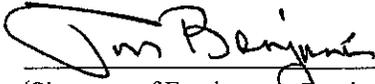


4.



(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}

Jon L. Benjamin

(Type or print name)

Attorney, Farella, Braun + Martel LLP, on behalf of First Solar Electric (California), Inc.

(Title)

235 Montgomery Street

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

San Francisco, CA

CA

94104

(City)

(State)

(Zip Code)

(415) 954-4971

jbenjamin@fbm.com

2/18/14

(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.

This appeal of Citation No. 1 by First Solar Electric (California), Inc. ("FSE") is timely filed.¹ A certified mail copy of the citation was received by FSE's agent, its law firm, Farella Braun + Martel LLP, on September 10, 2013. A copy of the citation is attached as Exhibit 1 and incorporated herein by reference. A copy of the certified mail envelope showing the September 10, 2013 delivery date is attached as Exhibit 2 and incorporated herein by reference. As provided in Labor Code Section 6600, FSE has 15 working days from the date of receipt of the certified mail copy of the citations to file this appeal, which is October 1, 2013. Because of prior and ongoing mail delivery problems at the Topaz Solar Farm Project ("Project") site, the certified mail copy of the citation sent to the facility site did not arrive until September 16, 2013. However, because Farella, as FSE's agent, received a certified mail copy on September 10, 2013, FSE accepts the September 10 date to determine the deadline for filing this appeal. Thus, as noted above, this appeal is timely made.

At the outset, it should be noted that people can contract Valley Fever in any setting wherever spores are mobilized. Because of the multiple modes and opportunities for exposure, there is no way to connect a specific occurrence of Valley Fever with a specific exposure scenario. In addition, because Valley Fever spores are so ubiquitous, microscopic and easily mobilized by any dust disturbing activity, it is impossible to prevent all exposures to Valley Fever spores.

In that light, the County of San Luis Obispo ("County") imposed conditions of approval to control dust and minimize exposure to Valley Fever at the Project as a result of the analysis of air quality and human health impacts during environmental review of the Project under the California Environmental Quality Act. The Valley Fever Dust Management Plan ("VFDMP") was specifically developed pursuant to County Condition of Approval No. 38. The VFDMP was approved by the County Epidemiologist in the County Public Health Department ("SLOPHD") on July 11, 2011. Moreover, the County issued a letter to the State Department of Public Health on September 17, 2013 stating that FSE is in compliance with the VFDMP. A copy of the County's September 17 letter is attached as Exhibit 3 and incorporated herein by reference. In addition, neither Aspen Environmental, which is the County's independent, third-party environmental monitor, nor the San Luis Obispo County Air Pollution Control District, nor the SLOPHD have ever formally cited or informally indicated to FSE orally or otherwise that FSE was not in compliance with the requirements of the VFDMP as approved by the SLOPHD. Finally, it is important to note that dust control measures at the Project site have evolved consistent with proactive continuous improvement measures as construction has progressed and additional measures have been added to augment the existing effective controls against fugitive dust generation. (See attachment to Exhibit 3, Letter from Tim Higdon (FSE) to Steve McMasters (County Planning and Building Department), dated June 28, 2013.)

In addition to the grounds for appeal noted on the Appeal Form, FSE raises the following affirmative defenses with respect to this citation, and as discussed below, reserves the right to assert additional affirmative defenses.

¹ The Citation incorrectly identified the recipient as First Solar Electric, Inc.

First, no FSE employees were exposed to airborne dust conditions in violation of the VFDMP.

Second, FSE implemented effective engineering controls at the site with respect to its employees, namely the engineering controls set forth in the approved VFDMP. FSE expects to show that effective watering was provided to stabilize airborne dusts, sufficient water was available, water was applied to off-road areas, and watering was sufficient to minimize airborne dust. Further, FSE expects to show that spoil piles were tarped or otherwise stabilized, and that other effective soil stabilization measures were implemented. In addition, FSE took appropriate steps to provide the VFDMP to its contractors, including CLP Resources Inc. ("CLP"), and directed its contractors to implement the VFDMP with respect to their employees, as called for by the VFDMP.

