

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

In the Matter of the Appeal of:

**GRANITE CONSTRUCTION COMPANY, INC. /  
GRANITE INDUSTRIAL, INC.  
P.O. Box 50085  
Watsonville, CA 95077**

**Employer**

Inspection No.

**1235643**

**DECISION AFTER  
RECONSIDERATION**

The Occupational Safety and Health Appeals Board (Board), acting pursuant to authority vested in it by the California Labor Code and having taken the Division of Occupational Safety and Health's (Division) Petition for Reconsideration under reconsideration, renders the following decision after reconsideration.

**Jurisdiction**

The Division issued three citations to Granite Construction Company, Inc./Granite Industrial Inc. (Employer), alleging four violations of worker safety regulations. Citation 1, Item 1 alleges a General violation of section 5144, subdivision (e)(1) [failure to medically evaluate employees who were required to use respirators]. Citation 1, Item 2 alleges a General violation of section 5144, subdivision (k)(5) [failure to retrain employees who were required to use respirators]. Citation 2, Item 1 alleges a Serious violation of section 1509, citing section 3203, subdivision (a)(6) [failure to have methods and/or procedures for correcting unsafe or unhealthy conditions]. Citation 3, Item 1 alleges a Serious violation of section 5144, subdivision (a)(1) [failure to use appropriate respirators when effective engineering controls were not feasible].<sup>1</sup>

On August 22, 2019, the administrative law judge (ALJ) issued a Decision after a three-day hearing. In her decision, the ALJ vacated all of the citations. On September 26, 2019, the Division filed a Petition for Reconsideration with the Board, disputing the ALJ's Decision and asserting, "(1) the evidence did not justify the findings of fact; and (2) the findings of fact did not support the order or decision." (Division's Petition, p. 2; Lab. Code, § 6617, subs. (c), (e).) Employer answered. On November 04, 2019, the Board took the Division's Petition under submission.

The Board renders the following Decision After Reconsideration after fully and independently considering the record. The Board did not consider new or additional evidence.

---

<sup>1</sup> Employer argued before the ALJ and now before the Board, the Division did not issue the citation within six months after the occurrence of the violation. (Lab. Code, § 6317.) The Board disagrees and finds Employer fails to read the rest of the Labor Code, which adds, for the purposes of issuing a citation, "an 'occurrence' continues until it is corrected, or the division discovers the violation, or the duty to comply with the violated requirement ceases to exist." (Lab. Code, § 6317.) The Board upholds the ALJ's analysis of this issue.

## **Issues**

- 1) Did Employer use engineering control measures, as far as feasible, to control diseases caused by breathing air contaminated with harmful dusts? When effective engineering controls were not feasible, did Employer require use of appropriate respirators?
- 2) Did Employer provide medical evaluations before employees were fit tested or required to use respirators in the workplace?
- 3) Did Employer provide training or retraining, as often as necessary, to employees who were required to use respirators?
- 4) Did Employer fail to implement its Injury and Illness Prevention Program (IIPP) by failing to correct unsafe or unhealthy conditions?
- 5) Were citations 2 and 3 properly classified as Serious?
- 6) Were the proposed penalties reasonable?

## **Findings of Fact**

1. Valley Fever is a virus caused by a microscopic fungus known as *coccidioides immitis* and it is not known to spread from person to person or between people and animals; exposure typically occurs in connection with ground disturbing activities that release the fungal spores which can then be inhaled.
2. Valley Fever is not only a respiratory disease. It can also manifest itself as meningitis or affect bones and joints without apparent respiratory symptoms. Once inside the lungs, the spore transforms itself into a larger, multicellular structure called a spherule. The spherule continues to grow and will eventually burst, releasing endospores which develop into new spherules, and then the cycle repeats.
3. Symptoms appear within 7-28 days after breathing the fungal spores and while most people have no symptoms, some that do can have symptoms for weeks or months; those with chronic or disseminated disease may be ill for years. The fungal infection can spread from lungs to other parts of the body, which is called dissemination.
4. Ten or fewer spores are sufficient to cause Valley Fever—some sources state a single spore would suffice.
5. Employer was a subcontractor on a solar energy construction project. The California First Solar Project consists of the construction of a 280 megawatt photovoltaic solar power plant in the southeastern corner of Monterey County.
6. Employer had knowledge of the presence of cocci spores in the worksite area and engaged in multiple measures to attempt mitigating employee exposure.

7. Granite employees engaged in earthwork, including mixing dirt, powder puffing, digging out posts, excavating around wires, shoveling, moving dirt, and compacting dirt.
8. Employer mandated employees to carry N-95 masks<sup>2</sup> with them at all times.
9. While employees were required to use the mask in dusty or windy conditions, Employer gave employees discretion to decide whether and when they should use the masks. Many employees chose not to wear masks.
10. Granite provided some training to its employees on Valley Fever.

### Analysis

To avoid redundancy and for clarity, the Board first addresses Citation 3, Item 1.

- 1) **Did Employer use engineering control measures, as far as feasible, to control diseases caused by breathing air contaminated with harmful dusts? When effective engineering controls were not feasible, did Employer require use of appropriate respirators?**

Citation 3, Item 1 alleged a violation of section 5144, subdivision (a)(1). That section states:

In the control of those occupational diseases caused by breathing air contaminated with harmful dusts, fogs, fumes, mists, gases, smokes, sprays, or vapors, the primary objective shall be to prevent atmospheric contamination. This shall be accomplished as far as feasible by accepted engineering control measures (for example, enclosure or confinement of the operation, general and local ventilation, and substitution of less toxic materials). When effective engineering controls are not feasible, or while they are being instituted, appropriate respirators shall be used pursuant to this section.

To establish a violation of this section, the Division must prove 1) the citation concerns a relevant source of atmospheric contamination, i.e. harmful dusts; 2) one or more of Employer's employees were exposed to harmful dusts; 3) Employer failed to use accepted engineering control measures as far as feasible to prevent atmospheric contamination; and 4) when effective engineering controls are not feasible to prevent atmospheric contamination, or while being instituted, appropriate respirators were not used.

---

<sup>2</sup> Section 5144, subdivision (b), defines a negative pressure respirator as "a respirator in which the air pressure inside the facepiece is negative during inhalation with respect to the ambient air pressure outside the respirator." It defines a "filtering facepiece (dust mask)" as "a negative pressure particulate respirator with a filter as an integral part of the facepiece or with the entire facepiece composed of the filtering medium." From the definitions employed in subdivision (b), it is clear the term dust mask and respirator are not necessarily contradictory. Here, the evidence indicates Employer provided its employees N-95 dust masks, which is merely a type of negative pressure particulate respirator. Therefore, the two terms are often used interchangeably herein.

