

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

In the Matter of the Appeal of:

**DYNAMIC CONSTRUCTION SERVICES,
INC.**

3020 Old Ranch Parkway, Suite 300
Seal Beach, CA 90740

Employer

**DOCKETS 15-R4D1-1471
And 1472**

DECISION

Statement of the Case

Dynamic Construction Services, Inc. (Employer) is a general engineering contractor that performs construction related services. Beginning October 24, 2014, the Division of Occupational Safety and Health (the Division) through Associate Safety Engineer Christian Nguyen (Nguyen), conducted an inspection at a place of employment maintained by Employer near the intersection of Constellation and Avenue of the Stars, in Century City, California (the site). On April 1, 2015, the Division cited Employer for three violations¹ of California Code of Regulations, title 8.²

Employer filed a timely appeal contesting the existence of each of the alleged violations, and additionally contested the classification of and the reasonableness of the proposed penalty for Citation 2. Employer also pleaded numerous affirmative defenses identified in Exhibit 1.³

This matter came regularly for hearing before Howard Isaac Chernin, Administrative Law Judge (ALJ) for the California Occupational Safety and

¹ The parties resolved one of the alleged violations, Citation 1, item 2, by stipulated settlement at the hearing. Good cause appearing, the undersigned incorporates the parties' settlement of Citation 1, item 2, into this Decision and the attached summary table.

² Unless otherwise specified, all references are to sections of California Code of Regulations, title 8.

³ Except as otherwise noted in this Decision, Employer failed to present evidence in support of its pleaded affirmative defenses, and said defenses are therefore deemed waived. (See, e.g. *Central Coast Pipeline Construction Co., Inc*, Cal/OSHA App. 76-1342, Decision After Reconsideration (July 16, 1980) [holding that the employer bears the burden of proving all of the elements of the Independent Employee Action Defense].)

Health Appeals Board, at West Covina, California on February 24, 2016. David Donnell, Attorney, of the Robert D. Peterson Law Corporation, represented Employer. Victor Copelan, Acting District Manager, represented the Division. The matter was submitted for Decision on February 24, 2016.

Issues

1. Did Employer violate section 1541, subdivision (a), by failing to remove or support as necessary, a tree and cement tree box located adjacent to the excavation at the site?
2. Did Employer violate section 1541.1, subdivision (a)(1) by failing to utilize an adequate protective system in order to protect its employees working in an excavation from the hazard of cave-ins?
3. Did the Division establish a rebuttable presumption that the violation in Citation 2 was serious?
4. Did Employer successfully rebut the presumption of a serious violation in Citation 2 by demonstrating that it did not and could not with the exercise of reasonable diligence know of the existence of the violation?
5. Did the Division fail to include abatement credit in its proposed penalties?

Findings of Fact

1. On October 24, 2014, Employer's employees were performing work within an excavation at the site as part of an emergency repair of an underground pipe.
2. The excavation measured approximately 6 feet in depth and 103 feet in length, and approximately 9 feet in width.⁴
3. There was a mature tree in a cement tree box located adjacent to the excavation.
4. Prior to the inspection, Employer elected to install Quik Shor hydraulic shoring⁵ manufactured by Westar, to support the sides of the excavation.
5. Employer elected to follow the manufacturer's recommendations and tabulated data⁶ for installing the Quik Shor hydraulic shoring.

⁴ This finding of fact results from a stipulation by the parties at the commencement of the hearing as to the length and depth of the excavation. The width of the excavation is determined based on the preponderance of the evidence received at hearing.

⁵ Section 1540, subdivision (b), defines shoring as "A structure such as a metal hydraulic, mechanical or timber shoring system that supports the sides of an excavation and which is designed to prevent cave-ins." Aluminum hydraulic shoring, as was utilized by Employer, is defined by section 1540, subdivision (b) as "A pre-engineered shoring system comprised of aluminum hydraulic cylinders (crossbraces) used in conjunction with vertical rails (uprights) or horizontal rails (walers). Such system is designed specifically to support the sidewalls of an excavation and prevent cave-ins." Thus, the cylinders/crossbraces bear against the rails and thereby provide support to the sides of the excavation. (See also, testimony of Nguyen.)

