

**State of California  
Department of Industrial Relations  
Division of Occupational Safety and Health  
Santa Ana District Office**

2000 E. McFadden Avenue, Suite 122  
Santa Ana, CA 92705  
Phone: (714) 558-4451 Fax: (714) 558-2035



## CITATION AND NOTIFICATION OF PENALTY

**To:**  
Empire Equipment Service Inc.  
and its successors  
5271 Agate St.  
Riverside, CA 92509

**Inspection #:** 1314977  
**Inspection Date (s):** 05/09/2018 - 11/08/2018  
**Issuance Date:** 11/08/2018  
**CSHO ID:** Q1303  
**Optional Report #:** 040-18  
**Reporting ID:** 0950631

**Inspection Site:**  
Glenn Ranch Rd. & Viejo Ridge  
Lake Forest, CA 92630

*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** (hereinafter Citation) is being issued in accordance with California Labor Code Sections 6317 and 6320 for violations that were found during the inspection/ investigation. **This Citation or a copy must be prominently posted upon receipt by the employer at or near the location of each violation until the violative condition is corrected or for three working days, whichever is longer.** Violations of Title 8 of the California Code of Regulations or of the California Labor Code may result in some instances in prosecution for a misdemeanor.

**YOU HAVE A RIGHT** to contest this Citation and Notification of Penalty by filing an appeal with the Occupational Safety and Health Appeals Board. To initiate your appeal, you **must** contact the Appeals Board, in writing or by telephone, within 15 working days from the date of receipt of this Citation. If you miss the 15 working day deadline to appeal, the Citation and Notification of Penalty becomes a final order of the Appeals Board, not subject to review by any court or agency.

**Informal Conference** - You may request an informal conference with the manager of the district office which issued the Citation within 10 working days after receipt of the Citation. However, if the citation is appealed, you may request an informal conference at any time prior to the day of the hearing. Employers are encouraged to schedule a conference at the earliest possible time to assure an expeditious resolution of any issues. At the informal conference, you may discuss the existence of the alleged violation, classification of the violation, abatement date or proposed penalty.

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 agreement which resolves this matter without litigation or contest.

## APPEAL RIGHTS

The Occupational Safety and Health Appeals Board (Appeals Board) consists of three members appointed by the Governor. The Appeals Board is a separate entity from the Division of Occupational Safety and Health (Division) and employs experienced administrative law judges to hear appeals fairly and impartially. To initiate an appeal from a Citation and Notification of Penalty, you must contact the Appeals Board in writing, or by telephone, or online via the Board's OASIS system, within 15 working days from the date of receipt of a Citation.

After you have initiated your appeal, you must then file a completed appeal form with the Appeals Board, at the address listed below, or online via the Board's OASIS system, for each contested Citation. Failure to file a completed appeal form with the Appeals Board may result in dismissal of the appeal. Appeal forms are available to print online at: <https://www.dir.ca.gov/oshab/appealform.pdf>. You may also file the appeal through the Board's online OASIS system at: <https://www.dir.ca.gov/oshab/>. Hard copies can also be picked up from district offices of the Division, or from the Appeals Board:

Occupational Safety and Health Appeals Board  
2520 Venture Oaks Way, Suite 300  
Sacramento, CA 95833  
Telephone: (916) 274-5751 or (877) 252-1987  
Fax: (916) 274-5785

If the Citation you are appealing alleges more than one item, you must specify on the appeal form which items you are appealing. You must also attach to the appeal form a legible copy of the Citation you are appealing. In addition, please send a copy of Page 1 of this Citation and Notification of Penalty, the cover sheet.

Among the specific grounds for an appeal are the following: the safety order was not violated, the classification of the alleged violation (e.g., serious, repeat, willful) is incorrect, the abatement requirements are unreasonable or the proposed penalty is unreasonable.

**Important:** You must notify the Appeals Board, not the Division, of your intent to appeal within 15 working days from the date of receipt of the Citation. Otherwise, the Citation and Notification of Penalty becomes a final order of the Appeals Board not subject to review by any court or agency. An informal conference with the Division does not constitute an appeal and does not stay the 15 working day appeal period. If you have any questions concerning your appeal rights, call the Appeals Board, at (916) 274-5751 or (877) 252-1987.

