

**BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD**

In the Matter of the Appeal of:

**INTERNATIONAL DIOXCIDE INC
40 Whitecap Drive
North Kingston, RI 02852**

Employer

DOCKET 12-R2D1-0739

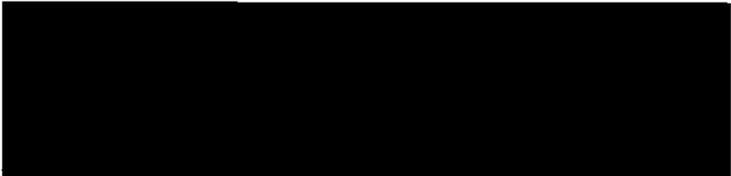
ORDER

Good cause having been shown, the above captioned matter is resolved as set forth in the attached summary table.

IT IS STIPULATED by and between the parties that this stipulation and order, and the terms and conditions set forth therein, are not intended to be and shall not be construed by anyone as an admission of any wrongdoing whatsoever by Appellant, **INTERNATIONAL DIOXCIDE INC**, except for purposes of administration and enforcement of the California Occupational Safety and Health Act and in proceedings before the Appeals Board, and that the stipulation will not be used in any other proceeding between the parties or involving any other person, whether said proceeding be legal, equitable, or administrative in nature.

IT IS SO ORDERED.

DATED: April 22, 2013


/ KEVIN J. REEDY
Administrative Law Judge

Pursuant to § 364.2(d), Title 8 California Code of Regulations, Employer shall post for 15 working days a copy of this Order.

Pursuant to § 364.2(b), Title 8 California Code of Regulations, the Division shall serve a copy of this disposition on any authorized employee representative if known to the Division to represent affected employees.

SUMMARY TABLE ORDER

In the Matter of the Appeal of:
INTERNATIONAL DIOXIDE INC
DOCKET 12-R2D1-0739

Abbreviation Key:	Reg=Regulatory
G=General	W=Willful
S=Serious	R=Repeat
Er=Employer	DOSH=Division

IMIS No. 314570177

Site: 1376 Lemen Ave, Woodland, CA 95776
Date of Inspection: 08/24/2011-02/14/2012

Date of Citation: 02/14/2012

DOCKET	C I T A T I O N	I T E M	SECTION	T Y P E	ALLEGED VIOLATION DESCRIPTION MODIFICATION OR WITHDRAWAL AND REASON	A F F I R M E D	V A C A T E D	PENALTY PROPOSED BY DOSH IN CITATION	PENALTY PROPOSED BY DOSH AT PRE- HEARING	FINAL PENALTY ASSESSED BY BOARD
12-R2D1-0739	1	1	3328(g)	S	Failure to maintain equipment in safe operating condition. Penalty reduced based on re-evaluation of size and lowered extent based on good faith dispute as to how the law applies to the facts	X		\$18,000	\$10,800	\$10,800
Sub-Total								\$18,000	\$10,800	\$10,800
Total Amount Due*										\$10,800

(INCLUDES APPEALED CITATIONS ONLY)

NOTE: Payment of final penalty amount should be made to:

Accounting Office (OSH)
Department of Industrial Relations
PO Box 420603
San Francisco, CA 94142
(415) 703-4291, (415) 703-4308 (payment plans)

*You will owe more than this amount if you did not appeal one or more citations or items containing penalties. Please call (415) 703-4291 if you have any questions.

ALJ: KR
POS: 04/22/13

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a citizen of the United States, over the age of 18 years and not a party to the within action; my place of employment and business address is Occupational Safety and Health Appeals Board, 2520 Venture Oaks Way, Suite 300, Sacramento, California 95833.

On April 22, 2013, I served the attached **Order** by placing a true copy thereof in an envelope addressed to the persons named below at the address set out immediately below each respective name, and by sealing and depositing said envelope in the United States Mail at Sacramento, California, with first-class postage thereon fully prepaid. There is delivery service by United States Mail at each of the places so addressed, or there is regular communication by mail between the place of mailing and each of the places so addressed:

Peter A. Cownan, Attorney
GLYNN & FINLEY
1 Walnut Creek Center
100 Pringle Avenue, #500
Walnut Creek, CA 94596

DOSH DISTRICT OFFICE
2424 Arden Way, Suite 165
Sacramento, CA 95825

DOSH LEGAL UNIT
ATTN: Mary Allen, DOSH Legal Counsel
1515 Clay Street, Suite 1901
Oakland, CA 94612

I declare under penalty of perjury that the foregoing is true and correct.
Executed on April 22, 2013, at Sacramento, California.