⁶ Tabulated data is defined by section 1540, subdivision (b) as "Tables and charts approved by a registered professional engineer and used to design and construct a protective system."

6. The manufacturer's tabulated data for the hydraulic shoring required that the rails on the ends of the cylinders be installed vertically.
7. The hydraulic shoring was not uniformly constructed in compliance with the manufacturer's recommendations and tabulated data, as some of the rails were oriented horizontally, while the rest were oriented vertically.
8. Employer's employees had access to the entirety of the excavation and were exposed to the risk of serious injury from cave-in because the hydraulic shoring was not constructed in accordance with the manufacturer's recommendations and tabulated data.
9. The Division never received any evidence from Employer that it had abated the hazard created by the improperly constructed hydraulic shoring, prior to finishing its work at the site.
10. The Division's proposed penalties were correctly calculated and are reasonable.⁷

Analysis

1. Did Employer violate section 1541, subdivision (a), by failing to remove or support as necessary, a tree and cement tree box located adjacent to the excavation at the site?

Section 1541, subdivision (a), found under Article 6 (Excavations) of Subchapter 4 (Construction Safety Orders) provides:

(a) Surface encumbrances. All surface encumbrances that are located so as to create a hazard to employees shall be removed or supported, as necessary, to safeguard employees.

In citing Employer, the Division alleged:

Prior to and during the course of inspection including but not limited to October 24, 2014, the concrete base for the tree located next to the face cut was not removed or supported to safe guard the employees working inside the excavation.

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

⁷ This finding of fact results from a stipulation of the parties at the commencement of the hearing, and the evidence offered at hearing with respect to abatement.

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

In order to prove a violation, the Division has the burden of establishing that 1) there were surface encumbrances, 2) located so as to create a hazard to employees working in an excavation; and, 3) that were not removed or supported, as necessary, to safeguard employees.

Although there was some evidence that there was a mature tree and concrete tree base next to the excavation (in particular, Exhibit 9), the Division did not put on any evidence establishing that the tree or its concrete base created a hazard for employees working in the excavation. As a result, the Division did not meet its burden of proving the second element.

Because the Division did not meet its burden of establishing a violation of the cited safety order by a preponderance of the evidence, Employer's appeal of Citation 1, item 1, is granted.⁸

2. Did Employer violate section 1541.1, subdivision (a)(1) by failing to utilize an adequate protective system in order to protect its employees working in an excavation from the hazard of cave-ins?

Section 1541.1 (Requirements for Protective Systems), subdivision (a)(1) (Protection of employees in excavations), states:

(a) Protection of employees in excavations.

(1) Each employee in an excavation shall be protected from cave-ins by an adequate protective system designed in accordance with Section 1541.1(b) or (c)⁹ except when:

⁸ Because the Division did not meet its burden with regard to the second element, discussion of the third element is omitted as it is unnecessary to the resolution of this appeal.

⁹ Citation 2 issued with reference to section 1541.1, subdivision (c)(2)(A), and the parties actually litigated subdivision (c)(2)(A), (B) and (C) at hearing. Although Employer did not raise due process during the hearing, to ensure a complete record the undersigned notes in passing that Employer's due process is satisfied by the fact that Employer had adequate notice and opportunity to defend against the allegedly violated safety order. (See *MCM Construction, Inc.*, Cal/OSHA App. 13-3851-3854, Decision After Reconsideration (Feb. 22, 2016), citing *Cranston*

(A) Excavations are made entirely in stable rock; or

(B) Excavations are less than 5 feet in depth and examination of the ground by a competent person provides no indication of a potential cave-in.

