

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

In the Matter of the Appeal  
of:

**ACCU-BORE DIRECTIONAL DRILLING INC.**  
P.O. BOX 639  
Benicia, California 94510

Employer

DOCKET 14-R3D3-3057

**DECISION**

**Statement of the Case**

Accu-Bore Directional Drilling Inc. (Employer) is an underground utility contractor involved in construction projects. Beginning February 20, 2014, the Division of Occupational Safety and Health (the Division) through Associate Safety Engineer Katherine Moore (Moore) conducted an accident inspection at a place of employment maintained by Employer at Warren Road and Mustang Way, Hemet, California (the site). On July 25, 2014, the Division cited Employer for failing to have written procedures regarding heat illness [a general violation of section 3395, subdivision (f)(3)].<sup>1</sup>

Employer filed a timely appeal contesting the violation of the safety orders, and the reasonableness of the proposed penalties for the Citation.<sup>2</sup> The Employer also raised a number of affirmative defenses.<sup>3</sup>

This matter came on regularly for hearing before Jacqueline Jones, Administrative Law Judge (ALJ) for the California Occupational Safety and Health Appeals Board, at Riverside, California on March 29, 2016. Michael Robirds, President represented Employer. Richard Fazlollahi, District Manager, represented the Division. The matter was submitted on March 29, 2016.

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<sup>1</sup> All references are to the California Code of Regulations, title 8, unless otherwise specified.

<sup>2</sup> Employer stipulated that the penalty was calculated appropriately and withdrew the reasonableness of the penalty as a ground for appeal.

<sup>3</sup> Employer withdrew all of its affirmative defenses.

## Issues

1. Did Employer's Heat Illness Prevention Program (HIPP) meet the requirements of section 3395, subdivisions (f)(1)(B),(G), (H), and (I)?

## Findings of Fact

1. Employer's Heat Illness Prevention Plan (HIPP) failed to include a site-specific map, did not include a supervisor chain of command, including supervisor's responsibilities and did not include directions to the closest clinic, all of which is required by subsection (f)(1)(H).

## Analysis

### **1. Did Employer's HIPP meet the requirements of section 3395 subdivisions (f)(1)(B),(G), (H), and (I)?**

(1) This standard applies to all outdoor places of employment.

Section 3395 subdivision (f)(3), under Heat Illness Prevention, provides the following:

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

Section 3395 subdivision (a)(2)(B) provides that the construction industry is subject to all provisions of Section 3395, including high heat provisions.

Section 3395 subdivision (f)(1) provides, in relevant parts:

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

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

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

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

In the citation, the Division alleges the following:

On and before February 20, 2014, the employer was not in compliance with the standard in that it did not include all of the required High Heat Procedures in its written Heat Illness Prevention Program.

The Division has the burden of proving a violation by a preponderance of the evidence, including the applicability of the safety order. (*Ja Con Construction*, Cal/OSHA App. 03-441, Decision After Reconsideration (Mar. 27, 2006); *Howard J. White, Inc.*, Cal/OSHA App. 78-741, Decision After Reconsideration (June 16, 1983).) In order for section 3395, subdivision (a) to apply, the Division has to prove that the employer was engaged in outdoor employment. In this matter Employer was performing construction project work outside and was therefore required to have a written Heat Illness Prevention Plan (HIPP). Here, there is no dispute that employer engaged in outdoor employment.<sup>4</sup> There is no dispute that employer engaged in construction related work outside at the site.<sup>5</sup> Employer offered no opposing evidence even though it had the opportunity to do so. The evidence confirms that Employer's employees were working outside. Therefore, Employer's business was an outdoor place of employment.

Subdivision (f)(1)(B) requires written procedures for compliance with the standard. Moore<sup>6</sup> testified that Employer submitted Exhibit 4 in response to the document request form. Employer's Exhibit 4 does not contain written procedures to address heat illness. Subsection (G) requires procedures for responding to symptoms of possible heat illness. Subsection (H) requires procedures for contacting emergency medical services. Subsection (I) requires procedures for clear and precise directions to the work site for emergency responders. The required elements were not present, based on the evidence presented at the hearing.

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<sup>4</sup> Employer stipulated that employer employs workers that work outdoors.

<sup>5</sup> Employer stipulated that the employer is engaged in underground utility construction, which is a construction related industry.

