

ORIGINAL

DAVID M. LOUIE 2162
Attorney General of Hawaii

LAWRENCE H. NAKANO 2288
Deputy Attorney General
Department of Attorney
General, State of Hawaii
Labor Division
425 Queen Street
Honolulu, Hawaii 96813
Telephone: 586-1450

2013 DEC -4 AM 9:41

HAWAII LABOR
RELATIONS BOARD

Attorneys for Complainant Director, Department
of Labor and Industrial Relations

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

| | |
|-------------------------------|-------------------------------------|
| In the Matter of |) CASE NO. OSH 2013-10 |
| |) (Inspection No. 316267384) |
| DIRECTOR, DEPARTMENT OF LABOR |) |
| AND INDUSTRIAL RELATIONS, |) STIPULATION AND SETTLEMENT |
| |) AGREEMENT; EXHIBITS 1-3; APPROVAL |
| Complainant, |) AND ORDER |
| |) |
| and |) |
| |) |
| RENT A FENCE, INC., |) |
| |) |
| Respondent. |) |
| |) |

STIPULATION AND SETTLEMENT AGREEMENT

Complainant Director, Department of Labor and Industrial Relations ("Director")
and Respondent RENT A FENCE, INC., ("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:

From on or about April 24, 2012 through April 27, 2012, Director, by and through
the State of Hawaii's Occupational Safety and Health Division ("HIOSH"), inspected

Respondent's workplace located at 96-1268 Waihona Street, Pearl City, Hawaii, 96782.

As a consequence of said inspection, Director, through HIOSH's Administrator, issued a Citation and Notification of Penalty ("Citation") to Respondent on September 4, 2012 alleging violations of the Hawaii Occupational Safety and Health Standards and assessed an aggregate penalty of \$660.00. See Exhibit 1.

Respondent acknowledged receipt of the Citation on September 14, 2012.

Respondent did not contest the Citation which therefore became a final order of the Department of Labor and Industrial Relations by on or about October 4, 2012.

On or about October 30, 2012, Director, by and through HIOSH conducted a re-inspection of Respondent's workplace located at 96-1268 Waihona Street, Pearl City, Hawaii 96782.

As a consequence of the re-inspection, the Director, through HIOSH's Administrator, issued a Notification of Failure to Abate Alleged Violations on or about May 20, 2013 and assessed an additional penalty of \$51,000.00. See Exhibit 2.

Respondent contested the Notification of Failure to Abate Alleged Violations.

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 96-1268 Waihona Street, Pearl City, Hawaii 96782.
- 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 Notification of Failure to Abate Alleged Violations in compliance with the abatement requirements under Hawaii Administrative Rules § 12-51-22 as indicated in the completed Abatement Certificate attached hereto as Exhibit 3.

5. Director reduces the additional proposed penalty for failure to abate the alleged violations from \$51,000.00 to \$1,000.00, which amount has been paid in full. Respondent further agrees that if it fails to abide by the terms of this agreement, Director may give notice and may declare the entire original penalty in the amount of \$51,000.00 immediately due and owing, provided that all payments made by Respondent shall be credited to Respondent and retained by Director.

6. Except for the stipulated amendment described above, the Notification of Failure to Abate Alleged Violation is confirmed in all other respects and upon approval by the Board, this Agreement and the Notification of Failure to Abate Alleged Violation, as amended, shall become a final order of the Director.

7. Respondent shall post a copy of this Agreement and Order in a prominent place at or near the location of the posting of the Notification of Failure to Abate Alleged Violation, and the Agreement and Order shall remain posted for three working days (excluding weekends and State holidays).

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


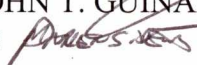
9. Nothing in this Agreement shall bar Director from taking any action

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.

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


DATED: Honolulu, Hawaii, 11-21-13.

