

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



April 29, 2014

Scott Wilson, Attorney
LAW OFFICES OF SCOTT A. WILSON
711 8th Avenue, Suite C
San Diego, CA 92101

Re: THREE FROGS INC
14-R3D2-1463/1471

DOCKETED: 04/25/14

Dear Mr. Wilson:

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) **Jacqueline Jones** (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,


Nichole Franco
Office Technician

cc: Accounting
DOSH District Manager-San Diego
DOSH Legal Unit-Oakland
DOSH Legal Unit-Los Angeles
IMIS# 317230167

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

2520 Venture Oaks Way, Suite 300

Sacramento, CA 95833

TOLL FREE NUMBER (877) 252-1987

(916) 274-5751

FAX (916) 274-5785

RECEIVED

APR 24 2014

OSH Appeals Board

APPEAL FORM

2014-R 3 D 2 -1463

317230167

Inspection Number on Citation

(Alleged Employer) Three Frogs Inc.

Employer Name on Citation

Employer Legal Name or DBA (Optional)

4450 Date Avenue, La Mesa, CA 91941

Address

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 of:

[X] CITATION NO(s): 1 Item No(s): 1, 2, 3, 4, 5

[] 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)

[X] The safety order was not violated.

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

[] The abatement requirements are unreasonable.

[] Required changes [] Time allowed to complete changes

[X] The proposed penalty is unreasonable.

3. Explain any other reasons for appeal or issues to be raised on appeal. Affirmative defenses must be specifically stated.

See attachment 3.

See attachment 3.

1. Three Frogs Inc., the entity named in this citation, is not a statutory/common law employer as defined by California Labor Code Section 6403; and/or any section of the California Labor Code and/or as defined by controlling case law either federal or state.
2. ~~Three Frogs Inc. did not have direction, management, control, or custody over any person performing work as alleged within this citation.~~
3. Three Frogs Inc. engaged in no wrongdoing as defined by statute and/or case law as it relates to the conduct alleged in this citation.

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OSH Appeals Board

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}

Scott A. Wilson

(Type or print name)

Attorney

(Title)

711 8th Avenue, Suite C

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

San Diego

CA

92101

(City)

(State)

(Zip-Code)

619-234-9011

scott@pepperwilson.com

4/21/14

(Telephone)

(E-Mail Address)

(Date)

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State of California

Division of Occupational Safety and Health
Cal/OSHA San Diego District (0950632; 4032)
7575 Metropolitan Drive, Suite 207
San Diego, CA 92108

Phone: (619) 767-2280 Fax: (619) 767-2299

Inspection Number: 317230167
Inspection Dates: 11/12/2013 - 04/14/2014
Issuance Date: 04/14/2014
CSHO ID: D2288
Optional Inspection Nbr: 013-14



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APR 24 2014

Citation and Notification of Penalty

OSH Appeals Board

Company Name: THREE FROGS INC
Inspection Site: 4450 DATE AVENUE, LA MESA, CA 91941

Citation 1 Item 1 Type of Violation: **General**

8 CCR 3395(f)(3): Heat Illness Prevention. The employer's procedures for complying with each requirement of this standard required by subsections (f)(1)(B), (G), (H), and (I) shall be in writing and shall be made available to employees and to representatives of the Division upon request. The Heat Illness Prevention Plan shall include:

- (B) The employer's procedures for complying with the requirements of this standard;
- (G) The employer's procedures for responding to symptoms of possible heat illness, including how emergency medical services will be provided should they become necessary;
- (H) The employer's procedures for contacting emergency medical services, and if necessary, for transporting employees to a point where they can be reached by an emergency medical service provider;
- (I) The employer's procedures for ensuring that, in the event of an emergency, clear and precise directions to the work site can and will be provided as needed to emergency responders. These procedures shall include designating a person to be available to ensure that emergency procedures are invoked when appropriate.

a) At the time of the inspection, a copy of the employer's Heat Illness Prevention Plan that includes procedures for complying with each requirement of this standard was requested by the Division by way of a Document Request. The employer did not provide the requested documentation.

