ORIGINAL

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2014 OCT 22 AM 10: 10

HAWAII LABOR
RELATIONS BOARD

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of	) CASE NO. OSH 2014-18
	) (Inspection No. 316274596)
DIRECTOR, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS,	)
	) STIPULATION AND SETTLEMENT
	) AGREEMENT; EXHIBIT A; APPROVAL
Complainant,	) AND ORDER
	)
vs.	)
	)
CC ENGINEERING & CONSTRUCTION, INC.,	)
	)
	)
Respondent.	)

STIPULATION AND SETTLEMENT AGREEMENT

Complainant Director of Labor and Industrial Relations ("Director") and Respondent CC ENGINEERING & CONSTRUCTION, 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 March 18, 2014, the Director, by and through the State of Hawaii's Occupational Safety and Health Division ("HIOSH"), inspected Respondent's workplace located

at 869 Punchbowl Street, Honolulu, Hawaii 96813.

As a consequence of said inspection, the Director, through HIOSH's Administrator, issued a Citation and Notification of Penalty on June 27, 2014 ("Citation") to Respondent alleging violations of the Hawaii Occupational Safety and Health Standards and assessed an aggregate penalty of $825.00. 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 869 Punchbowl Street, Honolulu, Hawaii 96813.

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 shall abate the single violation listed in its Citation as follows:

a. Respondent shall develop an alternate method of moving wheeled trailered equipment both in its shop and in the field in lieu of using powered industrial lift trucks.

b. Respondent shall refrain from performing any modification or additions to any of its powered industrial lift trucks that would affect their capacity or safe operation without written approval from the manufacturer.

c. Respondent shall obtain a letter from a licensed structural engineer confirming that the presence of the hole in the tine of the powered industrial lift truck (forklift) for which Respondent was cited does not in any way affect the load carrying capacity of the forklift's tine.

d. In compliance with abatement requirements under Hawaii Administrative Rule § 12-51-22, Respondent shall submit a completed abatement certification to HIOSH no later than ten (10) days after this Stipulation and Settlement Agreement ("Agreement") is approved and filed; failure to timely do so may result in additional penalties or follow up inspections.

5. In return for and upon Respondent's complete fulfillment of all the agreements described in paragraphs 4.a through 4.d above, the Director shall delete Respondent's Citation and its entire penalty.

6. This Agreement 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 Citation, 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 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.

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

DATED: Honolulu, Hawaii, October 22, 2014.

CC ENGINEERING & CONSTRUCTION, INC.

JEFFREY DURHAM, Vice President

APPROVED AS TO FORM:

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

DIRECTOR OF LABOR AND INDUSTRIAL RELATIONS

DWIGHT TAKAMINE

APPROVED AND SO ORDERED BY HAWAII LABOR RELATIONS BOARD:

ORDER NO. 619

DATED: October 22, 2014

JAMES B. NICHOLSON, Chair

SESNITA A.D. MOEPONO, Member

ROCK B. LEY, Member

EXHIBIT A

FILE COPY

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

Certified Number: 7012 2210 0002 6730 3091

Citation and Notification of Penalty

To:
CC Engineering & Construction Inc
and its successors
P O Box 4349
Kaneohe, HI 96744

Inspection Number: 316274596
Inspection Date(s): 03/18/2014- 03/18/2014
Issuance Date: 06/27/2014

Inspection Site:
869 Punchbowl Street
Honolulu, HI 96813

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 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

CC Engineering & Construction Inc
P O Box 4349
Kaneohe, HI 96744

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 06/27/2014. 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

Inspection Number: 316274596
Inspection Dates: 03/18/2014-03/18/2014
Issuance Date: 06/27/2014

Citation and Notification of Penalty

Company Name: CC Engineering & Construction Inc
Inspection Site: 869 Punchbowl Street, Honolulu, HI 96813

Citation 1 Item 1 Type of Violation: Serious

29 CFR 1926.602(c)(1)(ii): [Refer to chapter 12-110-50(a), HAR]: No modifications or additions which affect the capacity or safe operation of the equipment shall be made without the manufacturer's written approval. If such modifications or changes are made, the capacity, operation, and maintenance instruction plates, tags, or decals shall be changed accordingly. In no case shall the original safety factor of the equipment be reduced.

Open area next to State of Hawaii Department of Transportation Building - There was no manufacturer's written approval for the hole modification in the left tine of the Daewoo Forklift that was at the job site.

Date By Which Violation Must be Abated:	Corrected
Penalty:	$ 825.00

DIANTHA M. GOO
Administrator

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
830 PUNCHBOWL STREET, ROOM 423
HONOLULU, HI 96813

SUMMARY OF PENALTIES

Company Name: CC Engineering & Construction Inc
Inspection Site: 869 Punchbowl Street, Honolulu, HI 96813
Issuance Date: 06/27/2014

Summary of Penalties for Inspection Number 316274596

Citation 1, Serious	= $	**825.00**
TOTAL PENALTIES	= $	**825.00**

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.