Element 1: the citation concerns a relevant source of atmospheric contamination, i.e. harmful dusts

Section 5144, subdivision (a), applies to those occupational diseases “caused by breathing air contaminated with harmful dusts, fogs, fumes, mists, gases, smokes, sprays, or vapors...”; therefore, it is necessary to determine whether cocci spores actually constitute “harmful dust” and whether the air was “contaminated” with that dust. Employer argues cocci spores are neither a harmful dust, nor are they a contaminant. The Board rejects both arguments.

The Board first addresses the Employer’s argument that cocci spores do not constitute dust. Section 5140 defines “dust” as “particles of solid matter, other than fumes, in such a state of comminution that they may be inhaled.” The word comminute is variously defined to mean, “to reduce to minute particles: PULVERIZE”<sup>3</sup> and “To reduce to powder; pulverize.”<sup>4</sup> Comminution is not defined in the regulations. By citing to dictionaries, Employer states “‘Comminution’ is commonly defined as the act of reducing or pulverizing (e.g., crushing, grinding, cutting) mineral ores to minute particles or fragments.” (Employer’s Answer, p. 15.) Employer argues cocci spores do not fit within this definition. The Board disagrees. In interpreting regulations, the Board keeps the purpose behind the Occupational Safety and health Act of 1973 in mind and interprets regulations liberally to promote worker safety. (Lab. Code, § 6300; *Carmona v. Division of Industrial Safety* (1975) 13 Cal. 3d 303, 313; *Department of Industrial Relations v. Occupational Safety & Health Appeals Bd.* (2018) 26 Cal.App.5th 93, 106-107.)

For cocci spores to fit within the definition of “dust,” they must be particles of solid matter “in such a state of comminution that they may be inhaled.” The Board concludes cocci spores fit within this quoted language for two reasons. First, the cocci spores are undisputedly solid matter consisting of minute particles that may be inhaled due to their small size. Second, being “in such a state of comminution” does not mean they must fit within the definition of comminution per se, but rather be in a similar state or condition, i.e., “in such a state of comminution.” Cocci spores, as solid matter, are in a similar state or condition to reduced or pulverized mineral ores to minute particles that they may be inhaled. Thus, Cocci spores fit within the definition of “dust.” And, the record establishes cocci spores can be harmful.

The Board next addresses Employer’s argument that the air was not “contaminated” with harmful dust. Employer points to section 1504’s definition of “contaminant” as “a harmful, irritating or nuisance material that is foreign to the environment.” (Emphasis added.) Based on this definition, Employer claims the Division did not establish cocci spores were foreign to the environment. In effect, Employer is arguing cocci spores are part of the soil and thus, they are not foreign matter. The Board rejects Employer’s argument.

The “contaminant” definition Employer relies on is within the Construction Safety Orders (CSOs) while the regulation at issue here (section 5144) is within the General Industry Safety Orders (GISOs). Thus, Employer’s argument relying on the definition in CSOs when discussing a violation within GISOs is mistaken. Since there is no special definition for the word

---

<sup>3</sup> Merriam-Webster Since 1828 <<https://www.merriam-webster.com/dictionary/comminute>> (as of January 25, 2020).

<sup>4</sup> The American Heritage Dictionary of the English Language <<https://ahdictionary.com/word/search.html?q=comminute>> (as of January 25, 2021).

contaminant in the GISOs, the Board applies a common or ordinary definition for the word “contaminate,” which may be derived from dictionaries. (*Heritage Residential Care, Inc. v. Division of Labor Standards Enforcement* (2011) 192 Cal. App. 4th 75, 82-83.) The term “contaminate” is defined to mean, as relevant to here, “**2**: to make unfit for use by the introduction of unwholesome or undesirable elements.” (Merriam-Webster Since 1828 <<https://www.merriam-webster.com/dictionary/contaminate>> [as of January 25, 2021].) As cocci spores, make the air unfit or undesirable for breathing, they fit the definition of a contaminant.

Even if the Board were to apply the definition Employer wants it to apply, Employer’s arguments still fail. This is because the environment section 5144 is concerned with is the respiratory environment and cocci spores are foreign to the breathing air, which would make them fall under the definition of a contaminant, i.e., as foreign matter, cocci spores contaminate the environment at issue which is the breathing air.

For these reasons, the Board concludes cocci spores are both dust and a contaminant.

Element 2: one or more of Employer’s employees were exposed to harmful dusts<sup>5</sup>

The Board can analyze the exposure issue under two different standards: 1) the Board may apply the “harmful exposure standard” as it has done in *Nielsen Freight Lines*, Cal/OSHA App. 79-647, Decision After Reconsideration (Aug. 17, 1984) and other similar cases; 2) overrule *Nielson Freight*, in light of the amendments section 5144 has gone through, and engage in the Board’s typical exposure analysis. The Board need not resolve the issue at this juncture as the issue is not dispositive and employee exposure exists under either of the mentioned standards.

Under the Board’s typical exposure analysis, the Division may establish exposure in two different ways: 1) actual exposure to the zone of danger, or 2) by demonstrating exposure under the reasonably predictable access standard. (*Benicia Foundry & Iron Works, Inc.*, Cal/OSHA App. 00-2976, Decision After Reconsideration (Apr. 24, 2003).) Under the second method, the Division may establish exposure by demonstrating it was reasonably predictable that employees while in the course of assigned work duties, pursuing personal activities during work, and normal means of ingress and egress would have access to the zone of danger. The Board finds the Division established by a preponderance of evidence that employees were exposed to the hazard through the second way.

Employer’s worksite was predominantly located in Monterey County. The record demonstrates cocci fungus exists and is endemic within Monterey County. Further, Evidence in the record establishes Employer had knowledge of the presence of cocci spores within the

---

<sup>5</sup> Employer seeks the Board take judicial notice of *Miranda v. Bomel Construction, Co., Inc.* (2010) 187 Cal.App.4th 1326 (hereafter *Miranda*). The Board denies this request for two reasons. First, while *Miranda* involves Valley Fever, it is discussing the disease in torts and causation context, not worker safety laws. Second, to the extent Employer wishes to rely on the favorable expert opinions in the case, the Board rejects this basis as well since there were conflicting testimony in the case and the challenging party did not dispute “the sufficiency of the USGS report, or object to its inclusion, or challenge the facts as unreliable.” (*Id.* at p. 1343.) So, the Board will not treat those testimonies as “any generally accepted technical or scientific matter within the field of occupational safety and health.” (§ 376.3.) The Board decides the instant matter under the record developed during the administrative proceeding and declines to look beyond the record the parties have developed before the ALJ.

worksite and it attempted to mitigate against exposure to the hazard. For instance, the Division provided Employer's Safety Task Assignment (Exhibit 7B). Under the respiratory protection section, foreman Kyle Stroub wrote "dust mask." Once again, in Exhibit 7B, Valley Fever is identified as a risk with hazards of "sick, illness, fatality/ do [sic] to dust." (Exhibit 7B, p. 2.) He also identified Valley Fever as a hazard employees faced due to their work activities on other days. (Exhibit 7B, pp. 12, 14.) The document identifies "were [sic] mask if need" as a safe work practice. Numerous other Safety Task Assignment forms filled by other foremen such as Kayne Goff and Angela Hurley also identify dust mask as a PPE and Valley Fever as a hazard. (Exhibit 7B, pp. 4, 6, 16.) Some of the jobs identified in the Safety Task Assignment include mixing dirt, powder puffing, digging out posts, excavating around wires, shoveling, moving dirt, and compacting dirt.