Date By Which Violation Must be Abated:	05/28/2014
Proposed Penalty:	\$ 215.00

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

State of California

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Cal/OSHA San Diego District (0950632; 4032)
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Phone: (619) 767-2280 Fax: (619) 767-2299

Citation and Notification of Penalty

Company Name: THREE FROGS INC
Inspection Site: 4450 DATE AVENUE, LA MESA, CA 91941

RECEIVED
APR 24 2014

OSH Appeals Board

Citation 1 Item 2 Type of Violation: General

8 CCR 3421(a): Tree Work, Maintenance, or Removal. General. Injury and Illness Prevention Program.
An Injury and Illness Prevention Program shall be implemented and maintained in accordance with Section 3203 of these Orders.

8 CCR 3203(a). Injury and Illness Prevention Program. 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:

- (1) Identify the person or persons with authority and responsibility for implementing the Program.
- (2) Include a system for ensuring that employees comply with safe and healthy work practices. Substantial compliance with this provision includes recognition of employees who follow safe and healthful work practices, training and retraining programs, disciplinary actions, or any other such means that ensures employee compliance with safe and healthful work practices.

(3) Include a system for communicating with employees in a form readily understandable by all affected employees on matters relating to occupational safety and health, including provisions designed to encourage employees to inform the employer of hazards at the worksite without fear of reprisal. Substantial compliance with this provision includes meetings, training programs, posting, written communications, a system of anonymous notification by employees about hazards, labor/management safety and health committees, or any other means that ensures communication with employees.

EXCEPTION: Employers having fewer than 10 employees shall be permitted to communicate to and instruct employees orally in general safe work practices with specific instructions with respect to hazards unique to the employees' job assignments as compliance with subsection (a)(3).

(4) Include procedures for identifying and evaluating work place hazards including scheduled periodic inspections to identify unsafe conditions and work practices. Inspections shall be made to identify and evaluate hazards.

(A) When the Program is first established;

EXCEPTION: Those employers having in place on July 1, 1991, a written Injury and Illness Prevention Program complying with previously existing section 3203.

(B) Whenever new substances, processes, procedures, or equipment are introduced to the workplace that represent a new occupational safety and health hazard; and

(C) Whenever the employer is made aware of a new or previously unrecognized hazard.

(5) Include a procedure to investigate occupational injury or occupational illness.

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Citation and Notification of Penalty

Company Name: THREE FROGS INC
Inspection Site: 4450 DATE AVENUE, LA MESA, CA 91941

OSH Appeals Board

(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.

(7) Provide training and instruction:

(A) When the program is first established;
EXCEPTION: Employers having in place on July 1, 1991, a written Injury and Illness Prevention Program complying with the previously existing Accident Prevention Program in Section 3203.

- (B) To all new employees;
- (C) To all employees given new job assignments for which training has not previously been received;
- (D) Whenever new substances, processes, procedures or equipment are introduced to the workplace and represent a new hazard;
- (E) Whenever the employer is made aware of a new or previously unrecognized hazard; and,
- (F) For supervisors to familiarize themselves with the safety and health hazards to which employees under their immediate direction and control may be exposed.

a) On and before 11/12/13, the employer, Three Frogs, Inc., had not established, implemented and maintained an Injury and Illness Prevention Program (IIPP) in accordance with Section 3203 of these Orders. A copy of this program was requested by way of a document request, but it was not provided by the employer.

Date By Which Violation Must be Abated:	05/28/2014
Proposed Penalty:	\$ 350.00

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
Cal/OSHA San Diego District (0950632; 4032)
7575 Metropolitan Drive, Suite 207
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Inspection Number: 317230167
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Issuance Date: 04/14/2014
CSHO ID: D2288
Optional Inspection Nbr: 013-14



Phone: (619) 767-2280 Fax: (619) 767-2299

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APR 24 2014

Citation and Notification of Penalty

Company Name: THREE FROGS INC
Inspection Site: 4450 DATE AVENUE, LA MESA, CA 91941

OSH Appeals Board

Citation 1 Item 3 Type of Violation: **General**

8 CCR 3421(d): Tree Work, Maintenance or Removal. General. Training. Training shall be documented by the employer to certify that the employee has satisfactorily completed the training program prior to performing the job assignment without the oversight and observation of a qualified person.

At the time of the inspection, the employer did not provide any documentation to certify that the employees removing the tree at 4450 Date Ave., La Mesa, CA, had satisfactorily completed a training program prior to performing the job assignment without the oversight and observation of a qualified person.

Date By Which Violation Must be Abated: 05/28/2014
Proposed Penalty: \$ 175.00

Citation 1 Item 4 Type of Violation: **General**

8 CCR 3421(g): Tree Work, Maintenance or Removal. General. Equipment. All equipment shall be operated by qualified persons, and where required, qualified tree workers.