RENT A FENCE, INC.,

By: 
JOHN T. GUINAN, JR.
Its 

APPROVED AS TO FORM:

DIRECTOR, DEPARTMENT OF LABOR AND
INDUSTRIAL RELATIONS


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


DWIGHT TAKAMINE

APPROVED AND SO ORDERED BY
HAWAII LABOR RELATIONS BOARD:

ORDER NO. 538

DATED: December 4, 2013


JAMES B. NICHOLSON, Chair


SESNITA A.D. MOEPONO, Member


ROCK B. LEY, Member

Director, Department of Labor and Industrial Relations and Rent a Fence, Inc., OSH 2013-10 (Insp. No. 316267384) – Stipulation and Settlement Agreement

State of Hawaii

Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 423
HONOLULU, HI 96813
Phone: (808)586-9090 FAX: (808)586-9104



Certified Number: 7006 2760 0000 7214 8381

Citation and Notification of Penalty

To:
Rent A Fence Inc
and its successors
96-1422 Waihona Pl
Pearl City, HI 96782

Inspection Number: 316265222
Inspection Date(s): 04/24/2012- 04/27/2012
Issuance Date: 09/04/2012

Inspection Site:
96-1268 Waihona St
Pearl City, HI 96782

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.**

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

DIANTHA M. GOO, ADMINISTRATOR
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 423
HONOLULU, HI 96813

Rent A Fence Inc
96-1422 Waihona Pl
Pearl City, HI 96782

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 09/04/2012. The conference will be held at the HIOSH office located at 830 PUNCHBOWL STREET, ROOM 423, HONOLULU, HI, 96813 on _____ at _____.

Employees and/or representatives of employees have a right to attend an informal conference.



Citation and Notification of Penalty

Company Name: Rent A Fence Inc
Inspection Site: 96-1268 Waihona St, Pearl City, HI 96782

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

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

29 CFR 1910.1200(e)(1) [Refer to chapter 12-60-50(a) HAR] was violated because:

The employer did not develop, implement, and/or maintain at the workplace a written hazard communication program for employees exposed to flammable gas (i.e. propane, LPG).

29 CFR 1910.1200(e)(1) states "(1) Employers shall develop, implement, and maintain at each workplace, a written hazard communication program that at least describes how the criteria specified in paragraphs (f), (g), and (h) of this section for labels and other forms of warning, material safety data sheets, and employee information and training will be met, and that also includes the following: (i) A list of the hazardous chemicals known to be present using an identity that is referenced on the appropriate material safety data sheet (the list may be compiled for the workplace as a whole or for individual work areas); and, (ii) The methods the employer will use to inform employees of the hazards of non-routine tasks (for example, the cleaning of reactor vessels), and the hazards associated with chemicals contained in unlabeled pipes in their work areas."

Location: Establishment

| | |
|---|------------|
| Date By Which Violation Must be Abated: | 10/08/2012 |
| Penalty: | \$ 660.00 |



Citation and Notification of Penalty

Company Name: Rent A Fence Inc
Inspection Site: 96-1268 Waihona St, Pearl City, HI 96782

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

29 CFR 1910.1200(h)(1) [Refer to chapter 12-60-50(a) HAR] was violated because:

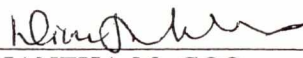
The employer did not provide information and training to the employees on the requirements of the Hazard Communication Standard.

29 CFR 1910.1200(h)(1) states "Employers shall provide employees with effective information and training on hazardous chemicals in their work area at the time of their initial assignment, and whenever a new physical or health hazard the employees have not previously been trained about is introduced into their work area. Information and training may be designed to cover categories of hazards (e.g., flammability, carcinogenicity) or specific chemicals. Chemical-specific information must always be available through labels and material safety data sheets."

Location: Establishment

Date By Which Violation Must be Abated:

09/21/2012



DIANTHA M. GOO
Administrator

State of Hawaii

Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 423
HONOLULU, HI 96813
Phone: (808)586-9090 FAX: (808)586-9104



Certified Number: 7012 2210 0002 6655 5170

Notification of Failure to Abate Alleged Violations

To:

Rent A Fence Inc
and its successors
96-1422 Waihona Pl
Pearl City, HI 96782

Original Inspection Number: 316265222

Original Inspection Date: 04/24/2012-04/27/2012

Inspection Number: 316267384

Inspection Date(s): 10/30/2012-10/30/2012

Issuance Date: 05/10/2013

Inspection Site:

96-1268 Waihona St
Pearl City, HI 96782

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.

After the original inspection, a Citation(s) was issued to you in accordance with the provisions of the Hawaii Occupational Safety and Health Law, Chapter 396, Hawaii Revised Statutes, notifying you of certain violations of the Law and the dates by which they were to be abated. Based upon reinspection, it is alleged that you have failed to abate the violation(s) listed below within the time prescribed, and the following additional penalties are added. The additional penalty is computed by multiplying a daily penalty times the number of days the violation(s) remained unabated. You are to notify the Administrator in writing of the date and nature of the corrective action taken. If you do not abate the violation(s), further penalties may be added and other enforcement action to compel abatement may be taken under section 4(d) of the Law.