Furthermore, Employer's Job Hazard Analysis (JHA) identifies dust as a hazard for the work of "compact waste with a 'jumping jack' type compactor" and states, "keep material wet with onsite water truck. Apply N95 dust mask if dust around work area is present. Only remove dust mask if dust has completely cleared." (Exhibit 4, p. 2.) The same document also identifies dust as a hazard when backfilling the excavation and states, "keep large enough distance from excavation to avoid any dust generated from backfill. Apply water with onsite water truck. Use N95 mask if necessary." (Exhibit 4, p. 3.)

The Division also introduced a document called "Monterey County Planning Department Conditions of Approval/Mitigation Monitoring Reporting Plan." (Exhibit 8.) Inspector Rodenburg testified this document details the requirements an employer must comply with to receive a valid permit in Monterey County. The document has multiple sections devoted to Valley Fever. It requires identifying and retaining a Valley Fever Management Plan, implementing additional dust suppression measures in cases where the daily winds measure is higher than 15 miles per hour or when the temperature rises higher than 95 degrees for three consecutive days, establishing a worker training program on Valley Fever, and developing an educational handout for on-site employees and residents within three miles of the site. Cal Flats Solar, the owner of the site, created a Valley Fever Management Plan as one of the things necessary to get its use permit. (Exhibit N.) The inspector testified Monterey County's permit requirements concerning Valley Fever constitutes proof that exposure to Valley Fever is an issue at this worksite that the County is trying to address.

Exhibit O, McCarthy's Site Specific Safety Plan, cites Valley Fever illness as a risk and lists methods for mitigating risks associated with the fungus. (Exhibit O, p. 13.) Employer's Exhibit P, McCarthy's Site Specific Safety Plan training, also includes detailed instructions on minimizing employee exposure to Valley Fever.

Moreover, testimony in the record further proves employee exposure to the hazard based on the nature of their work duties, also supporting the Board's finding of exposure through the second method. Omar Cervantes testified his job was shoveling, cleaning trenches out, and backfilling them. When asked, "Were you exposed to dust when you were doing your job?" he responded, "Everyone is there." He further stated employees ate lunch in the seat tray of the buggies.<sup>6</sup>

---

<sup>6</sup> The buggies were machines similar to golf carts, but not enclosed.

Inspector Rodenburg testified much of Granite’s work at the site involved laborers backfilling trenches that another contractor (Sachs Electric) had dug to lay wires from cables. He stated Kayne Goff told him he split his time between operating a water truck and backfilling the trenches. He mentioned another employee, a forklift operator, who was in charge of installing solar panels worked with a forklift that did not have an enclosed cabin.

Based on this evidence, the record preponderates to a finding that it was reasonably predictable by operational necessity or otherwise that employees are, have been, or will be exposed to the zone of danger due to the nature of employees’ work at this worksite—mixing dirt, powder puffing, digging out posts, excavating around wires, shoveling, moving dirt, and compacting dirt.

Alternatively, if the Board were to apply the harmful exposure standard in *Nielson Freight*, employee exposure still exists. Section 5140 defines “harmful exposure” as “An exposure to dusts, fumes, mists, vapors, or gases: ... (b) Of such a nature by inhalation as to result in, or have a probability to result in, injury, illness, disease, impairment, or loss of function.” The Board has explained cocci spores fit the definition of dust. The issue here is whether there was exposure to the dust “Of such a nature by inhalation as to result in, or have a probability to result in, injury, illness, disease, impairment, or loss of function.” (§ 5140, subd. (b).) In light of the evidence the Board has discussed, including but not limited to Findings of Fact 1-4, and will continue to discuss, the Board concludes the evidence preponderates to a finding that inhalation of the cocci spores will result in, or has a probability to result in, injury, illness, disease, impairment, or loss of function. Thus, the Division established exposure through the harmful exposure standard.

In conclusion, the Board finds the Division established the second element: employees were exposed to air contaminated with harmful dust under both the “harmful exposure standard” discussed in *Nielson Freight* and the Board’s typical exposure analysis. The Board’s findings are meant to apply narrowly to the facts and circumstances specific to this case.

Element 3: Employer failed to use accepted engineering control measures as far as feasible to prevent atmospheric contamination

The record demonstrates Employer utilized engineering control measures. Inspector Rodenburg’s field notes discuss some of the engineering controls like changing clothes, using water trucks for roads and spoil piles, providing dust masks, keeping windows rolled up, making sure trucks have HEPA filters and ensuring those without filters are vacuumed daily, providing busing services with an incentive program (\$5 per day plus \$25 if employees use it for a whole week), using buses with AC, using anemometers to measure the wind, applying extra water in dustier areas, maintaining as much vegetation as possible, having two water trucks on standby, “apply[ing] cement treat to road,” and spraying water into holes during the digging process. (Exhibit 3, pp. 2, 3, 5, 6, 7.) Inspector Rodenburg further testified he saw some speed limit signs (5 mph) in some areas as he was driving. Employer claims limiting the vehicles’ speed was another engineering control method to protect employees from potential exposure to cocci spores.

While the Board recognizes Employer contemplated multiple engineering controls, the Board concludes Employer failed to effectively implement them, meaning it did not control the occupational disease at issue “as far as feasible by accepted engineering control measures.” (§ 5144, subd. (a)(1).) For instance, Employee Goff testified he wore his work clothes when he went home and washed them at home. Employee Cervantes also testified when they wanted to eat lunch, they “would shut down and take lunch under our buggies or under the shade, or a house, or something.” Inspector Rodenburg also testified when he was speaking to employees at the site, they told him they would eat lunch wherever they were working, like inside the buggies. Mr. Rodenburg’s field notes state he interviewed Chris (someone associated with McCarthy) who told him employees eat lunch at work stations, toilets, and hand washing stations. On respirator use, he told inspector Rodenburg, “visibly see dust that could engulf you,” “Dust mask not considered an effective measure,” and “water truck too far behind excavator.” (Exhibit 3, p. 6.) He further mentioned coveralls were not used and “also do not need to change clothes before leaving” but some do.

The Board concludes the Division established this third element by a preponderance of evidence.