In citing Employer, the Division alleged:

Prior to and during the course of the inspection, including but not limited to, on October 24, 2014, employees working inside an excavation were not protected from cave-ins by an adequate protective system. The employer or his designee did not construct the hydraulic shoring system in accordance with the manufacturer's tabulated data including all specifications, recommendations, and limitations issued or made by the manufacturer.

As noted above, the Division has the burden of proving the applicability and violation of the cited safety order by a preponderance of the evidence.

In order to establish a violation, the Division has the burden of proving that 1) employees were in an excavation; and, 2) the employees were not protected by an adequate protective system designed in accordance with either section 1541.1, subdivision (b) or subdivision (c).¹⁰ Because the undisputed evidence here shows that the sides of the excavation were vertical, subdivision (b) is inapplicable.¹¹

In the citation, the Division referenced section 1541.1, subdivision (c)(2). That subdivision provides:

(c) Design of support systems, shield systems, and other protective systems. Designs of support systems, shield systems, and other protective systems shall be selected

Steel Structures, Cal/OSHA App. 98-3268, Decision After Reconsideration (Mar. 26, 2002) [holding that all that is required to satisfy due process is notice pleading.]

¹⁰ The evidence at hearing, in particular Nguyen's testimony and Exhibit 9, established that the excavation was not "made entirely in stable rock" and was more than 5 feet deep.

¹¹ Section 1541.1, subdivision (b) applies to sloping and benching systems. Section 1540 defines a benching system as "A method of protecting employees from cave-ins by excavating the sides of an excavation to form one or a series of horizontal levels or steps, usually with vertical or near-vertical surfaces between levels." It defines a sloping system as a method of protecting employees from cave-ins by excavating to form sides of an excavation that are inclined away from the excavation so as to prevent cave-ins. The angle of incline required to prevent a cave-in varies with differences in such factors as the soil type, environmental conditions of exposure, and application of surcharge loads." Employer conceded that it did not employ either type of system at the site at the time of the inspection.

and constructed by the employer or his designee and shall be in accordance with the requirements of Section 1541.1(c)(1); or, in the alternative, Section 1541.1(c)(2); or, in the alternative, Section 1541.1(c)(3); or, in the alternative, Section 1541.1(c)(4) as follows:

(2) Option (2) - Designs Using Manufacturer's Tabulated Data.

(A) Design of support systems, shield systems, or other protective systems that are drawn from manufacturer's tabulated data shall be in accordance with all specifications, recommendations, and limitations issued or made by the manufacturer.

(B) Deviation from the specifications, recommendations, and limitations issued or made by the manufacturer shall only be allowed after the manufacturer issues specific written approval.

(C) Manufacturer's specifications, recommendations, and limitations, and manufacturer's approval to deviate from the specifications, recommendations, and limitations shall be in written form at the jobsite during construction of the protective system. After that time this data may be stored off the jobsite, but a copy shall be made available to the Division upon request.

Nguyen testified credibly that when he inspected the site, he observed Employer's employees working in the excavation.¹² Thus, the first element was established by uncontroverted evidence.

As for the second element, the excavation was supported with a hydraulic shoring system that Employer chose to install. Nguyen observed that although many of the rails were installed vertically, some were horizontally installed. (Exhibit 9, pp. 1, 5, 6, and 8; Exhibit A, p. 4.) Nguyen and Associate Safety Engineer Rosalyn Dimenstein (who is licensed as a California Registered

¹² Although Employer argued at hearing that there was no evidence of employee exposure to the area(s) where railing was installed horizontally, Nguyen's testimony was that employees had access to the entire excavation, which was corroborated by photographs (Exhibit 9).