Third, this is not a dual employer situation. FSE does not exercise supervision and control over CLP employees working in the field. Under its contract and course of conduct with FSE, CLP provides superintendents, forepersons and field-level employees to the Project site. FSE pays different rates for each of these employee levels. FSE directs CLP superintendents on general work requirements, who in turn direct forepersons that exercise supervision and control over the CLP field-level employees. More specifically, FSE has directed CLP superintendents that they are responsible for implementing the VFDMP, who are in turn responsible for directing CLP forepersons and field staff on implementation of the VFDMP, including the effective implementation of engineering controls. Similarly, the other contractors hired by FSE at the Project site are responsible for ensuring that their employees are properly implementing the VFDMP. Accordingly, FSE is not a secondary employer or special employer under the Division of Occupational Safety and Health Policy and Procedures Manual No. P&P C-1D, "Dual-Employer Inspections." Therefore, if any violation of Title 8 California Code of Regulations Section 5141(a) occurred, this citation should not be issued against FSE. CLP's role at the Project site is that of a general contractor, not a primary employer under the dual employer doctrine.

FSE reserves the right to amend its appeal, including but not limited to providing additional facts and evidence in support of the affirmative defenses raised above. In addition, FSE may raise additional affirmative defenses, including but not limited to asserting that any violation was an independent employee act and/or was an unforeseeable employee act, the citation was not issued within six months after the occurrence of the alleged violation, and is void for vagueness, as it may determine based on additional evidence adduced during discovery. As provided in Title 8 California Code of Regulations Sections 371(c)(1) and 371.2(a), FSE may amend its appeal by right up to 20 days before the hearing before the Cal/OSHA Appeals Board.

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

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

APPEAL FORM

AMENDED

DOCKET 13-R4D7-3281

(Leave blank-Appeals Board will fill in.)

313388555

Inspection Number on Citation

First Solar Electric, Inc.

Employer Name on Citation

Employer Legal Name or DBA (Optional)

10400 Helios Way & 13505 Hwy 58

Address

Santa Margarita, CA 93453

RECEIVED

FEB 19 2014

OSH Appeals Board

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.

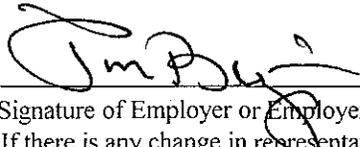
Required changes Time allowed to complete changes

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.

See attached pages.

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}

Jon L. Benjamin

(Type or print name)

Attorney, Farella, Braun + Martel LLP, on behalf of First Solar Electric (California), Inc.

(Title)

235 Montgomery Street

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

San Francisco, CA

CA

94104

(City)

(State)

(Zip Code)

(415) 954-4971

jbenjamin@fbm.com

2/18/14

(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.

This appeal of Citation No. 2 by First Solar Electric (California), Inc. ("FSE") is timely filed.¹ A certified mail copy of the citation was received by FSE's agent, its law firm, Farella Braun + Martel LLP, on September 10, 2013. A copy of the citation is attached as Exhibit 1 and incorporated herein by reference. A copy of the certified mail envelope showing the September 10, 2013 delivery date is attached as Exhibit 2 and incorporated herein by reference. As provided in Labor Code Section 6600, FSE has 15 working days from the date of receipt of the certified mail copy of the citations to file this appeal, which is October 1, 2013. Because of prior and ongoing mail delivery problems at the Topaz Solar Farm Project ("Project") site, the certified mail copy of the citation sent to the facility site did not arrive until September 16, 2013. However, because Farella, as FSE's agent, received a certified mail copy on September 10, 2013, FSE accepts the September 10 date to determine the deadline for filing this appeal. Thus, as noted above, this appeal is timely made.

