

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

In the Matter of the Appeal of:

**SILVERADO CONTRACTORS, INC.**

2855 Mandela Parkway, 2nd Floor  
Oakland, CA 94608-4011

Employer

**DOCKET 14-R4D7-3044**

**DECISION**

**STATEMENT OF THE CASE**

Silverado Contractors, Inc., (Employer) is a demolition contractor, engaged in the business of demolishing and dismantling buildings and structures for clients. On July 22, 2014, the Division of Occupational Safety and Health (the Division) through Associate Safety Engineer, Daniel Pulido (Pulido) conducted an inspection at a place of employment maintained by Employer at 2401 Coffee Road, Bakersfield, California. On September 9, 2014, the Division cited Employer for failing to obtain a project permit before conducting demolition activity.<sup>1</sup>

The Employer filed an appeal contesting the existence of the violation of the safety order, the classification and the reasonableness of the proposed penalty. Employer pleaded affirmative defenses as indicated in Employer's Appeal filed with the Occupational Safety and Health Appeals Board (Exhibit 1).<sup>2</sup>

The matter came on regularly for hearing before Clara Hill-Williams, administrative Law Judge (ALJ) for the California Occupational Safety and Health Appeals Board, at Bakersfield, California on September 2, 2015. Employer was represented by Attorney Lisa Prince. The Division was represented by District Manager Efren Gomez. The ALJ extended the submission date to December 1, 2015.

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<sup>1</sup> Unless otherwise specified, all section references are to sections of California Code of Regulations, title 8.

<sup>2</sup> Employer alleged affirmative defenses as listed in the appeal but did not present any evidence in support of the affirmative defenses at the hearing. An issue not properly raised on appeal is deemed waived. (See section 361.3 ("Issues on Appeal") and *Western Paper Box Co.*, Cal/OSHA App. 86-812, DDAR (Dec. 24, 1986).)

## ISSUES

1. Was Employer required to have a project permit to conduct demolition or dismantling of a building or structure more than 36 feet in height?
2. Did the Division correctly classify the penalty as a regulatory citation?
3. Did the Division propose a reasonable penalty for Employer's alleged violation of section 341, subdivision (d)(3)?

## FINDINGS OF FACT

1. An explosion occurred at the work site of a Pacific Gas and Electric (PG&E) power plant. Four months later PG&E hired Employer to replace Cleveland Wrecking (Cleveland) to complete the planning and demolition started by Cleveland before the explosion.
2. The two remaining toppled tower structures from the explosion measured 60 feet in height.
3. Employer began the demolition work on July 21, 2014 before Employer requested a project permit from the Division on July 22, 2014.
4. Employer's failure to obtain a permit before resuming the demolition at the work site was correctly classified as a regulatory violation.
5. Employer did not present any evidence in support of the affirmative defenses at the hearing.
6. The penalty calculations were correctly determined in accordance with the Division's policies and the California Code of Regulations.

## ANALYSIS

- 1. Was Employer required to have a project permit to conduct demolition or dismantling of a building or structure more than 36 feet in height?**

Section 341, subdivision (d)(3) provides:

(d) Work activities subject to permit requirements and the types of permits required to conduct the activities.

(3) To conduct the demolition or dismantling of any building or structure more than 36 feet in height, the Project Administrator shall hold a Project Permit and all other employers directly engaging in demolition or dismantling activity shall hold an annual permit.

The Division alleged:

On or about July 22, 2014 the employer was the project administrator at the demolition site which had previously begun demolishing structures over 36 feet in height. The employer had conducted demolition activity subject to permit requirements prior to obtaining a project permit.

The Division has the burden of proving every element of its case, including the applicability of the cited safety orders, by a preponderance of the evidence. (*Cambrio Manufacturing Co.*, Cal/OSHA App. 84-923, Decision After Reconsideration (Dec. 31, 1986); *Howard J. White, Inc.*, Cal/OSHA App. 78-741, Decision After Reconsideration (June 16, 1983).)