## PENALTY PAYMENT OPTIONS

For general/regulatory violations, and for serious violations that have been abated, penalties are due within 15 working days of receipt of this Citation and Notification of Penalty unless contested. If you are appealing any item of the citation, remittance is still due on all items described above that are not appealed. Enclosed for your use is a Penalty Remittance Form for payment.

For serious violations that are not abated, if a signed statement of abatement (as described under "Notification of Corrective Action", below) is not timely received or if the statement does not demonstrate acceptable abatement, penalties will be due within 15 working days after the date the signed statement was due, unless contested.

For serious violations for which a signed statement of abatement demonstrating acceptable abatement is timely received, the payment due date will be described in a Modified Citation and Notification of Penalty that you will receive reflecting a 50% abatement credit.

If you are paying electronically, please have the Penalty Remittance Form on-hand when you are ready to make your payment. The company name, inspection number, and Citation number(s) will be required in order to ensure that the payment is accurately posted to your account. Please go to: **[www.dir.ca.gov/dosh/CalOSHA\\_PaymentOption.html](http://www.dir.ca.gov/dosh/CalOSHA_PaymentOption.html)** to access the secure payment processing site. **Additionally, you must also mail the Penalty Remittance Form to the address below.**

If you are paying by check, return one copy of the Citation, along with the Notice of Proposed Penalties Sheet and the Penalty Remittance Form and mail to:

Department of Industrial Relations  
Cal/OSHA Penalties  
P. O. Box 516547  
Los Angeles, CA 90051-0595

CAL/OSHA does not agree to any restrictions, 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 general/regulatory violations which you do not contest, you should notify the Division of Occupational Safety and Health promptly by letter that you have taken appropriate corrective action within the time frame set forth on this Citation and Notification of Penalty. Please inform the district office listed on the Citation by submitting the Cal/OSHA 160 form with the abatement steps you have taken and the date the violation was abated, together with adequate supporting documentation, e.g., drawings or photographs of corrected conditions, purchase/work orders related to abatement actions, air sampling results, etc. The adjusted penalty for general violations has already been reduced by 50% on the presumption that the employer will correct the violations by the abatement date. The adjusted penalty for serious violations that have been abated, if any, has already been reduced by 50% because abatement of those violations has been completed.

The adjusted penalty for serious violations that have not been abated will be reduced by 50% if the Division of Occupational Safety and Health receives from you within 10 working days following the abatement date a signed statement under penalty of perjury (Cal/OSHA form 161) and sufficient supporting evidence, when necessary to prove abatement, demonstrating abatement acceptable to the Division. If the Division does not receive the statement of abatement within 10 working days after the abatement date, the adjusted penalty will not be reduced by 50% - regardless of whether you appeal the serious citations.

**Note:** Return the Cal/OSHA 160/161 forms to the district office listed on the Citation and as shown below:

Division of Occupational Safety and Health  
Santa Ana District Office  
2000 E. McFadden Avenue, Suite 122  
Santa Ana, CA 92705  
Telephone: (714) 558-4451  
Fax: (714) 558-2035

## EMPLOYEE RIGHTS

**Employer Discrimination Unlawful** - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under Labor Code Section 6310 or 6311. An employee who believes that he/she has been discriminated against may file a complaint no later than six (6) months after the discrimination occurred with the Division of Labor Standards Enforcement.

**Employee Appeals** - An employee or authorized employee's representative may, within 15 working days of the issuance of a citation, special order, or order to take special action, appeal to the Occupational Safety and Health Appeals Board the reasonableness of the period of time fixed by the Division of Occupational Safety and Health (Division) for abatement. An employee appeal may be filed with the Appeals Board or with the Division. No particular format is necessary to initiate the appeal, but the notice of appeal must be in writing.

