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HAWAII  
LABOR RELATIONS BOARD

Attorneys for Director of Labor  
and Industrial Relations

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of	) CASE NO. OSH 2004-16
DIRECTOR, DEPARTMENT OF LABOR	) (Inspection No. 307259820)
AND INDUSTRIAL RELATIONS,	)
	) STIPULATION AND SETTLEMENT
Complainant,	) AGREEMENT; EXHIBIT A; APPROVAL
	) AND ORDER
vs.	)
	)
ENGLE DEVELOPMENT AND	)
INSULATION, INC.,	)
	)
Respondent.	)
	)
	)

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**STIPULATION AND SETTLEMENT AGREEMENT**

Complainant, Director of Labor and Industrial  
Relations ("Director"), and Respondent, Engle Development  
And Insulation, Inc. ("Respondent"), having reached a  
settlement of the above-captioned contested case presently

pending before the Hawaii Labor Relations Board ("Board") stipulate and agree as follows:

On or about July 21, 2004, the Director, by and through the State of Hawaii's Occupational Safety and Health Division ("HIOSH"), inspected Respondent's workplace located at 75-6025 Alii Drive Kailua Kona, Hawaii 96740.

As a consequence of said inspection, the Director, through HIOSH's Administrator, issued a Citation and Notification of Penalty on September 20, 2004 ("Citation") to Respondent alleging violations of the Hawaii Occupational Safety and Health Standards and assessed an aggregate penalty of \$300. See Exhibit A.

Respondent timely contested the Citation.

Upon further investigation, it was learned that Respondent has continuously conducted a comprehensive safety and health training program for its employees and has been accident free for the preceding 12 years.

THEREFORE, to avoid the expense of litigation and to compromise and settle the above-captioned case, the parties, by and through their respective representatives, stipulate and agree as follows:

1. The Board has jurisdiction over this contested case pursuant to section 396-11, Hawaii Revised Statutes ("HRS").

2. At all relevant times, Respondent maintained a workplace at 75-6025 Alii Drive Kailua Kona, Hawaii 96740.

3. At all relevant times, Respondent was an employer, as defined in HRS § 396-3, and employed employees, as defined in HRS § 396-3, and was therefore subject to the requirements of HRS chapter 396, the Hawaii Occupational Safety and Health Law.

4. Respondent agrees that it has or will abate each violation listed in the Citation in compliance with the abatement requirements under Hawaii Administrative Rule § 12-51-22. Respondent shall submit the completed abatement certification to HIOSH no later than thirty days after the signing of this Agreement; failure to timely do so may result in additional penalties or follow up inspections.

5. The Citation is amended as follows. See Exhibit A:

a. Citation 1 Item 1 is withdrawn.

6. Respondent shall request enrollment and participate in Complainant's Safety and Health Achievement Recognition Program ("SHARP").

7. This Agreement and the Citation, as amended, shall become a final order of the Director.

8. Respondent shall post a copy of this Agreement and Order in a prominent place at or near the location of the posting of the Citation, and the Agreement and Order shall remain posted for three working days (excluding weekends and State holidays).

9. Respondent shall continue to comply with HRS chapter 396, the Hawaii Occupational Safety and Health Law, and the related rules.

10. By entering into this Agreement, Respondent does not admit that it violated the cited standards of Citation 1 Item 1 for any litigation or purpose other than proceedings under the Hawaii Occupational Safety and Health Law for similar and subsequent violations occurring at Respondent's worksite at 75-6025 Alii Drive Kailua Kona, Hawaii 96740.

11. The terms of this Settlement Agreement shall be confidential unless there is a subsequent violation of Citation 1 Item 1 of the Citation at Respondent's worksite at 75-6025 Alii Drive Kailua Kona, Hawaii 96740.

12. Unless otherwise provided by this Agreement, nothing in this Agreement shall bar the Director from taking any action regarding future acts or practices by Respondent which may be alleged to violate HRS chapter 396,


the Hawaii Occupational Safety and Health Law, or the related rules.

DATED: Honolulu, Hawaii, 3/22/, 2005.

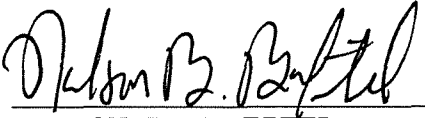
Engle Development  
And Insulation, Inc.

