

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

*In the Matter of the Appeal of:*

**SOLARCITY CORP.**

5402 Clearview Way  
San Mateo, CA 94402

Employer

**DOCKET 14-R3D2-3707**

**DECISION**

**Statement of the Case**

SolarCity Corp (Employer) is a construction contractor specializing in the installation of solar energy equipment. Beginning May 22, 2014, the Division of Occupational Safety and Health (the Division) through Associate Safety Engineer Darcy Murphine (Murphine), conducted an accident inspection at a place of employment maintained by Employer at 23005 Stokes Road, Ramona, California (the site). On October 30, 2014, the Division cited Employer for 6 violations of California Code of Regulations, title 8.<sup>1</sup>

Employer filed a timely appeal contesting the existence of the alleged violations, the classifications, the required abatement, and the reasonableness of the proposed penalties. Employer also pleaded numerous affirmative defenses.<sup>2</sup>

This matter came regularly for hearing before Howard Isaac Chernin, Administrative Law Judge (ALJ) for the California Occupational Safety and Health Appeals Board, at San Diego, California on October 13 and December 17, 2015. Lisa Prince, Attorney, of Walter and Prince, represented Employer. Kathleen Derham, District Manager, represented the Division. The matter was submitted on December 17, 2015. The ALJ extended the submission date to December 22, 2015 on his own motion.

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<sup>1</sup> Unless otherwise specified, all references are to Sections of Title 8, California Code of Regulations.

<sup>2</sup> Except as otherwise noted in this Decision, Employer failed to present evidence in support of its pleaded affirmative defenses, and said defenses are therefore deemed waived. (See, e.g. *Central Coast Pipeline Construction Co., Inc*, Cal/OSHA App. 76-1342, Decision After Reconsideration (July 16, 1980) [holding that the employer bears the burden of proving all of the elements of the Independent Employee Action Defense.]

## **Issues**

1. Did Employer violate section 1512, subdivision (i), when its written Emergency Medical Services (EMS) plan failed to contain a phone number for a local physician or hospital?
2. Did Employer violate section 1527, subdivision (a)(1) by not providing hand washing facilities at the site?
3. Did Employer violate section 1637, subdivision (a), by not providing scaffolding for the work that was being performed May 15, 2014, at the site?
4. Did Employer violate section 3395, subdivision (f)(3) by not including all of the required elements in Employer's Heat Illness Prevention Plan (HIPP)?
5. Did Employer violate section 3395, subdivision (f)(1), by failing to train employees in all of the required heat illness topics?
6. Did Employer violate section 14300.40, subdivision (a), by failing to provide the Division with Form 300s as requested?
7. Did the Division correctly classify the alleged violations?
8. Did Employer establish that it would be impractical to abate the violations?
9. Did the Division propose reasonable penalties for the alleged violations?

## **Findings of Fact**

1. On May 15, 2014, at approximately 11 a.m., Employer's employee Ramon Orozco Hernandez (Hernandez), was working in the attic space of an under-construction home at the site, when a wooden beam he was standing on gave way, causing him to fall (the incident).
2. Employer did not post phone numbers for local hospitals or physicians at the site. The General Contractor in charge of the site supplied an "all-in-one" poster designed to include job safety information required by the Title 8 regulations. The poster had blank spaces identified for listing phone numbers for local hospitals or physicians. Employer's Job Hazard Analysis (JHA), prepared the morning of the incident, similarly lacked EMS phone numbers. Instead, the JHA instructed employees to call Employer's off-site "Incident Manager", whose job was to provide guidance and EMS phone numbers to employees in the field.
3. There were several portable toilets available to Employer's employees at the site, all of which lacked hand washing facilities.
4. Murphine did not measure the attic space where Hernandez was working.
5. Employer's HIPP lacked specific high heat procedures for ensuring communication between employees and supervisors and for ensuring adequate observation of employees by supervisors.
6. Employer did not effectively train Hernandez in all of the topics required by section 3395, subdivision (f)(1), prior to the incident, in particular, the topics pertaining to acquisition of EMS in the event of an emergency. Employer did not provide adequate instruction to its employees to ensure

- that they knew how to obtain EMS and move or transport injured employees in order to obtain medical care.
7. Employer did not timely provide the Division with all of the Form 300s that were requested.
  8. Having an incomplete EMS plan causes employees to not know who to call in the event of an emergency, and leads to delays in receiving appropriate medical treatment.
  9. Failing to provide hand washing facilities in connection with portable toilets at the site encourages the spreading of illness.
  10. Failing to effectively train employees in required heat illness prevention topics can result in serious injury or fatality to employees who are not knowledgeable about the symptoms of, and proper response to, heat illness.
  11. Failing to provide high-heat procedures in writing exacerbates heat illness.
  12. Failing to provide recordkeeping documents to the Division upon request is properly classified as a Regulatory violation because it pertains to recordkeeping.
  13. It was within Employer's ability to provide EMS contact information at the job site or to ensure that the General Contractor in charge of the site provided the information. Contact information for area hospitals, physicians and first responders was available to Employer prior to the beginning of the work on the date of the incident.
  14. It was within Employer's ability to ensure that handwashing facilities were provided along with the portable toilets at the site on the date of the incident, either by providing them directly or by negotiating to have the General Contractor provide them.
  15. It was within Employer's ability to include high-heat procedures in its HIPP.
  16. It was within Employer's ability to train its employees in all of the required heat illness prevention topics prior to sending them to work at outdoor workplaces.
  17. It was within Employer's ability to timely provide 3 years of Cal/OSHA Form 300s to the Division upon request.
  18. The Division calculated the proposed penalties in accordance with the applicable Title 8 regulations.

### **Analysis**

**1. Did Employer violate section 1512, subdivision (i), when its written Emergency Medical Services (EMS) plan failed to contain a phone number for a local physician or hospital?**

Section 1512 (Emergency Medical Services), states in relevant part:

- (e) Provision for Obtaining Emergency Medical Services. Proper equipment for the prompt

transportation of the injured or ill person to a physician or hospital where emergency care is provided, or an effective communication system for contacting hospitals or other emergency medical facilities, physicians, ambulance and fire services, shall be provided. The telephone numbers of the following emergency services in the area shall be posted near the job telephone, telephone switchboard, or otherwise made available to the employees where no job site telephone exists:

- (1) A physician and at least one alternate if available.
- (2) Hospitals.
- (3) Ambulance services.
- (4) Fire-protection services.

...

(i) Written Plan. The employer shall have a written plan to provide emergency medical services. The plan shall specify the means of implementing all applicable requirements in this section. When employers form a combined emergency medical services program with appropriately trained persons, one written plan will be considered acceptable to comply with the intent of this subsection.

