

BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:

**JENSEN ENTERPRISES INC dba JENSEN
PRECAST**

14221 San Bernardino Ave
Fontana, CA 92335-2232

Employer

**DOCKET 15-R3D3-0047
through 0049**

DECISION

Statement of the Case

Jensen Enterprises Inc. dba Jensen Precast (Employer) is a manufacturer specializing in precast concrete products.¹ Beginning July 3, 2014, the Division of Occupational Safety and Health (the Division) through Associate Safety Engineer Mahmood Chaudhry (Chaudhry), conducted an accident inspection at a place of employment maintained by Employer at 14221 San Bernardino Ave, Fontana, California (the site). On December 16, 2014, the Division cited Employer for four violations of California Code of Regulations, title 8.²

Employer filed a timely appeal contesting the existence of the alleged violations for Citation 1, Items 1 and 2.³ Additionally, Employer pleaded numerous affirmative defenses.⁴

This matter came regularly for hearing before Jacqueline Jones, Administrative Law Judge (ALJ) for the California Occupational Safety and

¹ Among other things, Jensen Precast manufactures septic tanks, k-rails, fuel tanks, and utility boxes.

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

³ During the hearing, the Division withdrew Citation 2, Item 1 and Citation 3, Item 1. Good cause appearing, the undersigned incorporates the Division's withdrawal of said citations into this Decision and the attached Decision Summary Table.

⁴ 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 Riverside, California on March 9, 2016. Ron Medeiros, Attorney, of Peterson Law Corporation, represented Employer. Kathryn Woods, Division Staff Attorney, represented the Division. The ALJ submitted the matter on April 27, 2016.

Issues

1. Did Employer violate section 3203, subdivision (a)(4), by not including an essential element in its IIPP to have procedures in place for identifying work safe practices and evaluating workplace hazards?
2. Did the Division violate Labor Code section 6317, by issuing Citation 1, Item 1 to Employer after six months had elapsed since the alleged violation of section 3203, subdivision (a)(4) occurred?
3. Did Employer violate section 3328, subdivision (g) by failing to maintain equipment in use at the facility during the moving, loading and unloading of materials in a safe operating condition?

Findings of Fact

1. An accident occurred on April 25, 2014 at the site during the unloading of plastic pipes resulting in an injury to the truck driver.
2. The Division calculated the proposed penalties in accordance with the applicable title 8 regulations.⁵
3. The Division received permission to conduct inspections at the site on July 3, 2014 and July 9, 2014.
4. Ruben Gallegos (Gallegos) is the Safety Director for Employer and is responsible for implementing the Injury Illness Prevention Program (IIPP) and onsite safety at the site.⁶
5. Employer had a written IIPP.
6. Employer had no procedure for unloading pipes, in writing or otherwise on July 3, 2014.
7. Employer had two deliveries of similar plastic pipes in the previous twelve months prior to the accident.
8. Employer did not have a delivery of similar plastic pipes for unloading between the time April 25, 2014 and July 3, 2014.
9. Employer did not produce a document requested by the Division regarding procedures for the ensuring of loads/pipes [sic] during and at the start of unloading activity.
10. Employer did not implement any procedural changes for unloading pipes after the accident occurred.
11. The Division timely issued Citation 1, Item 1.

⁵ The Division and Employer stipulated to this during hearing.

⁶ The Division and Employer stipulated to this during hearing.

12. The Linde fork lift was in service since the beginning of the shift on July 3, 2014.
13. The strobe light on the Linde fork lift was not operational during the Division's inspection on July 3, 2014.

Analysis

1. **Did Employer violate section 3203, subdivision (a)(4), by not including an essential element in its IIPP to have procedures in place for identifying work safe practices and evaluating workplace hazards?**

Section 3203, subdivision (a)(4) states:

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

[...]

(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.