  
By: \_\_\_\_\_

APPROVED AS TO FORM:

  
Leo B. Young  
Deputy Attorney General  
Attorney for Director of Labor  
and Industrial Relations,  
State of Hawaii

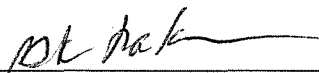
DIRECTOR OF LABOR AND  
INDUSTRIAL RELATIONS

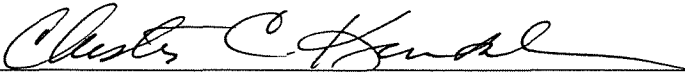
  
NELSON B. BEFITEL

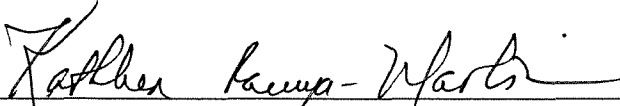
Director of Labor and  
Industrial Relations  
State of Hawaii

APPROVED AND SO ORDERED BY  
HAWAII LABOR RELATIONS BOARD:

ORDER NO: 133  
DATED : APRIL 1, 2005

  
BRIAN K. NAKAMURA, Chair

  
CHESTER C. KUNITAKE, Member

  
KATHLEEN RACUYA-MARKRICH, Member

**State of Hawaii**

Department of Labor and Industrial Relations

HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION

830 PUNCHBOWL STREET, ROOM 425

Honolulu, HI 96813

Phone: (808) 586-9110

FAX: (808) 586-9104



Certified Number: 7003 3110 0003 1480 5370

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## Citation and Notification of Penalty

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**To:**  
Engle Development & Insulation Inc  
and its successors  
78-6823 Makenawai St  
Kailua Kona, HI 96740

**Inspection Number:** 307259820 Charles Clark

**Inspection Date(s):** 07/21/2004 - 07/21/2004

**Issuance Date:** 09/20/2004

**OSHSO ID:** X8851

**Optional Report No.:** 07704

**Inspection Site:**  
75-6025 Alii Dr  
Kailua Kona, HI 96740

*The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.*

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This Citation and Notification of Penalty describes violations of the Hawaii Occupational Safety and Health Law. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties, unless within 20 calendar days from your receipt of this Citation and Notification of Penalty, you mail a notice of contest to the State of Hawaii Occupational Safety and Health Division (HIOSH) at the address shown above. Please refer to the enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the law has occurred unless there is a failure to contest as provided for in the law or, if contested, unless this Citation is affirmed by the Hawaii Labor Relations Board (HLRB) or a court.

**Posting** - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer. The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.

EXHIBIT A

**Informal Conference** - An informal conference is not required. However, if you wish to have such a conference you may request one with the Administrator during the 20 calendar day contest period. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Administrator within 20 calendar days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 4, Notice to Employees, next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

**Employers' Right to Contest** - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Administrator in writing that you intend to contest the citation(s) and/or penalty(ies) within 20 calendar days after receipt, the citation(s) and the penalty(ies) will become a final order of the Department of Labor and Industrial Relations and may not be reviewed by any court or agency. Once a letter of contest is received, it becomes the jurisdiction of the HLRB.

**Penalty Payment** - Penalties are due within 20 calendar days of receipt of this notification unless contested. Make your check or money order payable to "Director of Budget and Finance." Please indicate the Inspection Number on the remittance.

HIOSH does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

**Notification of Corrective Action** - For each violation which you do not contest, you are required by Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification must be sent by you within 5 calendar days of the abatement date indicated on the citation. For Willful and Repeat violations, documents (example: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as Serious and the citation states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

All abatement verification documents must contain the following information: 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by Section 12-55-22 to be sent to HIOSH, also be posted at the location where the violation appeared and the corrective action took place.

**Employer Discrimination Unlawful** - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 60 days after the discrimination occurred with the Hawaii Occupational Safety and Health Division at the address shown above.

**Employer Rights and Responsibilities** - The enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

**Employees' Right to Contest** - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Hawaii Occupational Safety and Health Division at the address shown above and postmarked within 20 calendar days of the receipt by the employer of this Citation and Notification of Penalty.

**Inspection Activity Data** - you should be aware that OSHA publishes information on inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at [WWW.OSHA.GOV](http://WWW.OSHA.GOV). If you have any dispute with the accuracy of the information displayed, please contact this office.





## NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with HIOSH to discuss the citation(s) issued on 09/20/2004. The conference will be held at the HIOSH office located at 830 PUNCHBOWL STREET, ROOM 425, Honolulu, HI 96813 on \_\_\_\_\_ at \_\_\_\_\_. Employees and/or representatives of employees have a right to attend an informal conference.

