

DEPARTMENT OF INDUSTRIAL RELATIONS

OCCUPATIONAL SAFETY
AND HEALTH APPEALS BOARD2520 VENTURE OAKS WAY, SUITE 300
SACRAMENTO, CA 95833
(916) 274-5751
FAX (916) 274-5785

October 9, 2013

Karen Nardi, Attorney
ARNOLD & PORTER LLP
3 Embarcadero Center 10th Floor
San Francisco, CA 94111Re: BECHTEL CONSTRUCTION OPERATIONS INC.
13-R4D7-3026/3030

DOCKETED: 10/08/2013

Dear Ms. Nardi:

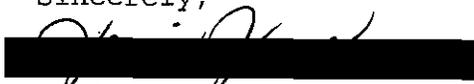
Enclosed are the docketed copies of each Appeal form that you filed with the Board. The above listed docket numbers should appear on all future correspondence. A copy of any correspondence with the Appeals Board must be served on the Division of Occupational Safety and Health DOSH and any other party to the proceeding.

You are obligated to notify any affected employees or their representative that an appeal is pending and that they have a right to participate in the proceeding. You are required to post a copy of the docketed Appeal form and a Participation Notice (similar to the sample enclosed) at or near the site of the violation or in a conspicuous place where it will be readily observable by employees. In addition to posting, a copy of the Appeal form and the Participation Notice must be served on the following: 1) any authorized employee representative; and 2) any employee (or their representative) who was seriously injured or killed in an accident related to this appeal. Proof, such as a brief letter, that the forms were posted must be sent to the DOSH District Manager whose address appears on the citation.

Please direct any request for information dealing with the filing of your appeal to the above address and/or telephone number. All other communications prior to the hearing will be handled by the assigned Administrative Law Judge (ALJ) **Clara L. Hill-Williams** (626) 332-1145.

Any written motion, such as a request for subpoena, consolidation of cases, or request for party or intervenor status must be made by written motion to the ALJ named above at **2520 Venture Oaks Way, Suite 300, Sacramento, CA 95833**.

Sincerely,


Janis Jones
Office Techniciancc: Accounting
DOSH District Manager-Bakersfield
DOSH Legal Unit-Oakland
DOSH Legal Unit-Los Angeles
IMIS# 313388571

Department of Industrial Relations

**OCCUPATIONAL SAFETY
AND HEALTH APPEALS BOARD**

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Sacramento, CA 95833

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October 9, 2013

Karen J. Nardi, Attorney
ARNOLD & PORTER LLP
Three Embarcadero Center, 10th floor
San Francisco, CA 94111

Efren Gomez, District Manager
DOSH – Bakersfield
7718 Meany Avenue
Bakersfield, CA 93308

Amy Martin, Chief Legal Counsel
DOSH- Oakland Legal Unit
1515 Clay Street, Suite 1901
Oakland, California 94612

RE: Notice of Additional Documents Received by the Employer,
not to be included in the Appeal Packet
BECHTEL CONSTRUCTION OPERATIONS, INC.
Docket Number: 2013-R4D7-3026-3030

To all Parties:

The Employer submitted completed Appeal Form(s) and copies of citations to be appealed. The Employer also submitted with the completed Appeal Form(s) either "attachments," additional documents, photos or other things. These items are not part of the "Docketed Appeal." (Title 8, Cal. Code. Regs., section 347(j).) These attachment(s), documents or other things are not being served with the Docketed Appeal. These items will be retained by the Board outside of the record until such time and they are made part of the record in accordance with the Rules of Practice and Procedure. (Title 8, Cal. Code of Regulations sections 345 – 397.)

To the Employer: If you wish to explain your position about the citation(s) to CAL OSHA, prior to a formal appeal hearing being held at the Appeals Board, please write or speak directly to the Cal OSHA office that issued the citation(s).

Sincerely,

CAL OSHA APPEALS BOARD

cc: ALJ C. Hill-Williams

9/11/13

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

2520 Venture Oaks Way, Suite 300
Sacramento, CA 95833
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RECEIVED
SEP 20 2013

APPEAL FORM

OSH Appeals Board

313388571

Inspection Number on Citation

Bechtel Construction Operations, Inc.

Employer Name on Citation

Bechtel Construction Company - citation has incorrect name of employer

Employer Legal Name or DBA (Optional)

5275 Westview Drive

Address

Frederick, MD 21703

DO 2013-R4D7 - 3026
(Lea)

1. You only have 15 working days from receipt of a citation to appeal.

2. A copy of this form must be attached to each citation or notification appealed. Failure to file a completed form may result in dismissal of the appeal.

**FIRST READ IMPORTANT INFORMATION ON THE REVERSE SIDE
THEN COMPLETE ONE APPEAL FORM FOR EACH CITATION**

1. This is an Appeal from:

CITATION NO(s): 1 Item No(s): 1

NOTIFICATION OF FAILURE TO ABATE ALLEGED VIOLATION
CITATION NO(s): _____ Item No(s): _____

SPECIAL ORDER/SPECIAL ACTION NO: _____
Item No(s): _____

2. Specific ground(s) for this appeal are: **(Check all that apply):**

The safety order was not violated

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

The abatement requirements are unreasonable.

Required changes

Time allowed to complete changes

The proposed penalty is unreasonable.

3. Explain any other reasons for appeal or issues to be raised on appeal. Affirmative defenses must be specifically stated. Some important affirmative defenses are listed on the OSHAB website at: <http://www.dir.ca.gov/OSHAB/oshab.html>
See attached explanation.

