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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 2014-29
)	(Inspection No. 316273911)
DIRECTOR, DEPARTMENT OF LABOR)	
AND INDUSTRIAL RELATIONS,)	STIPULATION AND SETTLEMENT
)	AGREEMENT; EXHIBIT A; APPROVAL
Complainant,)	AND ORDER
)	
vs.)	
)	
BF TILE, INC.,)	
)	
Respondent.)	

STIPULATION AND SETTLEMENT AGREEMENT

Complainant Director of Labor and Industrial Relations ("Director") and
Respondent BF TILE, 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 February 7, 2014, the Director, by and through the State of Hawaii's
Occupational Safety and Health Division ("HIOSH"), inspected Respondent's workplace located

at 680 Bannister Street, Honolulu, Hawaii 96819.

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 \$1,650.00. 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 680 Bannister Street, Honolulu, Hawaii 96819.
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 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. The violations and corresponding characterizations as stated in the Citation are affirmed. See Exhibit A.

6. The Director reduces the aggregate penalty from \$1,650.00 to \$825.00 which shall be paid in full to the Director of Budget and Finance upon execution of this Agreement.

7. If Respondent fails to fulfill any condition of this Agreement within the time stated, then, Respondent shall automatically and without further notice be liable for the entire original penalty in the amount of \$1,650.00. All amounts shall be immediately due and owing. If Respondent fails to pay all penalties and the Director institutes legal action to collect on the outstanding amount due, Respondent agrees to pay all fees and costs, including reasonable attorney's fees, incurred to collect on the unpaid penalties. Any forbearance by the Director in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

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

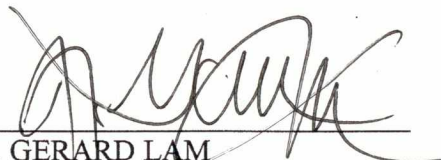
12. Upon approval of this Agreement, all proceedings before the Board shall be dismissed.

DATED: Honolulu, Hawaii, October 23, 2014.

BF TILE, INC.


James Marciel, Shop Superintendent

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. 620

DATED: October 23, 2014


JAMES B. NICHOLSON, Chair


SESNITA A.D. MOEPONO, Member


ROCK B. LEY, Member

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 6730 3213

Citation and Notification of Penalty

To:
B F Tile Inc
and its successors
680 Bannister St
Honolulu, HI 96819

Inspection Number: 316273911
Inspection Date(s): 02/07/2014- 02/07/2014
Issuance Date: 06/27/2014

Inspection Site:
680 Bannister St
Honolulu, HI 96819

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

B F Tile Inc
680 Bannister St
Honolulu, HI 96819

The hazard referenced in Inspection Number 316273911 for the violation identified as
Citation 1 and Item 1, 2a, 2b was corrected on 03/10/14.

How corrected: Extension cord removed and saw and fan were relocated. Both plugged directly into wall outlet. Wet angle grinder is pneumatic not electric.

The hazard referenced in Inspection Number 316273911 for the violation identified as
Citation 2 and Item 1 was corrected on _____.

How corrected: Pending evaluation appointments

The hazard referenced in Inspection Number 316273911 for the violation identified as
Citation 2 and Item 2, 3 was corrected on 03/10/14.

How corrected: Respirators are cleaned daily and stored in air-tight bag, when not in use.

The hazard referenced in Inspection Number 316273911 for the violation identified as
Citation 2 and Item 4 was corrected on 04/14/14.

How corrected: Employees received training in Hazcomm & all MSDS sheets were made available, Also a full safety program.

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.

James Morciel
Signature

James Morciel
Typed or Printed Name

RECEIVED
STATE OF HAWAII-DLIR
2014 JUL 21 PM 1:19
HAWAII OCCUPATIONAL
SAFETY AND HEALTH
DIVISION

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: 316273911
Inspection Dates: 02/07/2014 - 02/07/2014
Issuance Date: 06/27/2014



Citation and Notification of Penalty

Company Name: B F Tile Inc
Inspection Site: 680 Bannister St, Honolulu, HI 96819

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

29 CFR 1910.22(a)(2): [Refer to Chapter 12-60-50(a), HAR]: The floor of every workroom shall be maintained in a clean and, so far as possible, a dry condition. Where wet processes are used, drainage shall be maintained, and false floors, platforms, mats, or other dry standing places should be provided where practicable.

Main Shop - The floor around the Baldor Reliancer wet cutter was not kept in a dry condition in that the water line for the portable wet angle grinder was left lying on the floor and turned on. The wet surface exposed employees to slipping, tripping, and electrical hazards which could cause potentially serious injuries.

Date By Which Violation Must be Abated:
Penalty:

07/01/2014
\$ 825.00

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: 316273911

Inspection Dates: 02/07/2014-02/07/2014

Issuance Date: 06/27/2014



Citation and Notification of Penalty

Company Name: B F Tile Inc

Inspection Site: 680 Bannister St, Honolulu, HI 96819

The alleged violations below (2a & 2b) have been grouped because they involve similar or related hazards that may increase the potential for injury or illness.

Citation 1 Item 2a Type of Violation: Serious

29 CFR 1910.304(a)(2): [Refer to Chapter 12-60-50(a), HAR]: Polarity of connections. No grounded conductor may be attached to any terminal or lead so as to reverse designated polarity.

