

OCCUPATION L SAFETY AND HEALTH APPEALS BOARD

2520 Venture Oaks Way, Suite 300  
Sacramento, CA 95833  
(916) 274-5751  
FAX (916) 274-5785

RECEIVED  
MAR 03 2014

APPEAL FORM OSH Appeals Board

316980598

Inspection Number on Citation

**2014-R 4D7 -0729**

Alpha Explosives, Inc.

Employer Name on Citation

1. You only have 15 working days from receipt of a citation to appeal.

Alpha Dyno Nobel, Inc., dba Alpha Explosives

Employer Legal Name or DBA (Optional)

2. A copy of this form must be attached to each citation or notification appealed. Failure to file a completed form may result in dismissal of the appeal.

3400 Nader Rd., Lincoln, CA 95648

Address

**FIRST READ IMPORTANT INFORMATION ON THE REVERSE SIDE  
THEN COMPLETE ONE APPEAL FORM FOR EACH CITATION**

1. This is an Appeal from:

CITATION NO(s): ONE (1) Item No(s): ONE (1)

NOTIFICATION OF FAILURE TO ABATE ALLEGED VIOLATION

CITATION NO(s): \_\_\_\_\_ Item No(s): \_\_\_\_\_

SPECIAL ORDER/SPECIAL ACTION NO: \_\_\_\_\_

Item No(s): \_\_\_\_\_

2. Specific ground(s) for this appeal are: (**Check all that apply**)

The safety order was not violated.

The classification (i.e. serious, willful, repeat) is incorrect.

The abatement requirements are unreasonable.

Required changes  Time allowed to complete changes

The proposed penalty is unreasonable.

3. Explain any other reasons for appeal or issues to be raised on appeal. Affirmative defenses must be specifically stated.

a. Alpha Explosives was not a Citable Employer.

b. Alpha Explosives claims the Independent Employee Act Defense.

c. There was no Personnel Injured.

d. Alpha Explosives did not know and could not have known of the violation with reasonable diligence. It took "all the steps a reasonable and responsible employer in like circumstances should be expected to

- take.”
- e. The Citation does not cite with particularity what Order was violated and how it was violated for Alpha Explosives to prepare a defense.
  - f. Alpha Explosives did not create the hazard.
  - g. Alpha Explosives did not have the responsibility or authority to have the hazard corrected.
  - h. Alpha Explosives did not have the ability to correct the hazard.
  - i. Cleveland Wrecking Company (CWC) is a Citable Employer and was aware of the hazards to which CWC employees were exposed.
  - i. Demtech is a Citable Employer and was aware of the hazards to which CWC employees were exposed.
  - j. Alpha Explosives took all proper steps and precaution to remove its employees from the job.
  - h. There is no evidence of the cause of the hazard making the issuance arbitrary and capricious.
  - i. This citation is based on the same facts and circumstances of Citation 2 and appears to be a double fine.
  - j. The citable offense, if any, was administrative.

4.



(Signature of Employer or Employer's Representative)

{If there is any change in representation after you file your appeal, you must notify the Appeals Board in writing}

**Lawrence E. Skidmore / Kathleen C. Lyon, Esq.**

(Type or print name)

Partner, Aronowitz Skidmore Lyon

(Title)

200 Auburn Folsom Rd.

Suite 305

(Address) {Address where all communications from the Appeals Board will be sent}

Auburn

CA

95603

(City)

(State)

(Zip Code)

(530) 823-9736

[klyon@asilaw.org](mailto:klyon@asilaw.org)

February 28, 2014

(Telephone)

(E-Mail Address)

(Date)

{All correspondence from the Appeals Board will be sent to the representative above at the address above. If there is any change in address, telephone number, and/or e-mail address after you file your appeal, you must notify the Appeals Board of the change(s). All such notifications must be in writing}

**State of California**

Division of Occupational Safety and Health  
Bakersfield District Office (0950647; 4029)  
7718 Meany Avenue  
Bakersfield, CA 93308-5110

Inspection Number: 316980598  
Inspection Dates: 08/05/2013 -  
Issuance Date: 01/31/2014  
CSHO ID: S6346  
Optional Inspection Nbr: 1 2013



**Citation and Notification of Penalty**

**RECEIVED**

**MAR 03 2014**

Company Name: Alpha Explosives Inc  
Inspection Site: 7825 Rosedale Hwy, Bakersfield, CA 93308

**OSH Appeals Board**

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

California Code of Regulations, Title 8 Section 3203 (a)

Every employer shall establish, implement and maintain n effective Injury and Illness Prevention Program.

