



CITATION AND NOTIFICATION OF PENALTY

To:
Mercer, Fraser Company
and its successors
PO Box 1006
Eureka, CA 95502

Inspection #: 1351450
Inspection Date (s): 10/02/2018 - 03/29/2019
Issuance Date: 03/29/2019
CSHO ID: K5298
Optional Report #: 611-19
Reporting ID: 0950651

Inspection Site:
200 Dinsmore Dr
Fortuna, CA 95540

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** 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
Sacramento Mining & Tunneling District Office
1750 Howe Avenue, Suite 300
Sacramento, CA 95825
Telephone: (916) 574-2540
Fax: (916) 574-2542

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.

State of California

Department of Industrial Relations
Division of Occupational Safety and Health
Sacramento Mining & Tunneling District Office
1750 Howe Avenue, Suite 300
Sacramento, CA 95825
Phone: (916) 574-2540 Fax: (916) 574-2542

Inspection #: 1351450
Inspection Dates: 10/02/2018 - 03/29/2019
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CSHO ID: K5298
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Citation and Notification of Penalty

Company Name: Mercer, Fraser Company
Establishment DBA: and its successors
Inspection Site: 200 Dinsmore Dr
Fortuna, CA 95540

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

§7010. Loading, Hauling, and Dumping--General.

(a) Equipment defects affecting safety shall be corrected before the equipment is used.

Prior to and during the course of the inspection, including but not limited to 10/2/18, the employer did not correct defects affecting safety on a Cat 980M Loader before the equipment was used.

Date By Which Violation Must be Abated:	Corrected During Inspection
Proposed Penalty:	\$560.00

State of California

Department of Industrial Relations
Division of Occupational Safety and Health
Sacramento Mining & Tunneling District Office
1750 Howe Avenue, Suite 300
Sacramento, CA 95825
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Citation and Notification of Penalty

Company Name: Mercer, Fraser Company
Establishment DBA:

and its successors

Inspection Site: 200 Dinsmore Dr
Fortuna, CA 95540

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

§3203. Injury and Illness Prevention Program. (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:

(2) Include a system for ensuring that employees comply with safe and healthy work practices. Substantial compliance with this provision includes recognition of employees who follow safe and healthful work practices, training and retraining programs, disciplinary actions, or any other such means that ensures employee compliance with safe and healthful work practices.

(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 10/2/18, the employer's Injury and Illness Prevention Program was ineffective because the employer did not implement a system for ensuring that employees comply with safe and healthy work practices including procedures for correcting unsafe work practices and work procedures when operating a Volvo A40G Haul Truck. As a result, on or about October 1, 2018, an employee sustained a serious head injury after hitting a bump at an excessive speed and, subsequently, colliding with a Cat 980M Loader.

Date By Which Violation Must be Abated:
Proposed Penalty:

April 19, 2019
\$22500.00

State of California

Department of Industrial Relations
Division of Occupational Safety and Health
Sacramento Mining & Tunneling District Office
1750 Howe Avenue, Suite 300
Sacramento, CA 95825
Phone: (916) 574-2540 Fax: (916) 574-2542

Inspection #: 1351450
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Citation and Notification of Penalty

Company Name: Mercer, Fraser Company
Establishment DBA: and its successors
Inspection Site: 200 Dinsmore Dr
Fortuna, CA 95540

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

§3653. Seat Belts. (a) Seat belt assemblies shall be provided and used on all equipment where rollover protection is installed and employees shall be instructed in their use. Seat belt assemblies installed after June 26, 1998, shall be labeled as meeting the design requirements of SAE J386 JUN93, Operator Restraint System For Off-Road Work Machines. Seat belt assemblies installed on or before June 26, 1998, shall be labeled as meeting either the design requirements of the SAE standard indicated above or the SAE J386 JUN85 standard.

Prior to and during the course of the inspection, including but not limited to 10/2/18, the employer allowed the operator of a Volvo A40G Haul Truck to operate the equipment without using the seat belt. As a result, on or about October 1, 2018, an employee sustained a serious head injury after hitting a bump at an excessive speed and, subsequently, colliding with a Cat 980M Loader.

Date By Which Violation Must be Abated: April 19, 2019
Proposed Penalty: \$22500.00

State of California

Department of Industrial Relations
Division of Occupational Safety and Health
Sacramento Mining & Tunneling District Office
1750 Howe Avenue, Suite 300
Sacramento, CA 95825
Phone: (916) 574-2540 Fax: (916) 574-2542

Inspection #: 1351450
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Citation and Notification of Penalty

Company Name: Mercer, Fraser Company
Establishment DBA:
and its successors
Inspection Site: 200 Dinsmore Dr
Fortuna, CA 95540

Citation 4 Item 1 Type of Violation: **Serious**

§7021. Haulage Vehicle Operation Procedure. (a) When operating vehicles, consideration shall be given to the condition of the roadway, weather, curves, grades and mechanical condition of the vehicle. The vehicle shall not be operated at a speed which will endanger the driver or traffic. On curves, the vehicle speed shall be limited so that it can be stopped within one-half the visible distance of the roadway.

Prior to and during the course of the inspection, including but not limited to 10/2/18, the employer allowed the operator of a Volvo A40G Haul Truck to operate the equipment at an excessive speed. As a result, on or about October 1, 2018, an employee sustained a serious head injury after hitting a bump at an excessive speed and, subsequently, colliding with a Cat 980M Loader.

Date By Which Violation Must be Abated: April 19, 2019
Proposed Penalty: \$18000.00

Jeffrey Wallace
Compliance Officer / District Manager

State of California
Department of Industrial Relations
Division of Occupational Safety and Health
Sacramento Mining & Tunneling District Office
1750 Howe Avenue, Suite 300
Sacramento, CA 95825
Phone: (916) 574-2540 Fax: (916) 574-2542



NOTICE OF PROPOSED PENALTIES

Company Name: Mercer, Fraser Company
Establishment DBA:
and its successors
Inspection Site: 200 Dinsmore Dr, Fortuna, CA 95540
Mailing Address: PO Box 1006, Eureka, CA 95502
Issuance Date: 03/29/2019
Reporting ID: 0950651
CSHO ID: K5298

Summary of Penalties for Inspection Number 1351450

Citation 1 Item 1, General	\$560.00
Citation 2 Item 1, Serious	\$22500.00
Citation 3 Item 1, Serious	\$22500.00
Citation 4 Item 1, Serious	\$18000.00
TOTAL PROPOSED PENALTIES:	\$63560.00

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. Enclosed for your use is a Penalty Remittance Form.

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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

CIVIL PENALTY INFO	INSPECTION NO.: 1351450	REPORTING ID: 0950651
COMPANY NAME:	Mercer, Fraser Company	FEIN/SEIN: UNKNOWN
ESTABLISHMENT DBA:		
CONTACT PERSON:	Mark Benzinger	
PHONE NO.:	UNKNOWN	FAX NO.: UNKNOWN
SITE ADDRESS:	200 Dinsmore Dr, Fortuna, CA 95540	
MAILING ADDRESS:	PO Box 1006, Eureka, CA 95502	

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

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

PAYMENT COUPON



Inspection No.: 1351450

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:
www.dir.ca.gov/dosh/CalOSHA_PaymentOption.html