4.

(Signature of Employer or Employer's Representative)

{If there is any change in representation after you file your appeal, you must notify the Appeals Board in writing}

Karen J. Nardi (State Bar No. 104742); Maurice Leiter (State Bar No. 123732)

(Type or print name)

Attorneys

(Title)

Arnold & Porter LLP, Three Embarcadero Center, 10th Floor

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

San Francisco

CA

94111

(City)

(State)

(Zip Code)

415-471-3301

karen.nardi@aporter.com; maurice.leiter@aporter.com

(Telephone)

(E-Mail Address)

(Date)

{All correspondence from the Appeals Board will be sent to the representative above at the address above. If there is any change in address, telephone number, and/or e-mail address after you file your appeal, you must notify the Appeals Board of the change(s). All such notifications must be in writing.

IMPORTANT INFORMATION

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- G. Mail each completed Appeal form and citation or notification to the Occupational Safety and Health Appeals Board, 2520 Venture Oaks Way, Suite 300, Sacramento, CA 95833.
- H. Late appeals will not be accepted unless good cause is shown.

OSHAB 5/08

34141381v1

ATTACHMENT TO APPEAL FORM
Bechtel Construction Company
Inspection No. 313388571

3. Explain any other reasons for appeal or issues to be raised on appeal.¹

Citation 1, Item 1:

3.1 The Findings of Deficiency Under the Injury and Illness Prevention Plan are Incorrect

Bechtel Construction Company (“Bechtel”) should not be cited for violations of 8 Cal. Code Regs. § 3203(a)(4), 8 Cal. Code Regs. § 3203(a)(5); or 8 Cal. Code Regs. § 3203(a)(6). These regulations require each employer to instate a written Illness and Injury Prevention Program (“IIPP”). Under these regulations, Bechtel should not be cited, because:

- Bechtel designed the California Valley Solar Ranch Project to minimize employee exposure to dust containing coccidioides fungal spores which could result in employees contracting Valley Fever.
- Bechtel developed and implemented a written plan entitled “Dust Management Plan for Valley Fever” (“Plan”), a further elaboration of its IIPP that was approved by the San Luis Obispo County Health Department.
- The Plan effectively identified and evaluated workplace hazards for Bechtel’s employees and evaluated unsafe and unhealthy conditions and work practices which could result in employees contracting Valley Fever.
- Bechtel provided its employees with training in accordance with the Plan, including, but not limited to, training on how to recognize the symptoms of Valley Fever.
- Bechtel effectively implemented work practices and procedures to ensure ongoing compliance with Plan, including a “STARTT Card” plan implemented at the beginning of each project.
- Bechtel regularly evaluated its own compliance with the Plan. In addition, regulatory agencies – including, the San Luis Obispo County Health Department and the San Luis Obispo County Air Pollution Control District – periodically evaluated Bechtel’s compliance with the Plan.

¹ By further explaining the grounds for appeal, Bechtel Construction Company does not waive, and reserves, the right to present additional facts and information in support of its appeal.

- Bechtel did not investigate cases of Valley Fever that were identified by medical professionals as non-work-related, or where there was no evidence that they were occupational in origin.

3.2 Cal/OSHA Citation Lists Incorrect Employer Name

Bechtel raises the argument that Cal/OSHA Citation Number 1 lists the incorrect employer name. The citation lists “Bechtel Construction Operations, Inc.” as the employer instead of “Bechtel Construction Company.”

State of California
Division of Occupational Safety and Health
Bakersfield District Office (0950647; 4029)
7718 Meany Avenue
Bakersfield, CA 93308-5110

Inspection Number: 313388571
Inspection Dates: 03/06/2013 - 09/05/2013
Issuance Date: 09/05/2013
CSHO ID: Y0393
Optional Inspection Nbr: 031-13



Citation and Notification of Penalty

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SEP 20 2013

Company Name: Bechtel Construction Operations Inc.
Inspection Site: 13505 Highway 58, Santa Margarita, CA 93453

OSH Appeals Board

Citation 1 Item 1 Type of Violation: General

During and/or prior to the time of the inspection, the employer did not implement and/or maintain the following procedures as described in their IIPP:

- a. The employer did not effectively identify and evaluate work place hazards of employees disturbing soil contaminated with coccidioides fungal spores during their work activities and did not identify and evaluate unsafe & unhealthy conditions and work practices which could result in employees contracting Valley Fever from breathing coccidioides fungal spores present in the soil which could become airborne as a result of the employees work activities. (Ref: T8CCR Section 3203(a)(4))
- b. The employer did not follow their procedure to investigate occupational injury as described in their IIPP. According to the employer's IIPP "Any observation of a risk condition or near miss incident that could cause serious injury or damage to property and/or the environment must be reported immediately to the appropriate supervisor and an incident report completed." The employer did not investigate known cases of Valley Fever after the illnesses were reported. (Ref: T8CCR Section 3203(a)(5))
- c. The employer did not effectively correct unsafe or unhealthy conditions, work practices or procedures involving employees disturbing soil contaminated with coccidioides fungal spores during their work activities which could result in employees contracting Valley Fever from breathing coccidioides fungal spores present in the soil which could become airborne as a result of the employees' work activities. (Ref: T8CCR Section 3203(a)(6))

Date By Which Violation Must be Abated:
Proposed Penalty:

10/08/2013
\$ 560.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

2520 Venture Oaks Way, Suite 300
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SEP 20 2013

APPEAL FORM OSH Appeals Board

1 2013-R4 D 7 -3027

313388571

Inspection Number on Citation

Bechtel Construction Operations, Inc.