You are further notified that you must pay the **ADDITIONAL PENALTY** unless you inform the Administrator in writing that you intend to contest the Notification or the Additional Penalty within 20 calendar days from your receipt of this notification. If you do not contest within 20 calendar days after receipt, the Notification and the additional penalties will become the final order of the Department of Labor and Industrial Relations and may not be reviewed by any court of agency. Issuance of this Notification 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, if contested, unless the Notification is affirmed by the Department of Labor and Industrial Relations Appeals Board. **Please refer to the previous materials that you received as to employer's rights, etc.**

Inspection Activity Data - You should be aware that OSHA publishes information on its 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.

State of Hawaii

Hawaii Occupational Safety and Health Division



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with HIOSH to discuss the Notification of Failure to Abate Alleged Violations issued on 05/10/2013. The conference will be held at the HIOSH office located at 830 PUNCHBOWL STREET, ROOM 423, 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



Notification of Failure to Abate Alleged Violation

Original Inspection: 316265222

Original Inspection Dates: 04/24/2012 - 04/27/2012

Inspection: 316267384

Inspection Dates: 10/30/2012 - 10/30/2012

Issuance Date: 05/10/2013

Company Name: Rent A Fence Inc

Inspection Site: 96-1268 Waihona St, Pearl City, HI 96782

Citation 1 Item 1a

29 CFR 1910.1200(e)(1) [Refer to chapter 12-60-50(a) HAR] was violated because:

The employer did not develop, implement, and/or maintain at the workplace a written hazard communication program for employees exposed to flammable gas (i.e. propane, LPG).

29 CFR 1910.1200(e)(1) states "Employers shall develop, implement, and maintain at each workplace, a written hazard communication program which at least describes how the criteria specified in paragraphs (f), (g), and (h) of this section for labels and other forms of warning, safety data sheets, and employee information and training will be met, and which also includes the following: (i) A list of the hazardous chemicals known to be present using a product identifier that is referenced on the appropriate safety data sheet (the list may be compiled for the workplace as a whole or for individual work areas); and, (ii) The methods the employer will use to inform employees of the hazards of non-routine tasks (for example, the cleaning of reactor vessels), and the hazards associated with chemicals contained in unlabeled pipes in their work areas."

Location: Establishment

Additional Penalty:

\$ 21,000.00

State of Hawaii

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



Notification of Failure to Abate Alleged Violation

Original Inspection: 316265222

Original Inspection Dates: 04/24/2012 - 04/27/2012

Inspection: 316267384

Inspection Dates: 10/30/2012 - 10/30/2012

Issuance Date: 05/10/2013

Company Name: Rent A Fence Inc

Inspection Site: 96-1268 Waihona St, Pearl City, HI 96782

Citation 1 Item 1b

29 CFR 1910.1200(h)(1) [Refer to chapter 12-60-50(a) HAR] was violated because:


The employer did not provide information and training to the employees on the requirements of the Hazard Communication Standard.

29 CFR 1910.1200(h)(1) states "Employers shall provide employees with effective information and training on hazardous chemicals in their work area at the time of their initial assignment, and whenever a new chemical hazard the employees have not previously been trained about is introduced into their work area. Information and training may be designed to cover categories of hazards (e.g., flammability, carcinogenicity) or specific chemicals. Chemical-specific information must always be available through labels and safety data sheets.

Location: Establishment

Additional Penalty:

\$ 30,000.00


DIANTHA M. GOO
Administrator

ABATEMENT CERTIFICATION

DIANTHA M. GOO, ADMINISTRATOR
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 423
HONOLULU, HI 96813

Rent A Fence Inc
96-1422 Waihona Pl
Pearl City, HI 96782

The hazard referenced in Inspection Number 314267384 for the violation identified as
Citation 1 and Item 1a was corrected on _____.
How corrected: HAZARD ANALYSIS HAS BEEN COMPLETED AND IS REVIEWED WEEKLY.

The hazard referenced in Inspection Number 316267304 for the violation identified as
Citation 1 and Item 1b was corrected on _____.
How corrected: INFORMATION & CYCLICAL TRAINING TO ALL EMPLOYEES HAS BEEN EFFECTED ON THE REQUIREMENTS OF HAZARD COMM. STANDARDS.

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

John T. Guinan, Jr.
Typed or Printed Name