In citing Employer, the Division alleged:

At the time of the inspection, where the employer was performing installation of solar panels and associated electrical connections on 5/15/14, at the jobsite located at 23005 Stokes Road, Ramona, the employer did not have a written plan to provide emergency medical services that included all applicable requirements of this section. There was no phone number for the physician or hospital, and the closest hospital was not identified.

The Division has the burden of proving a violation, including the applicability of the safety order, by a preponderance of the evidence. (*Howard J. White, Inc.*, Cal/OSHA App. 78-741, Decision After Reconsideration (June 16, 1983).) "Preponderance of the evidence" is usually defined in terms of probability of truth, or of evidence that when weighted with that opposed to it, has more convincing force and greater probability of truth with consideration

of both direct and circumstantial evidence and all reasonable inferences to be drawn from both kinds of evidence. (*Lone Pine Nurseries*, Cal/OSHA App. 00-2817, Decision After Reconsideration (Oct. 30, 2001), citing *Leslie G. v. Perry & Associates* (1996) 43 Cal.App. 4th 472, 483.) Words within an administrative regulation are to be given their plain and commonsense meaning, and when the plain language of the regulation is clear, there is a presumption that the regulation means what it says. (*AC Transit*, Cal/OSHA App. 08-135, Decision After Reconsideration (June 12, 2013) (Internal citations omitted).)

In order to prove a violation, the Division has the burden of establishing that 1) Employer is subject to the Construction Safety Orders; and, Employer either, 2) failed to post the telephone numbers of one or more physicians, hospitals, ambulance and fire services near the job phone or telephone switchboard; or 3) failed to otherwise make said phone numbers available to the employees where no job site telephone exists.

The first element was undisputed, as both parties provided evidence at hearing that the site consisted of a housing development under construction on the date of the incident, and Employer's employees were performing construction-related work at the site when the incident occurred.

With regard to the second element, Murphine testified that Employer failed to post the required EMS phone numbers. She observed an "all-in-one" poster designed to include job safety information required by the Title 8 regulations. The poster had blank spaces identified for listing phone numbers for local hospitals and physicians. (See Exhibit 9.) In addition, Employer's daily Job Hazard Analysis (JHA) (Exhibit 8), dated May 15, 2014, had a field labeled "Medical Clinic," which was left blank, and a field labeled "Hospital" stating only "Sharp Rees Stealy RB." Page 2 of the JHA states:

Accident Reporting Procedures:

\*Contact Armando Perez at the first indication you have an emergency situation: 650-477-9290

\*If you cannot reach Armando, call your Supervisor and have them contact your assigned Area Safety Manager.

The phone number provided for Perez on page 2 of the JHA also appeared on the first page, handwritten in the left margin. Based on the above, Murphine concluded that Employer failed to post or otherwise make the required EMS contact information available to employees at the site.<sup>3</sup>

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<sup>3</sup> Murphine also testified that she requested, but did not receive "Employer's Plan for Obtaining Emergency Medical services at jobsite 8 CCR 5194." (See Exhibit 7.)

Carlos Ramirez (Ramirez), Employer's Vice President of Safety, testified at hearing that Employer utilizes on-call "Incident Managers" who are available by phone 24 hours a day, 7 days a week, and who provide guidance and EMS contact information as needed to field employees. Ramirez explained that Employer sends its employees to many locations on a given day, and that Employer's system is more efficient than what the regulation requires. Employees in the field are instructed to call in if urgent care is needed, or else call 911 first if it is an emergency.<sup>4</sup>

Employer's argument that its practice of requiring employees to call an in-house "Incident Manager" in lieu of posting the contact information for the appropriate emergency medical service providers at the site is superior to the regulation is unavailing.<sup>5</sup> Here, the plain language of the regulation required Employer to post telephone numbers at the job site for (1) A physician and at least one alternate if available; (2) Hospitals; (3) Ambulance services; and, (4) Fire-protection services. While calling an "Incident Manager" might, depending on the circumstances, result in the employees obtaining relevant information in a timely fashion, section 1512 is quite clear in its mandate that the information must be posted at the job site.<sup>6</sup> Employer's practice did not meet the requirements of the cited safety order.

For the foregoing reasons, the Division established a violation of section 1512, subdivision (i), by a preponderance of the evidence.

**2. Did Employer violate section 1527, subdivision (a)(1) by not providing hand washing facilities at the site?**

Section 1527, subdivision (a)(1) states in relevant part:

(a) Washing Facilities.

(1) General. Washing facilities shall be provided as follows: A minimum of one washing station

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<sup>4</sup> Ramirez explained this policy and associated procedure were developed to deal with the fact that employees were previously calling for an ambulance in non-emergency situations, which caused delays in receiving treatment of less serious injuries at urgent care facilities. Although Ramirez testified credibly, as explained in this Decision, the regulatory language is clear, and Employer could have, but did not, seek a variance from the requirements of the safety order.

<sup>5</sup> Neither party produced evidence or argued at hearing that either 1) there was no job phone at the site; or 2) that Employer had proper equipment at the site for the prompt transportation of the injured or ill person to a physician or hospital where emergency care is provided. Accordingly, discussion of these elements of subdivision (e) has been omitted by the undersigned ALJ.

<sup>6</sup> The Appeals Board cannot read terms or requirements into (or out of) safety orders. (*Webcor Construction LP*, Cal/OSHA App. 08-2365, Denial of Petition for Reconsideration (Sep. 2, 2010).) Nothing in the record suggested that Employer sought, or was prevented from seeking a variance from the safety order prior to the incident.

shall be provided for each twenty employees or fraction thereof. . . [and] shall at all times:

. . . .

(F) When provided in association with a nonwater carriage toilet facility in accordance with Section 1526(c),

. . . .

2. Be located outside of the toilet facility and not attached to it.

Exception to subsection (a)(1): Mobile crews having readily available transportation to a nearby toilet and washing facility.

Section 1504 defines “readily available” as “in a location with no obstacles to prevent immediate acquisition for use.” In *Davey Tree Surgery Company*, Cal/OHSA App. 00-032, Decision After Reconsideration (June 14, 2002), the Board held that basic personal hygiene standards require that hand-washing facilities be used in conjunction with toilet facilities, thus requiring the hand-washing facility to be close enough to the toilet for an employee to wash their hands before returning to work to minimize transmission of disease to other employees.

In citing Employer, the Division alleged:

At the time of the inspection, where the employer was performing construction work at the jobsite located at 23005 Stokes Road, Ramona for the installation of solar panels on 5/15/2014, washing facilities meeting the requirements of this section were not provided by the employer. There was a toilet at the job site but there were no washing facilities provided.