In citing Employer, the Division alleged:

Prior to and during the course of the inspection, including, but not limited to April 25, 2014, JENSEN ENTERPRISES INC dba. JENSEN PRECAST (Creating, Controlling & Correcting employer) had not effectively implemented all the elements of the Injury and Illness Prevention Program including but not limited to, an essential element given in section 3203(a)(4), for the loading & unloading activity of materials including heavy plastics pipes. In that the employer had not identified work safe practices and evaluated the hazards of rolling and or falling off the heavy plastics pipes from the flatbed truck during unloading activity by the forklift operators.

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 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 Employer 1) had a written IIPP; and 2) failed to effectively implement an essential element of the IIPP by not including procedures for identifying work safe practices and evaluating the hazards of unloading plastic pipes with a fork lift from a truck.

The first element was undisputed, as both parties provided testimonial evidence at hearing that Employer had a written IIPP. In determining the existence of the second element, the Division must show Employer failed to implement an essential element, and that such a failure is a deficiency that is essential to the overall IIPP.

Section 3203, subdivision (a)(4) contains no requirement for an employer to have a written procedure for each hazardous operation it undertakes. What is required is for Employer to have procedures in place for identifying and evaluating workplace hazards, and these procedures are to include scheduled periodic inspections. (*Brunton Enterprises, Inc.*, Cal/OSHA App. 08-3445, Decision After Reconsideration (Oct. 11, 2013).) Inspections only need to be reasonably performed. (*Underground Construction Co., Inc.*, Cal/OSHA App. 98-4105, Decision After Reconsideration (Oct. 30, 2001), *affirmed in part regarding definition of inspection*, Judgment Granting Peremptory Writ of Mandamus, Sacramento County Superior Court, State of California, 01CS01671 (June 24, 2005), Amended Decision After Reconsideration (Feb. 22, 2006) vacating Decision After Reconsideration issued Oct. 30, 2001.) The occurrence of an accident alone is not proof that an employer has failed to identify and evaluate hazards. (*Michigan-California Lumber Co.*, Cal/OSHA App. 91-759, Decision After Reconsideration (May 20, 1993).)

Merely having a written IIPP is insufficient to establish implementation. (*Los Angeles County Department of Public Works*, Cal/OSHA App. 96-2470, Decision After Reconsideration (Apr. 5, 2002).) Proof of implementation and

maintenance requires evidence of actual responses to known or reported hazards. (*Bay Area Rapid Transit District*, Cal/OSHA App. 09-1218, Decision After Reconsideration and Order of Remand (Sep. 6, 2012) citing *Los Angeles County Department of Public Works*, *Ibid.*) A single, isolated failure to "implement" a detail within an otherwise effective program does not necessarily establish a violation for failing to maintain an effective program where that failure is the sole imperfection. (*GTE California*, Cal/OSHA App. 91-107, Decision After Reconsideration (Dec. 16, 1991); *David Fischer, dba Fischer Transport, A Sole Proprietorship*, Cal/OSHA App. 90-762, Decision After Reconsideration (Oct. 16, 1991).) The Board, however, has also held that an IIPP can be proved not effectively maintained on the ground of one deficiency, if that deficiency is shown to be essential to the overall program. (*Keith Phillips Painting*, OSHAB 92-777, Decision After Reconsideration (Jan. 17, 1995).) Procedures to ensure compliance with safe and healthy work practices and procedures for correcting unsafe or unhealthy conditions, including imminent hazards, are essential to the overall program. (*GTE California, supra*, Cal/OSHA App. 91-107; *David Fischer dba Fischer Transport, A Sole Proprietorship, supra*, Cal/OSHA App. 90-762.)

While the Employer may have a comprehensive IIPP, the Division may still demonstrate an IIPP violation by showing Employer failed to effectively implement that plan – in this case, through failing to inspect, identify and evaluate the hazards associated with the unloading of plastic pipes.

