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2014 JUN 26 AM 9:37

HAWAII LABOR
RELATIONS BOARD

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of DIRECTOR, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS, Complainant, vs. SIEMENS INDUSTRY, INC., Respondent.	CASE NO. OSH 2014-7 (Inspection No. 316270206) STIPULATION AND SETTLEMENT AGREEMENT; EXHIBIT A; APPROVAL AND ORDER

STIPULATION AND SETTLEMENT AGREEMENT

Complainant Director of Labor and Industrial Relations ("Director") and Respondent Siemens Industry, 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:

On or about April 29, 2013 to August 21, 2013, the Director, by and through the State of Hawaii's Occupational Safety and Health Division ("HIOSH"), inspected Respondent's

workplace located at Olaa No. 6 Well, Mountain View, Hawaii 96771.

As a consequence of said inspection, the Director, through HIOSH's Administrator, issued a Citation and Notification of Penalty on October 24, 2013 ("Citation") to Respondent alleging violations of the Hawaii Occupational Safety and Health Standards and assessed an aggregate penalty of $20,790.00. 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 Olaa No. 6 Well, Mountain View, Hawaii 96771.

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 certifies it has abated the Citation (as amended below) as follows: In May 2013, within a few weeks after the April 2013 incident underlying the citations, Respondent conducted 8-hour training classes for 16 employees on electrical safety-related work practices. The training was conducted by the Technology Services Manager, Industry Sector for the Customer Services Division, who has extensive training and experience with how to work safely with energized medium-voltage equipment. The topics covered included: Electrical Arc Flash Hazard – Enhancing Personnel Safety & Complying with NFPA Regulations; Electrical

Safety - Live Work Program; Electrical Safety – Protective Equipment Program; and Electrical Safety – Daily Meeting Program. Attendees were members of the Medium Voltage Product Development Group and the Field Service organization.

5. Based on Respondent's abatement certifications set forth above, HIOSH agrees Respondent has abated the Citation, as amended below.

6. The Citation is amended as follows:

a. Citation 1 Item 1 and its corresponding penalty for $6,930.00 are entirely deleted;

b. Citation l Item 2 is amended to cite a violation under 29 C.F.R. § 1926.417(b) [Refer to chapter 12-110-50(a), Hawaii Administrative Rules] with a corresponding penalty of $6,930.00 and to read as follows:

> Equipment or circuits that were deenergized were not rendered inoperative and did not have tags attached at all points where such equipment or circuits could be energized:
>
> Olaa #6 Well, Series 81000 cabinet in control building: An employee who was trouble shooting a Siemens Series 81000 controller did not render the equipment inoperative and did not attach tags prior to doing work on the controller, potentially exposing him to electrocution.

c. Citation 1 Item 3 and its corresponding penalty for $6,930.00 are entirely deleted.

7. The Director reduces the aggregate penalty from $20,790.00 to $6,930.00 which shall be paid in full to the Director of Budget and Finance within 20 calendar days of receipt of an order by the Board approving this Agreement.

8. Except for the stipulated amendments described above, the Citation is confirmed 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.

9. 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).

10. Except for proceedings under HRS chapter 396, the Hawaii Occupational Safety and Health Law, or the related rules, nothing in this Agreement shall be deemed an admission of the allegations contained within the Citation and Notification of Penalty. Neither this Agreement nor any order of the Board entered pursuant to this Agreement shall be offered, used, or admitted in evidence in any litigation or other proceeding, other than in proceedings arising under HRS chapter 396, the Hawaii Occupational Safety and Health Law, or the related rules.

11. 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.

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

APPROVED AS TO FORM:

Mark N. Duvall

MARK N. DUVALL
Attorney for Respondent

Date signed:_____

SIEMENS INDUSTRY, INC.