Murphine testified that she observed a portable toilet with toilet paper but no hand washing facilities. She also determined that there was a toilet at a trailer approximately half a mile from the job site that also lacked hand washing facilities. The toilets had been there since the beginning of the contract.

Employer did not dispute that there were multiple portable toilets at the site lacking washing facilities. Rather, Ramirez testified that several completed model homes within approximately 600 yards from where Hernandez was working were available to Employer’s employees, complete with working toilets, sinks, soap and towels. (See Exhibit 6.) Ramirez’s testimony about the

availability of bathrooms with washing facilities inside the model homes was based on hearsay statements of a witness who did not testify. More importantly, the Division did not allege that there were too few bathrooms available; rather, the Division cited Employer for observed portable toilets lacking hand washing facilities. The fact that some toilet facilities comply with the applicable safety order does not negate the undisputed fact that there were portable toilets provided without hand washing facilities. Accordingly, the uncontroverted evidence that there were portable toilets at the site that lacked handwashing facilities supports the finding of a violation.

Even though the Division met its burden of proving a violation, Employer argued and presented evidence in order to establish that it was entitled to application of the “mobile crew” exception, which excuses a violation of section 1527, subdivision (a)(1) if the employer can establish that 1) its exposed employees belong to a mobile crew; 2) with readily available transportation; 3) to a nearby toilet and washing facility. An exception to the requirements of a safety order is in the nature of an affirmative defense, which the employer has the burden of raising and proving at the hearing. (See *Kaiser Steel Corporation*, Cal/OSHA App. 75-1135, Decision After Reconsideration (June 21, 1982); *Roof Structures, Inc.*, Cal/OSHA App. 81-357, Decision After Reconsideration (Feb. 24, 1983); and *The Koll Company*, Cal/OSHA App. 79-1147, Decision After Reconsideration (May 27, 1983).) An exception, however, must be read narrowly; a reading of an exception that “consumes the rule” is an absurd interpretation and is disfavored under rules of statutory construction. (See *Thyssenkrupp Elevator Corp.*, Cal/OSHA App. 11-2217, Denial of Petition of Reconsideration (Mar. 11, 2013).) Had there not been toilets at all, Employer might have availed itself of the “mobile crew” exception; however, the facts of this case demonstrate that Employer violated the safety order because it exposed its employees to the hazard meant to be prevented – using a toilet with no means to ensure proper hygiene after use. Applying the exception under these circumstances, therefore, would “consume the rule”.

Thus, for the foregoing reasons, the Division proved a violation of section 1527, subdivision (a)(1) by a preponderance of the evidence, and Employer failed to meet its burden of establishing the applicability of the “mobile crew” exception. Therefore, a violation is established and Employer’s appeal from Citation 1, item 2, is denied.

**3. Did Employer violate section 1637, subdivision (a), by not providing scaffolding for the work that was being performed May 15, 2014 at the site?**

Section 1637, subdivision (a), states:

Scaffolds – General Requirements.

Scaffolds shall be provided for all work that cannot be done safely by employees standing on permanent or solid construction at least 20 inches wide, except where such work can be safely done from ladders.

Section 1504 defines a “scaffold” as “Any temporary, elevated structure used for the support of a platform.”

In citing Employer, the Division alleged:

On 5/15/2014, at a jobsite at 23005 Stokes Road, Ramona, an employee used a ladder to access the attic space above the second floor in the unfinished home in order to install junction boxes for the installation of solar panels. The employee was standing on the ceiling joists, when he stepped onto an inadequately secured joist piece that broke free, and he fell 8 feet to the second floor, suffering injury. Scaffolding, or a plank platform 12 inches wide or equivalent protection in lieu of scaffolding was not provided.

To prove a violation, the Division first “must demonstrate the applicability of the safety order to the facts of the alleged violation.” (*Dish Network California Service Corporation*, Cal/OSHA App. 12-0455, Decision After Reconsideration (Aug. 28, 2014), citing *Howard J. White, Inc.*, Cal/OSHA App. 78-741, supra.) In *Dish Network California Service Corporation*, the Appeals Board held that the Division had not shown the applicability of section 1637, subdivision (a), where the Division’s inspector admitted during cross-examination that it was not possible to erect a scaffold where work was being performed. According to the Appeals Board:

There is little in the record related to scaffolding outside of Hammer’s concession that it could not be used in an attic. As the safety order requires scaffolding to be provided as a platform on which an employee may safely stand to work (or alternately a ladder), and a scaffold is not suitable for the work space at issue, the safety order on its face does not apply to these facts. **The language of section 1637 [subdivision] (a) does not appear to contemplate application to the low attic of a finished residence.** (Emphasis added.)

The Division's only evidence that scaffolding would have been suitable was Murphine's conclusory testimony that mobile scaffolding was available that could be erected in the space. Her testimony is not entitled to much weight, because the Division did not provide any evidence that Murphine measured or ascertained the dimensions of the attic space, in order to determine the feasibility of scaffolding.<sup>7</sup> The Division therefore did not meet its burden of establishing the applicability of the safety order to the facts of this case, particularly in light of the Appeals Board's holding in *Dish Network California Service Corporation*, Cal/OSHA App. 12-0455, above.<sup>8</sup> For the foregoing reasons, the Division failed to meet its burden of proof, and Employer's appeal of Citation 1, item 3 is granted.

**4. Did Employer violate section 3395, subdivision (f)(3) by not including all of the required elements in Employer's Heat Illness Prevention Plan (HIPP)?**

Section 3395 (Heat Illness Prevention), subdivision (f)(3) stated at the time of the incident:

The employer's procedures for complying with each requirement of this standard required by subsections (f)(1)(B), (G), (H), and (I) shall be in writing and shall be made available to employees and to representatives of the Division upon request.

Section 3395, subdivision (f)(1) (Training) stated in relevant part at the time of the incident:

(f) Training

(1) Employee training. Effective training in the following topics shall be provided to each supervisory and non-supervisory employee before the employee begins work that should reasonably be

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<sup>7</sup> Rather, the undersigned reasonably infers from the totality of the evidence produced at hearing that Murphine in fact did not take measurements of the attic space where Hernandez had been working.

<sup>8</sup> The undersigned recognizes that the facts in this case are not identical to the facts that were before the Appeals Board. The Appeals Board was addressing a situation involving work being performed in a completed attic. Here, the attic had not been completed when the incident occurred. The *Dish Network* decision does not specify the height of the "low attic"; here, similarly, the parties failed to introduce evidence of the height, making it hard to compare the two situations. Nonetheless, the Division failed to show how scaffolding would have been feasible in the space provided. Exhibits 16, 17, and G depict a framework of wooden beams, trusses, etc., and the undersigned infers from the evidence presented that substantially the same restrictions would have prevented erection of a scaffold in the work space at the site, as prevented erection of a scaffold in the finished attic in *Dish Network*.

anticipated to result in exposure to the risk of heat illness:

.....