At the time of the inspection, the employer did not provide any supporting documentation to indicate that any of the employees involved in the tree removal operation at 4450 Date Ave., La Mesa, CA were qualified tree workers or qualified to operate the aerial lift or chainsaw.

Date By Which Violation Must be Abated: 05/28/2014
Proposed Penalty: \$ 325.00

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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7575 Metropolitan Drive, Suite 207
San Diego, CA 92108

Inspection Number: 317230167
Inspection Dates: 11/12/2013 - 04/14/2014
Issuance Date: 04/14/2014
CSHO ID: D2288
Optional Inspection Nbr: 013-14



Phone: (619) 767-2280 Fax: (619) 767-2299

Citation and Notification of Penalty

RECEIVED
APR 24 2014

Company Name: THREE FROGS INC
Inspection Site: 4450 DATE AVENUE, LA MESA, CA 91941

OSH Appeals Board

Citation 1 Item 5 Type of Violation: **General**

8 CCR 3638(d): Elevating Work Platforms and Aerial Devices. Equipment Instructions and Marking.

Employees shall be instructed in the proper use of the platform in accordance with this Article, the manufacturer's operating instructions and Section 3203, Injury and Illness Prevention Program.

On and before 11/12/13, employees of Three Frogs, Inc. who were operating the JLG 80-foot articulating boom lift at 4450 Date Ave., La Mesa, CA, were not instructed in the proper use of the aerial device in accordance with this Article and the manufacturer's operating instructions. The employer did not have an Injury and Illness Prevention Program, and did not provide any safety training records that would indicate the employees were trained and instructed in accordance with this section.

Date By Which Violation Must be Abated:
Proposed Penalty:

05/28/2014
\$ 350.00

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

TOLL FREE NUMBER (877) 252-1987
(916) 274-5751
FAX (916) 274-5785

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APR 24 2014

OSH Appeals Board

APPEAL FORM

2014-R 3D2 -1464

317230167

Inspection Number on Citation

(Alleged Employer) Three Frogs Inc.

Employer Name on Citation

Employer Legal Name or DBA (Optional)

4450 Date Avenue, La Mesa, CA 91941

Address

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THEN COMPLETE ONE APPEAL FORM FOR EACH CITATION

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

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

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

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

The safety order was not violated.

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

The abatement requirements are unreasonable.

Required changes Time allowed to complete changes

The proposed penalty is unreasonable.

3. Explain any other reasons for appeal or issues to be raised on appeal. Affirmative defenses must be specifically stated.

See attachment 3.

See attachment 3.

1. Three Frogs Inc., the entity named in this citation, is not a statutory/common law employer as defined by California Labor Code Section 6403; and/or any section of the California Labor Code and/or as defined by controlling case law either federal or state.
2. ~~Three Frogs Inc. did not have direction, management, control, or custody over any person performing work as alleged within this citation.~~
3. Three Frogs Inc. engaged in no wrongdoing as defined by statute and/or case law as it relates to the conduct alleged in this citation.

RECEIVED
APR 24 2014

OSH Appeals Board

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}

Scott A. Wilson

(Type or print name)

Attorney

(Title)

711 8th Avenue, Suite C

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

San Diego

CA

92101

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(State)

(Zip Code)

619-234-9011

scott@pepperwilson.com

4/21/14

(Telephone)

(E-Mail Address)

(Date)

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State of California

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7575 Metropolitan Drive, Suite 207
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Inspection Number: 317230167
Inspection Dates: 11/12/2013-04/14/2014
Issuance Date: 04/14/2014
CSHO ID: D2288
Optional Inspection Nbr: 013-14



Phone: (619) 767-2280 Fax: (619) 767-2299

Citation and Notification of Penalty

RECEIVED
APR 24 2014

Company Name: THREE FROGS INC
Inspection Site: 4450 DATE AVENUE, LA MESA, CA 91941

OSH Appeals Board

Citation 2 Item 1 Type of Violation: Serious Accident-Related

8 CCR 3421(b): General. Qualified Tree Worker. Each work location where tree trimming, tree repairing or removal is to be done, shall be under the direction of a qualified tree worker.

a) On and about 11/12/13, employees of Three Frogs, Inc. were not under the direction of a qualified tree worker when they used improper methods and procedures to cut a large eucalyptus tree which resulted in an employee sustaining fatal injuries.