At the outset, it should be noted that people can contract Valley Fever in any setting wherever spores are mobilized. Because of the multiple modes and opportunities for exposure, there is no way to connect a specific occurrence of Valley Fever with a specific exposure scenario. In addition, because Valley Fever spores are so ubiquitous, microscopic and easily mobilized by any dust disturbing activity, it is impossible to prevent all exposures to Valley Fever spores.

In that light, the County of San Luis Obispo ("County") imposed conditions of approval to control dust and minimize exposure to Valley Fever at the Project as a result of the analysis of air quality and human health impacts during environmental review of the Project under the California Environmental Quality Act. The Valley Fever Dust Management Plan ("VFDMP") was specifically developed pursuant to County Condition of Approval No. 38. The VFDMP was approved by the County Epidemiologist in the County Public Health Department ("SLOPHD") on July 11, 2011. Moreover, the County issued a letter to the State Department of Public Health on September 17, 2013 stating that FSE is in compliance with the VFDMP. A copy of the County's September 17 letter is attached as Exhibit 3 and incorporated herein by reference. In addition, neither Aspen Environmental, which is the County's independent, third-party environmental monitor, nor the San Luis Obispo County Air Pollution Control District, nor the SLOPHD have ever formally cited or informally indicated to FSE orally or otherwise that FSE was not in compliance with the requirements of the VFDMP as approved by the SLOPHD. Finally, it is important to note that dust control measures at the Project site have evolved consistent with proactive continuous improvement measures as construction has progressed and additional measures have been added to augment the existing effective controls against fugitive dust generation. (See attachment to Exhibit 3, Letter from Tim Higdon (FSE) to Steve McMasters (County Planning and Building Department), dated June 28, 2013.)

In addition to the grounds for appeal noted on the Appeal Form, FSE raises the following affirmative defenses with respect to this citation, and as discussed below, reserves the right to assert additional affirmative defenses.

¹ The Citation incorrectly identified the recipient as First Solar Electric, Inc.

First, no employees of FSE were exposed to airborne dust conditions on March 5, 2013 in violation of the VFDMP.

Second, as noted in the discussion under Citation No. 1, which is incorporated herein by reference, FSE expects to show that it implemented effective engineering controls at the site with respect to its employees on March 5, 2013. Therefore, administrative controls were not required to be implemented under Title 8 California Code of Regulations Section 5141(b).

Third, if administrative controls were required on March 5, 2013 because engineering controls were not effective at controlling potential exposure to Valley Fever, FSE implemented effective administrative controls at the site with respect to its employees, namely the administrative controls set forth in the approved VFDMP and the Environmental Health and Safety Plan ("EHASP") prepared for the Project. FSE expects to show that it issued a stop work order to the entire site in accordance with its policy to stop work when wind speeds exceed 25 miles per hour or opacity exceeds 20 percent. FSE took appropriate steps to provide the VFDMP and EHASP to CLP Resources Inc. ("CLP"), and directed CLP to implement the VFDMP and EHASP with respect to their employees, as called for by the VFDMP.

Fourth, this is not a dual employer situation. FSE does not exercise supervision and control over CLP employees working in the field. Under its contract and course of conduct with FSE, CLP provides superintendents, forepersons and field-level employees to the Project site. FSE, pays different rates for each of these employee levels. FSE directs CLP superintendents on general work requirements, who in turn direct forepersons that exercise supervision and control over the CLP field-level employees. More specifically, FSE has directed CLP superintendents that they are responsible for implementing the VFDMP, who are in turn responsible for directing forepersons and field staff on implementation of the VFDMP, including the effective implementation of administrative controls. FSE is not a secondary employer or special employer under the Division of Occupational Safety and Health Policy and Procedures Manual No. P&P C-1D, "Dual-Employer Inspections." Therefore, if any violation of Title 8 California Code of Regulations Section 5141(b) occurred, this citation should not be issued against FSE. CLP's role at the Project site is that of a general contractor, not a primary employer under the dual employer doctrine.