During direct exam by the Division, Chaudhry credibly testified on the issue of whether Employer had procedures for identifying work safe practices and evaluating work place hazards. During the July 3, 2014 inspection Gallegos informed Chaudhry that the accident was not the first time plastic pipes were delivered to the site as there had been at least 2 shipments of similar plastic pipes within the previous twelve months. Chaudhry testified there were hazards associated with the unloading of the plastic pipes.⁷ These hazards concerned the risk of large plastic pipes falling during the unloading of the pipes on workers around the pipes and the forklift operator, which happened during the accident on April 25, 2014. Chaudhry testified Employer did not identify these issues and did not have any procedures in place to address them. Chaudhry testified Employer does have a written IIPP, but during the July 3, 2014 inspection Employer had no procedure in place regarding this hazard in writing or otherwise.

The Division presented Chaudhry's Field Documentation Worksheet as Exhibit 5 and Chaudhry provided testimony regarding this document.

⁷ The plastic pipes measure fourteen feet long, twenty-four inches in diameter and weigh 200 pounds each.

Employer objected to the use of Exhibit 5 on several grounds.⁸ After evaluating Employer's objections and the Division's reply, the ALJ received Exhibit 5 into evidence over Employer's objections.⁹

After refreshing his recollection by examining his handwritten notes from Exhibit 5, Chaudhry credibly testified Gallegos informed him during the inspection on July 3, 2014 that he did not recall any written procedure in place for unloading pipes.¹⁰ Additionally, Gallegos informed Chaudhry that Employer had not implemented any procedure changes for unloading plastic pipes after the accident.¹¹ Chaudhry testified he requested from Employer any procedures for ensuring the loads/pipes during the start of the unloading activity by way of a document request sheet.¹² Employer did not respond to his request. Chaudhry testified he interviewed Gustavo Flores (Flores), Employer's representative in charge of shipping and receiving. When Chaudhry asked Flores if Employer had procedures for unloading or unloading of pipes, Flores responded they did not.

Employer presented testimonial evidence from Gallegos that Employer had procedures in place for the general unloading and loading of materials. Gallegos testified that he could not recall if Employer had a specific written procedure for the unloading of pipes, but it did have a general procedure for unloading materials. This general procedure was utilized during the unloading of pipes on April 25, 2014.¹³ The procedures Employer had in place, however, did not and do not equate to a procedure for identifying and evaluating work place hazards. Rather, those procedures are merely generic

⁸ Employer's counsel objected to marking the Field Document Worksheet as an exhibit and then allowing the Division to use it as a script for testimony. There was no objection to using the document to refresh the recollection of Chaudhry. Additionally, Employer's counsel objected to the relevancy of the document, the use of the document as hearsay evidence, and because examination regarding the document would take up too much time.

⁹ Exhibit 5 is the Field Document Worksheet used by Chaudhry during his inspection of the site on July 3, 2014 to record his findings during the inspection. Because the worksheet contains relevant information about what Chaudhry discovered during the course of his investigation in his official capacity its probative value far outweighs any prejudice to the Employer. The document is six pages of hand written notes and Chaudhry's testimony was limited to two portions of notes on separate pages during the Division's examination, lasting not more than five minutes of hearing time. Although the document is hearsay, the document contains admissions from Gallegos, an Employer representative authorized to speak on Employer's behalf, on which Chaudhry specifically testified. Admissions adverse to an employer made by a representative of that employer are an exception to the hearsay rule and may support a finding of fact. (See Evidence Code § 1222; *Macco Construction, Cal/OSHA App. 84-1106, Decision After Reconsideration (Aug. 20, 1986).*)

¹⁰ Exhibit 5 pg. 1

¹¹ Exhibit 5 pg. 3

¹² Exhibit 6, "Other" checked box.

¹³ Gallegos testified the general procedure is to have the driver of the truck containing the loads to stand at the front of the truck and not standing on either side of the truck, until the loading or unloading is complete.

unloading and loading material procedures and do not indicate any procedures for identification or evaluation of work safe practices or hazards.