(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.

On or about August 3, 2013 Alpha Explosives (the controlling employer) did not effectively implement procedures to identify and evaluate the workplace hazards associated with their methodology of semi-gelatin dynamite and linear shape charges to demolish the PG&E Kern Power Plant Boiler Buildings Bakersfield, California prior to explosive demolition. The blast area was not correctly evaluated; leading to projectiles flying outside the calculated blast area which resulted in serious injury to a by-stander. The hazards of using the amount of pusher charge that was placed on the columns were not properly identified and evaluated. The material strength of each column was not properly evaluated. Some of the columns fractured (under the pressures created by the amount of charge used) into pieces that could be propelled further than the anticipated blast area.

Methods to correct the hazard of fragments flying outside the calculated blast area were not effective.

As a result, employees of the Bakersfield Police department and Cleveland Wrecking were exposed to the hazard of flying projectiles. .

Date By Which Violation Must be Abated:

02/10/2014

Proposed Penalty:

\$ 7200.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

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APPEAL FORM OSH Appeals Board

316980598

Inspection Number on Citation

2014-R 4D7 -0730

Alpha Explosives, Inc.

Employer Name on Citation

1. You only have 15 working days from receipt of a citation to appeal.

Alpha Dyno Nobel, dba Alpha Explosives

Employer Legal Name or DBA (Optional)

2. A copy of this form must be attached to each citation or notification appealed. Failure to file a completed form may result in dismissal of the appeal.

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Address

FIRST READ IMPORTANT INFORMATION ON THE REVERSE SIDE THEN COMPLETE ONE APPEAL FORM FOR EACH CITATION

1. This is an Appeal from:

[X] CITATION NO(s): TWO (2) Item No(s): ONE (1)

[ ] NOTIFICATION OF FAILURE TO ABATE ALLEGED VIOLATION

CITATION NO(s): \_\_\_\_\_ Item No(s): \_\_\_\_\_

[ ] SPECIAL ORDER/SPECIAL ACTION NO: \_\_\_\_\_

Item No(s): \_\_\_\_\_

2. Specific ground(s) for this appeal are: (Check all that apply)

[X] The safety order was not violated.

[X] The classification (i.e. serious, willful, repeat) is incorrect.

[ ] The abatement requirements are unreasonable.

[ ] Required changes [ ] Time allowed to complete changes

[X] The proposed penalty is unreasonable.

3. Explain any other reasons for appeal or issues to be raised on appeal. Affirmative defenses must be specifically stated.

a. Alpha Explosives was not a Citable Employer.

b. Independent Employee Act Defense.

c. There was no Personnel Injured.

d. Alpha Explosives did not know and could not have known of the violation with reasonable diligence. It took "all the steps a reasonable and responsible employer in like circumstances should be expected to

take.”

e. The Citation does not cite with particularity what Order was violated and how it was violated for Alpha Explosives to prepare a defense.

f. Alpha Explosives did not create the hazard.

g. Alpha Explosives did not have the responsibility or authority to have the hazard corrected.

h. Alpha Explosives did not have the ability to correct the hazard.

i. Cleveland Wrecking Company was a Citable Employer and was aware of the hazards to which CWC employees were exposed.

i. Demtech was a Citable Employer and was aware of the hazards to which CWC employees were exposed.

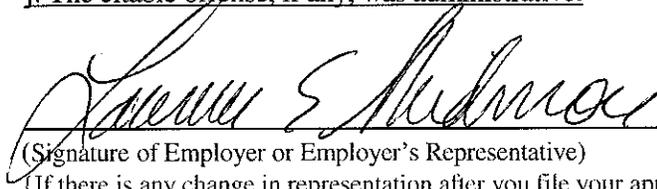
j. Alpha Explosives took all proper steps and precaution to remove its employees from the job.

h. There is no evidence of the cause of the hazard making the issuance arbitrary and capricious.

i. This citation is based on the same facts and circumstances of Citation 1 and appears to be a double fine.

j. The citable offense, if any, was administrative.

4.