The Division must determine whether Employer was required to have a project permit in addition to the Employer's possession of an annual permit, which was sufficient for engaging in demolition or dismantling activities. The Division must establish that (1) Employer was the "project administrator" rather than an employer engaged in the demolition/dismantling activities; and (2) whether the structure was more than 36 feet in height.

In determining the first element of the safety order of whether Employer was the project administrator, the Division asserted that Employer was hired by PG&E. The Division's Senior Safety Engineer Steven Honjio (Honjio) testified that during his investigation of the explosion approximately four months before Employer was cited by the Division, he learned that PG&E hired Employer to replace Cleveland as project administrator. Associate Safety Engineer Pulido testified that his subsequent investigation revealed Employer was engaged in planning and completing the demolition started by Cleveland, the previous demolition contractor hired by PG&E before the explosion. Pulido testified that all of the documents he reviewed from Employer in response to the Division's Document Request Form regarding the demolition "clean-up" listed Employer as the contractor. The "SPECIFIC CONDITIONS" (Exhibit 3)<sup>3</sup>, received from

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<sup>3</sup> The SPECIFIC CONDITIONS included the following terms:

1. EXTENT OF WORK
2. FIELD AUTHORIZATIONS
3. DELAY OF WORK
4. CONFLICTS
5. WORK SITE FACILITIES
6. WORK BY OTHERS
7. SECURITY REGULATIONS
8. SAFETY REQUIREMENTS
9. HAZARDOUS AND NON-HAZARDOUS SUBSRTANCES
10. PROJECT CLOSE-OUT SUBMITTALS
11. INSURANCE
12. LABOR FORCE
13. APPLICABLE DOCUMENTS

Employer included the procedures and conditions under which the demolition was to proceed.

Cesar Solis (Solis), Employer's Project Manager and Mike Turpin, Employer's superintendent both testified asserting Employer was not the project administrator, and that PG&E was the project administrator who hired Employer to conduct the demolition. PG&E oversaw all facets of activities with an unusual amount of scrutiny that required PG&E's approval at every level of the demolition process. Solis stated PG&E hired employees and hired experts such as project managers, site managers, onsite safety managers, demolition experts, certified industrial hygienists and certified asbestos consultants at the demolition work site. Solis further testified that PG&E also required daily "job safety analysis sheets" before completing a task and could stop work on the project at any time.

However, Solis acknowledged that his duties as project manager for Employer for the PG&E project in Southern California as well as all demolition projects California involved: hiring personnel; allocation of equipment; determining what type of equipment is to be used; writing the plans and job safety analysis. Solis further acknowledged that the "SPECIFIC CONDITIONS" (Exhibit 3) was part of Employer's contract with PG&E after Employer removed Cleveland as the project administrator at the demolition work site.

In weighing the evidence presented, the Division met its burden in establishing the first element of whether Employer was the "project administrator". While PG&E had extensive scrutiny over the project, Employer's contract with PG&E specifically stated Employer was hired to replace Cleveland on the demolition project after the explosion. The testimony of Division's Senior Safety Engineer Honjio regarding PG&E's hire of Employer to replace Cleveland as project administrator after the explosion also confirmed that Employer was the project administrator.

In establishing the second element of whether the structure was more than 36 feet in height, Pulido testified that he observed and reviewed the plans of two tower structures and the toppled towers on their sides as the result of an explosion that occurred four weeks before his July 22, 2014 inspection (Exhibits 5A through 5C<sup>4</sup>). The toppled tower structures measured 60 feet, which was over the 36 feet height limitation requirement of the safety order. Employer did not object to the 60 feet measurement of the toppled towers.