Element 4: when effective engineering controls are not feasible to prevent atmospheric contamination, or while being instituted, appropriate respirators were not used

Under this element, the Board decides whether “effective engineering controls” were being instituted or were not feasible to prevent atmospheric contamination. And, if not, whether Employer required respirators. The term “effective” is defined to mean, “1a: producing a decided, decisive, or desired effect.”<sup>7</sup> Thus, the engineering controls must produce a decided or desired effect to be effective; that decided or desired effect is found in connection with the objectives of this safety order. The primary purpose of the safety order is to control occupational diseases caused by breathing air contaminated with harmful dusts, i.e., prevent employee exposure to atmospheric contamination.

The record here establishes the Employer’s engineering controls were not always effective in preventing employee exposure to harmful dust. As discussed above, the nature of employees’ work duties exposed them to harmful dust. Employees’ work included mixing dirt, powder puffing, digging out posts, excavating around wires, shoveling, moving dirt, and compacting dirt. Employee Cervantes’s testimony further corroborates this point. He testified his job was shoveling, cleaning trenches out, and backfilling them. He stated employees were exposed to dust while engaging in such work; a contention that the Board credits and finds in line with common sense. Mr. Cervantes further explained the worksite was a big piece of land so dust picked up quickly and while he chose to wear his mask while performing his work duties, other employees chose not to wear their masks.

The record demonstrates Employer tried watering down the soil as a method to reduce the hazard when employees engaged in earthwork and the ALJ found this method sufficient. (Decision, p. 15.) However, the Division correctly argues that is not sufficient to eliminate the

---

<sup>7</sup> Merriam-Webster Dictionary (Online) <[www.merriam-webster.com/dictionary/effective](http://www.merriam-webster.com/dictionary/effective)> [accessed January 29, 2020].



hazard at issue here—“again, if watering eliminated the hazard, there would be no need for a requirement for employees to carry respirators at all times. Watering has no effect on Cocci spores from offsite brought onsite during windy conditions.” (Division’s Petition, p. 20.)

Further, the record establishes Employer required its employees to carry their masks with them at all times. From this requirement, the Board infers Employer believed its engineering controls would not always be effective, and circumstances would exist necessitating employee usage of the mask. Thus, while the Board does not hold respirators were required to be used at all times, the Board finds Employer’s engineering controls were not effective in preventing employee exposure to atmospheric contamination while they engaged in earthwork on site.

Next, the Board must resolve whether Employer required use of respirators. Employer’s position in this proceeding is while it provided its employees with N-95 masks, it left to its employees the discretion as to whether they need to use the masks. As a result, some employees chose not to wear their masks. Employer’s decision to leave virtually unlimited discretion regarding mask usage to employees, rather than specifying the occasions where they must be worn, further demonstrates the violation. Employer’s position demonstrates a violation of this element on its own since the plain text of the regulation states, “appropriate respirators shall be used.” (§ 5144, subd. (a)(1).)

Additionally, inspector Rodenburg testified some employees used bandanas in lieu of face masks. Employer failed to rebut this testimony. During cross-examination, Employer’s attorney did not question the truthfulness of Mr. Rodenburg’s testimony on employees’ use of bandanas in lieu of masks but instead attempted to demonstrate bandanas served multiple functions like being used to keep sweat out of employees’ eyes or being soaked in water as a measure to prevent heat illness. While this may be true, it does not negate inspector Rodenburg’s testimony on employees using bandanas instead of face masks. Since Employer was in a position to rebut this point and failed to do so, the Board draws a negative inference and finds some employees used bandanas in lieu of face masks. (Evid. Code, § 413.) While this evidence cannot support a violation on its own (as the Board explains later below), it can still be used to supplement the finding above on the issue of employees’ failure to use “appropriate respirators” as the regulation mandates. (§ 376.2.) The Division established the fourth element.

In conclusion, the Board finds the record preponderates to a finding that the Division established a violation of section 5144, subdivision (a)(1) because the breathing air was contaminated with harmful dusts; employees were exposed to harmful dusts; Employer’s engineering control measures did not control employee exposure to Valley Fever as far as feasible; and appropriate respirators were not used when effective engineering controls were not feasible to prevent atmospheric contamination.

**2) Did Employer provide medical evaluations before employees were fit tested or required to use respirators in the workplace?**

Citation 1, Item 1 alleges a General violation of section 5144, subdivision (e)(1). That subdivision states,

(e) Medical evaluation. Using a respirator may place a physiological burden on employees that varies with the type of respirator worn, the job and workplace conditions in which the respirator is used, and the medical status of the employee. Accordingly, this subsection specifies the minimum requirements for medical evaluation that employers must implement to determine the employee's ability to use a respirator.

(1) General. The employer shall provide a medical evaluation to determine the employee's ability to use a respirator, before the employee is fit tested or required to use the respirator in the workplace. The employer may discontinue an employee's medical evaluations when the employee is no longer required to use a respirator.

Under the terms of the regulation, an employer violates subdivision (e)(1) if two conditions are met: 1) employer does not provide medical evaluation to determine employees' ability to use a respirator and 2) employees were fit tested<sup>8</sup> or required to use respirators in the workplace. As to the first element, there is no dispute that Employer did not provide medical evaluation to its employees and Employer has not claimed otherwise. Instead, Employer opposes the Division's contention that it required its employees to use face masks, claiming instead that use of the mask was discretionary. Thus, with this citation, the focus is on the second element: whether mask use was mandatory or discretionary.

Employer claims it did not require its employees to use respirators. To the contrary, it left it up to employees to decide whether they wanted to wear their masks. Employer claims it only required its employees to carry the respirators with them at all times but there was no mandatory requirement to use the respirators. Exhibit S, Granite's Valley Fever Awareness and Prevention Training, acknowledges some work activities may have specific dust hazards, requiring use of respirators and these will be identified in the Job Hazard Assessment. But employees may voluntarily request N95 masks if they wish to protect themselves against inadvertent exposure. (Exhibit S, p. 10.)

On the other hand, inspector Rodenburg testified respirator use was mandatory because employees had to have them on their person. In other words, he claimed there is no discretion left to employees if they are required to have the respirators on their person at all times. His field notes corroborate his testimony. (§ 376.2.)

Employee Goff testified they were required to keep the dust mask on them at all times and the rule was if it was too windy or dusty, they had to use the mask. He stated employees had discretion on whether they chose to wear the masks but whenever he saw dust in the air, he would put his mask on.

Employee Cervantes testified to the same: Employer required all employees to have masks on them at all times and the rule for them was to wear their masks when it was windy or dusty. He stated he always wore his mask because his work required him to be around dust. Further, Employee Cervantes testified the worksite was a big piece of land so dust picked up

---

<sup>8</sup> Fit testing is not at issue in this case so the Board will not discuss this issue further.

quickly and everyone at the job was exposed to dust. He testified one of his work duties was shoveling dirt and that stirred up dust. He stated while it was his choice to always wear his mask, other employees chose not to.