  
(Signature of Employer or Employer's Representative)  
(If there is any change in representation after you file your appeal, you must notify the Appeals Board in writing)

**Lawrence E. Skidmore, Esq. / Kathleen C. Lyon, Esq.**

(Type or print name)

Partner, Aronowitz Skidmore Lyon

(Title)

200 Auburn Folsom Rd. Suite 305

(Address) {Address where all communications from the Appeals Board will be sent}

Auburn CA 95603

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[klyon@asilaw.org](mailto:klyon@asilaw.org)

February 28, 2014

(Telephone)

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{All correspondence from the Appeals Board will be sent to the representative above at the address above. If there is any change in address, telephone number, and/or e-mail address after you file your appeal, you must notify the Appeals Board of the change(s). All such notifications must be in writing}

### IMPORTANT INFORMATION

- A. Use this form to appeal a Citation, Notification of Failure to Abate Alleged Violation, or Special Order/Special Action.
- B. You must complete *a separate appeal form for each citation or notification* you wish to appeal and *attach a copy of the complete citation or notification that you are appealing.*
- C. If the citation or notification being appealed includes more than one item **do not use separate appeals forms for each item.** Instead, specify the items you are appealing in the space provided in No. 1 on the front of this form. (for example, "Citation No. 1, Item Nos. 2, 5, and 8)
- D. **Be sure to sign your appeal form and provide all the information requested in No. 4 above.**
- E. Your appeal form shall be deemed not completed unless you attach a copy of each citation or notification that you are appealing, and failure to file a completed appeal form may result in dismissal of the appeal.
- F. If you or your representative change address, telephone number, and/or e-mail address, it is your responsibility to notify the Appeals Board in writing of the change(s). Otherwise the Appeals Board will continue to use the address it has on file and you

State of California  
Division of Occupational Safety and Health  
Bakersfield District Office (0950647; 4029)  
7718 Meany Avenue  
Bakersfield, CA 93308-5110

Inspection Number: 316980598  
Inspection Dates: 08/05/2013 -  
Issuance Date: 01/31/2014  
CSHO ID: S6346  
Optional Inspection Nbr: 1 2013



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**Citation and Notification of Penalty**

Company Name: Alpha Explosives Inc  
Inspection Site: 7825 Rosedale Hwy, Bakersfield, CA 93308

OSH Appeals Board

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

California Code of Regulations, Title 8 Section 5291

(b) Blasts are not to be fired without a warning signal/procedure. The signals, which may be given by a siren, air horn, whistle or other device, shall be loud enough to be heard clearly in areas that could possibly be affected by the blast or flyrock from the blast. In addition, blasts are not to be fired until the licensed blaster-in-charge verifies the following:

- (1) All surplus explosive materials are in a safe place,
- (2) All security personnel at the blast area are in the proper location, and
- (3) All personnel are either outside of the blast area or under sufficient cover.

On or about August 3, 2013, a steel structure explosive demolition blast was initiated.

The blast was detonated by the licensed blaster in charge without verification that all personnel were either outside of the blast area designated by the blaster, or under sufficient cover.

Alpha was determined to be a controlling employer who exposed employees of the Bakersfield Police department and Cleveland Wrecking to the shrapnel (flyrock) from the blast.

Date By Which Violation Must be Abated: 02/10/2014  
Proposed Penalty: \$ 7200.00

  
Compliance Officer/District Manager

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of California  
Division of Occupational Safety and Health  
7718 Meany Ave  
Bakersfield, CA 93308  
Phone: (661) 661-588-6400 Fax: (661) 588-6428

## NOTICE OF PROPOSED PENALTIES

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**Company Name:** Alpha Explosives Inc  
**Inspection Site:** 7825 Rosedale Hwy, Bakersfield, CA 93308  
**Mailing Address:** P.O. Box 920, Mojave, CA 93502  
**Issuance Date:** 01/31/2014  
**Reporting ID:** 0950647  
**Index Code:** 4029

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### Summary of Penalties for Inspection Number 316980598

Citation 1, Serious	= \$	7200.00
Citation 2, Serious	= \$	7200.00
<b>TOTAL PROPOSED PENALTIES</b>	<b>= \$</b>	<b>14400.00</b>

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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.

If you are paying electronically: Please have this form on-hand when you are ready to make your payment. The company name, index code, 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](http://www.dir.ca.gov/dosh) to access the secure payment processing site.

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  
CASHIER, ACCOUNTING OFFICE  
P. O. BOX 420603  
SAN FRANCISCO, CA 94142-0603**

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