**STATE OF HAWAII**

Department of Labor and Industrial Relations  
Hawaii Occupational Safety and Health Division

Inspection Number: 307259820

Inspection Dates: 07/21/2004 - 07/21/2004



830 Punchbowl Street, Room 425  
Honolulu, HI 96813

Issuance Date: 09/20/2004

**Citation and Notification of Penalty**

Company Name: Engle Development & Insulation Inc  
Inspection Site: 75-6025 Alii Dr, Kailua Kona, HI 96740

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

29 CFR 1926.501(b)(13) [Refer to chapter 12-121.2, HAR] was violated because:

Fall protection systems were not installed thus exposing an employee to fall hazards.


29 CFR 1926.501(b)(13) states "Residential construction. Each employee engaged in residential construction activities 6 feet (1.8 m) or more above lower levels shall be protected by guardrail systems, safety net system, or personal fall arrest system unless another provision in paragraph (b) of this section provides for an alternative fall protection measure. Exception: When the employer can demonstrate that it is infeasible or creates a greater hazard to use these systems, the employer shall develop and implement a fall protection plan which meets the requirements of paragraph (k) of 1926.502.

Note: There is a presumption that it is feasible and will not create a greater hazard to implement at least one of the above-listed fall protection systems. Accordingly, the employer has the burden of establishing that it is appropriate to implement a fall protection plan which complies with 1926.502(k) for a particular workplace situation, in lieu of implementing any of those systems."

Location: Bldg K

Date By Which Violation Must be Abated:  
Penalty:

Corrected  
\$300.00

  
NELSON B. BEFITELE  
DIRECTOR

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

**State of Hawaii**

Department of Labor and Industrial Relations

HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION

830 PUNCHBOWL STREET, ROOM 425

Honolulu, HI 96813



**SUMMARY OF PENALTIES**

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**Company Name:** Engle Development & Insulation Inc  
**Inspection Site:** 75-6025 Alii Dr  
Kailua Kona, HI 96740  
**Issuance Date:** 09/20/2004

Summary of Penalties for Inspection Number		<b>307259820</b>
Citation 01, Serious	=	\$300.00
<b>TOTAL PENALTIES</b>	=	<b>\$300.00</b>

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Make check or money order payable to the "Director of Budget and Finance." Please indicate the inspection number and dba, if company name is different, on the remittance. A fee of \$15.00 will be charged for any returned checks.

If receipt is desired, please indicate with payment; otherwise, your cancelled check will be your receipt.



## Track & Confirm

### Shipment Details

You entered 7003 3110 0003 1480 5370

Your item was delivered at 11:14 am on September 23, 2004 in KAILUA KONA, HI 96740.

Here is what happened earlier:

- NOTICE LEFT, September 21, 2004, 10:41 am, KAILUA KONA, HI 96740

### Track & Confirm

Enter label number:

Track & Confirm FAQs

7003 3110 0003 1480 5370

U.S. Postal Service <sup>®</sup>	
<b>CERTIFIED MAIL<sup>®</sup> RECEIPT</b>	
(Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at <a href="http://www.usps.com">www.usps.com</a>	
<b>OFFICIAL MAIL OFFICE</b>	
<b>Sent To:</b>	<b>Safety Postage</b>
Engle Development & Insulation, Inc.	\$ 60
78-6823 Makenawai Street	2.30
	1.75
	<b>Total Postage &amp; Fees</b>
	\$ 465
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Postage Held 20 SEP 2004 HONOLULU USPS	

### SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to: 307259820

Mr. Tom Engle, President  
Engle Development &  
Insulation, Inc.  
78-6823 Makenawai Street  
Kailua-Kona, Hawaii 96740

2. Article Number

(Transfer from service label)

7003 3110 0003 1480 5370

PS Form 3811, August 2001

Domestic Return Receipt

102565-02-M

### COMPLETE THIS SECTION ON DELIVERY

A. Signature

X / [Signature]

☐ Agent  
☐ Address

B. Received by (Printed Name)

C. Date of Delivery

9/23/04

D. Is delivery address different from item 1?  
If YES, enter delivery address below.

☐ Yes  
☒ No

3. Service Type

☐ Certified Mail ☐ Express Mail  
☐ Registered ☐ Return Receipt for Merchandise  
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes