

DEPARTMENT OF INDUSTRIAL RELATIONS
OCCUPATIONAL SAFETY
AND HEALTH APPEALS BOARD

2520 VENTURE OAKS WAY, SUITE 300
SACRAMENTO, CA 95833
(916) 274-5751
FAX (916) 274-5785



February 20, 2014

Eileen Gaisford, Senior Associate
BREMER, WHYTE, BROWN & O'MEARA LLP
21271 Burbank Boulevard, Suite 110
Woodland Hills, CA 91367

Re: DEMTECH LLC
14-R4D7-0456/0458

DOCKETED: 2/19/2014

Dear Ms. Gaisford:

Enclosed are the docketed copies of each Appeal form that you filed with the Board. The above listed docket numbers should appear on all future correspondence. A copy of any correspondence with the Appeals Board must be served on the Division of Occupational Safety and Health DOSH and any other party to the proceeding.

You are obligated to notify any affected employees or their representative that an appeal is pending and that they have a right to participate in the proceeding. You are required to post a copy of the docketed Appeal form and a Participation Notice (similar to the sample enclosed) at or near the site of the violation or in a conspicuous place where it will be readily observable by employees. In addition to posting, a copy of the Appeal form and the Participation Notice must be served on the following: 1) any authorized employee representative; and 2) any employee (or their representative) who was seriously injured or killed in an accident related to this appeal. Proof, such as a brief letter, that the forms were posted must be sent to the DOSH District Manager whose address appears on the citation.

Please direct any request for information dealing with the filing of your appeal to the above address and/or telephone number. All other communications prior to the hearing will be handled by the assigned Administrative Law Judge (ALJ) Dale Raymond (626) 332-1145.

Any written motion, such as a request for subpoena, consolidation of cases, or request for party or intervenor status must be made by written motion to the ALJ named above at 2520 Venture Oaks Way, Suite 300, Sacramento, CA 95833.

Sincerely,


Carri Riedel
Office Technician

cc: Accounting
DOSH District Manager-Bakersfield
DOSH Legal Unit-Oakland
DOSH Legal Unit-Los Angeles
IMIS# 316980630

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

2520 Venture Oaks Way, Suite 300

Sacramento, CA 95833

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FAX (916) 274-5785

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OSH Appeals Board

APPEAL FORM

316980630

Inspection Number on Citation

2014-R4D7-0456

Demtech, LLC and its
successors

Employer Name on Citation

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

Demtech,
LLC

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.

2500 South Noah Drive Saxonberg, PA

16056

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): 1: Item No(s): 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.

Demtech disputes the citation in its entirety. Demtech maintains that its practices in relation to the demolition were all within industry standards.

4.

Eileen J. Gaisford

(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}

Eileen J. Gaisford, Bremer, Whyte, Brown & O'Meara

(Type or print name)

Senior Associate

(Title)

21271 Burbank Blvd. Suite 110

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

Woodland Hills, Ca. 91367

(City)

(State)

(Zip Code)

(818) 712-9800

egaisford@bremerwhyte.com

February 5, 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}

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.**

State of California

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

Inspection Number: 316980630
Inspection Dates: 08/22/2013-01/30/2014
Issuance Date: 01/31/2014
CSHO ID: S6346
Optional Inspection Nbr: 03-2013



Citation and Notification of Penalty

Company Name: Demtech LLC
Inspection Site: 7825 Rosedale Hwy, Bakersfield, CA 93308

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

California Code of Regulations, Title 8 Section 3203

(a) 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.

On or about August 3, 2013 Demtech (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 Demtech's 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, two employees of the Bakersfield Police Department and one employee of Cleveland Wrecking were exposed the the hazard of the flying fragments.

Date By Which Violation Must be Abated: 02/10/2014
Proposed Penalty: \$ 4500.00

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

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

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

RECEIVED

FEB 12 2014

OSH Appeals Board

APPEAL FORM

316980630 _____
Inspection Number on Citation

2014-R4D7-0457

Demtech, LLC and its
successors _____
Employer Name on Citation

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

Demtech,
LLC _____
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.

2500 South Noah Drive Saxonberg, PA
16056 _____
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): 2: Item No(s): 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.

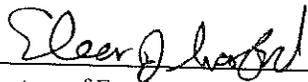
Required changes Time allowed to complete changes

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.