Date By Which Violation Must be Abated:
Proposed Penalty:

ABATED
\$ 13500.00

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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OSH Appeals Board

APPEAL FORM

2014-R 3 D2 -1465

317230167

Inspection Number on Citation

(Alleged Employer) Three Frogs Inc.

Employer Name on Citation

Employer Legal Name or DBA (Optional)

4450 Date Avenue, La Mesa, CA 91941

Address

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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)

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

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Attorney

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4/21/14

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CSHC ID: D2288
Optional Inspection Nbr: 013-14



Phone: (619) 767-2280 Fax: (619) 767-2299

Citation and Notification of Penalty

RECEIVED

APR 24 2014

Company Name: THREE FROGS INC
Inspection Site: 4450 DATE AVENUE, LA MESA, CA 91941

OSH Appeals Board

Citation 3 Item 1 Type of Violation: **Serious Accident-Related**

8 CCR 3421(c)(1): Tree Work Maintenance or Removal. General. Training. Employees shall be trained and instructed in areas that include, but are not limited to the following:

(1) The hazards involved in their job assignments.

a) On and before 11/12/13, employees of Three Frogs, Inc. working at 4450 Date Ave., La Mesa, CA, were not trained and instructed on the hazards involved with removing a large eucalyptus tree.

Date By Which Violation Must be Abated:

ABATED

Proposed Penalty:

\$ 16200.00

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

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RECEIVED

APR 24 2014

APPEAL FORM

OSHA Appeals Board

317230167

Inspection Number on Citation

2014-R 3D2-1466

(Alleged Employer) Three Frogs Inc.

Employer Name on Citation

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

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See attachment 3.

See attachment 3.

1. Three Frogs Inc., the entity named in this citation, is not a statutory/common law employer as defined by California Labor Code Section 6403; and/or any section of the California Labor Code and/or as defined by controlling case law either federal or state.
2. ~~Three Frogs Inc. did not have direction, management, control, or custody over any person performing work as alleged within this citation.~~
3. Three Frogs Inc. engaged in no wrongdoing as defined by statute and/or case law as it relates to the conduct alleged in this citation.

RECEIVED
APR 24 2014

OSH Appeals Board



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}

Scott A. Wilson

(Type or print name)

Attorney

(Title)

711 8th Avenue, Suite C

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

San Diego

CA

92101

(City)

(State)

(Zip Code)

619-234-9011

scott@pepperwilson.com

4/21/14

(Telephone)

(E-Mail Address)

(Date)

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

IMPORTANT INFORMATION

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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.

State of California

Division of Occupational Safety and Health
Cal/OSHA San Diego District (0950632; 4032)
7575 Metropolitan Drive, Suite 207
San Diego, CA 92108

Inspection Number: 317230167
Inspection Dates: 11/12/2013 - 04/14/2014
Issuance Date: 04/14/2014
CSHO ID: D2288
Optional Inspection Nbr: 013-14



Phone: (619) 767-2280 Fax: (619) 767-2299

Citation and Notification of Penalty

Company Name: THREE FROGS INC
Inspection Site: 4450 DATE AVENUE, LA MESA, CA 91941

RECEIVED
APR 24 2014

OSH Appeals Board

Citation 4 Item 1 Type of Violation: **Serious**

8 CCR 3421(c)(2): Tree Work Maintenance or Removal. General. Training. Employees shall be trained and instructed in areas that include, but are not limited to the following:

(2) The proper and safe use of all equipment, including, but not limited to, safety equipment and personal protective equipment.

a) On and before 11/12/13, employees of Three Frogs, Inc. were not trained and instructed on the proper and safe use of chainsaws, aerial lifts, ropes, associated safety equipment and personal protective equipment.

Date By Which Violation Must be Abated:
Proposed Penalty:

ABATED
\$ 6750.00

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

TOLL FREE NUMBER (877) 252-1987
(916) 274-5751
FAX (916) 274-5785

RECEIVED

APR 24 2014

OSH Appeals Board

APPEAL FORM

2014-R3 D2 -1467

317230167

Inspection Number on Citation

(Alleged Employer) Three Frogs Inc.

Employer Name on Citation

Employer Legal Name or DBA (Optional)

4450 Date Avenue, La Mesa, CA 91941

Address

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 of:

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.

See attachment 3.

See attachment 3.