If an Employee Appeal is filed with the Division, the Division shall note on the face of the document the date of receipt, include any envelope or other proof of the date of mailing, and promptly transmit the document to the Appeals Board. The Division shall, no later than 10 working days from receipt of the Employee Appeal, file with the Appeals Board and serve on each party a clear and concise statement of the reasons why the abatement period prescribed by it is reasonable.

Employee Appeal Forms are available from the Appeals Board, or from a district office of the Division.

**Employees Participation in Informal Conference** - Affected employees or their representatives may notify the District Manager that they wish to attend the informal conference. If the employer objects, a separate informal conference will be held.

## **DISABILITY ACCOMMODATION**

Disability accommodation is available upon request. Any person with a disability requiring an accommodation, auxiliary aid or service, or a modification of policies or procedures to ensure effective communication and access to the programs of the Division of Occupational Safety and Health, should contact the Disability Accommodation Coordinator at the local district office or the Statewide Disability Accommodation Coordinator at 1-866-326-1616 (toll free). The Statewide Coordinator can also be reached through the California Relay Service, by dialing 711 or 1-800-735-2929 (TTY) or 1-800-855-3000 (TTY - Spanish).

Accommodations can include modifications of policies or procedures or provision of auxiliary aids or services. Accommodations include, but are not limited to, an Assistive Listening System (ALS), a Computer-Aided Transcription System or Communication Access Realtime Translation (CART), a sign-language interpreter, documents in Braille, large print or on computer disk, and audio cassette recording. Accommodation requests should be made as soon as possible. Requests for an ALS or CART should be made no later than five (5) days before the hearing or conference.

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**Issuance Date:** 11/08/2018  
**CSHO ID:** Q1303  
**Optional Report #:** 040-18



**Citation and Notification of Penalty**

**Company Name:** Empire Equipment Service Inc.  
**Establishment DBA:**  
and its successors  
**Inspection Site:** Glenn Ranch Rd. & Viejo Ridge  
Lake Forest, CA 92630

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

CCR Title 8, Section 1509(a). Injury and Illness Prevention Program

(a) Every employer shall establish, implement and maintain an effective Injury and Illness Prevention Program in accordance with section 3203 of the General Industry Safety Orders.

[Reference to CCR 3203(a)]

(a) Effective July 1, 1991, every employer shall establish, implement and maintain an effective Injury and Illness Prevention Program (Program). The Program shall be in writing and, shall, at a minimum:

(4) Include procedures for identifying and evaluating work place hazards including scheduled periodic inspections to identify unsafe conditions and work practices. Inspections shall be made to identify and evaluate hazards:

(6) Include methods and/or procedures for correcting unsafe or unhealthy conditions, work practices and work procedures in a timely manner based on the severity of the hazard.]

Prior to and during the course of the inspection including, but not limited to 5/9/2018, Employer failed to implement an effective Injury and Illness Prevention Plan in that:

The employer failed to evaluate work place hazards and identify unsafe conditions for employees entering and performing work in an excavation including but not limited to, selecting a competent person to evaluate an excavation for conditions that might lead to its collapse and providing adequate protection for an excavation that was deeper than 5 feet. [†8CCR 3203(a)(4)]

The employer failed to implement procedures for correcting unsafe conditions of an excavation where employees entered and performed work. [†8CCR 3203(a)(6)]

**Date By Which Violation Must be Abated:**  
**Proposed Penalty:**

**December 11, 2018**  
**\$1200.00**

**State of California**

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**Inspection #:** 1314977  
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**Citation and Notification of Penalty**

**Company Name:** Empire Equipment Service Inc.  
**Establishment DBA:** and its successors  
**Inspection Site:** Glenn Ranch Rd. & Viejo Ridge  
Lake Forest, CA 92630

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

CCR Title 8, Section 1541(k)(1). General Requirements.

(k) Inspection.

(1) Daily inspections of excavations, the adjacent areas, and protective systems shall be made by a competent person for evidence of a situation that could result in possible cave-ins, indications of failure of protective systems, hazardous atmospheres, or other hazardous conditions. An inspection shall be conducted by the competent person prior to the start of work and as needed throughout the shift. Inspections shall also be made after every rain storm or other hazard increasing occurrence. These inspections are only required when employee exposure can be reasonably anticipated.

