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HAWAII LABOR
RELATIONS BOARD

Attorneys for Complainant Director
of Labor and Industrial Relations

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. OSH 2011-7
)	(Inspection No. 313081150)
DIRECTOR, DEPARTMENT OF LABOR)	
AND INDUSTRIAL RELATIONS,)	STIPULATION AND SETTLEMENT
)	AGREEMENT; EXHIBIT A-B; APPROVAL
Complainant,)	AND ORDER
)	
and)	
)	
THE TERMINIX INTL CO LP,)	
)	
Respondent.)	
)	

STIPULATION AND SETTLEMENT AGREEMENT

Complainant Director of Labor and Industrial Relations ("Director") and Respondent THE TERMINIX INTL CO LP ("Respondent") having reached a full and complete settlement of the above-captioned contested case presently pending before the Hawaii Labor Relations Board ("Board") stipulate and agree as follows:

On or about November 24, 2010, the Director, by and through the State of Hawaii's Occupational Safety and Health Division ("HIOSH"), inspected Respondent's

workplace located at 73-5574 Olowalu Street #11 & 12, Kailua-Kona, Hawaii 96740.

As a consequence of said inspection, the Director, through HIOSH's Administrator, issued a Citation and Notification of Penalty on January 27, 2011 ("Citation") to Respondent alleging violations of the Hawaii Occupational Safety and Health Standards and assessed an aggregate penalty of \$2,750.00. See Exhibit A.

Respondent timely contested the Citation.

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 73-5574 Olowalu Street #11 & 12, 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 abated each violation listed in the Citation in compliance with the abatement requirements under Hawaii Administrative Rules § 12-51-22. As documentation of its compliance with abatement requirements, Respondent completed the abatement certification attached hereto as Exhibit B. In addition, Respondent agrees to re-instruct Carlton Agena and Douglas Belle about their responsibilities for safety and health of employees and agrees to provide written confirmation of this within 30 days of the date of this Agreement.
5. The violations and corresponding characterizations as stated in the

Citation are affirmed, with the exception of Citation 1 Item 1a and Citation 1 Item 1b, wherein the classifications of "Type of Violation: Serious" are amended to "Type of Violation: Other than Serious."

6. The Director reduces the aggregate penalty from \$2,750.00 to \$2,200.00 which shall be paid in full payable to the Director of Budget and Finance upon the execution of this Agreement.

7. Except for the stipulated amendments described above, the Citation is affirmed in all other respects and upon approval by the Board, 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 this Agreement and Order shall remain posted for three working days (excluding weekends and State holidays).

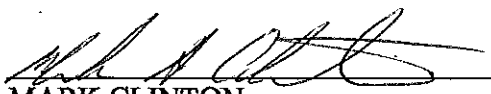
9. Respondent shall continue to comply with HRS chapter 396, the Hawaii Occupational Safety and Health Law, and the related rules.

10. 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.

11. Upon approval of this Agreement, all proceedings before the Board shall be dismissed.


DATED: San Diego, California, 7/1/11.

TERMINIX INTL CO LP

By: 
MARK CLINTON
Its West Division Safety Manager

APPROVED AS TO FORM:

DIRECTOR OF LABOR AND INDUSTRIAL
RELATIONS, STATE OF HAWAII


LAWRENCE H. NAKANO
Deputy Attorney General
Attorney for Director of Labor and
Industrial Relations, State of Hawaii


DWIGHT TAKAMINE

APPROVED AND SO ORDERED BY
HAWAII LABOR RELATIONS BOARD:

ORDER NO. 441

DATED: July 7, 2011


JAMES B. NICHOLSON, Chair


SESNITA A.D. MOEPONO, Member


ROCK B. LEY, Member

Director, Department of Labor and Industrial Relations and The Terminix Intl Co LP, OSH 2011-7 (Insp.
No.313081150) – Stipulation and Settlement Agreement

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: 7006 0100 0005 8250 9740

Citation and Notification of Penalty

To: The Terminix Intl Co LP and its successors 73-5574 Olowalu St #11 & 12 Kailua Kona, HI 96740	Inspection Number: 313081150 Inspection Date(s): 11/22/2010- 11/24/2010 Issuance Date: 01/27/2011 OSHCO ID: X8851 Optional Report No.: 01011 Inspection Type: Complaint Scope of Inspection: Comprehensive Inspection
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Inspection Site:
73-5574 Olowalu St #11 & 12
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.