Fifth, the citation was not issued within six months from the date of the alleged violation, as required by Labor Code 6317. The alleged violation at issue in Citation No. 2 occurred on March 5, 2013. According to Cal/OSHA Appeals Board precedent, "[a] citation is issued the day it is signed, dated, and mailed by the division." *Pouk & Steinle*, Cal/OSHA Decision After Reconsideration, 2010 WL 2706199 at *9 (June 10, 2010). To calculate the last date by which this citation should have been issued, the first day is excluded and the last day is included, unless the last day is not a working day, which would then extend the time to the next working day. Title 8 California Code of Regulations Section 348(a). Accordingly, to determine when the six-month deadline for issuing Citation No. 2 expired, counting begins the day after the alleged violation, which is March 6, 2013, and goes six months forward, including that last day of that six month period, which is September 5, 2013 and which was a working day. According to the postmark on Exhibit 2, Citation 2 was mailed on September 6, 2013. Therefore, according to the

Cal/OSHA Appeals Board precedent cited above, Citation No. 2 was issued a day late and therefore cannot be enforced against FSE.

FSE reserves the right to amend its appeal, including but not limited to providing additional facts and evidence in support of the affirmative defenses raised above. In addition, FSE may raise additional affirmative defenses, including but not limited to asserting that any violation was an independent employee act and/or was an unforeseeable employee act, and is void for vagueness, as it may determine based on additional evidence adduced during discovery. As provided in Title 8 California Code of Regulations Sections 371(c)(1) and 371.2(a), FSE may amend its appeal by right up to 20 days before the hearing before the Cal/OSHA Appeals Board.

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

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

A P P E A L F O R M

AMENDED

DOCKET 13-R4D7-3282

(Leave blank-Appeals Board will fill in.)

313388555

Inspection Number on Citation

First Solar Electric, Inc.

Employer Name on Citation

Employer Legal Name or DBA (Optional)

10400 Helios Way & 13505 Hwy 58

Address

Santa Margarita, CA 93453

RECEIVED

FEB 19 2014

OSH Appeals Board

**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.

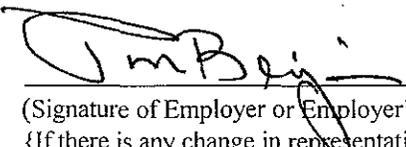
Required changes Time allowed to complete changes

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.

See attached pages.

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}

Jon L. Benjamin

(Type or print name)

Attorney, Farella, Braun + Martel LLP, on behalf of First Solar Electric (California), Inc.

(Title)

235 Montgomery Street

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

San Francisco, CA

CA

94104

(City)

(State)

(Zip Code)

(415) 954-4971

jbenjamin@fbm.com

2/18/14

(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.

This appeal of Citation No. 3 by First Solar Electric (California), Inc. ("FSE") is timely filed.¹ A certified mail copy of the citation was received by FSE's agent, its law firm, Farella Braun + Martel LLP, on September 10, 2013. A copy of the citation is attached as Exhibit 1 and incorporated herein by reference. A copy of the certified mail envelope showing the September 10, 2013 delivery date is attached as Exhibit 2 and incorporated herein by reference. As provided in Labor Code Section 6600, FSE has 15 working days from the date of receipt of the certified mail copy of the citations to file this appeal, which is October 1, 2013. Because of prior and ongoing mail delivery problems at the Topaz Solar Farm Project ("Project") site, the certified mail copy of the citation sent to the facility site did not arrive until September 16, 2013. However, because Farella, as FSE's agent, received a certified mail copy on September 10, 2013, FSE accepts the September 10 date to determine the deadline for filing this appeal. Thus, as noted above, this appeal is timely made.

At the outset, it should be noted that people can contract Valley Fever in any setting wherever spores are mobilized. Because of the multiple modes and opportunities for exposure, there is no way to connect a specific occurrence of Valley Fever with a specific exposure scenario. In addition, because Valley Fever spores are so ubiquitous, microscopic and easily mobilized by any dust disturbing activity, it is impossible to prevent all exposures to Valley Fever spores.