Demtech disputes the citation in its entirety. Demtech maintains that its practices in relation to the demolition were all within industry standards

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}

Eileen J. Gaisford, Bremer, Whyte, Brown & O'Meara

(Type or print name)

Senior Associate

(Title)

21271 Burbank Blvd, Suite 110

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

Woodland Hills, Ca. 91367

(City)

(State)

(Zip Code)

(818) 712-9800

egaisford@bremerwhyte.com

February 5, 2014

(Telephone)

(E-Mail Address)

(Date)

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State of California

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

Inspection Number: 316980630
Inspection Dates: 08/22/2013-01/30/2014
Issuance Date: 01/31/2014
CSHO ID: S6346
Optional Inspection Nbr: 03-2013



Citation and Notification of Penalty

Company Name: Demtech LLC
Inspection Site: 7825 Rosedale Hwy, Bakersfield, CA 93308

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

California Code of Regulations, Title 8 Sectionn 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

As a result, employees of the Bakersfield Police Department and Cleveland Wrecking were in the blast area at the time of the blast and not under cover.

Date By Which Violation Must be Abated:	02/10/2014
Proposed Penalty:	\$ 4500.00

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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OSH Appeals Board

APPEAL FORM

316980630 _____
Inspection Number on Citation

2014-R4D7-0458

Demtech, LLC and its
successors _____
Employer Name on Citation

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

Demtech,
LLC _____
Employer Legal Name or DBA (Optional)

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16056 _____
Address

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CITATION NO(s): 3: Item No(s): 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.

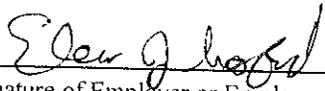
The abatement requirements are unreasonable.

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.
Demtech disputes the citation in its entirety. Demtech contends that it never willfully violated any California regulations.

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}

Eileen J. Gaisford, Bremer, Whyte, Brown & O'Meara

(Type or print name)

Senior Associate

(Title)

21271 Burbank Blvd. Suite 110

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

Woodland Hills, Ca. 91367

(City)

(State)

(Zip Code)

(818) 712-9800

egaisford@bremerwhyte.com

February 5, 2014

(Telephone)

(E-Mail Address)

(Date)

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State of California

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

Inspection Number: 316980630
Inspection Dates: 08/22/2013 - 01/30/2014
Issuance Date: 01/31/2014
CSHO ID: S6346
Optional Inspection Nbr: 03-2013



Citation and Notification of Penalty

Company Name: Demtech LLC
Inspection Site: 7825 Rosedale Hwy, Bakersfield, CA 93308

Citation 3 Item 1 Type of Violation: **Willful** Regulatory

California Code of Regulations, Title 8 Section 341

(c) Basic permit requirement.

(2) Annual Permits.

(A) Any employer other than a Project Permit holder who conducts permit-required activity shall hold a current Annual Permit before engaging in the activity.

On or about August 3, 2013 Demtech directly engaged in demolition by placing and detonating explosives which toppled a structure which was over 36 feet in height. Demtech knew of the regulation for obtaining an annual permit but did not obtain the permit before they engaged in the demolition activity.

Date By Which Violation Must be Abated:

02/10/2014

Proposed Penalty:

\$ 5000.00

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.