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 5, 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 violations 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 (examples: 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 12-51-22 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. If you have any dispute with the accuracy of the information displayed, please contact this office.

ABATEMENT CERTIFICATION

DWIGHT TAKAMINE, INTERIM DIRECTOR
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HI 96813

The Terminix Intl Co LP
73-5574 Olowalu St #11 & 12
Kailua Kona, HI 96740

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____.

I attest that the information contained in this document is accurate and that the affected employees and their representatives have been informed of the abatement activities described in this certification.

Signature

Typed or Printed Name

State of Hawaii

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



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with HIOSH to discuss the citation(s) issued on 01/27/2011. 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: 313081150
Inspection Dates: 11/22/2010 - 11/24/2010
Issuance Date: 01/27/2011



Citation and Notification of Penalty

Company Name: The Terminix Intl Co LP
Inspection Site: 73-5574 Olowalu St #11 & 12, Kailua Kona, HI 96740

The alleged violations below (1a & 1b) have been grouped because they involve similar or related hazards that may increase the potential for injury or illness.

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

29 CFR 1910.134(e)(1) [Refer to chapter 12-64.1-1, HAR] was violated because:

Two employees were not provided with the required medical evaluation prior to using a Self-contained breathing apparatus (SCBA).

29 CFR 1910.134(e)(1) states "General. The employer shall provide a medical evaluation to determine the employee's ability to use a respirator, before the employee is fit tested or required to use the respirator in the workplace. The employer may discontinue an employee's medical evaluations when the employee is no longer required to use a respirator."

Location: Site

Date By Which Violation Must be Abated:
Penalty:

Corrected
\$ 1,375.00

State of Hawaii

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

Inspection Number: 313081150

Inspection Dates: 11/22/2010-11/24/2010

Issuance Date: 01/27/2011



Citation and Notification of Penalty

Company Name: The Terminix Intl Co LP

Inspection Site: 73-5574 Olowalu St #11 & 12, Kailua Kona, HI 96740

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

29 CFR 1910.134(f) [Refer to chapter 12-64.1-1, HAR] was violated because:

Two employees were not fit tested prior to using a Self-contained breathing apparatus (SCBA).

29 CFR 1910.134(f) states "This paragraph requires that, before an employee may be required to use any respirator with a negative or positive pressure tight-fitting facepiece, the employee must be fit tested with the same make, model, style, and size of respirator that will be used. This paragraph specifies the kinds of fit tests allowed, the procedures for conducting them, and how the results of the fit tests must be used."

Location: Site

Date By Which Violation Must be Abated:

02/14/2011

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

Inspection Number: 313081150
Inspection Dates: 11/22/2010 - 11/24/2010
Issuance Date: 01/27/2011



Citation and Notification of Penalty

Company Name: The Terminix Intl Co LP
Inspection Site: 73-5574 Olowalu St #11 & 12, Kailua Kona, HI 96740

Citation 1 Item 2 Type of Violation: **Serious**

29 CFR 1910.23(c)(1) [Refer to chapter 12-72.1-1, HAR] was violated because:

Employees installing fumigation tenting on roofs more than 4 feet above the lower level were not utilizing conventional fall protection while exposed to fall hazards.

29 CFR 1910.23(c)(1) states "Every open-sided floor or platform 4 feet or more above adjacent floor or ground level shall be guarded by a standard railing (or the equivalent as specified in paragraph (e)(3) of this section) on all open sides except where there is entrance to a ramp, stairway, or fixed ladder. The railing shall be provided with a toeboard wherever, beneath the open sides,

- (i) Persons can pass,
- (ii) There is moving machinery, or
- (iii) There is equipment with which falling materials could create a hazard."