Employer Name on Citation

Bechtel Construction Company - citation has incorrect name of employer

Employer Legal Name or DBA (Optional)

5275 Westview Drive

Address

Frederick, MD 21703

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FIRST READ IMPORTANT INFORMATION ON THE REVERSE SIDE THEN COMPLETE ONE APPEAL FORM FOR EACH CITATION

1. This is an Appeal from:

CITATION NO(s): 2 Item No(s): 1

NOTIFICATION OF FAILURE TO ABATE ALLEGED VIOLATION
CITATION NO(s): Item No(s):

SPECIAL ORDER/SPECIAL ACTION NO:
Item No(s):

2. Specific ground(s) for this appeal are: (Check all that apply):

The safety order was not violated

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

The abatement requirements are unreasonable.

Required changes

Time allowed to complete changes

The proposed penalty is unreasonable.

3. Explain any other reasons for appeal or issues to be raised on appeal. Affirmative defenses must be specifically stated. Some important affirmative defenses are listed on the OSHAB website at: <http://www.dir.ca.gov/OSHAB/oshab.html> See attached explanation and letter of September 3, 2013.

4.

(Signature of Employer or Employer's Representative)
{If there is any change in representation after you file your appeal, you must notify the Appeals Board in writing}

Karen J. Nardi Attorney (State Bar No. 104742) Maurice Leiter Attorney (State Bar No. 123732)

(Type or print name)

Attorneys

(Title)

Arnold & Porter LLP, Three Embarcadero Center, 10th Floor

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

San Francisco

CA

94111

(City)

(State)

(Zip Code)

415-471-3301

karen.nardi@aporter.com

(Telephone)

(E-Mail Address)

(Date)

{All correspondence from the Appeals Board will be sent to the representative above at the address above. If there is any change in address, telephone number, and/or e-mail address after you file your appeal, you must notify the Appeals Board of the change(s). All such notifications must be in writing}

IMPORTANT INFORMATION

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- G. Mail each completed Appeal form and citation or notification to the Occupational Safety and Health Appeals Board, 2520 Venture Oaks Way, Suite 300, Sacramento, CA 95833.
- H. Late appeals will not be accepted unless good cause is shown.

OSHAB 5/08

34141389v1

ATTACHMENT TO APPEAL FORM
Bechtel Construction Company
Inspection No. 313388571

3. Explain any other reasons for appeal or issues to be raised on appeal.¹

Citation 2, Item 1:

3.1 The Findings of Deficiency Under Section 5141 Were Incorrect

Bechtel Construction Company (“Bechtel”) should not be cited for violations of 8 Cal. Code Regs. § 5141 “Control of Harmful Exposure to Employees.” This provision requires employers to prevent harmful exposures by engineering controls whenever feasible. Bechtel should not be cited under this section because:

- Bechtel implemented effective engineering controls to control exposure to airborne dust, in order to limit exposures to coccidioides in accordance with the “Risk-Reduction Measures” set forth in its “Dust Management Plan for Valley Fever” (“Plan”), a further elaboration of its IIPP that was approved by the San Luis Obispo County Health Department. § 5141.
- Bechtel implemented the use of High Efficiency Particulate (HEP)-filtered air conditioned enclosed cabs on heavy equipment, including grading equipment and earth-moving equipment. Workers exposed to fugitive dust for extended periods of time were also provided with half-face respirators in accordance with the “Dust Management” protocols of the Plan. § 5141.
- Bechtel effectively provided watering methods, including water trucks with sprinkler systems, to stabilize airborne dusts. § 5141.
- Bechtel ensured that spoils piles were stabilized and implemented additional soil stabilization measures, including the spraying of dirt stockpile areas for dust suppression. § 5141.

3.2 Cal/OSHA Citation Lists Incorrect Employer Name

Bechtel raises the argument that Cal/OSHA Citation Number 2 lists the incorrect employer name. The citation lists “Bechtel Construction Operations, Inc.” as the employer instead of “Bechtel Construction Company.”

¹ By further explaining the grounds for appeal, Bechtel Construction Company does not waive, and reserves, the right to present additional facts and information in support of its appeal.

State of California
Division of Occupational Safety and Health
Bakersfield District Office (0950647; 4029)
7718 Meany Avenue
Bakersfield, CA 93308-5110

Inspection Number: 313388571
Inspection Dates: 03/06/2013 - 09/05/2013
Issuance Date: 09/05/2013
CSHO ID: Y0393
Optional Inspection Nbr: 031-13



Citation and Notification of Penalty

Company Name: Bechtel Construction Operations Inc.
Inspection Site: 13505 Highway 58, Santa Margarita, CA 93453

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SEP 20 2013

OSH Appeals Board

Citation 2 Item 1 Type of Violation: Serious

5141. Control of Harmful Exposure to Employees

(a) Engineering Controls. Harmful exposures shall be prevented by engineering controls whenever feasible.