(B) The employer's procedures for complying with the requirements of this standard.

.....

(G) The employer's procedures for responding to symptoms of possible heat illness, including how emergency medical services will be provided should they become necessary.

(H) The employer's procedures for contacting emergency medical services, and if necessary, for transporting employees to a point where they can be reached by an emergency medical service provider.

(I) The employer's procedures for ensuring that, in the event of an emergency, clear and precise directions to the work site can and will be provided as needed to emergency responders. These procedures shall include designating a person to be available to ensure that emergency procedures are invoked when appropriate.

In addition, section 3395, subdivision (e) (High Heat Procedures) at the time of the incident provided in relevant part:

(e) High-heat procedures. The employer shall implement high-heat procedures when the temperature equals or exceeds 95 degrees Fahrenheit. These procedures shall include the following to the extent practicable:

(1) Ensuring that effective communication by voice, observation, or electronic means is maintained so that employees at the work site can contact a supervisor when necessary. An electronic device, such as a cell phone or text messaging device, may be used for this purpose only if reception in the area is reliable.

(2) Observing employees for alertness and signs or symptoms of heat illness.

(3) Reminding employees throughout the work shift to drink plenty of water.

(4) Close supervision of a new employee by supervisor or designee for the first 14 days of the employee's employment by the employer, unless the employee indicates at the time of hire that he or she has been doing similar outdoor work for at least 10 of the past 30 days for 4 or more hours per day.

In citing Employer, the Division alleged:

a) At the time of the inspection, for the employees performing outdoor construction work at the various job sites located in San Diego county installing solar panels on homes, the Employer's Heat Illness Prevention Policy did not include their plan for how to comply with all of the elements of the high-heat procedures required by 3395(e). The policy did not identify how effective communication will be ensured as per (e)(1), or close supervision of new employees as per (e)(4).

As noted above in Issue 3 of this Decision, to prove a violation, the Division first "must demonstrate the applicability of the safety order to the facts of the alleged violation." (*Dish Network California Service Corporation*, Cal/OSHA App. 12-0455, Decision After Reconsideration (Aug. 28, 2014), citing *Howard J. White, Inc.*, Cal/OSHA App. 78-741, *supra.*) Here, the safety order on its face applies to outdoor places of work. Employer did not dispute that it is in the construction industry, and installs solar equipment on the outsides of homes. Therefore, the Division met its initial burden of establishing the applicability of the safety order.

To establish a violation occurred, the Division has the burden of proving by a preponderance of the evidence that Employer's HIPP was missing one or more of the elements enumerated by the safety order. (See, e.g. *HHS Construction*, Cal/OSHA App. 12-0492-0497, Decision After Reconsideration (Feb. 26, 2015).) Here, the Division solely alleged that the HIPP was missing two elements: ensuring effective communication; and, close supervision of new employees.

Murphine testified that Employer did not explain in its HIPP how it would ensure effective communication as required under section 3395, subdivision (e). (See Exhibit 21, p. 2.) Employer's HIPP states the following:

Supervisors are required to ensure the following requirements are adhered to:

...

### **High-Heat Procedures**

When the ambient temperature exceeds 95 degrees, the Supervisor is required to follow these procedures:

- Ensure a method of contacting emergency services is available.
- Observing employees for alertness and signs or symptoms of heat illness before and after work begins.
- Take all required breaks and require employees to drink water during the break period.
- Ensure an adequate supply of water is available to the workers without additional exertion. For example, the workers should not have to climb down from the roof to get water.

Murphine's testimony, and Exhibit 21, together showed that Employer's HIPP did not contain procedures for ensuring effective communication or for observing employees. Employer's high-heat procedures merely restate what is in the safety order. The language is generic and does not describe how to specifically implement all of the required elements. A supervisor would be forced to interpret the procedures in order to determine how they should be implemented. Thus, the Division met its initial burden of establishing a violation of the safety order.

Ramirez testified that Employer complied because it was his belief that the JHA (Exhibit 8) adequately addressed all of the high-heat procedures including ensuring communication and observing employees. Ramirez's testimony is not persuasive, however, because Employer's HIPP does not reference JHAs, and therefore there is no indication that a JHA will become part of Employer's written procedures and consequently part of its Heat Illness Prevention Plan. Moreover, the JHA for the date of the incident did not contain adequate procedures for ensuring communication is maintained or ensuring observation of employees, and Ramirez admitted that Employer did not put specific communication procedures in its HIPP. Employer also introduced its "Accident and Incident Procedures" (Exhibit E), which Ramirez testified described instructions for how to obtain EMS in the event of an emergency. Contrary to Ramirez's testimony, Exhibit E mostly describes how to conduct an accident investigation (see page 1, numbered paragraphs 5

through 9). The only information contained with respect to providing EMS services is contained within paragraph 1, which directs employees to “Evaluate, Treat and or Transport the injured worker based on the best information available.” The Division’s point, which was persuasive, was that Employer failed to develop written procedures for obtaining “the best information possible”, much less for treating and transporting injured employees. Therefore, Employer did not rebut the Division’s evidence of a violation.<sup>9</sup>

For the foregoing reasons, the Division established a violation of section 3395, subdivision (f)(3), by a preponderance of the evidence.

**5. Did Employer violate section 3395, subdivision (f)(1), by failing to train employees in all of the required heat illness topics?**

Section 3395 (Heat Illness Prevention), subdivision (f)(1) (Training; Employee Training) stated in relevant part at the time of the incident:

Effective training in the following topics shall be provided to each supervisory and non-supervisory employee before the employee begins work that should reasonably be anticipated to result in exposure to the risk of heat illness:

.....

(F) The importance to employees of immediately reporting to the employer, directly or through the employee's supervisor, symptoms or signs of heat illness in themselves, or in co-workers.

(G) The employer's procedures for responding to signs or symptoms of possible heat illness, including how emergency medical services will be provided should they become necessary.

(H) The employer's procedures for contacting emergency medical services, and if necessary, for transporting employees to a point where they can be reached by an emergency medical service provider.

(I) The employer's procedures for ensuring that, in the event of an emergency, clear and precise

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<sup>9</sup> There were other elements missing as well, which were not specifically identified in the alleged violation description but which testified to at hearing. For instance, Ramirez admitted that acclimatization procedures were “inferred” by the language of its HIPP and that no time period was specified for monitoring.

directions to the work site can and will be provided as needed to emergency responders. These procedures shall include designating a person to be available to ensure that emergency procedures are invoked when appropriate.