The Division's testimony regarding the lack of specific written procedures for the operation at hand is not relevant because a written procedure for each hazardous operation is not required.¹⁴ However, the Division's testimony regarding procedural changes adopted by the Employer after the accident is relevant to whether Employer had procedures in place for identifying unsafe conditions and work practices. The accident on April 25, 2014 should have identified the hazard on the spot for Employer, but merely acknowledging an accident occurred does not demonstrate on its own that Employer has procedures in place for identifying and evaluating workplace hazards. It certainly is not proof that scheduled periodic inspections occurred or that Employer documented corrective measures to prevent similar accidents or any corrective actions at all. Employer's failure to do anything directly relates to its employees safety and health, and its employees are still at risk of a similar accident occurring.

The evidence demonstrates Employer did have a written IIPP with general procedures to handle the unloading and loading of materials, but that is not sufficient to establish effective implementation.¹⁵ If an IIPP contains one deficiency and it is essential to the overall program, the IIPP can be proved ineffective.¹⁶ Employer had two similar deliveries of plastic pipes prior to the accident. Employer engaged in the activity of unloading plastic pipes of similar size during the accident on April 25, 2014. Gallegos admitted that Employer did not develop any written procedures to cover the hazards associated with these shipments. Based on the evidence presented, Employer did not attempt to evaluate the work place hazard or develop safety procedures for unloading pipes despite the result of the accident. Furthermore, it does not appear Employer did a hazard analysis post-accident. These are precisely the type of procedures for identifying and correcting unsafe conditions that are essential to the overall program. Employer, therefore, failed to effectively implement an essential element of the IIPP.

2. Did the Division violate Labor Code section 6317, by issuing Citation 1, Item 1 to Employer after six months had elapsed since the alleged violation of section 3203, subdivision (a)(4) occurred?

Employer alleged the affirmative defense that the Division did not issue Citation 1, Item 1 in a timely manner. Employer has the burden to establish

¹⁴ (*Brunton Enterprises, Inc., supra*, Cal/OSHA App. 08-344.)

¹⁵ (*Los Angeles County Department of Public Works, supra*, Cal/OSHA App. 96-2470.)

¹⁶ (*Keith Phillips Painting, supra*, OSHAB 92-777.)

this defense by a preponderance of the evidence. (*Ernest W. Hahn, Inc.*, Cal/OSHA App. 77-576, Decision After Reconsideration (Jan. 25, 1984).)

Labor Code section 6317 states in relevant part:

No citation or notice shall be issued by the division for a given violation or violations after six months have elapsed since occurrence of the violation.

For purposes of determining whether the Division has issued a citation "after six months have elapsed since occurrence of the violation", the six months runs from the last occurrence of the violation. (*Los Angeles County Dept. of Public Works, supra*, Cal/OSHA App. 96-2470.) In that case, the Board quoted the Federal OSHRC with favor: "Therefore, it is of no moment that a violation first occurred more than six months before the issuance of a citation, so long as the instances of noncompliance and employee access providing the basis for the contested citation occurred within six months of the citation's issuance." (*Central of Georgia Railroad*, OSHRC Docket No. 11742, 1977--1978 OSHD, ¶ 21,688, (April 5, 1977).)

At hearing Employer argued that the violation of Citation 1, Item 1 occurred on the day of the accident, April 25, 2014; and, therefore, that is the date when the six months statute of limitations should begin to run. Under Employer's theory, because the Division did not issue Citation 1, Item 1 until December 16, 2014, over seven months after the accident occurred, with no further instance of noncompliance, the violation was not ongoing and the citation is invalid under Labor Code section 6317.

To support this position, Employer inquired during its cross-examination of Chaudhry as to whether he determined any similar types of plastic pipes were delivered to the site between the time of the accident and the Division's first inspection of the site. Chaudhry confirmed he was told by Gallegos no similar deliveries had been made during that specific time frame. Additionally, Employer presented testimonial evidence from Gallegos on direct examination to corroborate Chaudhry's testimony on this issue. Based on this evidence, Employer contends the accident was an isolated incident and not a continuing activity.