VIOLATION:

During and/or prior to the time of inspection, the employer did not implement effective engineering controls to control exposures to airborne dust, in order to limit exposures to coccidioides, the spore that causes Valley Fever (Coccidioidomycosis), a serious and potentially fatal disease. Coccidioides spores are known to be present in the soils of this area. The employer conducted work activities that involved considerable disturbance of the soils. Although the employer's Dust Management Plan included the use of engineering controls, the engineering controls that were not effectively implemented included, but were not limited to:

- a. The employer did not enforce use of High Efficiency Particulate (HEP)-filtered air conditioned enclosed cabs on heavy equipment as described in their "Dust Management Plan (Valley Fever Exposure)". Employees operated heavy equipment with open cabs.
- b. The employer did not effectively provide watering methods to stabilize airborne dusts. Insufficient water was available, and water was often not applied to the off-road areas. Watering methods, quantities, and frequency were not sufficient to minimize airborne dust in all areas where employees were exposed.
- c. The employer did not ensure that all spoils piles were tarped or otherwise stabilized.
- d. The employer did not implement other effective soil stabilization measures such as minimizing the area of exposed bare dirt to the immediate areas being worked, the application of soil stabilizers, and the prompt re-vegetation of completed areas.

Date By Which Violation Must be Abated: 09/15/2013
Proposed Penalty: \$ 5060.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

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

APPEAL FORM

313388571

Inspection Number on Citation

Bechtel Construction Operations, Inc.

Employer Name on Citation

Bechtel Construction Company - citation has
incorrect name of employer

Employer Legal Name or DBA (Optional)

5275 Westview Drive

Address

Frederick, MD 21703

1 2013-R4D7 - 3028

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from receipt of a citation to appeal.

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1. This is an Appeal from:

CITATION NO(s): 3 Item No(s): 1

NOTIFICATION OF FAILURE TO ABATE ALLEGED VIOLATION
CITATION NO(s): _____ Item No(s): _____

SPECIAL ORDER/SPECIAL ACTION NO: _____
Item No(s): _____

2. Specific ground(s) for this appeal are: **(Check all that apply):**

The safety order was not violated

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

The abatement requirements are unreasonable.

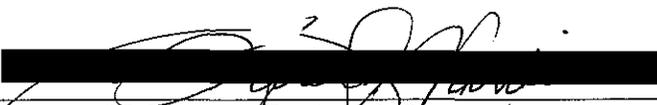
Required changes

Time allowed to complete changes

The proposed penalty is unreasonable.

3. Explain any other reasons for appeal or issues to be raised on appeal. Affirmative defenses must be specifically stated.
Some important affirmative defenses are listed on the OSHAB website at: <http://www.dir.ca.gov/OSHAB/oshab.html>
See attached explanation and letter of September 3, 2013.

4.


(Signature of Employer or Employer's Representative)
{If there is any change in representation after you file your appeal, you must notify the Appeals Board in writing}

Karen J. Nardi Attorney (State Bar No. 104742) Maurice Leiter Attorney (State Bar No. 123732)

(Type or print name)

Attorneys

(Title)

Arnold & Porter LLP, Three Embarcadero Center, 10th Floor

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

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415-471-3301

karen.nardi@aporter.com

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OSHAB 5/08

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SEP 20 2013

ATTACHMENT TO APPEAL FORM
Bechtel Construction Company
Inspection No. 313388571

OSH Appeals Board

3. Explain any other reasons for appeal or issues to be raised on appeal.¹

Citation 3, Item 1:

3.1 The Findings of Deficiency Under Section 5144 Were Incorrect

Bechtel Construction Company (“Bechtel”) should not be cited for violations of 8 Cal. Code Regs. § 5144 “Respiratory Protection.” This section requires employers to prevent harmful exposures by engineering controls whenever feasible. Bechtel should not be cited under this section because:

- Bechtel established and implemented a “Dust Management Plan for Valley Fever” (“Plan”) which contained policies governing the use of respirators. § 5144(c)(1).
- The Plan included procedures for selecting respirators for use in the workplace. § 5144(c)(1)(A).
- All workers who either were required to wear a respirator under the Plan or requested and received a respirator from Bechtel were trained and provided medical evaluations. § 5144(c)(1)(B); and § 5144(c)(1)(H).
- Employees who requested a respirator were medically qualified, fit tested and trained in the proper use of the equipment in accordance with the Plan. § 5144(c)(1)(C); § 5144(c)(1)(E); § 5144(c)(1)(F); and § 5144(c)(1)(D).
- The Plan provided for the training of employees in the respiratory hazards to which they are potentially exposed during routine and emergency situations. § 5144(c)(1)(G).
- Bechtel regularly evaluated its own compliance with the Plan. In addition, regulatory agencies - including, the San Luis Obispo County Health Department and the San Luis Obispo County Air Pollution Control District - periodically evaluated Bechtel’s compliance with the Plan. § 5144(c)(1)(I).

3.2 Cal/OSHA Citation Lists Incorrect Employer Name

¹ By further explaining the grounds for appeal, Bechtel Construction Company does not waive, and reserves, the right to present additional facts and information in support of its appeal.

Bechtel raises the argument that Cal/OSHA Citation Number 3 lists the incorrect employer name. The citation lists "Bechtel Construction Operations, Inc." as the employer instead of "Bechtel Construction Company."