Prior to and during the course of the inspection including, but not limited to 5/9/2018 and 6/4/2018, employer failed to ensure that a competent person inspected the excavation in which employees were working, including the adjacent area and protective system, prior to the start of work and as needed throughout the shift for evidence of situations that could result in possible cave-ins, indications of failure of the protective system, hazardous atmospheres or other hazardous conditions.

**Date By Which Violation Must be Abated:**  
**Proposed Penalty:**

**November 21, 2018**  
**\$21600.00**

**State of California**

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**Inspection #:** 1314977  
**Inspection Dates:** 05/09/2018 - 11/08/2018  
**Issuance Date:** 11/08/2018  
**CSHO ID:** Q1303  
**Optional Report #:** 040-18



**Citation and Notification of Penalty**

**Company Name:** Empire Equipment Service Inc.  
**Establishment DBA:**  
and its successors  
**Inspection Site:** Glenn Ranch Rd. & Viejo Ridge  
Lake Forest, CA 92630

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Citation 3 Item 1 Type of Violation: **Repeat-Serious**

CCR Title 8, 1541.1(a)(1). Requirements for Protective Systems.

(a) Protection of employees in excavations.

(1) Each employee in an excavation shall be protected from cave-ins by an adequate protective system designed in accordance with Section 1541.1(b) or (c) except when:

- (A) Excavations are made entirely in stable rock; or
- (B) Excavations are less than 5 feet in depth and examination of the ground by a competent person provides no indication of a potential cave-in.

[Reference: CCR Title 8, Section 1541.1(b). Requirements for Protective Systems

(b) Design of sloping and benching systems. The slopes and configurations of sloping and benching systems shall be selected and constructed by the employer or his designee and shall be in accordance with the requirements of Section 1541.1(b)(1), Section 1541.1(b)(2), Section 1541.1(b)(3), or Section 1541.1(b)(4), as follows:

(1) Option (1) - Allowable configurations and slopes.

(A) Excavations shall be sloped at an angle not steeper than one and one-half horizontal to one vertical (34 degrees measured from the horizontal), unless the employer uses one of the other options listed below.

(B) Slopes specified in Section 1541.1(b)(1)(A) shall be excavated to form configurations that are in accordance with the slopes shown for Type C soil in Appendix B to this article.

(2) Option (2) - Determination of slopes and configurations using Appendices A and B. Maximum allowable slopes, and allowable configurations for sloping and benching systems, shall be determined in accordance with the conditions and requirements set forth in Appendices A and B to this article.

(3) Option (3) - Designs using other tabulated data.



(A) Designs of sloping or benching systems shall be selected from and be in accordance with tabulated data, such as tables and charts.

(B) The tabulated data shall be in written form and shall include all of the following:

1. Identification of the parameters that affect the selection of a sloping or benching system drawn from such data;
2. Identification of the limits of use of the data, to include the magnitude and configuration of slopes determined to be safe;
3. Explanatory information as may be necessary to aid the user in making a correct selection of a protective system from the data.
4. At least one copy of the tabulated data which identifies the registered professional engineer who approved the data, shall be maintained at the jobsite during construction of the protective system. After that time the data may be stored off the jobsite, but a copy of the data shall be made available to the Division upon request.

(4) Option (4) - Design by a registered professional engineer.

(A) Sloping and benching systems not utilizing Option (1) or Option (2) or Option (3) under Section 1541.1 (b) shall be stamped and signed by a registered professional engineer.

(B) Designs shall be in written form and shall include at least the following:

1. The magnitude of the slopes that were determined to be safe for the particular project;
2. The configurations that were determined to be safe for the particular project;
3. The identity of the registered professional engineer approving the design.

(C) At least one copy of the design shall be maintained at the jobsite while the slope is being constructed. After that time the design need not be at the jobsite, but a copy shall be made available to the Division upon request.