The Division asserted that as project administrator, Employer was required to obtain a project permit. Pulido acknowledged that Employer possessed an annual permit but described the difference between an annual

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<sup>4</sup> Photos of the two towers were taken on July 22, 2014 at approximately 5:40 p.m. representing the work site.

permit and a project permit<sup>5</sup>. The annual permit required notification of a demolition taking place, whereas a project permit required a conference prior to commencement of the demolition work. Honjio testified that as a result of the explosion investigation, security cameras were installed at the demolition work site. Honjio stated photos taken by the security camera revealed Employer's cranes began picking up debris from the demolition work site on July 21, 2014, which was the day before Employer applied for a project permit (Photo Exhibits 7A-7F) on July 22, 2014. Employer asserted that picking up debris should not be considered starting the demolition process. However, the photos (Exhibits 7A-7F) conclusively show Employer's crane removed debris, which can be considered the beginning procedure of the demolition process.<sup>6</sup>

The Division has established a violation of the safety order. The first element is established by virtue of Employer replacing Cleveland as project administrator and the specific provisions of its contract with PG&E. The second element of the safety order is met because the structure was more than 36 feet in height. Employer failed to obtain a project permit as evidenced by the photos taken by security cameras of the work site revealing Employer began the demolition process of cleaning up debris on July 21, 2014, a day before Employer applied for a project permit on July 22, 2014.

## **2. Did the Division correctly classify the penalty as a regulatory citation.**

Pursuant to section 334, subdivision (a), a Regulatory Violation is a violation, other than one defined as Serious or General that pertains to permit, posting, recordkeeping and reporting requirements as established by regulation or statute.

Here, the Division classified the violation as Regulatory because the violation involved Employer's failure to obtain a "permit" before resuming the demolition project started by Cleveland. At the hearing, Employer failed to present any evidence rebutting the classification as Regulatory at the Hearing. Thus, Employer's failure to obtain a permit before resuming the demolition at the work site was correctly classified as a regulatory violation.

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<sup>5</sup> Exhibit 2 – Permit application form and Exhibit 4 – Project permit application was rejected as an exhibit, pursuant to Evidence Code section 1151. "Subsequent remedial conduct" – When, after occurrence of an event, remedial or precautionary measures are taken, which, if taken previously, would have tended to make the event less likely to occur, evidence of such subsequent measures is inadmissible to prove negligence or culpable conduct in connection with the event.

<sup>6</sup> Under the SPECIFIC CONDITIONS - #1 Extent of Work, subsection 1.5 specifically states "...the Contractor shall not begin any physical work until PG&E or any other required jurisdictions have accepted the detailed Work Plan and the Approval Date has occurred."

**3. Did the Division propose a reasonable penalty for Employer's alleged violation of section 341, subdivision (d)(3)?**

The Division must calculate proposed penalties in accordance with its regulations and present proof sufficient to support its calculations on likelihood, etc. (*Gal Concrete Construction Co.*, Cal/OSHA App. 89-317/318, Decision After Reconsideration (Sept. 27, 1990).)

Pursuant to section 336, subdivision (a)(1), in general any employer who commits any Regulatory violation as defined above, shall be assessed a civil penalty of up to \$7,000 for each such violation. Except as set forth in subdivisions (2) through (4) of this subsection,<sup>7</sup> a minimum proposed penalty of \$500, representing the gravity of the violation, shall be assessed against employers who commit Regulatory violations. Severity, extent and likelihood are not evaluated on Regulatory violations. The penalty for Regulatory violations starts at \$500. The proposed penalty shall be adjusted for Size, Good Faith and History; however an abatement credit shall not be granted.

Here, the parties stipulated that Polito's calculations were correctly determined in accordance with the Division's policies and the California Code of Regulations. The Division's proposed penalty of \$935 is assessed.

**Conclusion**

The Division established a violation of section 341 subdivision (d) (3) because Employer failed to obtain a project permit before beginning the demolition at the work site. The violation was correctly classified as regulatory and the proposed penalty is correctly assessed at \$935.

**Order**

It is hereby ordered that Citation 1, Item 1 is affirmed, as indicated above and as set forth in the attached Summary Table.

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<sup>7</sup> (2) For Carcinogens – A minimum proposed penalty of \$1,000.

(3) For Carcinogens failure to report Use shall be assessed a minimum proposed civil penalty of \$2,500.