In that light, the County of San Luis Obispo ("County") imposed conditions of approval to control dust and minimize exposure to Valley Fever at the Project as a result of the analysis of air quality and human health impacts during environmental review of the Project under the California Environmental Quality Act. The Valley Fever Dust Management Plan ("VFDMP") was specifically developed pursuant to County Condition of Approval No. 38. The VFDMP was approved by the County Epidemiologist in the County Public Health Department ("SLOPHD") on July 11, 2011. Moreover, the County issued a letter to the State Department of Public Health on September 17, 2013 stating that FSE is in compliance with the VFDMP. A copy of the County's September 17 letter is attached as Exhibit 3 and incorporated herein by reference. In addition, neither Aspen Environmental, which is the County's independent, third-party environmental monitor, nor the San Luis Obispo County Air Pollution Control District, nor the SLOPHD have ever formally cited or informally indicated to FSE orally or otherwise that FSE was not in compliance with the requirements of the VFDMP as approved by the SLOPHD. Finally, it is important to note that dust control measures at the Project site have evolved consistent with proactive continuous improvement measures as construction has progressed and additional measures have been added to augment the existing effective controls against fugitive dust generation. (See attachment to Exhibit 3, Letter from Tim Higdon (FSE) to Steve McMasters (County Planning and Building Department), dated June 28, 2013.)

In addition to the grounds for appeal noted on the Appeal Form, FSE raises the following affirmative defenses with respect to this citation, and as discussed below, reserves the right to assert additional affirmative defenses.

¹ The Citation incorrectly identified the recipient as First Solar Electric, Inc.

First, none of FSE's employees were exposed to airborne dust conditions in violation of the approved VFDMP.

Second, as set forth in the VFDMP, the contractors working at the project site, including CLP Resources Inc. ("CLP"), are required to implement a respiratory protection program that meets the requirements of the Cal/OSHA Respiratory Protection Standard in Title 8 California Code of Regulations Section 5144. It is each contractor's responsibility to determine through appropriate analyses, such as job hazard assessments, whether their employees may work in conditions that require utilization of personal protective equipment, such as respirators, to prevent dust inhalation. As to FSE's own employees, FSE expects to show that it evaluated respiratory hazards, established clear policies for the use of respirators, provided adequate respiratory protection, as needed, and evaluated the effectiveness of its respiratory protection program.

Third, this is not a dual employer situation. FSE does not exercise supervision and control over CLP employees working in the field. Under its contract and course of conduct with FSE, CLP provides superintendents, forepersons and field-level employees to the Project site. FSE, pays different rates for each of these employee levels. FSE directs CLP superintendents on general work requirements, who in turn direct forepersons that exercise supervision and control over the CLP field-level employees. More specifically, FSE has directed CLP superintendents that they are responsible for implementing the VFDMP, who are in turn responsible for directing forepersons and field staff on implementation of the VFDMP, including the implementation of a respiratory protection program. Similarly, the other contractors hired by FSE at the Project site are responsible for ensuring that their employees are properly implementing the VFDMP. Accordingly, FSE is not a secondary employer or special employer under the Division of Occupational Safety and Health Policy and Procedures Manual No. P&P C-1D, "Dual-Employer Inspections." Therefore, if any violation of Title 8 California Code of Regulations Section 5144 occurred, this citation should not be issued against FSE. CLP's role at the Project site is that of a general contractor, not a primary employer under the dual employer doctrine.

FSE reserves the right to amend its appeal, including but not limited to providing additional facts and evidence in support of the affirmative defenses raised above. In addition, FSE may raise additional affirmative defenses, including but not limited to asserting that any violation was an independent employee act and/or was an unforeseeable employee act, the citation was not issued within six months after the occurrence of the alleged violation, and is void for vagueness, as it may determine based on additional evidence adduced during discovery. As provided in Title 8 California Code of Regulations Sections 371(c)(1) and 371.2(a), FSE may amend its appeal by right up to 20 days before the hearing before the Cal/OSHA Appeals Board.