State of California

Division of Occupational Safety and Health
Bakersfield District Office (0950647; 4029)
7718 Meany Avenue
Bakersfield, CA 93308-5110

Inspection Number: 313388571
Inspection Dates: 03/06/2013 - 09/05/2013
Issuance Date: 09/05/2013
CSHO ID: Y0393
Optional Inspection Nbr: 031-13



Citation and Notification of Penalty

RECEIVED

Company Name: Bechtel Construction Operations Inc.
Inspection Site: 13505 Highway 58, Santa Margarita, CA 93453

SEP 20 2013

OSH Appeals Board

Citation 3 Item 1 Type of Violation: Serious

5144. Respiratory Protection.

(c) Respiratory protection program. This subsection requires the employer to develop and implement a written respiratory protection program with required worksite-specific procedures and elements for required respirator use. The program must be administered by a suitably trained program administrator. In addition, certain program elements may be required for voluntary use to prevent potential hazards associated with the use of the respirator. The Small Entity Compliance Guide contains criteria for the selection of a program administrator and a sample program that meets the requirements of this subsection. Copies of the Small Entity Compliance Guide will be available from the Occupational Safety and Health Administration's Office of Publications, Room N 3101, 200 Constitution Avenue, NW, Washington, DC, 20210 (202-219-4667).

(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. The program shall be updated as necessary to reflect those changes in workplace conditions that affect respirator use. The employer shall include in the program the following provisions, as applicable:

- (A) Procedures for selecting respirators for use in the workplace;
- (B) Medical evaluations of employees required to use respirators;
- (C) Fit testing procedures for tight-fitting respirators;
- (D) Procedures for proper use of respirators in routine and reasonably foreseeable emergency situations;
- (E) Procedures and schedules for cleaning, disinfecting, storing, inspecting, repairing, discarding, and otherwise maintaining respirators;

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of California
Division of Occupational Safety and Health
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Citation and Notification of Penalty

RECEIVED
SEP 20 2013

Company Name: Bechtel Construction Operations Inc.
Inspection Site: 13505 Highway 58, Santa Margarita, CA 93453

OSH Appeals Board

(F) Procedures to ensure adequate air quality, quantity, and flow of breathing air for atmosphere-supplying respirators;

(G) Training of employees in the respiratory hazards to which they are potentially exposed during routine and emergency situations;

(H) Training of employees in the proper use of respirators, including putting on and removing them, any limitations on their use, and their maintenance; and

(I) Procedures for regularly evaluating the effectiveness of the program.

VIOLATION:

During and/or prior to the time of inspection, the employer did not effectively develop and implement a written respiratory protection program to protect the employees from exposure to coccidioides spores, which cause Valley Fever (Coccidioidomycosis), a serious and potentially fatal disease. Coccidioides spores are known to be present in the soils of this area. The employer conducted work activities that involved considerable disturbance of the soils. During and/or prior to the time of the inspection, the employer did not develop and implement a respiratory protection program that met the requirements of this standard, including, but not limited to:

- a. The employer did not evaluate respiratory hazards in the workplace to determine operations in which exposure to coccidioides spores required respiratory protection, and did not establish and implement clear policies for the use of respirators. Employees worked in areas where airborne dusts were present due to work operations or wind, without the use of respiratory protection.
- b. The employer did not provide medical evaluations for some employees who used respirators.
- c. Employees used non-approved devices (dust masks) rather than respirators during high-wind events. These devices do not provide adequate respiratory protection.

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of California

Division of Occupational Safety and Health
Bakersfield District Office (0950647; 4029)
7718 Meany Avenue
Bakersfield, CA 93308-5110

Inspection Number: 313388571

Inspection Dates: 03/06/2013-09/05/2013

Issuance Date: 09/05/2013

CSHO ID: Y0393

Optional Inspection Nbr: 031-13



Citation and Notification of Penalty

Company Name: Bechtel Construction Operations Inc.
Inspection Site: 13505 Highway 58, Santa Margarita, CA 93453

d. The employer did not evaluate the effectiveness of the program, despite receiving reports of diagnosed cases of Valley Fever among employees working at the site.

| | |
|---|------------|
| Date By Which Violation Must be Abated: | 09/15/2013 |
| Proposed Penalty: | \$ 5060.00 |

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

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

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SEP 20 2013

APPEAL FORM OSH Appeals Board

2013-R4D7-3029

313388571

Inspection Number on Citation

Bechtel Construction Operations, Inc.

Employer Name on Citation

Bechtel Construction Company - citation has incorrect name of employer

Employer Legal Name or DBA (Optional)

5275 Westview Drive

Address

Frederick, MD 21703

1. You only have 15 working days from receipt of a citation to appeal.

2. A copy of this form must be attached to each citation or notification appealed. Failure to file a completed form may result in dismissal of the appeal.

FIRST READ IMPORTANT INFORMATION ON THE REVERSE SIDE THEN COMPLETE ONE APPEAL FORM FOR EACH CITATION

1. This is an Appeal from:

CITATION NO(s): 4 Item No(s): 1

NOTIFICATION OF FAILURE TO ABATE ALLEGED VIOLATION
CITATION NO(s): Item No(s):

SPECIAL ORDER/SPECIAL ACTION NO:
Item No(s):

2. Specific ground(s) for this appeal are: (Check all that apply):

The safety order was not violated

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

The abatement requirements are unreasonable.

Required changes

Time allowed to complete changes

The proposed penalty is unreasonable.

3. Explain any other reasons for appeal or issues to be raised on appeal. Affirmative defenses must be specifically stated. Some important affirmative defenses are listed on the OSHAB website at: <http://www.dir.ca.gov/OSHAB/oshab.html> See attached explanation.

4.