1. Three Frogs Inc., the entity named in this citation, is not a statutory/common law employer as defined by California Labor Code Section 6403; and/or any section of the California Labor Code and/or as defined by controlling case law either federal or state.
2. ~~Three Frogs Inc. did not have direction, management,~~ control, or custody over any person performing work as alleged within this citation.
3. Three Frogs Inc. engaged in no wrongdoing as defined by statute and/or case law as it relates to the conduct alleged in this citation.

4.



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(Zip Code)

619-234-9011

scott@pepperwilson.com

4/21/14

(Telephone)

(E-Mail Address)

(Date)

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Division of Occupational Safety and Health
Cal/OSHA San Diego District (0950632; 4032)
7575 Metropolitan Drive, Suite 207
San Diego, CA 92108

Inspection Number: 317230167
Inspection Dates: 11/12/2013-04/14/2014
Issuance Date: 04/14/2014
CSHO ID: D2288
Optional Inspection Nbr: 013-14



Phone: (619) 767-2280 Fax: (619) 767-2299

RECEIVED

APR 24 2014

Citation and Notification of Penalty

Company Name: THREE FROGS INC
Inspection Site: 4450 DATE AVENUE, LA MESA, CA 91941

OSH Appeals Board

Citation 5 Item 1 Type of Violation: Serious Accident-Related

8 CCR 3421(f): General. Job Briefing. A job briefing shall be conducted by a qualified tree worker before each work assignment is begun. Such job briefing shall include the description of the hazards unique to the work assignment, the appropriate work procedures to be followed, the appropriate personal protective equipment needed, and any other items necessary to ensure that the work can be accomplished safely. Additional job briefings shall be held if significant changes which might affect the safety of the employees occur during the course of the work.

a) On and before 11/12/13, a job briefing was not conducted by a qualified tree worker prior to beginning the tree removal operation as there were no qualified tree workers at the employers jobsite at 4450 Date Ave., La Mesa, CA.

b) On or about 11/12/13, significant changes were made in the manner the tree was cut without any additional job briefings being held which affected the safety of the employees present. As a result, when the method of cutting the tree changed from cutting small sections to cutting a section that was greater than 20-feet in length, employees were not able to control it and an employee was fatally injured by the falling tree.

Date By Which Violation Must be Abated:
Proposed Penalty:

ABATED
\$ 10800.00

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

TOLL FREE NUMBER (877) 252-1987

(916) 274-5751

FAX (916) 274-5785

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APR 24 2014

OSH Appeals Board

APPEAL FORM

2014-R 3D2-1468

317230167

Inspection Number on Citation

(Alleged Employer) Three Frogs Inc.

Employer Name on Citation

Employer Legal Name or DBA (Optional)

4450 Date Avenue, La Mesa, CA 91941

Address

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 of:

CITATION NO(s): 6 Item No(s): 1

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

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

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

The safety order was not violated.

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

The abatement requirements are unreasonable.

Required changes Time allowed to complete changes

The proposed penalty is unreasonable.

3. Explain any other reasons for appeal or issues to be raised on appeal. Affirmative defenses must be specifically stated.

See attachment 3.

See attachment 3.

1. Three Frogs Inc., the entity named in this citation, is not a statutory/common law employer as defined by California Labor Code Section 6403; and/or any section of the California Labor Code and/or as defined by controlling case law either federal or state.
2. ~~Three Frogs Inc. did not have direction, management, control, or custody over any person performing work as alleged within this citation.~~
3. Three Frogs Inc. engaged in no wrongdoing as defined by statute and/or case law as it relates to the conduct alleged in this citation.

RECEIVED

APR 24 2014

OSH Appeals Board

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(Signature of Employer or Employer's Representative)

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Scott A. Wilson

(Type or print name)

Attorney

(Title)

711 8th Avenue, Suite C

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

San Diego

CA

92101

(City)

(State)

(Zip-Code)

619-234-9011

scott@pepperwilson.com

4/21/14

(Telephone)

(E-Mail Address)

(Date)

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State of California
Division of Occupational Safety and Health
Cal/OSHA San Diego District (0950632; 4032)
7575 Metropolitan Drive, Suite 207
San Diego, CA 92108

Inspection Number: 317230167
Inspection Dates: 11/12/2013-04/14/2014
Issuance Date: 04/14/2014
CSHO ID: D2288
Optional Inspection Nbr: 013-14