In citing Employer, the Division alleged:

At the time of the inspection, for the employees performing outdoor construction work at the various job sites located in San Diego county, the employer had not provided all employees with effective heat illness training on their heat illness plan and the topics under (A) through (I) above. The employer's written Heat Illness Plan did not include all of the required elements, and employees were not trained on environmental and personal risk factors, the importance of acclimatization, the different types of heat illness and common signs and symptoms of heat illness, the importance of immediately reporting signs of heat illness, the employer's procedures for responding to symptoms of possible heat illness, the employer's procedures for contacting emergency medical services and the procedures for ensuring that clear and precise directions can be provided to emergency responders.

In order to prove a violation, the Division has the burden of establishing that Employer failed to 1) provide effective training in the listed topics; 2) to each supervisory and non-supervisory employee; 3) before the employee begins work that should reasonably be anticipated to result in exposure to the risk of heat illness.

Murphine testified that she requested Employer's training records relating to Hernandez, and its HIPP.<sup>10</sup> Murphine felt that Employer's HIPP was deficient and therefore, she felt that Employer's training must be deficient as well. Specifically, Murphine testified that the materials she received did not establish that Employer had provided training as to enumerated topics (F), (G), (H) or (I).<sup>11</sup> Additionally, although Murphine received training records showing that Ramirez had taken training, she testified that she did not receive

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<sup>10</sup> Employer's HIPP was identified and admitted as Division's Exhibit 21; Employer's training records were identified and admitted as Exhibits A, B, C, D, H, I, J and K.

<sup>11</sup> As discussed under issue 4, Murphine also issued a citation to Employer for having an incomplete HIPP.

agendas or other materials relating to the trainings, so it was impossible for her to determine what was covered.<sup>12</sup>

Employer presented evidence of the content of its HIPP training that it provided to Hernandez. Ramirez testified that training is provided to all employees and that employees must pass a multiple choice test immediately following the training before they are permitted to work in the field. Employer provided evidence that Hernandez received training entitled “Preventing Heat-Related Illness” on December 19, 2013 (Exhibit A) and May 14, 2014 (Exhibit D.) The training covered topics (A), (C), (D) and (E). (Exhibit C.) Employer also offered evidence that Hernandez received training entitled “Heat Stress Introduction” on April 10, 2014. (Exhibit A.) The content of the training covered topics (A), (E) and (G). (Exhibit B.) In addition, Employer provided the content of an online course that Hernandez was required to take prior to being allowed to work in the field. The content of the course covered topics (A) – (F). (Exhibit H.)

Employer offered no evidence that it complied with the requirement that it train employees on its procedures for contacting emergency medical services, and if necessary, for transporting employees to a point where they can be reached by an emergency medical service provider (enumerated topic (H)) or on its procedures for ensuring that, in the event of an emergency, clear and precise directions to the work site can and will be provided as needed to emergency responders. (Enumerated topic (I).) As discussed in section 1, Employer incorrectly relied on the use of 24/7 in-house “Incident Managers” in order to ensure provision of emergency medical services. Employer failed to offer legally sufficient evidence that it trained its employees or supervisors appropriately with regard to contacting EMS directly and transporting employees to a reachable location. Employer also failed to offer legally sufficient evidence that it ensured clear and precise directions to the worksite could be given to first responders.<sup>13</sup> Accordingly, the preponderance of the evidence at hearing demonstrated that Employer failed to effectively train its

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<sup>12</sup> Murphine requested “All Safety Training Records for Ramon Hernandez” as part of her document request dated May 23, 2014. (Exhibit 7.) She admitted at hearing that she requested only proof of training, not the content. Ordinarily, this might have resulted in the Division failing to meet its burden of proof because there would have been no evidence as to the basis for issuing the citation. However, Employer presented evidence as to the content of its HIPP training during Murphine’s cross-examination, which occurred during the Division’s case in chief. The evidence presented during cross-examination was sufficient to meet the Division’s initial burden of establishing a violation. Therefore, the effectiveness of Employer’s HIPP training is a matter for the undersigned to determine.

<sup>13</sup> This was particularly troubling in light of the undisputed testimony from Murphine that the site was located in a rural, hilly area, and that the houses under construction had not yet have street numbers posted. Under the circumstances, it was quite foreseeable that in the event of an emergency, without having implemented appropriate training for obtaining EMS, employees and supervisors could encounter difficulty obtaining potentially life-saving treatment in a reasonable amount of time.

supervisory and non-supervisory employees in all of the required HIPP topics.<sup>14</sup>

For the foregoing reasons, the Division established a violation of section 3395, subdivision (f)(1) by a preponderance of the evidence.

**6. Did Employer violate section 14300.40, subdivision (a), by failing to provide the Division with Form 300s as requested?**

Section 14300.40, subdivision (a), states:

Basic requirement. When an authorized government representative asks for the records you keep under the provisions of this article, you must provide within four (4) business hours, access to the original recordkeeping documents requested as well as, if requested, one set of copies free of charge.

Section 14300.29, subdivision (a), states:

Basic requirement. You must use Cal/OSHA 300, 300A, and 301 forms, or equivalent forms, for recordable injuries and illnesses. The Cal/OSHA Form 300 is called the Log of Work-Related Injuries and Illnesses, the Cal/OSHA Form 300A is called the Summary of Work-Related Injuries and Illnesses, and the Cal/OSHA Form 301 is called the Injury and Illness Incident Report. Appendices A through C give samples of the Cal/OSHA forms. Appendices D through F provide elements for development of equivalent forms consistent with Section 14300.29(b)(4) requirements. Appendix G is a worksheet to assist in completing the Cal/OSHA Form 300A.

Section 14300.33 requires that the Cal OSHA 300 be kept for 5 years following the end of the calendar year covered by the records.

In citing Employer, the Division alleged:

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<sup>14</sup> It was undisputed at hearing that Hernandez was a supervisory employee at the time of the incident, and it was also undisputed that exposure to heat illness was reasonably anticipated as part of Employer's regular work. Therefore, elements 2 and 3 were established, and further discussion is appropriately omitted.

a) On or before 5/30/2014, the employer did not provide a Cal/OSHA LOG 300 or equivalent for the calendar years 2012 and 2014 within the time frame allowed. The documents were requested in writing from the employer on the Document Request Sheet provided to the employer on 5/22/2014. The employer responded to the document request by providing only the Cal/OSHA LOG 300 for the year 2013.