Professional Engineer) both credibly testified that they had never seen hydraulic shoring installed horizontally. During his site inspection, when Nguyen questioned Employer's representatives Mike Nixon and Peter Wiesner about the shoring, they told him that Employer had intended to follow the manufacturer's tabulated data, Exhibit 2, though Employer did not have the tabulated data at the site when it was inspected.¹³

The hydraulic shoring system was manufactured by Westar. (Exhibit 2, Testimony of Nguyen; see also Exhibit 3.) Westar's tabulated data (Exhibit 2) is titled "Quik Shor Vertical Rails", and the illustrations accompanying the tabulated data show the railing installed in a vertical orientation to the floor of the excavation. In addition, Note 14 on page 1 of the tabulated data states, in pertinent part: "**Vertical** rail and/or plywood shall be within 2 [feet] from bottom of excavation." (Emphasis added.) Based on his roughly 10 years of experience at the time of the incident as an Associate Safety Engineer for the Division, and having completed his Division mandated training and over 500 inspections, Nguyen credibly testified that the hydraulic shoring was installed improperly, because it deviated from the manufacturer's tabulated data.

Employer presented no testimony to contradict the Division, but did cross-examine Nguyen. During cross-examination, Employer questioned Nguyen about a letter dated February 20, 2015 (Exhibit 3), produced to the Division in response to a document request served after the Division opened its investigation. The letter, which is signed and stamped by the same Registered Professional Engineer who stamped Exhibit 2, states "It is acceptable to install trench jack rails vertically, horizontally, or diagonally provided the cylinders are installed in the correct location per the manufacturer's tabulated data." Nguyen persuasively testified that the letter was not relevant because it did not exist at the time of the inspection and therefore could not have been considered or relied upon by Employer. In fact, the letter was created approximately 4 months after Nguyen's inspection. Coupled with the fact that the author of the letter, Adrianus J Vermeulen, P.E., did not testify either in person or by submitted declaration, the undersigned views the letter as self-serving hearsay and affords it little weight, regardless of its relevance.

For all of the foregoing reasons, the Division established a violation of section 1541.1, subdivision (a)(1) by a preponderance of the evidence, and Employer's appeal therefrom is denied.¹⁴

¹³ The statement that Employer intended to follow the manufacturer's recommendations negates Employer's argument that it complied with any of the other options, including adherence to the appendices to the safety order.

¹⁴ The above discussion is sufficient to support a finding that there was a violation. Employer, however, made several other arguments in support of its appeal that, in the interest of completeness, merit a brief discussion. First, Employer argued that Note 14 on page of Exhibit 14 was ambiguous, and that it called for either vertical rail or plywood to be within 2 feet of the bottom of the excavation. Nguyen credibly testified that several or more rails were more than 2

3. Did the Division establish a rebuttable presumption that the violation in Citation 2 was serious?

Section 334, subdivision (c) states in relevant part:

(c) Serious Violation.

(1) There shall be a rebuttable presumption that a “serious violation” exists in a place of employment if the division demonstrates that there is a realistic possibility that death or serious physical harm could

feet as measured from the bottom of the excavation. Employer argued that plywood in all cases extended to within 2 feet from bottom. The evidence does not support employer’s reading of Note 14. The first sentence of Note 14 states “For vertical spacing there must be a cylinder within 4 [feet] of the bottom of the excavation....” Page 2 of Exhibit 2 includes a drawing in the lower left hand corner that corresponds to Note 14. The drawing shows vertically oriented rails supported with two cylinders. The drawing includes measurements for the distance between the center of the bottom cylinder and the floor of the excavation that states “4 [feet] max.” It also includes a measurement for the distance between the bottom of the rail and the floor of the excavation, stating “2 [feet] max.” These measurements support a finding that it is the bottom of the rail that must be no more than 2 feet from the bottom of the excavation, not plywood. This reading is further supported by Note 4, which states “Plywood...Sheeting is for raveling and sloughing between shores only (nonstructural).” When read together, and in the context of the entire document (notably titled “Quik Shor Vertical Rails”), it is clear that the bottom of the rail, oriented vertically, may be no more than 2 feet from the bottom of the excavation. The evidence produced at hearing supports no other reasonable interpretation.