Phone: (619) 767-2280 Fax: (619) 767-2299

RECEIVED

APR 24 2014

Citation and Notification of Penalty

Company Name: THREE FROGS INC
Inspection Site: 4450 DATE AVENUE, LA MESA, CA 91941

OSH Appeals Board

Citation 6 Item 1 Type of Violation: **Serious**

8 CCR 3427(b)(2): Safe Work Procedures. Pruning, Trimming and Tree Removal Operations. A drop zone shall be established prior to the start of pruning or removal operations. Employees not directly involved in the pruning or removal operation shall stay out of the pre-established drop zone until it has been communicated by a qualified tree worker directly involved in the operation that it is safe to enter the drop zone. Employees shall be positioned and their duties organized so that the actions of one employee will not create a hazard for any other worker.

a) On and before 11/12/13, no qualified tree worker was present to communicate to employees when it was safe to enter the drop zone.

c) On or about 11/12/13, employees were positioned in the drop zone to handle a rope that had been attached to a tree section that was greater than 20-feet by employees who were working aloft cutting the tree. The employees working in the drop zone were exposed to the hazard of the large falling tree section.

Date By Which Violation Must be Abated:
Proposed Penalty:

ABATED
\$ 6750.00

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

TOLL FREE NUMBER (877) 252-1987
(916) 274-5751
FAX (916) 274-5785

RECEIVED
APR 24 2014

OSH Appeals Board

APPEAL FORM

2014-R 3D2 -1469

317230167

Inspection Number on Citation

(Alleged Employer) Three Frogs Inc.

Employer Name on Citation

Employer Legal Name or DBA (Optional)

4450 Date Avenue, La Mesa, CA 91941

Address

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

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CITATION NO(s): 7 Item No(s): 1

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

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

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

The safety order was not violated.

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

The abatement requirements are unreasonable.

Required changes Time allowed to complete changes

The proposed penalty is unreasonable.

3. Explain any other reasons for appeal or issues to be raised on appeal. Affirmative defenses must be specifically stated.

See attachment 3.

See attachment 3.

1. Three Frogs Inc., the entity named in this citation, is not a statutory/common law employer as defined by California Labor Code Section 6403; and/or any section of the California Labor Code and/or as defined by controlling case law either federal or state.
2. ~~Three Frogs Inc. did not have direction, management,~~ control, or custody over any person performing work as alleged within this citation.
3. Three Frogs Inc. engaged in no wrongdoing as defined by statute and/or case law as it relates to the conduct alleged in this citation.

RECEIVED
APR 24 2014

OSH Appeals Board

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(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}

Scott A. Wilson

(Type or print name)

Attorney

(Title)

711 8th Avenue, Suite C

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

San Diego

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92101

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4/21/14

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State of California

Division of Occupational Safety and Health
Cal/OSHA San Diego District (0950632; 4032)
7575 Metropolitan Drive, Suite 207
San Diego, CA 92108

Inspection Number: 317230167
Inspection Dates: 11/12/2013-04/14/2014
Issuance Date: 04/14/2014
CSHO ID: D2288
Optional Inspection Nbr: 013-14



Phone: (619) 767-2280 Fax: (619) 767-2299

Citation and Notification of Penalty

RECEIVED
APR 24 2014

Company Name: THREE FROGS INC
Inspection Site: 4450 DATE AVENUE, LA MESA, CA 91941

OSH Appeals Board

Citation 7 Item 1 Type of Violation: Serious Accident-Related

8 CCR 3427(b)(4): Tree Work, Maintenance or Removal. Safe Work Procedures. Pruning, Trimming and Tree Removal Operations. When a rigging system is necessary, a qualified tree worker shall determine the appropriate rigging system for the removal project based on factors that include, but are not limited to, the species, size, weight, and length of tree sections or limbs being removed.

a) During tree removal operations on and before 11/12/13 at 4450 Date Ave, La Mesa, CA, the rigging system that was used had not been determined by a qualified tree worker to be appropriate for the species, size, weight, and length of the tree section being removed which resulted in an employee being fatally injured.

Date By Which Violation Must be Abated:
Proposed Penalty:

ABATED
\$ 13500.00

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

TOLL FREE NUMBER (877) 252-1987

(916) 274-5751

FAX (916) 274-5785

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APR 24 2014

APPEAL FORM

OSH Appeals Board

317230167

Inspection Number on Citation

2014-R3 D2-1470

(Alleged Employer) Three Frogs Inc.