Murphine testified that she requested 3 years of Cal/OSHA LOG 300's (Form 300) from Employer. (Exhibit 7.) She testified that she normally gave employers approximately 1 week to respond to document requests; here, she requested the documents on May 22, 2014, and set the response date as May 30, 2014. Murphine received Employer's Form 300 only for 2013. Thus, the Division met its initial burden of establishing a violation. Moreover, Employer admitted it received Murphine's document request; rather, Ramirez testified that he thought all the requested Form 300s had been provided, and he did not hear back from Murphine prior to the citation being issued. Employer was required by the safety order to provide the requested records within 4 hours. The fact that Employer failed to provide the requested records even after a week, supports a finding that a violation occurred, as does the fact that Employer failed to present credible evidence at hearing that it timely provided copies of the requested forms to the Division.

For the foregoing reasons, the Division established a violation of section 14300.40, subdivision (a), by a preponderance of the evidence.

### **7. Did the Division correctly classify the alleged violations?**

Besides contesting the existence of the alleged violations, Appellant also contested the classifications of the appealed citations. The Division bears the burden of establishing by a preponderance of the evidence that it correctly classified the alleged violations.<sup>15</sup>

A regulatory violation is defined as "a violation, other than one defined as Serious or General that pertains to permit, posting, recordkeeping, and reporting requirements as established by regulation or statute. For example, failure to obtain permit; failure to post citation, poster; failure to keep required records; failure to report industrial accidents, etc." (Cal. Code Regs., tit. 8, § 334, subd. (a).)

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<sup>15</sup> As indicated in this Decision, the undersigned grants Employer's appeal of Citation 1, item 3. Therefore, discussion relating to the classification of said item is omitted as irrelevant.

A general violation is defined as “a violation which is specifically determined not to be of a serious nature, but has a relationship to occupational safety and health of employees.” (Cal. Code Regs., tit. 8, § 334, subd. (b).)

The Division classified Citation 1, item 1 (alleged violation of section 1512, subdivision (i) [failure to have a written plan to provide emergency medical services]) as General. Murphine testified that having an incomplete EMS plan bore a direct relationship to employee safety and health, because if employees do not know who to call in the event of an emergency, it could lead to delays in receiving appropriate medical treatment. Employer offered no contrary evidence in relation to the classification; therefore, Employer effectively admitted that the classification was correct. (See *Kaiser Steel Corporation*, Cal/OSHA App 75,-1135, Decision After Reconsideration (June 21, 1982) [the Appeals Board may consider an employer’s failure to explain or deny adverse evidence or facts]; see Evid. Code, § 413; see also *Shehtanian v. Kenny* (1958) 156 Cal.App.2d 576 [failure to offer any evidence on a certain issue, though production of such evidence was clearly within the defendant's power, raised an inference that the evidence, if produced, would have been adverse].) Accordingly, the preponderance of the evidence at hearing supports a finding that the Division correctly classified Citation 1, item 1 as General.

The Division classified Citation 1, item 2 (alleged violation of section 1527, subdivision (a)(1) [failure to provide hand washing facilities in connection with a portable toilet]) as General. Murphine testified that not providing hand washing facilities bore a direct relationship to employee safety and health, because it could lead to contamination and spreading of disease. Although Employer offered evidence that its employees had ready access to trucks to travel to nearby public toilet facilities, the presence of toilets without hand washing facilities at the site bore a relationship to employee safety and health because it was reasonably foreseeable that an employee could use a portable toilet and then not be able to effectively wash their hands immediately afterward. Accordingly, the preponderance of the evidence at hearing supports a finding that the Division correctly classified Citation 1, item 1 as General.

The Division classified Citation 1, item 4 (alleged violation of section 3395, subdivision (f)(1) [failure to effectively train supervisory and non-supervisory employees in all of the enumerated heat illness prevention topics]) as General. Murphine testified that failing to effectively train employees in the required topics bore a direct relationship to employee safety and health, because it can result in serious injury or fatality to employees who are not knowledgeable about the symptoms of, and proper response to, heat illness. As with regard to item 1, above, Employer had the opportunity to challenge the classification at hearing but failed to present any evidence to demonstrate that a General classification was incorrect. Accordingly, the

preponderance of the evidence at hearing supports a finding that the Division correctly classified Citation 1, item 4 as General.

The Division classified Citation 1, item 5 (alleged violation of section 3395, subdivision (f)(3) [failure to put procedures for complying with each HIPP requirement in writing]) as General. Murphine testified that failing to provide high-heat procedures in writing bore a direct relationship to employee safety and health, because it can exacerbate heat illness. Again, as with regard to items 1 and 4, above, Employer had the opportunity to challenge the classification at hearing but failed to present any evidence to demonstrate that a General classification was incorrect. Accordingly, the preponderance of the evidence at hearing supports a finding that the Division correctly classified Citation 1, item 5 as General.

The Division classified Citation 1, item 6 (alleged violation of section 14300.40, subdivision (a) [failure to provide recordkeeping documents to DOSH upon request] as Regulatory. Murphine testified that she classified the violation as Regulatory because it pertained to record keeping. Again, as with regard to items 1, 4 and 5, above, Employer had the opportunity to challenge the classification at hearing but failed to present any evidence to demonstrate that a Regulatory classification was incorrect. Accordingly, the preponderance of the evidence at hearing supports a finding that the Division correctly classified Citation 1, item 6 as Regulatory.

For the foregoing reasons, the Division established by a preponderance of the evidence, that it correctly classified each of the alleged violations.

### **8. Did Employer establish that it would be impractical to abate the violations?**

Employer challenged the reasonableness of the proposed abatement as part of its appeal from Citation 1, items 1 through 6.<sup>16</sup> It is the employer's burden to establish that the abatement requirements are not feasible, once the Division has established a violation of the applicable safety order. (*BHC Fremont Hospital, Inc.*, Cal/OSHA App. 13-0204, Decision After Reconsideration (May 30, 2014); *Home Depot USA, Inc.*, Cal/OSHA App. 10-3284, Decision After Reconsideration (Dec. 24, 2012).)

Regarding Citation 1, item 1, Ramirez testified that because Employer operates at numerous locations at any given time, it utilizes 24/7 on-call "Incident Managers" to provide EMS contact information to employees. Ramirez did not testify that it would be impractical or impossible for

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<sup>16</sup> As indicated in this Decision, the undersigned grants Employer's appeal of Citation 1, item 3. Therefore, discussion relating to the reasonableness of the abatement with respect to said item is omitted as irrelevant.

Employer to abate the violation; rather, Employer believed it had found a better way. Employer could have sought a variance under Labor Code section 143 if it believed that its system provided equal or superior safety as compared to adherence to the safety order. (Lab. Code, § 142.3, 142.4; *Hyatt Die Casting Co., Inc.*, Cal/OSHA App. 93-1530, Decision After Reconsideration (Oct. 1, 1997).) No variance was sought, and Employer failed to present evidence that abatement was unfeasible. Therefore, Employer did not meet its burden with respect to Citation 1, item 1.