The Division contends that although the alleged violation occurred on April 25, 2014, it was ongoing and continued every day, including July 3, 2014, in the six months before the citation was issued on December 16, 2014, because Employer did not have procedures for identifying and evaluating workplace hazards.

In weighing the evidence, the Division's argument is persuasive, and Employer did not meet its burden to establish the affirmative defense. The Division issued the citation within six months of the occurrence of the alleged violation and is not barred by the six months limitation specified in Labor Code section 6317. For the foregoing reasons, the Division established a violation of section 3203, subdivision (a)(4) by a preponderance of the evidence.

3. Did Employer violate section 3328, subdivision (g) by failing to maintain equipment in use at the facility during the moving, loading and unloading of materials in a safe operating condition?

Section 3328, subdivision (g) states:

(g) Machinery and equipment in service shall be maintained in a safe operating condition.

In citing Employer, the Division alleged:

Prior to and during the course of the inspection, including, but not limited to, on July 03, 2014, a (LINDE, designated #445) sit-in type industrial truck was in use at the facility during moving, loading and unloading materials. The industrial truck had damaged i.e. broken strobe light & twisted exhaust pipe attached to its' metal frame and was not maintained in a safe operating condition.¹⁷

The safety order "protects employees generally from injuries due to the operation of broken or malfunctioning equipment." (*Star-Kist Foods, Inc*, Cal/OSHA App. 83-781, etc. DAR (Oct. 16, 1987).) The Division does not have to prove that an employer knows of a non-compliant condition to establish the existence of a safety order violation. (*Gaehwiler Construction Co.*, Cal/OSHA App. 78-651, Decision After Reconsideration (Jan. 7, 1985).)

In order to prove a violation, the Division has the burden of establishing that the machinery and equipment was 1) in service; and 2) not maintained in a safe operating condition.

¹⁷ During the hearing, the Division upon its own motion moved to amend the AVD to read the following: "Prior to and during the course of the inspection, including, but not limited to, on July 3, 2014, a (LINDE, designated #445) sit-in type industrial truck was in use at the facility during moving, loading and unloading materials. The industrial truck had damaged i.e. broken strobe light and was not maintained in a safe operating condition. Upon no objection from Employer, the undersigned granted the motion.

During direct examination, Chaudhry testified that during the July 3, 2014 inspection he requested to inspect the fork lift involved in the accident. Chaudhry credibly testified he asked Flores, in the presence of Gallegos, how long the fork lift was in use and Flores responded the fork lift was in use since the start of the shift that day. The fork lift, therefore, was in service on July 3, 2014.

The question then becomes whether Employer maintained the fork lift in a safe operating condition while it was in service. Chaudhry credibly testified he was told by Gallegos what the strobe light on the fork lift was used for.¹⁸ Chaudhry asked Flores to test the strobe light, and based on this test he determined it was not working.¹⁹ Flores told Chaudhry he did not know how long the strobe light was not working, but he did know the fork lift was in use from the start of the shift. Chaudhry testified he reviewed the Shift Report of Industrial Forklifts and noticed under the general check section the item "Lights" was determined by Employer's maintenance personnel to be "Ok".²⁰

During cross-examination, Gallegos credibly testified regarding the functionality of the strobe light. He stated the strobe light turns on automatically when the fork lift is turned on. When asked if the fork lift was turned on during the July 3, 2014 inspection, Gallegos confirmed Flores turned on the ignition. Importantly, Gallegos testified that he saw the strobe light was not operational on July 3, 2014 during Chaudhry's inspection.²¹

Employer, during closing argument, asserted that in order for the Division to establish a violation of section 3328, subdivision (g) it must demonstrate some type of item that is broken or malfunctioning that exposes employees which relates directly to the safe operation of a piece of equipment; and, based on the evidence the Division had failed to demonstrate this.