Employer also argued that there was no employee exposure because there was no evidence that its employees were working in the area(s) where the rails were installed horizontally. The evidence at hearing supports a finding that the employees had access to the entirety of the excavation, and therefore, they were within the “zone of danger” created by the hazard. (See *United Parcel Service*, Cal/OSHA App. 14-1779, Decision After Reconsideration (Dec. 8, 2015), citing *Benicia Foundry & Iron Works, Inc.*, Cal/OSHA App. 00-2976, Decision After Reconsideration (Apr. 24, 2003) [holding that exposure need not be shown by actual injury and may be shown instead by the fact that employees have access to the zone of danger created by the alleged hazard in the course of their work].) Here, the evidence showed that Employer’s employees were working in an excavation of approximately 103 feet in length. Nguyen’s photographs (Exhibit 9) depict ladders at various points along the excavation, including within mere yards of horizontally installed railing. The evidence demonstrates that employees could freely move throughout the excavation, so it is reasonable to conclude that the employees were exposed to the alleged hazard.

Finally, Employer attempted to shift focus from the horizontally installed rails by pointing to the fact that the horizontal spacing between the cylinders was less than required by the manufacturer’s tabulated data and by the safety orders. Employer cross-examined Nguyen regarding the horizontal spacing between the cylinders. Nguyen was asked whether, assuming the depth was between 6 and 8 feet, and the width was between 8 and 12 feet, Employer exceeded the requirements for horizontal spacing. Nguyen admitted that the horizontal spacing was 4 feet, but he did not go so far as to state that the horizontal spacing was an improvement over what was required, or that it excused Employer for its violation with respect to the horizontally oriented railing.

result from the actual hazard created by the violation. The demonstration of a violation by the division is not sufficient by itself to establish that the violation is serious.

(2) For purposes of a serious violation, the “actual hazard” may consist of, among other things:

....

(B) The existence in the place of employment of one or more unsafe or unhealthful practices, means, methods, operations, or processes that have been adopted or are in use.¹⁵

The Appeals Board has defined "realistic possibility" to mean a prediction that is within the bounds of human reason, not pure speculation. (*Janco Corporation*, Cal/OSHA App. 99-565, Decision After Reconsideration (Sep. 27, 2001), citing *Oliver Wire & Plating Co., Inc.*, Cal/OSHA App. 77-693, Decision After Reconsideration (Apr. 30, 1980).) The evidence must not lead to impossibility, must be within human reason and logic, must not be speculative, and thus based on actual events and circumstances that are proven to exist. (*Oliver Wire & Plating Co., Inc. supra.*)

Labor Code Section 6432, subdivision (e) provides as follows:

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

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

¹⁵ See analogous Labor Code section 6432, subdivision (a).

The violation involved failing to protect employees from the hazard of a cave-in by not installing adequate protective systems. Nguyen testified that, in his opinion, the violation created a realistic possibility of serious physical harm or death due to the sides of the excavation collapsing.¹⁶ Nguyen's opinion was borne out by the demonstrative evidence, particularly Exhibit 9, which depicts an excavation approximately 6 feet deep and 103 feet long, with various heavy equipment and encumbrances depicted alongside. Were a cave-in (the hazard created by the violation) to occur, it is reasonably likely that a combination of 6 feet of dirt and/or heavy equipment and/or encumbrances falling onto an employee would cause serious physical harm or death.¹⁷

Based on the foregoing, the Division met its burden of establishing a rebuttable presumption that it correctly classified Employer's violation of section 1541.1, subdivision (a) as serious.

4. Did Employer successfully rebut the presumption of a serious violation in Citation 2 by demonstrating that it did not and could not with the exercise of reasonable diligence know of the existence of the violation?

"If the Division establishes a presumption pursuant to subdivision (c)(1) that a violation is serious, the employer may rebut the presumption and establish that a violation is not serious by demonstrating that the employer did not know and could not, with the exercise of reasonable diligence, have known of the presence of the violation." (§ 334, subd. (c)(3); see Lab. Code, § 6432, subd. (c).)