Employer Name on Citation

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

Employer Legal Name or DBA (Optional)

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.

4450 Date Avenue, La Mesa, CA 91941

Address

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1. This is an Appeal of:

[X] CITATION NO(s): 8 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)

[X] The safety order was not violated.

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

[] The abatement requirements are unreasonable.

[] Required changes [] Time allowed to complete changes

[X] The proposed penalty is unreasonable.

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3. Three Frogs Inc. engaged in no wrongdoing as defined by statute and/or case law as it relates to the conduct alleged in this citation.

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4/21/14

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State of California

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Cal/OSHA San Diego District (0950632; 4032)
7575 Metropolitan Drive, Suite 207
San Diego, CA 92108

Inspection Number: 317230167
Inspection Dates: 11/12/2013-04/14/2014
Issuance Date: 04/14/2014
CSHO ID: D2288
Optional Inspection Nbr: 013-14



Phone: (619) 767-2280 Fax: (619) 767-2299

Citation and Notification of Penalty

RECEIVED
APR 24 2014

Company Name: THREE FROGS INC
Inspection Site: 4450 DATE AVENUE, LA MESA, CA 91941

OSH Appeals Board

Citation 8 Item 1 Type of Violation: **Serious Accident-Related**

8 CCR 3427(b)(6): Safe Work Procedures. Pruning, Trimming and Tree Removal Operations. Wedges, block and tackle, rope, and other lowering devices shall be used when there is a danger that a tree or trees being removed may fall in the wrong direction or damage property. All limbs and sections shall be removed to a height and width sufficient to allow the tree to fall clear of any wires or other objects in the vicinity.

a) As a result of the failure to use wedges, block and tackle, rope, or other lowering devices to prevent a large tree section from falling in the wrong direction, an employee of Three Frogs, Inc. was fatally injured on or about 11/12/13 when he was struck by a large falling tree section that was cut by another employee.

Date By Which Violation Must be Abated: ABATED
Proposed Penalty: \$ 16200.00

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

TOLL FREE NUMBER (877) 252-1987
(916) 274-5751
FAX (916) 274-5785

RECEIVED

APR 24 2014

OSHA Appeals Board

APPEAL FORM

2014-R3D2-1471

317230167

Inspection Number on Citation

(Alleged Employer) Three Frogs Inc.

Employer Name on Citation

Employer Legal Name or DBA (Optional)

4450 Date Avenue, La Mesa, CA 91941

Address

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CITATION NO(s): 9 Item No(s): 1

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

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

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

The safety order was not violated.

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

The abatement requirements are unreasonable.

Required changes Time allowed to complete changes

The proposed penalty is unreasonable.

3. Explain any other reasons for appeal or issues to be raised on appeal. Affirmative defenses must be specifically stated.

See attachment 3.

See attachment 3.

1. Three Frogs Inc., the entity named in this citation, is not a statutory/common law employer as defined by California Labor Code Section 6403; and/or any section of the California Labor Code and/or as defined by controlling case law either federal or state.
2. ~~Three Frogs Inc. did not have direction, management,~~ control, or custody over any person performing work as alleged within this citation.
3. Three Frogs Inc. engaged in no wrongdoing as defined by statute and/or case law as it relates to the conduct alleged in this citation.

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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}

Scott A. Wilson

 (Type or print name)

Attorney

 (Title)

711 8th Avenue, Suite C

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

San Diego	CA	92101
(City)	(State)	(Zip Code)

619-234-9011	scott@pepperwilson.com	4/21/14
(Telephone)	(E-Mail Address)	(Date)

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

IMPORTANT INFORMATION

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

State of California

Division of Occupational Safety and Health
Cal/OSHA San Diego District (0950632; 4032)
7575 Metropolitan Drive, Suite 207
San Diego, CA 92108

Inspection Number: 317230167
Inspection Dates: 11/12/2013-04/14/2014
Issuance Date: 04/14/2014
CSHO ID: D2288
Optional Inspection Nbr: 013-14



Phone: (619) 767-2280 Fax: (619) 767-2299

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Citation and Notification of Penalty

Company Name: THREE FROGS INC
Inspection Site: 4450 DATE AVENUE, LA MESA, CA 91941

OSH Appeals Board

Citation 9 Item 1 Type of Violation: **Serious**

8 CCR 3648(o). Operating Instructions (Aerial Devices). An employee, while in an elevated aerial device, shall be secured to the boom, basket or tub of the aerial device through the use of a safety belt, body belt or body harness equipped with safety strap or lanyard.

a) On and before 11/12/13, employees of Three Frogs, Inc. working in an elevated JLG 80-foot articulating boom lift at 4450 Date Ave., La Mesa, CA, were not secured through the use of a safety belt, body belt or body harness equipped with safety strap or lanyard.

Date By Which Violation Must be Abated:
Proposed Penalty:

ABATED
\$ 6750.00



[Signature]
Compliance Officer/District Manager

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

SCOTT A. WILSON

ATTORNEY AT LAW
Practice of Labor and Employment Law

711 8th Avenue, Suite C
San Diego, CA 92101
TEL (619) 234-9011
CELL (619) 851-8441
FAX (619) 234-5853
EMAIL scott@pepperwilson.com

April 23, 2014

Via Federal Express

Monique Newsom
Division of Industrial Relations
~~Occupational Safety and Health Appeals Board~~
2520 Venture Oaks Way, Suite 300
Sacramento, CA 95833

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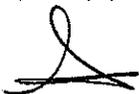
Re: Appeal Forms for Three Frogs Inc.
Inspection No. 317230167

Dear Ms. Newsom:

Enclosed please find completed Appeal Forms for Citation 1, Items 1, 2, 3, 4, 5;
Citation 2, Item 1; Citation 3, Item 1; Citation 4, Item 1; Citation 5, Item 1; Citation 6,
Item 1; Citation 7, Item 1; Citation 8, Item 1; and Citation 9, Item 1.

Please feel free to contact me with any questions.

Very truly yours,



Scott A. Wilson

SAW/dme
Enclosure

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



April 17, 2014

Scott Wilson, Attorney
LAW OFFICES OF SCOTT WILSON
711 8th Avenue Suite C
San Diego, CA 92101

**SUBJECT: Confirmation of your Intent to Appeal;
Request for Additional Documents
THREE FROGS INC
IMIS# 317230167**

Dear Mr. Wilson:

The Occupational Safety and Health Appeals Board received your telephone call on April 16, 2014. You indicated your intention to appeal the citation(s) issued by the Division of Occupational Safety and Health.

In order for us to proceed with your appeal, you are required to provide the following documents.

1. An Appeal Form must be filled out and submitted for each citation you are appealing.

The citation is the document issued by the inspector indicating the specific regulation(s) you are being charged with violating.

The Appeal Form is located at the following website address: <http://www.dir.ca.gov/oshab/oshab.html>. You may enter information directly into the form, however you cannot file your appeal electronically. You must print out the form and mail it to the Appeals Board at the address below.

Please indicate on the form which citation you are appealing and the grounds upon which your appeal is based. Please take the time to carefully fill out the appeal form completely and accurately. Incomplete appeal forms will be returned to you. (Refer to the "Important Information" section located on the second page of the appeal form.)

2. A copy of the entire citation packet.

The citation packet is entitled "Citation and Notification of Penalty", and may contain several citations.

The completed appeal form(s) and the entire citation packet must be postmarked (or received in this office, if via hand delivery) within 10 calendar days of the date of this letter. **Failure to meet this deadline constitutes grounds for dismissal of your appeal.** (Title 8, Cal. Code Regs, Section 359.1). Mail or hand-deliver the above documents to:

Cal-OSHA Appeals Board
2520 Venture Oaks Way, Suite 300
Sacramento, CA 95833

We accept express, certified, and regular U.S. Mail.

You should keep copies of all documents for your records. Once the above documents have been timely received, and after verifying all legal requirements are met, your appeal will be entered into our system and assigned a docket number. A copy of the docketed appeal will be mailed to you at the address provided on the Appeal Form.

Please note: During this time we are also required, by law, to verify that your telephone call (or other communication to the Board) indicating your intent to appeal was made within 15 working days of receipt of the citation. If, upon completing our review, it appears that your initial communication to the Board indicating your intent to appeal was outside the 15 working day deadline, we will notify you (via separate letter) that your intent to appeal was untimely and request that you show good cause regarding why you did not initiate your appeal within the 15 working day deadline. (See Title 8, Cal. Code Regs, Section Reg. 359.)

Sincerely,



Monique Newsom
Office Assistant

cc: DOSH District Manager - San Diego
3-2-D2288-013-2014