The Board has addressed section 3328, subdivision (g), and its applicability to a case can hinge on the particular use of the equipment or machinery. (*Stockton Steel Corporation*, Cal/OSHA App. 00-2157, DAR (Aug. 28, 2002) [no general violation because of insufficient evidence of employee exposure to show that improper coasting hazard resulted from failure to

¹⁸ A strobe light on a fork lift is a safety device because it operates as a visual warning to other workers that the machine is moving around. The site is a large and loud place and the strobe light is helpful to identify the machine when in use.

¹⁹ Chaudhry noted this in Exhibit 5 pg. 5

²⁰ The report indicates the hour meter reading for forklift #445 as 0908 hours on July 3, 2014.

²¹ An admission at a hearing is an adequate basis upon which to rest a finding of fact. (*C & S Battery & Lead*, OSHAB 77-0001, Decision After Reconsideration (Oct. 18, 1977).)

adjust drill press]; *Murphy Industrial Coatings, Inc.*, Cal/OSHA App. 96-4017, DAR (Nov. 9, 2000) [tears in high pressure air hoses used by employees established violation].)

The present case is distinguishable from *Stockton Steel Corporation, supra*, and closer to the rationale in *Murphy Industrial Coatings, Inc., supra*, because in this instance the evidence demonstrates employee exposure to the hazard.

Here, the strobe light was not a latent condition. If the fork lift was turned on and in service, the strobe light (if functioning properly), would flash and provide a safety warning to those working around it. Whether or not the light was functional during the first shift is not relevant. What is relevant is the condition of the strobe light at the time the Division inspected the fork lift. Because the strobe light is automatically turned on when the fork lift is in use, any malfunction of the strobe light would be discoverable upon turning on the fork lift, whether that be driving a fork lift to a place where the Division could inspect it, turning on the fork lift in front of the Division during inspection, or using the fork lift to maneuver loads around a large and noisy site where workers are present. There is no doubt Employer inspected the fork lift during the morning, but the Division's inspection was in the early afternoon.²² Employer had an obligation to its workers to maintain the fork lift in a safe operating condition throughout the entire shift by taking the action necessary to ensure that the machinery or equipment is and remains in that condition so long as it is in service.

The Division does not need to prove Employer had knowledge of a non-compliant condition to establish the existence of a safety order violation; all it needs to demonstrate is that the strobe light was not operational at the time of inspection. In this case the Division did just that because Gallegos admitted at the hearing the strobe light was not functioning during the Division's inspection on July 3, 2014. For the foregoing reasons, the Division established a violation of section 3328, subdivision (g) by a preponderance of the evidence.

Conclusion

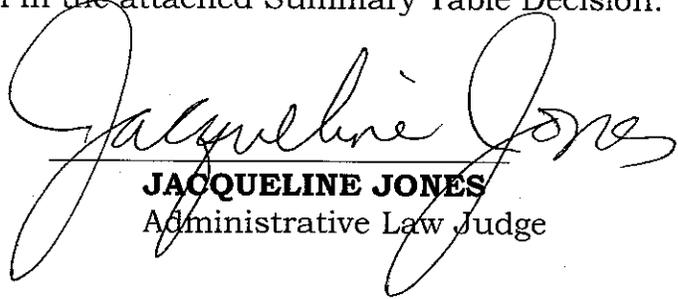
Employer's appeal from Citation 1, Items 1 and 2 is denied. The Division established the existence of the violations alleged in Citation 1, Items 1 and 2 by a preponderance of the evidence.

²² Based on Chaundry's testimony the inspection occurred sometime after 12:30 p.m. on July 3, 2014.

Order

It is hereby ordered that Citation 1, Items 1 and 2 is affirmed and the penalties are assessed as set forth in the attached Summary Table Decision.