(Signature of Employer or Employer's Representative)
{If there is any change in representation after you file your appeal, you must notify the Appeals Board in writing}

Karen J. Nardi (State Bar No. 104742) Maurice Leiter (State Bar No. 123732)

(Type or print name)

Attorneys

(Title)

Arnold & Porter LLP, Three Embarcadero Center, 10th Floor

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

San Francisco

CA

94111

(City)

(State)

(Zip Code)

415-471-3301

Karen.Nardi@aporter.com

(Telephone)

(E-Mail Address)

(Date)

{All correspondence from the Appeals Board will be sent to the representative above at the address above. If there is any change in address, telephone number, and/or e-mail address after you file your appeal, you must notify the Appeals Board of the change(s). All such notifications must be in writing}

IMPORTANT INFORMATION

- A. Use this form to appeal a Citation, Notification of Failure to Abate Alleged Violation, or Special Order/Special Action.
- B. You must complete *a separate appeal form for each citation or notification* you wish to appeal and *attach a copy of the complete citation or notification that you are appealing.*
- C. If the citation or notification being appealed includes more than one item **do not use separate appeals forms for each item.** Instead, specify the items you are appealing in the space provided in No. 1 on the front of this form. (for example, "Citation No. 1, Item Nos. 2, 5, and 8)
- D. **Be sure to sign your appeal form and provide all the information requested in No. 4 above.**
- E. Your appeal form shall be deemed not completed unless you attach a copy of each citation or notification that you are appealing, and failure to file a completed appeal form may result in dismissal of the appeal.
- F. If you or your representative change address, telephone number, and/or e-mail address, it is your responsibility to notify the Appeals Board in writing of the change(s). Otherwise the Appeals Board will continue to use the address it has on file and you risk not receiving notices or other communications from the Appeals Board. Appeals Board regulations make it the employer's obligation to notify the Appeals Board of any changes to the employer's and/or representative's contact information.
- G. Mail each completed Appeal form and citation or notification to the Occupational Safety and Health Appeals Board, 2520 Venture Oaks Way, Suite 300, Sacramento, CA 95833.
- H. Late appeals will not be accepted unless good cause is shown.

OSHAB 5/08

34141395v1

ATTACHMENT TO APPEAL FORM
Bechtel Construction Company
Inspection No. 313388571

OSH Appeals Board

3. Explain any other reasons for appeal or issues to be raised on appeal.¹

Citation 4, Item 1:

3.1 The Findings of Deficiency Under Section 342 Were Incorrect

Bechtel Construction Company (“Bechtel”) should not be cited for violations of 8 Cal. Code Regs. § 342 “Reporting Work-Connected Fatalities and Serious Injuries.” This provision requires employers to report to Cal/OSHA any serious injury, illness, or death of an employee that occurs in a place of employment or in connection with any employment within “8 hours after the employer knows or with diligent inquiry would have known of the death or serious injury or illness.” § 342(a). Section 342 further provides that “if the employer can demonstrate that exigent circumstances exist, the time frame for the report may be made no longer than 24 hours after the incident.” Bechtel should not be cited under this section because:

- Valley Fever is endemic to the San Luis Obispo area. Wide-spread distribution of the spore which causes Valley Fever in susceptible individuals precludes any valid or reliable method of determining whether the pathology is work related or the result of a non-occupational exposure.
- Bechtel reports Valley Fever cases to appropriate agencies, health care providers, and local health care officers.
- Cal/OSHA regulations require reporting of work-related occupational illnesses and injuries. Bechtel did not report cases where medical professionals did not identify the cases as work-related.

3.2 Cal/OSHA Citation Lists Incorrect Employer Name

Bechtel raises the argument that Cal/OSHA Citation Number 4 lists the incorrect employer name. The citation lists “Bechtel Construction Operations, Inc.” as the employer instead of “Bechtel Construction Company.”

¹ By further explaining the grounds for appeal, Bechtel Construction Company does not waive, and reserves, the right to present additional facts and information in support of its appeal.

State of California
Division of Occupational Safety and Health
Bakersfield District Office (0950647; 4029)
7718 Meany Avenue
Bakersfield, CA 93308-5110

Inspection Number: 313388571
Inspection Dates: 03/06/2013-09/05/2013
Issuance Date: 09/05/2013
CSHO ID: Y0393
Optional Inspection Nbr: 031-13



Citation and Notification of Penalty

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SEP 20 2013

Company Name: Bechtel Construction Operations Inc.
Inspection Site: 13505 Highway 58, Santa Margarita, CA 93453

OSH Appeals Board

Citation 4 Item 1 Type of Violation: Willful Regulatory

342. Reporting Work-Connected Fatalities and Serious Injuries.

(a) Every employer shall report immediately by telephone or telegraph to the nearest District Office of the Division of Occupational Safety and Health any serious injury or illness, or death, of an employee occurring in a place of employment or in connection with any employment.

Immediately means as soon as practically possible but not longer than 8 hours after the employer knows or with diligent inquiry would have known of the death or serious injury or illness. If the employer can demonstrate that exigent circumstances exist, the time frame for the report may be made no longer than 24 hours after the incident.

Serious injury or illness is defined in section 330(h), Title 8, California Administrative Code.