With regard to Citation 1, item 2, Employer offered evidence that its crew had ready access to nearby publicly available toilets in the local community. Employer argued that in order to comply with the safety order, it would have to tow hand washing stations to every job site. Employer's evidence was not persuasive, particularly in light of Murphine's testimony that Employer could negotiate with general contractors or property owners to provide compliant facilities. Therefore, Employer did not meet its burden with respect to Citation 1, item 2.

With regard to Citation 1, items 4 and 5, Employer offered no evidence that it would be unfeasible to improve its HIPP and related training in order to comply with the cited safety orders by including written procedures and training covering all of the required topics. Rather, Ramirez testified and Employer argued that Employer's HIPP and its training were not only compliant, but in fact went above and beyond what the cited safety orders required. As discussed above, Employer's HIPP and its training related thereto did not address all of the elements required by the respective safety orders; therefore, Ramirez's testimony and Employer's argument are not deemed compelling. Therefore, Employer did not meet its burden with respect to Citation 1, items 4 and 5.

With regard to Citation 1, item 6, Employer offered no evidence that it would be impractical or impossible to provide its safety records to the Division upon request. Ramirez simply testified that he thought Employer had complied, but his testimony is not supported by any additional evidence that Employer provided its Form 300's to the Division prior to issuance of the citation. Therefore, Employer did not meet its burden with respect to Citation 1, item 6.

Employer presented no evidence in support of its logical time affirmative defense and offered no argument related thereto in its closing argument. With respect to abatement, the appealed citation items did not impose any conduct other than compliance with the applicable standards. There is no evidence that compliance is either impractical or unreasonably expensive. Employer's assertion that the abatement requirement is unreasonable is rejected. (*The Daily Californian/Calgraphics*, Decision After Reconsideration Cal OSHA/App. 90-929, Decision After Reconsideration (Aug.

28, 1991).) For the foregoing reasons, Employer did not meet its burden of establishing that the abatements proposed for Citation 1, items 1, 2, 4, 5 or 6 is impractical or impossible.

**9. Did the Division propose reasonable penalties for the alleged violations?**

Employer appealed the reasonableness of the penalties for Citation 1, items 1 through 6. Labor Code section 6319, subdivision (c), sets forth the factors which the Director of the Department of Industrial Relations must include when promulgating penalty regulations: size of the employer, good faith, gravity of the violation, and history of any previous violations. (Cal. Code Regs., §§ 333-336.) Penalties calculated in accordance with the penalty setting regulations (Cal. Code Regs., §§ 333-336) are presumptively reasonable. (*Stockton Tri Industries, Inc.*, Cal/OSHA App. 02-4946, Decision After Reconsideration (Mar. 27, 2006).) Penalties proposed by the Division in accordance with those regulations are presumptively reasonable and will not be reduced absent evidence by Employer that the amount of the proposed civil penalty was miscalculated, the regulations were improperly applied, or that the totality of the circumstances warrant a reduction. (*Id.*)

If the Division introduces the proposed penalty worksheet and testifies that the calculations were completed in accordance with the appropriate regulations and procedures, it has met its burden to show the penalties were calculated correctly, absent rebuttal by the Employer. (*M1 Construction*, Cal/OSHA App. 12-0222, Decision After Reconsideration (July 31, 2014).) Employer offered no evidence that the proposed penalties were miscalculated, or the result of improper application of the regulations, or that the totality of the circumstances warrant a reduction. Although the Division did not need to offer any further evidence, Murphine credibly testified as to how she arrived at the proposed penalties for Citations 1, items 1 through 6 by following the appropriate regulations and procedures.<sup>17</sup> (See Exhibit 15.)

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<sup>17</sup> Citation 1, item 1: Murphine testified that she classified item 1 as General for the reasons described in this Decision. She rated Severity as moderate because of the possibility of delay in obtaining medical treatment which could cause or exacerbate injuries. She did not make any adjustments for Extent or Likelihood, because all employees were exposed, and because the location was remote, which in her experience and based on her training (See Exhibit 4) could cause delay in obtaining needed medical treatment for an ill or injured employee. Therefore, she arrived at a Gravity Based Penalty of \$1,500. Employer received no adjustment for size, because Murphine testified Employer had more than 100 employees. Murphine gave Employer a 15% adjustment for Good Faith because she found Employer's safety program was average. She found no violation history and accordingly Employer received a 10% adjustment for History. In addition, Employer received a 50% abatement credit. (See *Luis E. Avila DBA E & L Avila Labor Contractors*, Cal/OSHA App. 00-4067, Decision After Reconsideration (Aug. 26, 2003) [holding that application of the 50% abatement credit was mandatory unless otherwise prohibited by law.]) Thus, Murphine arrived as a proposed penalty of \$560.

Murphine's calculations are deemed reasonable and supported by the evidence at hearing. Accordingly, the penalties for Citation 1, items 1, 3, 4, 5 and 6 are assessed as set forth in Footnote 18 and the attached Summary Table.

### **Conclusion**

Employer's appeal from Citation 1, item 3, is granted. Employer's appeal from Citation 1, items 1, 2, 4, 5 and 6 is denied. The Division established the existence of the violations alleged in Citation 1, items 1, 2, 4, 5 and 6 by a preponderance of the evidence.

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Citation 1, item 2: Murphine testified that she classified item 1 as General for the reasons described in this Decision. She rated Severity as moderate because of employees were exposed for approximately 4 hours to 2 non-compliant portable toilets. She similarly rated Extent and Likelihood as moderate because of the risk of transmitting disease and the duration of time at the site increased the probability of actual exposure based on her training and experience. (See Exhibit 4.) Therefore, she arrived at a Gravity Based Penalty of \$1500. Employer received a 15% Good Faith adjustment, and a 10% adjustment for history, no adjustment for size, but did receive as a 50% abatement credit (see reasoning above re: Citation 1, item 1.) Thus, Murphine arrived as a proposed penalty of \$560.

Citation 1, item 4: Murphine testified that she classified item 4 as General for the reasons described in this Decision. She rated Severity as high because of the risk of serious injury or illness requiring hospitalization, and she rated Extent as high because the violation affected all of Employer's employees. She did not make any adjustment for Likelihood, which was justified by the number of employees exposed (Murphine assessed 15 were exposed) and her training and experience in investigating heat related illness and injuries in the past. (See Exhibit 4). Therefore, she arrived at a Gravity Based Penalty of \$2500. Employer received a 15% Good Faith adjustment, and a 10% adjustment for history, no adjustment for size, but did receive as a 50% abatement credit (see reasoning above re: Citation 1, item 1.) Thus, Murphine arrived as a proposed penalty of \$935.