Prior to and during the course of the inspection including, but not limited to 5/9/2018, employer failed to ensure that employees working in an excavation not made entirely in stable rock and deeper than 5 feet in depth were protected from cave-ins by an adequate protective system in accordance with Section 1541.1 (b), including but not limited to sloping and benching. As a result, on or about 5/9/18 an employee suffered fatal injuries when a side of the excavation in which he was working collapsed and engulfed the employee.

**Date By Which Violation Must be Abated:**

**November 21, 2018**

**Proposed Penalty:**

**\$43200.00**

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Christine Hoffman  
Compliance Officer / District Manager

State of California  
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2000 E. McFadden Avenue, Suite 122  
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## NOTICE OF PROPOSED PENALTIES

**Company Name:** Empire Equipment Service Inc.  
**Establishment DBA:** and its successors  
**Inspection Site:** Glenn Ranch Rd. & Viejo Ridge, Lake Forest, CA 92630  
**Mailing Address:** 5271 Agate St., Riverside, CA 92509  
**Issuance Date:** 11/08/2018  
**Reporting ID:** 0950631  
**CSHO ID:** Q1303

### Summary of Penalties for Inspection Number 1314977

Citation 1 Item 1, General	\$1200.00
Citation 2 Item 1, Serious	\$21600.00
Citation 3 Item 1, Repeat-Serious	\$43200.00
<b>TOTAL PROPOSED PENALTIES:</b>	<b>\$66000.00</b>

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If you are paying electronically: Please have this form on-hand when you are ready to make your payment. The company name, reporting ID and Citation number(s) will be required to ensure that the payment is accurately posted to your account. Please go to: [www.dir.ca.gov/dosh/CalOSHA\\_PaymentOption.html](http://www.dir.ca.gov/dosh/CalOSHA_PaymentOption.html) to access the secure payment processing site. **Additionally, you must also mail the Penalty Remittance Form to the address below.**

If you are paying by check: Mail this Notice of Proposed Penalties, the Penalty Remittance Form, along with a copy of the Citation and Notification of Penalty to:

**DEPARTMENT OF INDUSTRIAL RELATIONS  
CAL/OSHA PENALTIES  
P. O. BOX 516547  
LOS ANGELES, CA 90051-0595**

Cal/OSHA does not agree to any restrictions, 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.

**DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH – CAL/OSHA  
Accounting Office - Cashiering Unit  
Phone (415) 703-4310 or (415) 703-4308**

**PENALTY REMITTANCE FORM**

<b>CIVIL PENALTY INFO</b>	<b>INSPECTION NO.:</b> 1314977	<b>REPORTING ID:</b> 0950631
<b>COMPANY NAME:</b>	Empire Equipment Service Inc.	<b>FEIN/SEIN:</b> UNKNOWN
<b>ESTABLISHMENT DBA:</b>		
<b>CONTACT PERSON:</b>	Josh Steffy	
<b>PHONE NO.:</b>	UNKNOWN	<b>FAX NO.:</b> UNKNOWN
<b>SITE ADDRESS:</b>	Glenn Ranch Rd. & Viejo Ridge, Lake Forest, CA 92630	
<b>MAILING ADDRESS:</b>	5271 Agate St., Riverside, CA 92509	

**CITATION INFORMATION:**

Penalties are due within 15 working days of receipt of this notification unless contested. If you are appealing any item of this Citation, remittance is still due on all items that are not appealed.

**PAYMENT INSTRUCTIONS:**

For check or money order: please make check or money order payable to Department of Industrial Relations. Write the inspection number and total amount enclosed on the payment coupon below and on the check or money order.  
For credit card or EFT payment, go to: [www.dir.ca.gov/dosh/CalOSHA\\_PaymentOption.html](http://www.dir.ca.gov/dosh/CalOSHA_PaymentOption.html)

----- Detach here and return bottom portion with check or money order payment -----

**PAYMENT COUPON**



Inspection No.: 1314977

Amount Enclosed: \$ \_\_\_\_\_

**Mail payment to:**

DEPARTMENT OF INDUSTRIAL RELATIONS  
CAL/OSHA PENALTIES  
P.O. BOX 516547  
LOS ANGELES, CA 90051-0595

For credit card or EFT payment, go to:  
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