Location: Sites

Date By Which Violation Must be Abated: 01/31/2011
Penalty: \$ 1,375.00

State of Hawaii

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

Inspection Number: 313081150

Inspection Dates: 11/22/2010 - 11/24/2010

Issuance Date: 01/27/2011



Citation and Notification of Penalty

Company Name: The Terminix Intl Co LP

Inspection Site: 73-5574 Olowalu St #11 & 12, Kailua Kona, HI 96740

Citation 2 Item 1 Type of Violation: **Other**

29 CFR 1910.305(b)(2)(i) [Refer to chapter 12-89.1-1, HAR] was violated because:

A 3-wire duplex wall mounted outlet was missing the cover plate.

29 CFR 1910.305(b)(2)(i) states "All pull boxes, junction boxes, and fittings shall be provided with covers identified for the purpose. If metal covers are used, they shall be grounded. In completed installations, each outlet box shall have a cover, faceplate, or fixture canopy. Covers of outlet boxes having holes through which flexible cord pendants pass shall be provided with bushings designed for the purpose or shall have smooth, well-rounded surfaces on which the cords may bear."

Location: Warehouse

Date By Which Violation Must be Abated:

Corrected

Penalty:

\$ 0.00

See pages 1 through 5 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

Inspection Number: 313081150
Inspection Dates: 11/22/2010 - 11/24/2010
Issuance Date: 01/27/2011



Citation and Notification of Penalty

Company Name: The Terminix Intl Co LP
Inspection Site: 73-5574 Olowalu St #11 & 12, Kailua Kona, HI 96740

Citation 2 Item 2 Type of Violation: **Other**

29 CFR 1910.305(g)(1)(iv) [Refer to chapter 12-89.1-1, HAR] was violated because:

A 3-wire orange flexible extension cord was run through a doorway.

29 CFR 1910.305(g)(1)(iv) states "Unless specifically permitted otherwise in paragraph (g)(1)(ii) of this section, flexible cords and cables may not be used:

(c) Where run through doorways, windows, or similar openings."

Location: Warehouse mezzanine

Date By Which Violation Must be Abated:
Penalty:

Corrected
\$ 0.00



DWIGHT TAKAMINE
Interim Director

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

Company Name: The Terminix Intl Co LP
Inspection Site: 73-5574 Olowalu St #11 & 12, Kailua Kona, HI 96740
Issuance Date: 01/27/2011

Summary of Penalties for Inspection Number 313081150

Citation 1, Serious	= \$	2,750.00
Citation 2, Other	= \$	0.00
TOTAL PENALTIES	= \$	2,750.00

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.

ABATEMENT CERTIFICATION

DWIGHT TAKAMINE, INTERIM DIRECTOR
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HI 96813

The Terminix Intl Co LP
73-5574 Olowalu St #11 & 12
Kailua Kona, HI 96740

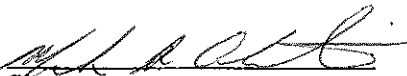
The hazard referenced in Inspection Number 313081150 for the violation identified as
Citation 1 and Item 1a was corrected on 12/22/10.
How corrected: employees were medically evaluated and fit tested for SCBA.

The hazard referenced in Inspection Number 313081150 for the violation identified as
Citation 1 and Item 1b was corrected on 12/25/10.
How corrected: employees were medically evaluated and fit tested for SCBA.

The hazard referenced in Inspection Number 313081150 for the violation identified as
Citation 1 and Item 2 was corrected on 2/15/11.
How corrected: Douglas Bell and Carlton Agana Attended full Protection training
Held by MHA HPOA. The Training covers the Volcanoes and full Protection
The hazard referenced in Inspection Number 313081150 for the violation identified as
Citation 2 and Item 1 was corrected on 11/25/10.
How corrected: cover plate was Replaced

The hazard referenced in Inspection Number 313081150 for the violation identified as
Citation 2 and Item 2 was corrected on 11/15/10.
How corrected: extension cord was Removed

I attest that the information contained in this document is accurate and that the affected employees and their representatives have been informed of the abatement activities described in this certification.


Signature

Mark Clinton
Typed or Printed Name