The record remains unrebutted that employees were required to have the dust mask on their person at all times. The Board infers from such a requirement that Employer provided these masks as a necessary safety tool or, else, it would not require employees to carry these masks at all times, and that employees were required to wear them at particular circumstances. (Evid. Code, § 600, subd. (b).) While Employer's argument that it did not require use of the mask at all times is corroborated by employees Cervantes and Goff testimony, Employer also had a rule requiring employees to wear or use the masks under dusty or windy conditions. This means employees had to wear their masks in particular circumstances and Employer's failure to medically evaluate its employees to determine their ability to use a respirator during those conditions violates the safety order. The Board upholds the violation on this basis.

In her Decision, however, the ALJ applied an exception enumerated in section 5144, subdivision (c), when analyzing section 5144, subdivision (e)(1). section 5144, subdivision (c), states:

(1) In any workplace where respirators are necessary to protect the health of the employee or whenever respirators are required by the employer, the employer shall establish and implement a written respiratory protection program with worksite-specific procedures.  
[...]

(2) Where respirator use is not required:

(A) An employer may provide respirators at the request of employees or permit employees to use their own respirators, if the employer determines that such respirator use will not in itself create a hazard. If the employer determines that any voluntary respirator use is permissible, the employer shall provide the respirator users with the information contained in Appendix D to this section ("Information for Employees Using Respirators When Not Required Under the Standard"); and

(B) In addition, the employer must establish and implement those elements of a written respiratory protection program necessary to ensure that any employee using a respirator voluntarily is medically able to use that respirator, and that the respirator is cleaned, stored, and maintained so that its use does not present a health hazard to the user. Exception: Employers are not required to include in a written respiratory protection program those employees whose only use of respirators involves the voluntary use of filtering facepieces (dust masks). (Emphasis added.)

The ALJ applied this exception in subdivision (c) to subdivision (e)(1) and found Employer met its requirements, i.e., use of masks was voluntary and dust masks were filtering

facepieces (a quarter-face<sup>9</sup> disposable 3M brand 8210 Plus N95 filtering facepiece with two straps). She then vacated the citation.

Even if the Board were to agree with the ALJ and apply that exception, its text specifically applies “where respirator use is not required.” (§ 5144, subd. (c).) Here, as the Board found above, Employer required its employees to use respirators in certain circumstances. Thus, assuming application of the exception was proper, it is still inapplicable to the facts and circumstances of this case.

In conclusion, the Board upholds Citation 1, Item 1.

**3) Did Employer provide training or retraining, as often as necessary, to employees who were required to use respirators?**

Citation 1, Item 2 alleges a General violation of section 5144, subdivision (k)(5), which states,

(k) Training and information. This subsection requires the employer to provide effective training to employees who are required to use respirators. The training must be comprehensive, understandable, and recur annually, and more often if necessary. This subsection also requires the employer to provide the basic information on respirators in Appendix D to employees who wear respirators when not required by this section or by the employer to do so.

(5) Retraining shall be administered annually, and when the following situations occur:

- (A) Changes in the workplace or the type of respirator render previous training obsolete;
- (B) Inadequacies in the employee's knowledge or use of the respirator indicate that the employee has not retained the requisite understanding or skill; or
- (C) Any other situation arises in which retraining appears necessary to ensure safe respirator use.

Section 5144, subdivision (k) has two separate requirements: one on training, which requires mandatory use of respirators and training or retraining as necessary and the other one on providing Appendix D to employees. Here, Employer provided the information in Appendix D to

---

<sup>9</sup> In its Petition, the Division disputes the ALJ's finding that the dust mask was a quarter mask and argues it was a half mask. (Division's petition, p. 9.) The distinction between the two is irrelevant since the underscored language in section 5144, subdivision (c)(2)B), discusses “filtering facepieces”; whether that facepiece is a quarter mask or a half mask does not matter. The Division agrees the designation is irrelevant. Further, the Board denies the Division's motion to supplement the record with the issue of whether the face masks were quarter face masks. As such, the Board will not address the Employer's response and request to admit further evidence in response to the Division's motion.

its employees. And, the Board has found above that employees were required to wear masks in certain circumstances. Therefore, the only part at issue is whether the employees required to use respirators were retrained as necessary under the terms of section 5144, subdivision (k)(5).

Inspector Rodenburg testified he had no issue with the initial training Employer provided on respirator use. However, Mr. Rodenburg stated Employer should have retrained the employees because some of them were using bandanas in lieu of face masks. His testimony on bandana use was based on interviews other Division inspectors conducted with Granite employees. While the referenced employee interviews may serve to supplement or explain other evidence (as they did in Citation 3, Item 1), they may not be used to prove a violation on their own. (§ 376.2.) Inspector Rodenburg did not personally observe any employee using a bandana, and this testimony does not meaningfully supplement and explain other evidence. Nor does the Board ascertain any exception that would make these statements otherwise admissible in civil proceedings. The Division has not established all elements of this violation.

Thus, the Board vacates Citation 1, Item 2.<sup>10</sup>

**4) Did Employer fail to implement its Injury and Illness Prevention Program (IIPP) by failing to correct unsafe or unhealthy conditions?**

Citation 2, Item 1 alleges a Serious violation of section 1509, subdivision (a), referencing section 3203, subdivision (a)(6). That section states:

(a) Effective July 1, 1991, every employer shall establish, implement and maintain an effective Injury and Illness Prevention Program (Program). The Program shall be in writing and, shall, at a minimum:

(6) Include methods and/or procedures for correcting unsafe or unhealthy conditions, work practices and work procedures in a timely manner based on the severity of the hazard:

(A) When observed or discovered; and,

(B) When an imminent hazard exists which cannot be immediately abated without endangering employee(s) and/or property, remove all exposed personnel from the area except those necessary to correct the existing condition. Employees necessary to correct the hazardous condition shall be provided the necessary safeguards.

---

<sup>10</sup> Employer points out the recently enacted Labor Code section 6709, a provision specific to Valley Fever awareness training. Since the Board is vacating this citation concerned with training or retraining employees on Valley Fever, it need not discuss this issue. Even if the Board were to address the issue, Employer fails to provide sufficient evidence to the Board. The subdivision at issue states, in part, “An employer subject to this section pursuant to subdivision (b) shall provide effective awareness training on Valley Fever to all employees by May 1, 2020, and annually by that date thereafter, and before an employee begins work that is reasonably anticipated to cause exposure to substantial dust disturbance. Substantial dust disturbance means visible airborne dust for a total duration of one hour or more on any day.” (Lab. Code, § 6307, subd. (c).) The Board finds Employer’s arguments on this issue incomplete since Employer failed to provide evidence proving why it cannot be reasonably anticipated that employees’ work duties exposed them to substantial dust disturbance.

The Division's AVD alleges,

Prior to and during the course of the investigation, including but not limited to, on May 23, 2017, the employer did not ensure implementation of methods and/or procedures to effectively correct unsafe and unhealthy conditions, work practices and procedures involving employees disturbing soil, employees conducting dust generating activities and dust generated by the wind, contaminated by coccidioides fungal spores that could result in employees contracting Valley Fever as a result of workplace activities.

The Board found in its prior analysis employees were exposed to hazards associated with Valley Fever and the Board incorporates that analysis here. The issue is whether Employer failed to correct the hazard to which employees were exposed. Section 3203, subdivision (a)(6), requires employers have written procedures for correcting unsafe or unhealthy conditions and it requires the employer to actually implement those procedures by taking appropriate action to correct hazards. (*National Distribution Center, LP*, Cal/OSHA App. 12-0391, Decision After Reconsideration (Oct. 5, 2015).) Implementation of an IIPP is a question fact. (*Ibid.*) Proof of implementation requires evidence of actual responses to known or reported hazards. (*Ibid.*) Further, the corrective action taken by the employer must be sufficient in magnitude and scope to address the particular hazard. (*Ibid.*) As the Board explained above, the record demonstrates Employer was aware of the hazard of cocci fungal spores at the worksite. Therefore, Employer had a duty to take appropriate action to correct the hazard. (*Ibid.*)

Employer argues it had measures and it did implement its measures to correct unhealthy and hazardous conditions. Inspector Rodenburg's field notes corroborate some of Employer's claims. For instance, the field notes state that Employer monitored the weather and if windy conditions were more than 15 miles per hour, Employer implemented extra measures such as increasing use of the water trucks. The notes also state two individuals were in charge of measuring wind speed with an anemometer and that they shut down the job if necessary. The notes further state Employer maintained as much vegetation as possible and "educate[d] operators on bucket drops to maximize vegetation." (Exhibit 3, p. 5.) Further, Employer sprayed inside the holes with water during the digging process. (Exhibit 3, p. 7.)

Inspector Rodenburg testified he saw five miles per hour signs at the site when he went there. He also saw water trucks on both days he was at the site. He explained Employer's busing program and the incentive it provided to encourage bus use. Employee Goff also testified Employer shut down the job when it was too windy or rainy. Employee Cervantes testified the same. Employee Goff further testified if water trucks could not keep up with dampening the dust and if there was visible dust in the air, Employer would shut down the job.

However, the record demonstrates additional corrective actions should have been taken. For instance, as previously explained, evidence indicates Employer should have required respirators during occasions where effective engineering controls were not feasible to prevent atmospheric contamination. Further, although the Board finds Employer required use of the face masks during certain conditions, Employer nonetheless improperly delegated significant decision making and discretion to employees. The onus of ensuring safe working conditions is on

employers, not employees; this is a non-delegable duty. (Lab. Code, §§ 6400, 6401, 6402, 6403, 6404; *National Distribution*, *supra*, Cal/OSHA App. 12-0391; *Staffchex*, Cal/OSHA App. 10-2456, Decision After Reconsideration (Aug. 28, 2014).) Moreover, Employer required employees to carry N-95 masks on their person at all times. If the circumstances warrant requiring employees to have and carry N-95 masks at all times, they also require Employer to provide specific instructions as to when employees should use them, particularly where the evidence indicates the existence of circumstances at this site that would necessitate use of the masks for adequate employee protection. The Board finds these bases sufficient to uphold the violation on their own.

There is also other evidence in the record to further support the violation. For instance, Employer had a changing station at the worksite but it did not mandate its use or require employees to change, wash, and even shower before going home. Employee Goff testified he wore his work clothes when he went home and washed his own clothes there. Inspector Rodenburg testified the issue with this practice is the clothes may have cocci spores on them.

Inspector Rodenburg testified employees were also exposed to cocci spores through the wind or through ground disturbing activities including trenching or backfilling. He pointed to Employer's Safety Task Assignment sheets where in some instances, while Valley Fever had been identified as a hazard, use of dust mask was not mentioned as a method to address that hazard. He testified this demonstrates Employer did not correct the hazard of exposure to Valley Fever.

As to lunch breaks, inspector Rodenburg also testified when he was speaking to employees at the site, they told him they would eat lunch wherever they were working, like inside the buggies. Employee Cervantes also testified when they wanted to eat lunch, they "would shut down and take lunch under our buggies or under the shade, or a house, or something." (Exhibit 7B, pp. 6, 8, 10, 16.) The Division argues eating lunch outside, instead of eating lunch at designated and protected areas, exposed these employees to Valley Fever; a hazard Employer failed to correct.

Inspector Rodenburg also testified while Employer recognized the hazard of Valley Fever as demonstrated through its JHA sheets, by not requiring use of the dust masks, it did not correct the identified hazard. Further, he mentioned employees' use of bandanas in lieu of dust masks was another condition Employer should have corrected. And, he also mentioned some employees told him sometimes there were delays with water trucks.

The Board concludes while Employer has procedures in its IIPP and implemented some of those procedures, the evidence mentioned above, in aggregate, preponderate to a finding that Employer failed to implement some of its other procedures, leading to its failure to correct unsafe or unhealthy working practices, procedures, or conditions. The Board upholds Citation 2, Item 1.

#### **5) Were citations 2 and 3 properly classified as Serious?**

The Division classified Citations 2 and 3 as Serious. Employer's appeal disputed the Serious classification of these two citations. Labor Code section 6432, subdivision (a), provides, "There shall be a rebuttable presumption that a 'serious violation' exists in a place of employment if the division demonstrates that there is a realistic possibility that death or serious

physical harm could result from the actual hazard created by the violation.” As used therein, the term “realistic possibility” means that it is within the bounds of reason, and not purely speculative. (*Langer Farms, LLC*, Cal/OSHA App. 13- 0231, Decision After Reconsideration (April 24, 2015).) Serious physical harm is defined in Labor Code section 6432, subdivision (e), which states,

“Serious physical harm,” as used in this part, means any injury or illness, specific or cumulative, occurring in the place of employment or in connection with any employment, that results in any of the following:

- (1) Inpatient hospitalization for purposes other than medical observation.
- (2) The loss of any member of the body.
- (3) Any serious degree of permanent disfigurement.
- (4) Impairment sufficient to cause a part of the body or the function of an organ to become permanently and significantly reduced in efficiency on or off the job, including, but not limited to, depending on the severity, second-degree or worse burns, crushing injuries including internal injuries even though skin surface may be intact, respiratory illnesses, or broken bones.

