.

Extreme departure from employee's scope of work. *J. R. Wood, Inc. Cal/OSHA App. 95-4431, DAR (Oct. 14, 1999)*; unforeseeable employee action; independent employee act; insubordination.

No employment relationship exists between the entity named in the citations and the employees allegedly exposed to violations. No employee exposure.

No realistic possibility that death or serious physical harm could result from the actual hazard created by the alleged violation. Labor Code § 6432(a), (e).

Employer did not know of a hazardous or allegedly violative condition, and could not have known with the exercise of reasonable diligence.

Employer took all 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, and the employer took effective action to eliminate employee exposure to the hazard created by the violation as soon as the violation was discovered. Labor Code § 6432(c).

Employer was not the controlling, creating, correcting or exposing employer as contemplated by Title 8 CCR, section 336.10.

If Appellant is determined to be a controlling employer under Title 8 CCR section 336.10 [cf.: Labor Code sections 6400 et seq.], it met its obligation to exercise reasonable diligence for the safety of workers on the project. *United Association Local*

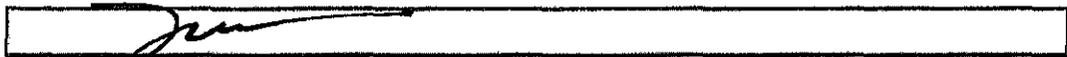
Union 246, AFL-CIO v. Occupational Safety and Health Appeals Board, et al. 199 Cal. App. 4th 273, 2011 Cal. App. LEXIS 1200 (Sept. 16, 2011).

The Division is in violation of Labor Code § 6432(b)(2) by having issued a serious-classified citation less than 15 days from having delivered "... to the employer a standardized form containing the alleged violation descriptions ('AVD') it intends to cite as serious and clearly soliciting the information specified in this subdivision."

And any other legal or factual basis that may constitute a defense to this citation.

P:\Butler Amusements\SpecificPleading\defenses.wpd

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;}

Fred Walter

(Type or print name)

Attorney for Employer

(Title)

1270 Healdsburg Avenue, Suite 201

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

Healdsburg

CA

95448

(City)

(State)

(Zip Code)

(707) 431-7900

fred@walterprincelaw.com

4/17/2014

(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.
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- 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 District Office (0950625; 4025)
2550 Mariposa Street, Room 4000
Fresno, CA 93721

Inspection Number: 316727502
Inspection Dates: 10/14/2013 -
Issuance Date: 04/11/2014
CSHO ID: H9839
Optional Inspection Nbr:



Phone: (559) 445-5302 Fax: (559) 445-5786

RECEIVED
APR 21 2014

Citation and Notification of Penalty

Company Name: Butler Amusements Inc
Inspection Site: 1121 S Chance Ave, Fresno, CA 93072

OSH Appeals Board

Citation 1 Item 1 Type of Violation: Serious Willful

T8 CCR 3328(g): Machinery and Equipment shall be maintained as recommended by the manufacturer for safe operation.

The Giant Wheel and Flying Bobs amusement rides were both being operated on October 14, 2013 without following the manufacturer's recommendations, and were operated in an unsafe condition. The Employer had removed the bolts associated with the support leg flanges on the Giant Wheel and the cross braces and "R keys" used for structural support for the Flying Bobs ride.

Date By Which Violation Must be Abated:
Proposed Penalty:

ABATED
\$ 33750.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

2520 Venture Oaks Way, Suite 300
Sacramento, CA 95833
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APPEAL FORM OSH Appeals Board

2014-R2D5 -1414

316727502

Inspection Number on Citation

Butler Amusements Inc.

Employer Name on Citation

Employer Legal Name or DBA (Optional)

3003 SW 153 Dr Suite 205

Address

Beaverton, OR 97006

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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> SEE ADDENDUM

Cal/OSHAB APPEAL re: Butler Amusements Inc.
Inspection No.: 316727502
Docket No.:

RECEIVED
APR 21 2014

OSH Appeals Board

ADDENDUM TO APPEAL

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

Statute of limitations; lack of jurisdiction; lack of due process; no consent to inspect; lack of reasonable promptness; lack of particularity; vagueness; safety order violates the law.