Dated: May 23, 2016
JJ:lgf



JACQUELINE JONES
Administrative Law Judge

APPENDIX A

SUMMARY OF EVIDENTIARY RECORD

JENSEN ENTERPRISES INC dba JENSEN PRECAST
Docket 15-R3D3-0047 through 0049

Date of Hearings: March 9, 2016

Division's Exhibits

Number	Exhibit Description	Admitted
1	Jurisdictional Documents	Yes
2	Copy of Division's accident report	Yes
3	Photograph of right front side of forklift dated July 9, 2014	Yes
4	Copy of Employer's Shift Report of Industrial Forklifts	Yes
5	Field Documentation Worksheet	Yes
6	Document Request Sheet	Yes

Employer's Exhibits

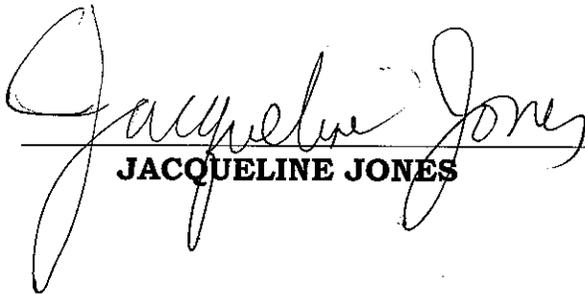
Exhibit Letter	Exhibit Description	Admitted
A	Photograph of the left front side of the Forklift dated July 3, 2014	Yes
B	Photograph of the right back side of the Forklift dated July 3, 2014	Yes

Witnesses Testifying at Hearing

1. Mahmood Chaudhry
2. Ruben Gallegos

CERTIFICATION OF RECORDING

I, JACQUELINE JONES, 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.



JACQUELINE JONES



Date

**SUMMARY TABLE
DECISION**

In the Matter of the Appeal of:

**JENSEN ENTERPRISES INC dba JENSEN PRECAST
DOCKET 15-R3D3-0047 through 0049**

IMIS No. 317729762

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

DOCKET	CITATION	SECTION	TYPE	MODIFICATION OR WITHDRAWAL	A 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
15-R3D3-0047	11	3203(a)(4)	G	ALJ affirmed as set forth in Decision.	X		\$750	\$750	\$750
	2	3328(g)	G	ALJ affirmed as set forth in Decision.	X		\$750	\$750	\$750
15-R3D3-0048	21	3273(e)	S A/R	DOSH withdrew citation - insufficient evidence.		X	\$18,000	\$0	\$0
15-R3D3-0049	31	3704	S	DOSH withdrew citation - insufficient evidence.		X	\$6,750	\$0	\$0
Sub-Total							\$26,250	\$1,500	\$1,500
Total Amount Due*									\$1,500

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

(INCLUDES APPEALED CITATIONS ONLY)

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

**ALJ: JJ/igf
POS: 05/23/16**

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a citizen of the United States, over the age of 18 years and not a party to the within action; my place of employment and business address is Occupational Safety and Health Appeals Board, 100 North Barranca Street, Suite 410, West Covina, California, 91791.

On May 23, 2016, I served the attached **DECISION** by placing a true copy thereof in an envelope addressed to the persons named below at the address set out immediately below each respective name, and by sealing and depositing said envelope in the United States Mail at West Covina, California, with first-class postage thereon fully prepaid. There is delivery service by United States Mail at each of the places so addressed, or there is regular communication by mail between the place of mailing and each of the places so addressed:

Robert D. Peterson, Esq.
PETERSON LAW CORPORATION
3300 Sunset Blvd., Suite 110
Rocklin, CA 95677

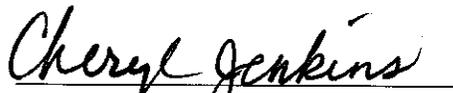
District Manager
DOSH - San Bernardino
464 West 4th Street, Suite 332
San Bernardino, CA 92408

DOSH LEGAL UNIT
ATTN: Amy Martin, Chief Counsel
1515 Clay Street, 19th Floor
Oakland, CA 94612

DOSH LEGAL UNIT
ATTN: Kathryn Woods, Staff Counsel
320 West Fourth Street, Suite 400
Los Angeles, CA 90013

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 23, 2016 at West Covina, California.


Declarant