Testimony and evidence in the record undisputedly prove cocci spores can cause serious physical harm within Labor Code section 6432’s definition. Here, the actual hazard was exposure to cocci spores and, as the Board found above, employees were exposed to this hazard. The Board finds the record establishes there is a realistic possibility the exposed employees could suffer serious physical harm or death as a result of exposure to the cocci fungal spores. Next, the Board decides whether Employer rebutted this presumption per the Labor Code.

Labor Code section 6432, subdivision (c), provides a mechanism for Employer to rebut the presumption of a Serious violation. It states:

If the division establishes a presumption pursuant to subdivision (a) that a violation is serious, the employer may rebut the presumption and establish that a violation is not serious by demonstrating that the employer did not know and could not, with the exercise of reasonable diligence, have known of the presence of the violation. The employer may accomplish this by demonstrating both of the following:

- (1) The employer took all the steps a reasonable and responsible employer in like circumstances should be expected to take, before the violation occurred, to anticipate and prevent the violation, taking into consideration the severity of the harm that could be expected to occur and the likelihood of that harm occurring in connection with the work activity during which the violation occurred. Factors relevant to this determination include, but are not limited to, those listed in subdivision (b).



- (2) The employer took effective action to eliminate employee exposure to the hazard created by the violation as soon as the violation was discovered.

Here, Employer failed to rebut the presumption as it cannot be said it took all the steps a reasonable and responsible employer in like circumstances should be expected to take, before the violation occurred, to anticipate and prevent the violation. As already discussed, Employer had a policy of providing its employees, and requiring that they carry, N-95 masks. There was also evidence demonstrating that Employer believed mask usage would be needed and required in some instances. But Employer left discretion as to whether to use the masks to employees. Employer's practice of providing safety equipment, but then largely delegating decision making as to its use to employees constitutes an impermissible delegation of a safety decision, and demonstrates that Employer did not take all steps a reasonable and responsible employer would take. Additionally, Employer should have provided specific instruction on when, and under what circumstances, employees should use them. The Board affirms the Serious classifications.

#### **6) Did the Division issue reasonable proposed penalties for citations 2 and 3?**

Penalties calculated in accordance with the penalty setting regulations set forth in sections 333 through 336 are presumptively reasonable and will not be reduced absent evidence 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. (*RNR Construction, Inc.*, Cal/OSHA App. 1092600, Denial of Petition for Reconsideration (May 26, 2017), citing *Stockton Tri Industries, Inc.*, Cal/OSHA App. 02-4946, Decision After Reconsideration (Mar. 27, 2006).) The Division must provide proof that a proposed penalty is, in fact, calculated in accordance with the penalty-setting regulations. (*Plantel Nurseries*, Cal/OSHA App. 01-2346, Decision After Reconsideration (Jan. 8, 2004); *RII Plastering, Inc. dba Quality Plastering Company*, Cal/OSHA App. 00-4250, Decision After Reconsideration (Oct. 21, 2003).) Generally, the Division, by introducing its proposed penalty worksheet and testifying to the calculations being completed in accordance with the appropriate penalties and procedures, will be found to have met its burden of showing the penalties were calculated correctly. (*MI Construction, Inc.*, Cal/OSHA App. 12-0222, Decision After Reconsideration (Jul. 31, 2014).)

Here, Employer's appeal asserted the proposed penalties for Citations 2 and 3 were unreasonable. During the hearing, the Division issued its proposed penalty worksheet and inspector Rodenburg testified how he calculated the penalties for Citations 2 and 3. (Exhibit 2.) The Division proposed a penalty of \$22,500 for each of the citations.

Section 335, subdivision (a)(1)(B), provides that the severity of a Serious violation is high. Section 336, subdivision (c)(1), provides that the initial base penalty of a Serious violation is \$18,000. Therefore, \$18,000 is the correct base penalty for these citations. The Board will next analyze other relevant factors in penalty calculations.

#### Extent

Section 336, subdivision (c)(1), provides Extent for a Serious violation is rated under section 335, subdivision (a)(2), which provides:

i. When the safety order violated pertains to employee illness or disease, Extent shall be based upon the number of employees exposed:

LOW-- 1 to 5 employees.

MEDIUM-- 6 to 25 employees.

HIGH-- 26 or more employees.

Section 336, subdivision (c)(1), provides that for a rating of “LOW,” 25 percent of the base penalty shall be subtracted; for a rating of “MEDIUM,” no adjustment to the base penalty shall be made; and for a rating of “HIGH,” 25 percent of the base penalty shall be added.

Here, inspector Rodenburg testified he rated extent high based on a phone conversation with Kevin Carnahan, Employer’s safety manager, who told him they had about 27 employees. Based on this testimony, Extent was properly rated as high so the penalty is adjusted to \$22,500.

Likelihood:

Section 336, subdivision (c)(1), provides that Likelihood for a Serious violation is rated under section 335, subdivision (a)(3), which states,

Likelihood is the probability that injury, illness or disease will occur as a result of the violation. Thus, Likelihood is based on (i) the number of employees exposed to the hazard created by the violation, and (ii) the extent to which the violation has in the past resulted in injury, illness or disease to the employees of the firm and/or industry in general, as shown by experience, available statistics or records. Depending on the above two criteria, Likelihood is rated as: LOW, MODERATE OR HIGH

Section 336, subdivision (c)(1), provides that for a rating of “LOW,” 25 percent of the base penalty shall be subtracted; for a rating of “MEDIUM,” no adjustment to the base penalty shall be made; and for a rating of “HIGH,” 25 percent of the base penalty shall be added.

Here, inspector Rodenburg testified he rated likelihood medium because of the number of exposed employees to the violative condition but also not finding evidence of prior Valley Fever cases. The record supports the medium determination and, as such, no adjustment is made to the \$22,500 penalty here.

Further adjustment factors: Size, history, and good faith

- *Size*

As to size, inspector Rodenburg testified he did not adjust the penalty because Granite had more than 100 employees. This comports with section 336, subdivision (d)(1).

- *History*

Section 335, subdivision (d), states,

(d) The History of Previous Violations--is the employer's history of compliance, determined by examining and evaluating the employer's records in the Division's files. Depending on such records, the History of Previous Violations is rated as:

GOOD-- Within the last three years, no Serious, Repeat, or Willful violations and less than one General or Regulatory violation per 100 employees at the establishment.

FAIR-- Within the last three years, no Serious, Repeat, or Willful violations and less than 20 General or Regulatory violations per 100 employees at the establishment.

POOR-- Within the last three years, a Serious, Repeat, or Willful violation or more than 20 General or Regulatory violations per 100 employees at the establishment.

Section 336, subdivision (d)(3), provides that for a rating of "GOOD," 10 percent of the base penalty shall be subtracted; for a rating of "FAIR," 5 percent of the base penalty shall be subtracted; and for a rating of "POOR," no adjustment shall be made.