(4) For Violation of Permit or Registration Requirements. Any employer who violates the permit requirements of article 2, Permits-Excavations, Trenches, Construction and Demolition, ... shall be assessed a minimum proposed civil penalty of \$1,250.

It is further ordered that the penalty indicated above and set forth in the attached Summary Table is assessed.

Dated: February 3, 2016

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**CLARA HILL-WILLIAMS**  
Administrative Law Judge

CHW:ml

**APPENDIX A**

**SUMMARY OF EVIDENTIARY RECORD**

**SILVERADO CONTRACTORS, INC.  
Dockets 14-R4D7-3044**

**Date of Hearing: September 2, 2015**

**Division's Exhibits**

<b>Exhibit Number</b>	<b>Exhibit Description</b>	<b>Admitted</b>
1	Jurisdictional Documents	X
3	Attachment 1 – SPECIFIC CONDITIONS	X
5	Photos A, B, and C	X
6	A/B Blue print of demolition structure	X
7	Photos A-F taken by 24 hour camera	X
8	Document provided by PG&E attorneys	X
9	Asbestos Abatement Work Plan	X

<b>Exhibit Number</b>		<b>Rejected</b>
2	Permit Application Form	X
4	Project Permit	X

**Employer's Exhibits**

<b>Exhibit Letter</b>	<b>Exhibit Description</b>	<b>Admitted</b>
A	Annual Permit	X
B	Activity Notification Form	X
C	PG&E Work & Safety Oversight	X
D	Site Map	X

**Witnesses Testifying at Hearing**

1. Daniel Polito
2. Steven Honjio
3. Cesar Solis
4. Mike Turpin

**CERTIFICATION OF RECORDING**

*I, Clara Hill-Williams, 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.*

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Signature

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Date

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

In the Matter of the Appeal of:

**SILVERADO CONTRACTORS, INC.**  
2855 Mandela Parkway, 2nd Floor  
Oakland, CA 94608-4011

Employer

**DOCKETS 14-R4D7-3044**

**TRANSMITTAL**

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The attached Decision was issued on the date indicated therein. If you are dissatisfied with the Decision, you have thirty (30) days from the date of service of the Decision in which to petition for reconsideration. The petition for reconsideration must be sent to:

**Occupational Safety and Health Appeals Board  
2520 Venture Oaks Way, Suite 300  
Sacramento, California 95833**

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

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

**OSHAB 20 (9/99)**

## **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 February 3, 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:

Lisa Prince, Esq.  
WALTER & PRINCE, LLP.  
1270 Healdsburg Avenue, #201  
Healdsburg, CA 95448

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

DOSH LEGAL UNIT  
ATTN: Amy Martin, Chief Counsel  
1515 Clay Street, Suite 1901  
Oakland, CA 94612

DOSH LEGAL UNIT  
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 February 3, 2016, at West Covina, California.

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Declarant

## SUMMARY TABLE DECISION

In the Matter of the Appeal of:

**SILVERADO CONTRACTORS, INC.**  
**Docket 14-R4D7-3044**

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

IMIS No. 316982263

DOCKET	CITATION	ITEM	SECTION	TYPE	ALLEGED VIOLATION DESCRIPTION MODIFICATION OR WITHDRAWAL	AFFIRMED	VIOLATED	PENALTY PROPOSED BY DOSH IN CITATION	PENALTY PROPOSED BY DOSH AT PRE-HEARING or STATUS CONF.	FINAL PENALTY ASSESSED BY BOARD
14-R4D7-3044	1	1	341(d)(3)	Reg	ALJ affirmed violation	X		\$935	\$935	<b>\$935</b>
<b>Sub-Total</b>								\$935	\$935	<b>\$935</b>

**Total Amount Due\***

**\$935**

(INCLUDES APPEALED CITATIONS ONLY)

NOTE: Please do not send payments to the Appeals Board. **All penalty payments must 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: CHW/ml  
POS: 02/03/2016