

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

RECEIVED

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

FEB 04 2010

OSH Appeals Board

APPEAL FORM

2010-R 2 D1 -0366

313228637

Inspection Number on Citation

CA Water Resources

Employer Name on Citation

California Department of Water Resources

Employer Legal Name or DBA (Optional)

Office of Chief Counsel

Address

1416 Ninth Street, Room 1118-19

Sacramento, CA 95814

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 _____

[] 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>
DWR contests this violation because CalOSHA did not review the correct Emergency Action Plan (EAP).

DWR will provide CalOSHA with a copy of the correct EAP. DWR believes Citation No. 1 should be withdrawn.

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}

Jeannie S. Lee

(Type or print name)

Staff Counsel

(Title)

1416 Ninth Street, Room 1118-19

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

Sacramento

CA

95814

(City)

(State)

(Zip Code)

(916) 652-3710

jslee@water.ca.gov

2/3/2010

(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.

OSHAB 5/08

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APPEAL FORM

313228637

Inspection Number on Citation

CA Water Resources

Employer Name on Citation

California Department of Water Resources

Employer Legal Name or DBA (Optional)

Office of Chief Counsel

Address

1416 Ninth Street, Room 1118-19

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2010-R 2 DL -0367

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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:

[x] 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)

[x] The safety order was not violated.

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

[] The abatement requirements are unreasonable.

[] Required changes [] 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 on the OSHAB website at: http://www.dir.ca.gov/OSHAB/oshab.html DWR contests this violation because the Department believes that the removal of the baffle ring was not

a potential hazard. This violation should be withdrawn.

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OSH Appeals Board

APPEAL FORM

2010-R 2 D / -0368

313228637

Inspection Number on Citation

CA Water Resources

Employer Name on Citation

California Department of Water Resources

Employer Legal Name or DBA (Optional)

Office of Chief Counsel

Address

1416 Ninth Street, Room 1118-19

Sacramento, CA 95814

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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): 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.

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>
DWR contests this violation because the Department believes that the removal of the baffle ring was not a potential hazard. This violation should be withdrawn.

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OSH Appeals Board

APPEAL FORM

2010-R 2 D / -0369

313228637

Inspection Number on Citation

CA Water Resources

Employer Name on Citation

California Department of Water Resources

Employer Legal Name or DBA (Optional)

Office of Chief Counsel

Address

1416 Ninth Street, Room 1118-19

Sacramento, CA 95814

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1. This is an Appeal from:

[] CITATION NO(s): 4 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>
DWR contests the serious willful violation because there are numerous questions of fact. DWR believes

CalOSHA is not accurately citing to the reports relied upon in the documentation worksheet. DWR asserts that the facts do not rise to the willful standard.

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OSH Appeals Board

APPEAL FORM

2010-R 2 D 1 -0370

313228637

Inspection Number on Citation

CA Water Resources

Employer Name on Citation

California Department of Water Resources

Employer Legal Name or DBA (Optional)

Office of Chief Counsel

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1. This is an Appeal from:

[] CITATION NO(s): 5 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)

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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>
Citation No. 5, Item No. 1 is not accurate. The break-away wall was designed to fail and it was not

designed to be a worker safety mechanism. DWR should not be cited for this inaccuracy and the penalty should be reduced.

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APPEAL FORM OSH Appeals Board

2010-R 2 D1 -0371

313228637

Inspection Number on Citation

CA Water Resources

Employer Name on Citation

California Department of Water Resources

Employer Legal Name or DBA (Optional)

Office of Chief Counsel

Address

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1. This is an Appeal from:

[] CITATION NO(s): 6 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)

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T8 CCR 5157 does not apply because the workspace in the River Valve Chamber does not meet the

definition of a confined space as defined in 5157(b) and Appendix A (confined space flowchart). DWR believes this citation should be withdrawn.