VIOLATION:

The employer did not report by telephone or telegraph to the nearest District Office of the Division of Occupational Safety and Health/ serious illnesses of employees occurring in a place of employment or in connection with employment.

a. On or about April 2012, an employee was treated and hospitalized for more than 2 days, for Valley Fever contracted in connection with working at the California Valley Solar Ranch site located in Santa Margarita, California. The employer was aware of the employee's serious illness (Valley Fever) involving hospitalization for more than 24 hours.

b. On or about April 2012, an employee was treated and hospitalized for more than 2 days, for Valley Fever contracted in connection with working at the California Valley Solar Ranch site located in Santa Margarita, California. The employer was aware of the employee's serious illness (Valley Fever) involving hospitalization for more than 24 hours.

c. On or about September 2012, an employee was treated and hospitalized for more than 2 days, for Valley Fever contracted in connection with working at the California Valley Solar Ranch site located in Santa

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of California
Division of Occupational Safety and Health
Bakersfield District Office (0950647; 4029)
7718 Meany Avenue
Bakersfield, CA 93308-5110

Inspection Number: 313388571
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Issuance Date: 09/05/2013
CSHO ID: Y0393
Optional Inspection Nbr: 031-13



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Citation and Notification of Penalty

Company Name: Bechtel Construction Operations Inc.
Inspection Site: 13505 Highway 58, Santa Margarita, CA 93453

OSH Appeals Board

Margarita, California. The employer was aware of the employee's serious illness (Valley Fever) involving hospitalization for more than 24 hours.

d. On or about October 2012, an employee was treated and hospitalized for more than 2 days, for Valley Fever contracted in connection with working at the California Valley Solar Ranch site located in Santa Margarita, California. The employer was aware of the employee's serious illness (Valley Fever) involving hospitalization for more than 24 hours.

The employer never reported the serious illnesses. The employer had knowledge of the regulation requirements to report serious injuries or illnesses to Cal/OSHA.

Date By Which Violation Must be Abated: 09/15/2013
Proposed Penalty: \$ 25000.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

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

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SEP 20 2013

APPEAL FORM OSH Appeals Board

2013-R4D7 - 3030

313388571

Inspection Number on Citation

Bechtel Construction Operations, Inc.

Employer Name on Citation

Bechtel Construction Company - citation has incorrect name of employer

Employer Legal Name or DBA (Optional)

5275 Westview Drive

Address

Frederick, MD 21703

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FIRST READ IMPORTANT INFORMATION ON THE REVERSE SIDE THEN COMPLETE ONE APPEAL FORM FOR EACH CITATION

1. This is an Appeal from:

CITATION NO(s): 5 Item No(s): 1

NOTIFICATION OF FAILURE TO ABATE ALLEGED VIOLATION
CITATION NO(s): Item No(s):

SPECIAL ORDER/SPECIAL ACTION NO: Item No(s):

2. Specific ground(s) for this appeal are: (Check all that apply):

The safety order was not violated

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

The abatement requirements are unreasonable.

Required changes

Time allowed to complete changes

The proposed penalty is unreasonable.

3. Explain any other reasons for appeal or issues to be raised on appeal. Affirmative defenses must be specifically stated. Some important affirmative defenses are listed on the OSHAB website at: <http://www.dir.ca.gov/OSHAB/oshab.html> See attached explanation.

4.

(Signature of Employer or Employer's Representative)

{If there is any change in representation after you file your appeal, you must notify the Appeals Board in writing}

Karen J. Nardi Attorney (State Bar No. 104742) Maurice Leiter (State Bar No. 123732)

(Type or print name)

Attorneys

(Title)

Arnold & Porter LLP, Three Embarcadero Center, 10th Floor

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

San Francisco

CA

94111

(City)

(State)

(Zip Code)

415-471-3301

karen.nardi@aporter.com

(Telephone)

(E-Mail Address)

(Date)

{All correspondence from the Appeals Board will be sent to the representative above at the address above. If there is any change in address, telephone number, and/or e-mail address after you file your appeal, you must notify the Appeals Board of the change(s). All such notifications must be in writing}

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- C. If the citation or notification being appealed includes more than one item **do not use separate appeals forms for each item.** Instead, specify the items you are appealing in the space provided in No. 1 on the front of this form. (for example, "Citation No. 1, Item Nos. 2, 5, and 8)
- D. **Be sure to sign your appeal form and provide all the information requested in No. 4 above.**
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- H. Late appeals will not be accepted unless good cause is shown.

OSHAB 5/08

34141396v1

ATTACHMENT TO APPEAL FORM

Bechtel Construction Company

Inspection No. 313388571

OSH Appeals Board

3. Explain any other reasons for appeal or issues to be raised on appeal.¹Citation 5, Item 1:**3.1 The Findings of Deficiency Under Section 14300.39 Were Incorrect**

Bechtel Construction Company ("Bechtel") should not be cited for violations of 8 Cal. Code Regs. § 14300.29 "Forms." This provision requires employers to enter each recordable injury or illness on certain Cal/OSHA forms within a specified timeframe. Bechtel should not be cited under this section because:

- Bechtel has not, to date, listed Valley Fever cases on the Cal/OSHA form 300 for several reasons:
 - Valley Fever is endemic to the San Luis Obispo area. Wide-spread distribution of the spore which causes Valley Fever in susceptible individuals precludes any valid or reliable method of determining whether the pathology is work-related or the result of a non-occupational exposure.
 - Cal/OSHA regulations require recording of work-related occupational illnesses and injuries. Bechtel did not log cases where medical professionals did not identify the cases as work-related.
- Some four months after the Cal/OSHA inspection, the California Department of Public Health (CDPH) sent Bechtel a letter on July 23, 2013. In this letter, CDPH notified Bechtel that "since the number of cases at the two solar farms results in estimated rates significantly higher than the county background rate, cases occurring among solar farm employees should be presumed to be work-related unless proved otherwise." In a letter dated July 30, 2013, Scott Goldsmith of Bechtel responded that Bechtel did not have the statistical information referenced in CDPH's letter and requested that Cal/OSHA provide that empirical data to Bechtel. In a letter dated August 20, 2013, CDPH provided information on Valley Fever statistics and an analysis of that information. Bechtel contests the applicability and correctness of this statistical analysis. In addition, Bechtel did not have this detailed CDPH analysis during the course of the project when the Division alleges that Bechtel should have included all cases of Valley Fever on the 300 log. And the Division cannot retroactively cite an employer for failing to comply with an

¹ By further explaining the grounds for appeal, Bechtel Construction Company does not waive, and reserves, the right to present additional facts and information in support of its appeal.

interpretation about the reportability of Valley Fever that is not codified in a regulation or otherwise properly issued.