Employer did not put on any evidence to rebut the serious classification of Citation 2. Indeed, as discussed above, Employer's presentation of its case was limited to cross-examination of Nguyen. None of the testimony elicited from Nguyen, or the exhibits offered by the parties, demonstrates in any way that Employer did not know and could not, with the exercise of reasonable diligence, that it was in violation of the cited safety order. Nguyen competently testified that Employer's project manager (Nixon) and foreperson (Wiesner) were present during the work; they therefore had the opportunity to discover that the excavation was not properly shored, and to take steps to prevent

¹⁶ Nguyen's opinion was based on his working for the Division, which included investigating at least a few excavation collapses. Nguyen has performed over 500 inspections since becoming an Associate Safety Engineer in 2004. He holds a Bachelor's of Science degree in Construction Engineering and Management, and he credibly testified that he is current in his Division mandated safety training. Nguyen's opinion was based on a reasonable evidentiary foundation consisting of his education and training (See *Wright & Associates, Inc.*, Cal/OSHA App. 95-3649, Decision After Reconsideration (Nov. 29, 1999).)

¹⁷ One cubic yard of soil can weigh as much as a car. (OSHA, Soil Classification – Transcript, retrieved from https://www.osha.gov/dts/vtools/construction/soil_testing_fnl_eng_web_transcript.html on February 26, 2016.)

employees from entering the trench until they could correct the violation. As discussed above, Employer unsuccessfully argued that it complied with the safety order. Employer's representatives at the site told Nguyen, and the evidence at hearing supports a finding, that Employer installed the hydraulic shoring with the intention of complying with the manufacturer's recommendations and the tabulated data. In short, Employer did not meet its burden of rebutting the serious classification for Citation 2.

5. Did the Division fail to include abatement credit in its proposed penalties?

Employer had initially appealed the reasonableness of the proposed penalties for Citations 1 and 2. At hearing, the parties stipulated that if the violations were affirmed, and furthermore if the serious classification of Citation 2 was affirmed, that the penalties were correctly calculated, with the exception of abatement credit, which Employer challenges it should have received. As described above, the preponderance of the evidence does not support the finding of a violation as described in Citation 1, item 1, but does support the finding of a violation as described in Citation 2. Furthermore, the Division established, and Employer failed to rebut, a presumption that the violation described in Citation 2 was serious. Thus, with the exception of abatement, the proposed penalty for Citation 2 was established as reasonable by stipulation.

With regard to the abatement credit, section 336 (Assessment of Civil Penalties) states in relevant part:

(e) Abatement Credit for General and Serious Violations -

.....

(2) For Serious violations not listed in paragraph (3)¹⁸, the Division shall not grant an abatement credit unless the employer has done any of the following:

(A) Abated the Serious violation at the time of the initial or a subsequent visit during an inspection and prior to the issuance of a citation.

(B) Submitted a signed statement under penalty of perjury and supporting evidence, when necessary to prove abatement, if the signed statement and supporting evidence are received within 10 working days after the end of the period fixed in the citation for abatement.

¹⁸ None of the situations described in paragraph 3 apply to Citation 2.

Nguyen testified that he never received signed abatement forms from Employer and the hazard was not abated during his inspection. Employer argued, but provided no credible evidence, that the excavation was back-filled no later than February 2016. Even were that assumed to be true, Employer's argument fails because Employer did not show that it took any steps to correct the cited hazard before its employees finished the work. Employer's argument, if anything, is an admission that it continued work after October 24, 2014, without correcting the hazard. Employer had the opportunity to present evidence that it abated the hazard, but failed to do so. As discussed above, Employer's argument at hearing largely (and unreasonably) relied on a letter, dated 4 months after the inspection, purporting to show that the shoring was correctly installed. Because the Division established that it never received or observed any evidence that Employer abated the hazard prior to the issuance of the citation, and because Employer failed to present any reliable evidence demonstrating that it abated the hazard, the Division correctly calculated the penalty for Citation 2 without applying any credit for abatement.