Substantial compliance; isolated incident; "logical time"; greater hazard; financial hardship; economic infeasibility.

Extreme departure from employee's scope of work. *J. R. Wood, Inc.* Cal/OSHA App. 95-4431, DAR (Oct. 14, 1999); unforeseeable employee action; independent employee act; insubordination.

No employment relationship exists between the entity named in the citations and the employees allegedly exposed to violations. No employee exposure.

No realistic possibility that death or serious physical harm could result from the actual hazard created by the alleged violation. Labor Code § 6432(a), (e).

Employer did not know of a hazardous or allegedly violative condition, and could not have known with the exercise of reasonable diligence.

Employer took all 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, and the employer took effective action to eliminate employee exposure to the hazard created by the violation as soon as the violation was discovered. Labor Code § 6432(c).

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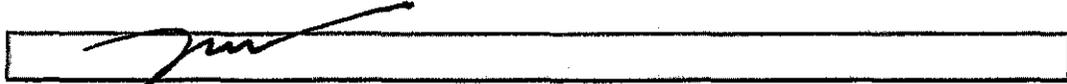
Union 246, AFL-CIO v. Occupational Safety and Health Appeals Board, et al. 199 Cal. App. 4th 273, 2011 Cal. App. LEXIS 1200 (Sept. 16, 2011).

The Division is in violation of Labor Code § 6432(b)(2) by having issued a serious-classified citation less than 15 days from having delivered "... to the employer a standardized form containing the alleged violation descriptions ('AVD') it intends to cite as serious and clearly soliciting the information specified in this subdivision."

And any other legal or factual basis that may constitute a defense to this citation.

P:\Butler Amusements\SpecificPleading\defenses.wpd

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(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;}

Fred Walter

(Type or print name)

Attorney for Employer

(Title)

1270 Healdsburg Avenue, Suite 201

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

Healdsburg

CA

95448

(City)

(State)

(Zip Code)

(707) 431-7900

fred@walterprincelaw.com

4/17/2014

(Telephone)

(E-Mail Address)

(Date)

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State of California

Division of Occupational Safety and Health
Cal/OSHA District Office (0950625; 4025)
2550 Mariposa Street, Room 4000
Fresno, CA 93721

Inspection Number: 316727502
Inspection Dates: 10/14/2013 -
Issuance Date: 04/11/2014
CSHO ID: H9839
Optional Inspection Nbr:



Phone: (559) 445-5302 Fax: (559) 445-5786

Citation and Notification of Penalty

Company Name: Butler Amusements Inc
Inspection Site: 1121 S Chance Ave, Fresno, CA 93072

RECEIVED
APR 21 2014

OSH Appeals Board

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

T8 CCR 3910(b): The daily inspection and operational test shall be performed prior to opening the ride to the public to determine that all of the fastenings and other equipment required is installed so the ride is operated in a safe condition.

The Giant Wheel and Flying Bobs amusement rides were both operated on October 14, 2013 in an unsafe condition. The Employer conducted daily maintenance inspections on October 14, 2013 on both rides and allowed the rides to operate when the bolts associated with the support leg flanges on the Giant Wheel and the cross braces and "R keys" used for structural support on the Flying Bobs ride were removed.

Date By Which Violation Must be Abated:

ABATED

Proposed Penalty:

\$ 33750.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

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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APR 21 2014

APPEAL FOR MOSH Appeals Board

316727502

Inspection Number on Citation

Butler Amusements Inc.