<sup>6</sup> Moore is current in her Cal/OSHA mandated training.

Michael Robirds (Robirds) conceded that the HIPP did not have written procedures to address Heat Illness. Employer contends that it was an administrative error that caused the wrong HIPP to be sent to the Division. Employer argued that the correct HIPP (Exhibit A) which Employer brought to hearing contained all of the procedures. In *Underground Construction Co., Inc.*, Cal/OSHA App. 09-3518, Denial of Petition for Reconsideration (Mar. 22, 2012), the employer was cited for having a heat illness plan which omitted various required details, such as how to provide water and shade, and how to summon emergency medical assistance. In *Underground Construction, supra*, the Board found that “those elements of a heat illness prevention plan (HIPP) are necessary and apply regardless of when and where the plan was required: a HIPP which lacks necessary elements is not compliance with section 3395 and the propounding employer is in violation regardless of whether the plan’s operations were ‘triggered’ by workplace conditions.” Exhibit A fails to include a site-specific map, does not include a supervisor chain of command, and directions to the closest clinic, all of which are required by subdivisions (f)(1)(H), and (I). Neither Exhibit 4 nor Exhibit A contain all of the elements required in subdivisions (f)(1)(B),(G), (H), and (I), and is not in compliance with section 3395, subdivision (f)(3).

Employer’s HIPP did not contain all of the required elements. The Division established a violation of section 3395 subdivision (f)(3). Employer’s appeal is denied. Accordingly, citation 1, item 1 is affirmed.

### **Conclusion**

Therefore, Employer’s appeal as to citation 1, item 1 is denied. The Division established Employer’s HIPP did not contain all of required procedures as set forth in section 3395, subdivision (f)(3). Citation 1, item 1 is affirmed.

### **Order**

Citation 1, item 1 and the proposed penalty totaling \$335 is affirmed. It is further ordered that the penalty indicated above and set forth in the attached Summary Table shall be assessed.

Dated: April 22, 2016

JJ:lgf

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**JACQUELINE JONES**  
Administrative Law Judge

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

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

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

## SUMMARY TABLE DECISION

In the Matter of the Appeal of:

**ACCU-BORE DIRECTIONAL DRILLING INC.**  
**Docket 14-R3D3-3057**

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

IMIS No. 316215201

DOCKET	C I T A T I O N	I T E M	SECTION	T Y P E	MODIFICATION OR WITHDRAWAL	A F F I R M E D	V A C A T E D	PENALTY PROPOSED BY DOSH IN CITATION	PENALTY PROPOSED BY DOSH AT HEARING	FINAL PENALTY ASSESSED BY BOARD
14-R3D3-3057	1	1	3395(f)(3)	G	ALJ affirmed citation.	X		\$335	\$335	<b>\$335</b>
								\$335	\$335	<b>\$335</b>

**Total Amount Due\***

(INCLUDES APPEALED CITATIONS ONLY)

**\$335**

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

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

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

ALJ: JJ:lgf  
POS: 04/22/2016

**APPENDIX A  
SUMMARY OF EVIDENTIARY RECORD  
ACCU-BORE DIRECTIONAL DRILLING INC.**

**Dockets 14-R3D3-3057**

**DATE OF HEARING: March 29, 2016**

**DIVISION'S EXHIBITS- Admitted**

<b><u>Exhibit Number</u></b>	<b><u>Exhibit Description</u></b>
1.	Jurisdictional Documents
2.	C-10 Proposed Penalty Worksheet
3.	Document request form
4.	Heat Illness Prevention Program

**EMPLOYER'S EXHIBITS - Admitted**

<b><u>Exhibit Letter</u></b>	<b><u>Exhibit Description</u></b>
A.	Heat Illness Prevention Program
B.	Annual permit dated January 12, 2012

**Witnesses Testifying at Hearing**

1. Katherine Moore
2. Michael Robirds

**CERTIFICATION OF RECORDING**

I, Jacqueline Jones, the California Occupational Safety and Health Appeals Board Administrative Law Judge duly assigned to hearing the above-entitled matter, hereby certify the proceedings therein were electronically recorded. The recording was monitored by the undersigned and constitutes

the official record of said proceedings. To the best of my knowledge the electronic recording equipment was functioning normally.

Dated: April 22, 2016

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**Jacqueline Jones**  
Administrative Law Judge