Conclusions

Employer's appeal from Citation 1, item 1, is granted. Employer's appeal from Citation 1, item 2, is resolved pursuant to the parties' stipulation. Employer's appeal from Citation 2 is denied. The proposed penalty of \$8,100 for Citation 2 is found reasonable and is affirmed.

Orders

It is hereby ordered that the Citation 1, item 1 is vacated. It is hereby further ordered that Citation 1, item 2 is resolved pursuant to the parties' stipulation and as set forth in the attached Summary Table. It is hereby further ordered that Citation 2 is established and the penalty is assessed as indicated above and as set forth in the attached Summary Table. Total penalties are assessed in the amount of \$8,775.

Dated: April 7, 2016
HIC:ao

HOWARD I. CHERNIN
Administrative Law Judge

APPENDIX A
SUMMARY OF EVIDENTIARY RECORD
DYNAMIC CONSTRUCTION SERVICES INC.
Docket 15-R4D1-1471-1472

Date of Hearing: February 24, 2016

Division's Exhibits

Number	Exhibit Description	Admitted
1	Jurisdictional Documents	Yes
2	Manufacturer's Tabulated Data re Quik Shor Vertical Rails	Yes
3	Letter from Adrianus Vermeulen re Trench Jack Rail Orientation, dated February 20, 2015	Yes
4	Manufacturer's Tabulated Data re Single Cylinder Trench Jack Memorandum	Yes
5	Figure No. 1 – Aluminum Hydraulic Shoring Typical Installations	Yes
6	Hand-drawn excavation cross section	No
7	Photocopy of License of Eva Rosalind Dimenstein, P.E., Licensed Civil Engineer	Yes
8	Division's C-10 Proposed Penalty Worksheet	Yes
9	16 Scene Photographs	Yes

Employer's Exhibits

Exhibit Letter	Exhibit Description	Admitted
A	Division's Incident Report dated October 24, 2014	Yes
B	Brian Katz training records	Yes

C	Peter Wiesner training record	Yes
D	Jacob Hastings training records	Yes
E	Division's Documentation Worksheet	Yes

Witnesses Testifying at Hearing

Christian Nguyen
 Rosalyn Dimenstein, P.E.

CERTIFICATION OF RECORDING

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

HOWARD I. CHERNIN
 Administrative Law Judge

 Date

**SUMMARY TABLE
DECISION**

In the Matter of the Appeal of:

**DYNAMIC CONSTRUCTIONS SERVICES, INC.
DOCKET 15-R4D1-1471-1472**

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

IMIS No. 1005890

DOCKET	CITATION	SECTION	TYPE	MODIFICATION OR WITHDRAWAL	AVF F I R M E D	PENALTY PROPOSED BY DOSH IN CITATION	PENALTY PROPOSED BY DOSH AT HEARING	FINAL PENALTY ASSESSED BY BOARD
15-R4D1-1471	1 1	1541(a)	G	ALJ vacated citation as set forth in Decision	X	\$675	\$675	\$0
		1541.1(c)(2)(C)	G	Employer withdrew appeal in exchange for a non-admission clause	X	\$675	\$675	\$675
15-R4D1-1472	2 1	1541.1(a)(1)	S	ALJ affirmed citation as set forth in Decision	X	\$8,100	\$8,100	\$8,100
Sub-Total						\$9,450	\$9,450	\$8,775
Total Amount Due*								\$8,775

(INCLUDES APPEALED CITATIONS ONLY)

NOTE: *Please do not send payments to the Appeals Board.*
All penalty payments should be made to:
 Accounting Office (OSH)
 Department of Industrial Relations
 P.O. Box 420603
 San Francisco, CA 94142

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

**ALJ: HIC/ao
POS: 04/07/2016**