3.2 Cal/OSHA Citation Lists Incorrect Employer Name

Bechtel raises the argument that Cal/OSHA Citation Number 5 lists the incorrect employer name. The citation lists “Bechtel Construction Operations, Inc.” as the employer instead of “Bechtel Construction Company.”

State of California
Division of Occupational Safety and Health
Bakersfield District Office (0950647; 4029)
7718 Meany Avenue
Bakersfield, CA 93308-5110

Inspection Number: 313388571
Inspection Dates: 03/06/2013 - 09/05/2013
Issuance Date: 09/05/2013
CSHO ID: Y0393
Optional Inspection Nbr: 031-13



Citation and Notification of Penalty

Company Name: Bechtel Construction Operations Inc.
Inspection Site: 13505 Highway 58, Santa Margarita, CA 93453

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Citation 5 Item 1 Type of Violation: Willful Regulatory

OSH Appeals Board

CCR, Title 8, Employer Records of Occupational Injury or Illness, 14300.29. Forms
(b) Implementation.

(3) How quickly must each injury or illness be recorded?

You must enter each recordable injury or illness on the Cal/OSHA Form 300 and Cal/OSHA Form 301 Incident Report within seven (7) calendar days of receiving information that a recordable injury or illness has occurred.

VIOLATION:

The employer has not to date, recorded on their 2011 and 2012 Cal/OSHA Form 300 several recordable valley fever illnesses that resulted in one or more of the following:

- (1) An employee receiving medical treatment beyond first aid.
- (2) An employee missing a day or days away from work.

The employer was familiar with the CCR Title 8 accident recording regulations through experience in completing the company's Log 300 Forms.

Date By Which Violation Must be Abated: 09/15/2013
Proposed Penalty: \$ 5000.00



See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

Karen J. Nardi
karen.nardi@aporter.com
(415) 471-3301

Three Embarcadero Center, 10th Floor
San Francisco, CA 94111-4024

September 18, 2013

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SEP 20 2013

Via Federal Express

Occupational Safety and Health Appeals Board
2520 Venture Oaks Way, Suite 300
Sacramento, CA 95833
Telephone: (916) 274-5751 or (877) 252-1987

OSH Appeals Board

Cal/OSHA Inspection No. 313388571
CSHO ID: Y0303
Optional Report #: 031-13
Reporting ID: 0950647
Citations #1-5

Dear Sir/Madam:

Enclosed are five appeal forms for citations issued to Bechtel Construction Operations Inc. (BCOI) at the California Valley Solar Project (CVSR) in San Luis Obispo County.

Please note that the Division cited the wrong entity on each of the enclosed citations. Bechtel Construction Company (BCC) is the employer at the CVSR project, not BCOI.

Yours sincerely,


Karen J. Nardi
Counsel to Bechtel Construction Company

Enclosures

cc: Scott Goldsmith, Bechtel
Maurice Leiter, Arnold & Porter
Lori Walth, Bechtel

DEPARTMENT OF INDUSTRIAL RELATIONS
OCCUPATIONAL SAFETY
AND HEALTH APPEALS BOARD
2520 VENTURE OAKS WAY, SUITE 300
SACRAMENTO, CA 95833
(916) 274-5751
FAX (916) 274-5785



September 16, 2013

Karen Nardi, Attorney
ARNOLD & PORTER
3 Embarcadero Center 10th Floor
San Francisco, CA 94111

RE: BECHTEL CONSTRUCTION OPERATIONS INC

IMIS# 313388571

Dear Ms. Nardi:

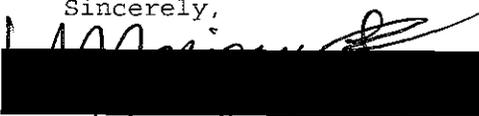
The Occupational Safety and Health Appeal Board received your telephone call on September 11, 2013, indicating your intention to appeal the citation(s), notification(s), or order(s) issued by the Division of Occupational Safety and Health.

A completed Appeal Form must be filed for each citation, notification, or order that you are appealing. Please indicate on the Appeal Form what action by the Division is being appealed and the grounds upon which the appeal is based. Attach a copy of the citation(s) you are appealing to your completed Appeal form(s). You should keep copies for your records.

If you do not postmark, mail, or deliver the completed Appeal form(s) and the appealed citation(s) to the Appeals Board at 2520 Venture Oaks Way, Suite 300, Sacramento, CA 95833 by September 23, 2013, your appeal may be dismissed.

If your appeal meets all the legal requirements, it will be docketed upon receipt of your Appeal form(s) and citation(s). Docketed copies of each timely appeal will be sent to you.

Sincerely,



Monique Getts
Office Assistant

cc: DOSH District Manager - Bakersfield

4-7-Y0393-031-2013