Fabrication Shop - An extension cord and a splitter were found to be in use and to have the polarity switched. The Sure Test Circuit Analyzer showed that the polarity of the wire was reversed. The corresponding wall outlet was also tested and the polarity was not reversed. The cord and the splitter posed a hazard as employees were working with a wet saw and with a hand-held wet angle grinder which were plugged into the splitter and the extension cord. When the wet saw and the wet angle grinder were not in use, the water line was left on and lying on the floor to create a wet working surface. A third item plugged into the splitter and extension cord was a free standing, metal fan used to cool the work area. The metal fan was also on the wet work surface. Employees were exposed to potentially serious injury due to contact with electrical currents.

Date By Which Violation Must be Abated:

07/07/2014

Proposed Penalty:

\$ 825.00

State of Hawaii

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

Inspection Number: 316273911

Inspection Dates: 02/07/2014 - 02/07/2014

Issuance Date: 06/27/2014



Citation and Notification of Penalty

Company Name: B F Tile Inc

Inspection Site: 680 Bannister St, Honolulu, HI 96819

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

29 CFR 1910.305(a)(2)(ii): [Refer to Chapter 12-60-50(a)]: Temporary wiring shall be removed immediately upon completion of the project or purpose for which the wiring was installed.

Main Shop - An electrical extension cord and three head splitter were used in the place of permanent wiring to power the free standing floor fan, the wet saw Baldor Reliancer Serial No. 512203079 and a hand held wet angle grinder. Temporary wiring in the place of permanent wiring affects the amount of current being consumed on a branch circuit, the distance and resistance the electrical current must travel, and the wear and tear on temporary wiring being used to excess. Employees were exposed to potentially serious injuries due to contact with electrical currents.

Date By Which Violation Must be Abated:

07/07/2014

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: 316273911**Inspection Dates:** 02/07/2014-02/07/2014**Issuance Date:** 06/27/2014**Citation and Notification of Penalty****Company Name:** B F Tile Inc**Inspection Site:** 680 Bannister St, Honolulu, HI 96819**Citation 2 Item 1** Type of Violation: **Other**

29 CFR 1910.134(e)(1): [Refer to chapter 12-60-50(a), HAR]: 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.

Main Shop - An employee was required to wear an elastomeric, half face, respirator when working with dry cutting on marble and stone; however, the employee was not given a medical evaluation to determine if the filtering facepiece dust mask would pose a hazard to the employee's life and health. Without a medical evaluation to determine employee's ability to wear a filtering facepiece dust mask, the employee was exposed to respiratory and pulmonary distress.

Date By Which Violation Must be Abated:**07/30/2014****Penalty:****\$ 0.00**

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



Citation and Notification of Penalty

Company Name: B F Tile Inc
Inspection Site: 680 Bannister St, Honolulu, HI 96819

Citation 2 Item 2 Type of Violation: Other

29 CFR 1910.134(h)(2)(i): [Refer to Chapter 12-60-50(a), HAR]: All respirators shall be stored to protect them from damage, contamination, dust, sunlight, extreme temperatures, excessive moisture, and damaging chemicals, and they shall be packed or stored to prevent deformation of the facepiece and exhalation valve.

Main Shop - A half-mask, elastomeric, 3M respirator was found to be stored in the open and exposed to the elements and to the dust and debris of the main shop. The respirator was stored by being placed on the work table. Improper storage of the respirator exposes it to damage and degradation of the mask. Employees were exposed to utilizing a respirator that does not protect the employee from airborne contaminants as intended.

Date By Which Violation Must be Abated: 07/10/2014
Penalty: \$ 0.00

Citation 2 Item 3 Type of Violation: Other

29 CFR 1910.134(k)(1)(v): [Refer to Chapter 12-60-50(a), HAR]: The employer shall ensure that each employee can demonstrate knowledge of at least the following: (v) What the procedures are for maintenance and storage of the respirator.

Establishment - The employees could not demonstrate sufficient knowledge in the use of and the hazards of respirator use. Lack of effective training was demonstrated by the poor condition of, poor storage of, and the lack of cleaning for half mask elastomeric respirators. Training for the employees was lacking or ineffective. Lack of training exposes employees to improper use of the respirator which could cause bodily harm.

Date By Which Violation Must be Abated: 07/10/2014
Penalty: \$ 0.00

State of Hawaii

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

Inspection Number: 316273911

Inspection Dates: 02/07/2014 - 02/07/2014

Issuance Date: 06/27/2014



Citation and Notification of Penalty

Company Name: B F Tile Inc

Inspection Site: 680 Bannister St, Honolulu, HI 96819

Citation 2 Item 4 Type of Violation: Other

29 CFR 1910.1200(h)(1): [Refer to Chapter 12-60-50(a), HAR]: 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.

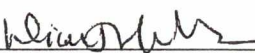
Main Shop - The employer did not have an effective training program. Employees were unable to answer basic questions about the Global Harmonizing System, about what a Safety Data Sheet was and where they could be located, and reported that they have not been trained in HazComm. Employees were working with Klean Strip, Pamir Wax, and Non-Sanded Grout among other chemicals.

Date By Which Violation Must be Abated:

07/30/2014

Penalty:

\$ 0.00


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: B F Tile Inc
Inspection Site: 680 Bannister St, Honolulu, HI 96819
Issuance Date: 06/27/2014

Summary of Penalties for Inspection Number 316273911

Citation 1, Serious	= \$ 1,650.00
Citation 2, Other	= \$ 0.00
TOTAL PENALTIES	= \$ 1,650.00

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.