Declarant

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TRANSMITTAL

The attached order was issued on the date indicated therein. If you are dissatisfied with the order, you have thirty days from the date of service of the order in which to petition for reconsideration. The petition for reconsideration must be sent to:

OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD
2520 Venture Oaks Way, Suite 300
Sacramento, CA 95833

Your petition for reconsideration must fully comply with the requirements of Labor Code Section 6616, 6617, 6618 and 6619, and with Title 8, California Code of Regulations, Section 390.1.

For further information, call: (916) 274-5751.

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DOCKET 12-R2D1-0739

**AMENDED
ORDER ON MOTION**

On March 6, 2013, the following motion was filed (with an erratum on that same date) in writing by Mary Allen, counsel for the Division of Occupational Safety and Health:

- | | | | |
|-------------------------------------|------------------------------------|--------------------------|-----------------------------|
| <input type="checkbox"/> | Motion to Amend the Appeal(s) | <input type="checkbox"/> | Motion for Party Status |
| <input checked="" type="checkbox"/> | Motion to Amend Citation(s) | <input type="checkbox"/> | Motion to Grant Late Appeal |
| <input type="checkbox"/> | Motion to Continue Hearing | <input type="checkbox"/> | Motion to Intervene |
| <input type="checkbox"/> | Other (see below) | <input type="checkbox"/> | |

<input checked="" type="checkbox"/>	GOOD CAUSE APPEARING, THE MOTION IS GRANTED
	(See Below)

The motion seeks to amend the alleged violation description in Citation 1, Item 1, as follows:

Violation: International Dioxide Inc., the creating and/or correcting, and/or controlling employer at the Pacific Coast Producers multiemployer worksite at 1736 Lemon Ave., Woodland, failed to maintain the Unpeeled Flume System at the processing plant in a safe operating condition from when use of the line began in 2011, which was on or about approximately August 10, through the chloride dioxide release on August 21, 2011, including on August 14, 2011.

The employer's field service technician "fixed the contactor" on the unpeeled system's flume on August 14, 2011. After a chlorine dioxide release inside the plant on August 21, 2011, from the Unpeeled Flume System resulted in overexposure to 47 employees who were sent to hospital for treatment, and investigation found

that the pump safety switch contactor had been bypassed (jumped), which switch is also called the "motor running signal." This "motor running signal" was one of the two safety shut offs for the Unpeeld Flume System, the other one was the "flow switch," and both were not properly maintained during the relevant time period. The switch (motor running signal) was properly wired and the hazard abated on August 24, 2011. This is a Serious, Accident Related Citation. \$18,000.

The Division asserts that the proposed amended violation description relates back to the same set of facts. The Division further asserts that the proposed amendment includes mere amplifications of the evidence originally plead within the six month violative time, and not new ultimate facts, but merely evidentiary facts.

On March 15, 2013, Peter A. Cownan, of Glynn & Finley, LLP, on behalf of International Dioxide Inc (Employer), submitted its Opposition to the Division's Motion to Amend the Citation. Employer asserts that the proposed amendment does not clarify the violation contained in the original citation, and claims that the amendment creates a new violation based upon key facts and allegations of instrumentality which are not present in the original.

The proposed amendment to the language of the alleged violation description, which "relates back" to the same general set of facts, is permissible. The motion was filed more than 20 days before the scheduled hearing. Good cause appearing, the motion is granted. /

DATED: April 22, 2013


KEVIN J. REEDY
Administrative Law Judge

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a citizen of the United States, over the age of 18 years and not a party to the within action; my place of employment and business address is Occupational Safety and Health Appeals Board, 2520 Venture Oaks Way, Suite 300, Sacramento, California 95833.

On April 22, 2013, I served the attached **AMENDED Order on Motion** by placing a true copy thereof in an envelope addressed to the persons named below at the address set out immediately below each respective name, and by sealing and depositing said envelope in the United States Mail at Sacramento, California, with first-class postage thereon fully prepaid. There is delivery service by United States Mail at each of the places so addressed, or there is regular communication by mail between the place of mailing and each of the places so addressed:

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