Here, the proposed penalty worksheet shows the Division made no adjustment under this factor. During the hearing, however, the Division failed to demonstrate why Employer received no adjustment under History. The Division must provide proof that a proposed penalty is, in fact, calculated in accordance with the penalty-setting regulations. (*Plantel Nurseries*, Cal/OSHA App. 01-2346, Decision After Reconsideration (Jan. 8, 2004); *RII Plastering, Inc*, Cal/OSHA App. 00-4250, Decision After Reconsideration (Oct. 21, 2003).) The Board has held that maximum credits and the minimum penalty allowed under the regulations are to be assessed when the Division fails to justify its proposed penalty. (*Armour Steel Co.*, Cal/OSHA App. 08-2649, Decision After Reconsideration (Feb. 7, 2014); *Plantel Nurseries, supra*, Cal/OSHA App. 01-2346.) Thus, the Board grants maximum credits to Employer and rates History as good.

- *Good Faith*

Section 335, subdivision (c), states,

(c) The Good Faith of the Employer--is based upon the quality and extent of the safety program the employer has in effect and operating. It includes the employer's awareness of CAL/OSHA, and any indications of the employer's desire to comply with the Act, by specific displays of accomplishments. Depending on such safety programs and the efforts of the employer to comply with the Act, Good Faith is rated as:

GOOD-- Effective safety program.

FAIR-- Average safety program.

POOR-- No effective safety program.

Section 336, subdivision (d)(2), provides that for a rating of “GOOD,” 30 percent of the base penalty shall be subtracted; for a rating of “FAIR,” 15 percent of the base penalty shall be subtracted; and for a rating of “POOR,” no adjustment shall be made.

Here, the Division’s proposed penalty worksheet shows 15 percent has been marked on the sheet. Inspector Rodenburg testified he had a good working relationship with Mr. Carnahan but he gave the fair rating for these citations due to Employers’ failure to correct the discussed hazard and the deficiencies in Employer’s respiratory program. Despite his testimony on this issue and marking 15 on the sheet, the 15% adjustment was not applied to the penalties at issue. The Board cannot discern any reason why Employer cannot receive the 15% adjustment factor for Citations 2 and 3. Further, the Division failed to point to any reason demonstrating Good Faith should be calculated differently between the citations. The Board grants Employer the 15% adjustment.

Adding the 10% adjustment for history and the 15% adjustment for good faith, the Board adjusts the penalties by subtracting 25% of the proposed penalty. 25% of \$22,500 is \$5,625, resulting in \$16,875 penalties each for Citations 2 and 3.

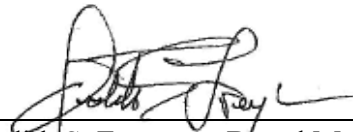
### Decision

For the reasons stated above, the Board overrules the ALJ, in part, and upholds it, in part.<sup>11</sup> The Board upholds all of the citations at issue, except Citation 1, Item 2. The Board adjusts the penalties in Citations 2 and 3 to \$16,875 each.

### OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD



Ed Lowry, Chairman



Judith S. Freyman, Board Member



Marvin Kropke, Board Member



FILED ON: **03/30/2021**

<sup>11</sup> The Board also denies Employer’s request to sanction the Division as the Board cannot, and does not, find evidence demonstrating action(s) worthy of sanctioning a party.

**SUMMARY TABLE**  
OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

Inspection Number: **1235643**

In the Matter of the Appeal of: **GRANITE CONSTRUCTION COMPANY, INC./GRANITE INDUSTRIAL, INC.**

Site address: **19855 EAST HIGHWAY 41, SHANDON, CALIFORNIA**

Citation Issuance Date: **11/15/2017**

Citation	Item	Section	Class. Type*	Citation/Item Resolution	Affirm or Vacate	Final Class. Type*	DOSH Proposed Penalty in Citation	FINAL PENALTY ASSESSED
1	1	5144 (e)(1)	G	DAR Issued. Citation affirmed.	A	G	\$795.00	<b>\$795.00</b>
1	2	5144 (k)(5)	G	DAR Issued. Citation vacated.	V		\$795.00	<b>\$0.00</b>
2	1	1509 (a)	S	DAR Issued. Citation affirmed.	A	S	\$22,500.00	<b>\$16,875.00</b>
3	1	5144 (a)(1)	S	DAR Issued. Citation affirmed.	A	S	\$22,500.00	<b>\$16,875.00</b>
<b>Sub-Total</b>							\$46,590.00	<b>\$34,545.00</b>
<b>Total Amount Due**</b>								<b>\$34,545.00</b>

\*See Abbreviation Key

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

Please call 415-703-4310 or email [accountingcalosha@dir.ca.gov](mailto:accountingcalosha@dir.ca.gov) if you have any questions.

Inspection Number:

**SUMMARY TABLE**  
**OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD**

In the Matter of the Appeal of: **GRANITE CONSTRUCTION COMPANY, INC./GRANITE INDUSTRIAL, INC.**

Site address: **19855 EAST HIGHWAY 41, SHANDON, CALIFORNIA**

Citation Issuance Date: **11/15/2017**

**PENALTY PAYMENT INFORMATION**

Please make your cashier's check, money order, or company check payable to: **Department of Industrial Relations**  
 Write the **Inspection Number** on your payment.

If sending via US Mail:

CAL-OSHA Penalties  
 PO Box 516547  
 Los Angeles, CA 90051-0595

If sending via Overnight Delivery:

US Bank Wholesale Lockbox  
 c/o 516547 CAL-OSHA Penalties  
 16420 Valley View Ave.  
 La Mirada, CA 90638-5821

Credit card payments can also be made on-line at [www.dir.ca.gov/dosh/calosha\\_paymentoption.html](http://www.dir.ca.gov/dosh/calosha_paymentoption.html)

**DO NOT** send payments to the California Occupational Safety and Health Appeals Board.

\*Classification Type (Class.) Abbreviation Key:

Abbreviation	Classification Type	Abbreviation	Classification Type	Abbreviation	Classification Type
<b>FTA</b>	Failure to Abate	<b>RR</b>	Repeat Regulatory	<b>WR</b>	Willful Regulatory
<b>G</b>	General	<b>RS</b>	Repeat Serious	<b>WRG</b>	Willful Repeat General
<b>IM</b>	Information Memorandum	<b>S</b>	Serious	<b>WRR</b>	Willful Repeat Regulatory
<b>NL</b>	Notice in Lieu of Citation	<b>SA</b>	Special Action	<b>WRS</b>	Willful Repeat Serious
<b>R</b>	Regulatory	<b>SO</b>	Special Order	<b>WS</b>	Willful Serious
<b>RG</b>	Repeat General	<b>WG</b>	Willful General		