By: _____

NOE G. BERMUDEZ
(Print Name) ASSISTANT SECRETARY

Its: _____

Date signed: 6-6-2014

APPROVED AS TO FORM:

J. GERARD LAM
Deputy Attorney General
Attorney for Director of Labor and
Industrial Relations, State of Hawaii

Date signed: 6-20-14

DIRECTOR OF LABOR AND
INDUSTRIAL RELATIONS

DWIGHT TAKAMINE

Date signed: 6/24/14

APPROVED AND SO ORDERED BY HAWAII LABOR RELATIONS BOARD:

EXCUSED

JAMES B. NICHOLSON, Chair

Date signed:_____

ORDER NO. 583
DATED: June 26, 2014

Sesnita a.D. Moepono

SESNITA A.D. MOEPONO, Member

Date signed: 6/26/14

Rock B. Ley

ROCK B. LEY, Member

Date signed: 6/26/14

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)586-586-9110 FAX: (808)586-9104

Certified Number: 7012 2210 0002 6655 7396

Citation and Notification of Penalty

To:
Siemens Industry Inc
and its successors
3333 Old Milton Pkwy
Alpharetta, GA 30005

Inspection Number: 316270206
Inspection Date(s): 04/29/2013- 08/21/2013
Issuance Date: 10/24/2013

Inspection Site:
Olaa No. 6 Well
Mountain View, HI 96771

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 ofice.

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

Siemens Industry Inc
3333 Old Milton Pkwy
Alpharetta, GA 30005

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 10/24/2013. 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.

Citation and Notification of Penalty

Company Name: Siemens Industry Inc
Inspection Site: Olaa No. 6 Well, Mountain View, HI 96771

Citation 1 Item 1 Type of Violation: Serious

29 CFR 1910.333(a)(1): [Refer to chapter 12-60-50(a), HAR]: Live parts to which an employee could be exposed were not deenergized before the employee worked on or near them:

Olaa #6 Well, Series 81000 cabinet in control building - An employee opened the door of cabinet which housed the Siemens Series 81000 motor controller while it was energized, made contact with the live parts and was electrocuted.

Date By Which Violation Must be Abated:	11/18/2013
Penalty:	$ 6,930.00

Citation 1 Item 2 Type of Violation: Serious

29 CFR 1910.333(b)(2): [Refer to chapter 12-60-50(a), HAR]: While any employee was exposed to contact with parts of fixed electric equipment or circuits which had been deenergized, the circuits energizing the parts were not locked out or tagged or both:

Olaa #6 Well, Series 81000 cabinet in control building - An employee who was trouble shooting a Siemens Series 81000 controller did not lock out the power prior to doing work on the controller potentially exposing him to electrocution.

Date By Which Violation Must be Abated:	11/18/2013
Penalty:	$ 6,930.00

Citation and Notification of Penalty

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Inspection Site: Olaa No. 6 Well, Mountain View, HI 96771

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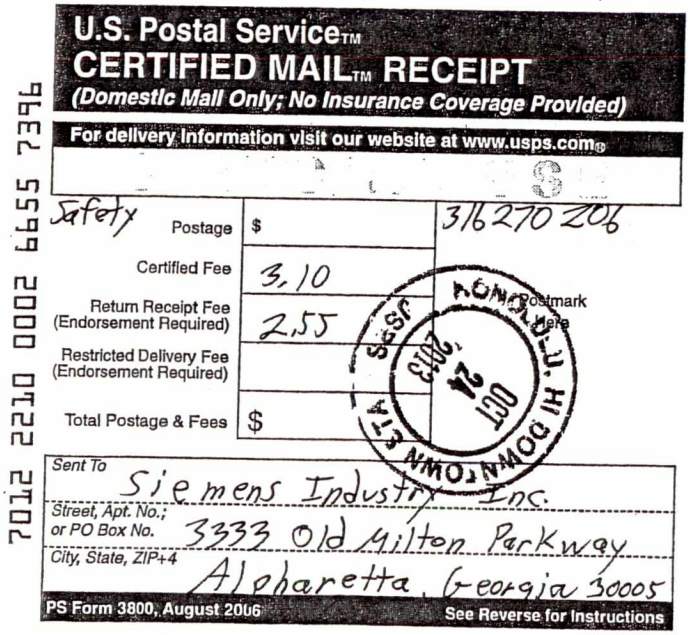
State of Hawaii
Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 423
HONOLULU, HI 96813

SUMMARY OF PENALTIES

Company Name: Siemens Industry Inc
Inspection Site: Olaa No. 6 Well, Mountain View, HI 96771
Issuance Date: 10/24/2013

Summary of Penalties for Inspection Number 316270206

Citation 1, Serious	=	**$ 20,790.00**
TOTAL PROPOSED PENALTIES	=	**$ 20,790.00**

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.