Citation 1, item 5: Murphine testified that she classified item 5 as General for the reasons described in this Decision. She rated Severity as low because she did not think the violation would cause a serious injury but could exacerbate an injury, and she rated Extent as medium because the violation affected all of Employer's employees. She rated Likelihood as low by giving Employer the benefit of the doubt. Therefore, Murphine arrived at a Gravity Based Penalty of \$750. Murphine gave Employer the same adjustments for good faith, history and size as she did for the other citations, for the same reasons as discussed above. Thus, Murphine arrived at a proposed penalty of \$280.

Citation 1, Item 6: Murphine testified that she classified item 6 as Regulatory for the reasons described in this Decision. She assessed the minimum \$500 gravity based penalty. (See section 336, subdivision (a).) She further adjusted the penalty 10% for History and 15% for Good Faith for the same reasons as set forth above. Accordingly, she arrived at a proposed penalty of \$375.

**Order**

It is hereby ordered that the Citation 1, item 3 is vacated. It is hereby further ordered that Citation 1, items 1, 2, 4, 5 and 6 are established as the penalties are assessed as indicated above and as set forth in the attached Summary Table. Total penalties are assessed in the amount of \$2,710.

Dated: January 20, 2016  
HIC:ml

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**HOWARD I. CHERNIN**  
Administrative Law Judge

**APPENDIX A**  
**SUMMARY OF EVIDENTIARY RECORD**

**SOLARCITY CORP.**  
**Docket 14-R3D2-3707**

**Date of Hearings: October 13 and December 17, 2015**

**Division's Exhibits**

<b>Number</b>	<b>Exhibit Description</b>	<b>Admitted</b>
1	Notice of Hearing	Yes
2	Copy of Employer's Docketed Appeal	Yes
3	Division's Citation and Notice of Penalty	Yes
4	Letter dated July 1, 2015 confirming Darcy Murphine's Division-mandated training is current	Yes
5	Google aerial image depicting the site	Yes
6	Photograph of plot map depicting the site	Yes
7	Document request dated May 22, 2014	Yes
8	SolarCity-Job Hazard Analysis dated May 15, 2014	Yes
9	Photograph of Contractor's "All-in-one" poster	Yes
10	Printed contact information for Sharp Rees-Stealy Rancho Bernardo	Yes
11	Google Maps directions from the site to Sharp Rees-Stealy Rancho Bernardo	Yes
12	Printout of Pomerado Hospital Emergency Services web page	Yes
13	Google Maps directions from the site to Pomerado Hospital	Yes
14	Employer's Report of Occupational Injury or Illness dated May 15, 2014	Yes

15	Division's C-10 Proposed Penalty Worksheet	Yes
16	Site Photograph #1 depicting location of incident	Yes
17	Site Photograph #1 depicting location of incident	Yes
18	Employer's Incident Report dated May 15, 2014	Yes
19	Copy of Section 3395 as it existed on date of incident	Yes
20	Quality Controlled Local Climatological Data from NOAA, May 2014	Yes
21	Employer's HIPP as of date of incident	Yes

**Employer's Exhibits**

<b>Exhibit Letter</b>	<b>Exhibit Description</b>	<b>Admitted</b>
A	SolarCity University Training Records as of June 5, 2014 re Ramon Hernandez	Yes
B	SolarCity Weekly Toolbox Training – Heat Stress Introduction	Yes
C	SolarCity Weekly Toolbox Training – Preventing Heat-Related Illnesses	Yes
D	Toolbox Training Sign in sheet re Heat Related Illnesses dated May 14, 2014	Yes
E	SolarCity Accident and Incident Procedures	Yes
F	Google Maps directions from the site to the nearest public restroom	Yes
G	Scene photo	Yes
H	Thumb drive containing Employer's online Heat Illness training	Yes
I	Toolbox Training Sign in sheet re Heat Stress, dated April 9, 2014	Yes
J	SolarCity Weekly Toolbox Training – Safety in the Sun	Yes

K	Toolbox Training Sign in sheet re Dangers of the Sun, dated April 23, 2014	Yes
L	Declaration of Employer's counsel, Lisa Prince, Esq.	No

**Witnesses Testifying at Hearing**

Darcy Murphine  
Carlos Ramirez

**CERTIFICATION OF RECORDING**

*I, HOWARD I. CHERNIN, the California Occupational Safety and Health Appeals Board Administrative Law Judge duly assigned to hear the above matter, hereby certify the proceedings therein were electronically recorded. The recording was monitored by the undersigned and constitutes the official record of said proceedings. To the best of my knowledge, the electronic recording equipment was functioning normally.*

\_\_\_\_\_  
**HOWARD I. CHERNIN**

\_\_\_\_\_  
Date

**SUMMARY TABLE  
DECISION**

*In the Matter of the Appeal of:*

**SOLARCITY CORP  
DOCKET 14-R3D2-3707**

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

IMIS No. 317231884

DOCKET	CITATION	SECTION	TYPE	MODIFICATION OR WITHDRAWAL	AVFCIRTED	PENALTY PROPOSED BY DOSH IN CITATION	PENALTY PROPOSED BY DOSH AT HEARING	FINAL PENALTY ASSESSED BY BOARD
14-R3D2-3707	1	1512(i)	G	[Failure to post EMS contact information at job site] ALJ affirmed as set forth in Decision.	X	\$560	\$560	<b>\$560</b>
		1527(a)(1)	G	[Failure to provide hand washing stations] ALJ affirmed as set forth in Decision.	X	\$560	\$560	<b>\$560</b>
		1637(a)	G	[Failure to provide scaffolding] ALJ granted appeal.		\$560	\$560	<b>\$0</b>
		3395(f)(1)	G	[HIPP – Failure to train Ee’s in all required topics] ALJ affirmed as set forth in Decision	X	\$935	\$935	<b>\$935</b>
		3395(f)(3)	G	[HIPP – Written program missing elements] ALJ affirmed as set forth in Decision.	X	\$280	\$280	<b>\$280</b>
		14300.40(a)	R	[Failure to provide DOSH with 3 years of CalOSHA Form 300s] ALJ affirmed as set forth in Decision	X	\$375	\$375	<b>\$375</b>
							\$	
				<b>Sub-Total</b>		\$3,270	\$3,270	<b>\$2710</b>
				<b>Total Amount Due*</b>				<b>\$2,710</b>

NOTE: *Please do not send payments to the Appeals Board.*

**All penalty payments should be made to:**

Accounting Office (OSH)  
Department of Industrial Relations  
P.O. Box 420603  
San Francisco, CA 94142

(INCLUDES APPEALED CITATIONS ONLY)

\*You will owe more than this amount if you did not appeal one or more citations or items containing penalties.

**ALJ: HIC/ml  
POS: 01/20/16**