Employer Name on Citation

Employer Legal Name or DBA (Optional)

3003 SW 153 Dr Suite 205

Address

Beaverton, OR 97006

2014-R 2D5 -1415

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CITATION NO(s): Item No(s):

SPECIAL ORDER/SPECIAL ACTION NO: _____
Item No(s): _____

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SEE ADDENDUM

Cal/OSHAB APPEAL re: Butler Amusements Inc.
Inspection No.: 316727502
Docket No.:

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APR 21 2014

OSH Appeals Board

ADDENDUM TO APPEAL

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Statute of limitations; lack of jurisdiction; lack of due process; no consent to inspect; lack of reasonable promptness; lack of particularity; vagueness; safety order violates the law.

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Employer did not know of a hazardous or allegedly violative condition, and could not have known with the exercise of reasonable diligence.

Employer took all 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, and the employer took effective action to eliminate employee exposure to the hazard created by the violation as soon as the violation was discovered. Labor Code § 6432(c).

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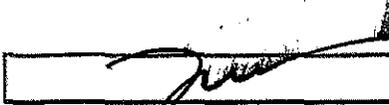
Union 246, AFL-CIO v. Occupational Safety and Health Appeals Board, et al. 199 Cal. App. 4th 273, 2011 Cal. App. LEXIS 1200 (Sept. 16, 2011).

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(Signature of Employer or Employer's Representative)

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Fred Walter

(Type or print name)

Attorney for Employer

(Title)

1270 Healdsburg Avenue, Suite 201

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

Healdsburg

CA

95448

(City)

(State)

(Zip Code)

(707) 431-7900

fred@walterprincelaw.com

4/17/2014

(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!

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State of California

Division of Occupational Safety and Health
Cal/OSHA District Office (0950625; 4025)
2550 Mariposa Street, Room 4000
Fresno, CA 93721

Inspection Number: 316727502
Inspection Dates: 10/14/2013 -
Issuance Date: 04/11/2014
CSHO ID: H9839
Optional Inspection Nbr:



Phone: (559) 445-5302 Fax: (559) 445-5786

Citation and Notification of Penalty

Company Name: Butler Amusements Inc
Inspection Site: 1121 S Chance Ave, Fresno, CA 93072

RECEIVED

APR 21 2014

OSH Appeals Board

Citation 3 Item 1 Type of Violation: Serious Willful

T8 CCR 3911(b)(3): Fastening and locking devices shall be installed where required for safe operation.

The Giant Wheel and Flying Bobs amusement rides were both being operated on October 14, 2013 in an unsafe condition. The employer had removed the bolts associated with the support leg flanges on the Giant wheel and the cross braces and "R keys" used for structural support for the Flying Bobs ride.

Date By Which Violation Must be Abated:
Proposed Penalty:

ABATED
\$ 33750.00

Compliance Officer/District Manager

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of California
Division of Occupational Safety and Health
2550 Mariposa Street, Room 4000
Fresno, CA 93721
Telephone: (559) 445-5302 Fax: (559) 445-5786

NOTICE OF PROPOSED PENALTIES

Company Name: Butler Amusements Inc
Inspection Site: 1121 S Chance Ave, Fresno, CA 93072
Mailing Address: 3003 SW 153 Dr Suite 205, Beaverton, OR 97006
Issuance Date: 04/11/2014
Reporting ID: 0950625
Index Code: 4025

Summary of Penalties for Inspection Number 316727502

Citation 1, Serious Willful	= \$ 33750.00
Citation 2, Serious Willful	= \$ 33750.00
Citation 3, Serious Willful	= \$ 33750.00
TOTAL PROPOSED PENALTIES	= \$ 101250.00

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

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

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

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

State of California
 Division of Occupational Safety and Health
 2550 Mariposa Street, Room 4000
 Fresno, CA 93721
 Telephone: (559) 445-5302 Fax: (559) 445-5786

RECEIVED

APR 21 2014



OSH Appeals Board

Citation and Notification of Penalty

To:
 Butler Amusements Inc

3003 SW 153 Dr Suite 205
 Beaverton, OR 97006

Inspection Site:
 1121 S Chance Ave
 Fresno, CA 93072

Inspection Number: 316727502
 Inspection Date(s): 10/14/2013 - ~~04-11-14~~
 Issuance Date: 04/11/2014
 CSHO ID: H9839
 Optional Report #:
 Reporting ID: 0950625

The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

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

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

April 18, 2014

RECEIVED

APR 21 2014

OSH Appeals Board

VIA FEDERAL EXPRESS

Occupational Safety and Health Appeals Board
2520 Venture Oaks Way, Suite 300
Sacramento, CA 95833

Re: Butler Amusements inc.
Inspection No.: 316727502
Our File No.: 450.001

Dear Sir or Madam:

Enclosed please find an original and one copy of three **Appeal** forms for filing in the above-referenced matter. Please return filed-endorsed copies of the **Appeal** forms to this office in the return envelope provided.

Thank you.

Very truly yours,

WALTER & PRINCE LLP



Cat Andre
Assistant to Fred Walter

ca

Enclosures

 1270 Healdsburg Ave. • Suite 201
Healdsburg, CA 95448

10940 Wilshire Blvd. • Suite 1600
Los Angeles, CA 90024

707.431.7900

DEPARTMENT OF INDUSTRIAL RELATIONS
OCCUPATIONAL SAFETY
AND HEALTH APPEALS BOARD
2520 VENTURE OAKS WAY, SUITE 300
SACRAMENTO, CA 95833
(916) 274-5751
FAX (916) 274-5785



April 18, 2014

Fred Walter, Attorney
WALTER & PRINCE LLP
1270 Healdsburg Avenue, Suite 201
Healdsburg, CA 95448

**SUBJECT: Confirmation of your Intent to Appeal;
Request for Additional Documents
BUTLER AMUSEMENT INC
IMIS# 316727502**

Dear Mr. Walter:

The Occupational Safety and Health Appeals Board received your telephone call on April 17, 2014. You indicated your intention to appeal the citation(s) issued by the Division of Occupational Safety and Health.

In order for us to proceed with your appeal, you are required to provide the following documents.

1. An Appeal Form must be filled out and submitted for each citation you are appealing.

The citation is the document issued by the inspector indicating the specific regulation(s) you are being charged with violating.

The Appeal Form is located at the following website address: <http://www.dir.ca.gov/oshab/oshab.html>. You may enter information directly into the form, however you cannot file your appeal electronically. You must print out the form and mail it to the Appeals Board at the address below.

Please indicate on the form which citation you are appealing and the grounds upon which your appeal is based. Please take the time to carefully fill out the appeal form completely and accurately. Incomplete appeal forms will be returned to you. (Refer to the "Important Information" section located on the second page of the appeal form.)

2. A copy of the entire citation packet.

The citation packet is entitled "Citation and Notification of Penalty", and may contain several citations.

The completed appeal form(s) and the entire citation packet must be postmarked (or received in this office, if via hand delivery) within 10 calendar days of the date of this letter. **Failure to meet this deadline constitutes grounds for dismissal of your appeal.** (Title 8, Cal. Code Regs, Section 359.1). Mail or hand-deliver the above documents to:

Cal-OSHA Appeals Board
2520 Venture Oaks Way, Suite 300
Sacramento, CA 95833

We accept express, certified, and regular U.S. Mail.

You should keep copies of all documents for your records. Once the above documents have been timely received, and after verifying all legal requirements are met, your appeal will be entered into our system and assigned a docket number. A copy of the docketed appeal will be mailed to you at the address provided on the Appeal Form.

Please note: During this time we are also required, by law, to verify that your telephone call (or other communication to the Board) indicating your intent to appeal was made within 15 working days of receipt of the citation. If, upon completing our review, it appears that your initial communication to the Board indicating your intent to appeal was outside the 15 working day deadline, we will notify you (via separate letter) that your intent to appeal was untimely and request that you show good cause regarding why you did not initiate your appeal within the 15 working day deadline. (See Title 8, Cal. Code Regs, Section Reg. 359.)

Sincerely,



Monique Newsom
Office Assistant

cc: DOSH District Manager - Fresno
2-5-H9839-