BREMER WHYTE

BREMER WHYTE BROWN & O'MEARA LLP

21271 BURBANK BOULEVARD
SUITE 110
WOODLAND HILLS, CALIFORNIA 91367
(818) 712-9800
(818) 712-9900 FAX
www.bremerwhyte.com

- | | | |
|---|---|------------------------------------|
| NICOLELWHYTE ^{1,2,3,4,5,6,7,8,9,10,11,12,13,14,15,16,17,18,19,20,21,22,23,24,25,26,27,28,29,30,31,32,33,34,35,36,37,38,39,40,41,42,43,44,45,46,47,48,49,50,51,52,53,54,55,56,57,58,59,60,61,62,63,64,65,66,67,68,69,70,71,72,73,74,75,76,77,78,79,80,81,82,83,84,85,86,87,88,89,90,91,92,93,94,95,96,97,98,99,100} | GREGORY J. CARPENTER ¹ | RYANN WANDERNAALD ¹ |
| KATHI G. BREMER ¹ | ANDREW CRANER ¹ | ALEX M. CHAZEN ¹ |
| RAYMOND MIBYLK, JR. ¹ | RICK L. PEDERSON ¹ | FRANK K. LE ¹ |
| PETER C. BROWN ^{1,2,3,4,5,6,7,8,9,10,11,12,13,14,15,16,17,18,19,20,21,22,23,24,25,26,27,28,29,30,31,32,33,34,35,36,37,38,39,40,41,42,43,44,45,46,47,48,49,50,51,52,53,54,55,56,57,58,59,60,61,62,63,64,65,66,67,68,69,70,71,72,73,74,75,76,77,78,79,80,81,82,83,84,85,86,87,88,89,90,91,92,93,94,95,96,97,98,99,100} | RACHEL A. MILAI ¹ | CHARLES LAWRENCE ¹ |
| JOHN V. O'MEARA ^{1,2,3,4,5,6,7,8,9,10,11,12,13,14,15,16,17,18,19,20,21,22,23,24,25,26,27,28,29,30,31,32,33,34,35,36,37,38,39,40,41,42,43,44,45,46,47,48,49,50,51,52,53,54,55,56,57,58,59,60,61,62,63,64,65,66,67,68,69,70,71,72,73,74,75,76,77,78,79,80,81,82,83,84,85,86,87,88,89,90,91,92,93,94,95,96,97,98,99,100} | LANCE J. PEDERSEN ¹ | MARY M. HUCK ¹ |
| KERE K. TICKNER ¹ | DANIEL A. CRESPO ¹ | MARIETTA E. RAQUENO ¹ |
| KIT NATLAND ¹ | LECIAN J. GRUBO ¹ | ANDREW M. MAZOFF ¹ |
| TYLER D. OPPENHAUSER ¹ | JOHN C. GOTTLIEB ¹ | JASON S. DIJOLA ¹ |
| PATRICK AU ¹ | JOHN R. CAYANGYANG ¹ | NICHOLAS P. KOHAN ¹ |
| NELSON L. COHEN ¹ | ANTHONY T. GARAS ¹ | HOLLY A. TOWNSON ¹ |
| JEREMY S. JOHNSON ¹ | MICHAEL A. D'ANDREA ¹ | ZACH WALLIN ¹ |
| JOHN H. TOOHEY ^{1,2} | ALEXANDER M. GIANNETTO ^{1,2,3,4,5,6,7,8,9,10,11,12,13,14,15,16,17,18,19,20,21,22,23,24,25,26,27,28,29,30,31,32,33,34,35,36,37,38,39,40,41,42,43,44,45,46,47,48,49,50,51,52,53,54,55,56,57,58,59,60,61,62,63,64,65,66,67,68,69,70,71,72,73,74,75,76,77,78,79,80,81,82,83,84,85,86,87,88,89,90,91,92,93,94,95,96,97,98,99,100} | CAMERON B. GORDON ¹ |
| VIK NAGPAL ¹ | R. TODD WINDISCH ¹ | VANESSA VIPOCH ¹ |
| KAREN M. BAYTOSH ^{1,2} | TROY A. CLARK ^{1,2} | MARISSA GUTTLER ¹ |
| MONIQUE R. DONAVAN ¹ | SHEILA C. STILES ¹ | JOSHUA D. MOUNTAIN ¹ |
| ARASH S. ARABI ¹ | JEFFREY W. SAAB ¹ | JESSE M. BABLOVE ¹ |
| LANETTA D.W. RINEBART ¹ | BENJAMIN L. PRICE ¹ | EILEEN J. GAISFORD ¹ |
| JOHN J. BELANGER ¹ | NICOLE M. SLATTERY ^{1,2} | CITATA N. HOLT ¹ |
| PAUL A. ACKER ¹ | KYLE P. CARROLL ^{1,2} | AMBER P. ADAMS ¹ |
| JOSHUA BORDIN-WOSK ^{1,2,3,4,5,6,7,8,9,10,11,12,13,14,15,16,17,18,19,20,21,22,23,24,25,26,27,28,29,30,31,32,33,34,35,36,37,38,39,40,41,42,43,44,45,46,47,48,49,50,51,52,53,54,55,56,57,58,59,60,61,62,63,64,65,66,67,68,69,70,71,72,73,74,75,76,77,78,79,80,81,82,83,84,85,86,87,88,89,90,91,92,93,94,95,96,97,98,99,100} | BRANDI M. FLANET ^{1,2} | AMANDA J. MCKECHNIE ¹ |
| ALISON K. HURLEY ¹ | JENNIFER K. ARIAS MAYHEW ^{1,2} | AMBER WILLIAMS ¹ |
| 1 Admitted in California | PRESCOTT T. JONES ¹ | LINDA T. LAM ¹ |
| 2 Admitted in Nevada | ORCHID BARZIN ¹ | DARLENE M. CARTER ¹ |
| 3 Admitted in Arizona | STEPHEN R. FRIEDER ¹ | CHRISTINE M. MILLER ¹ |
| 4 Admitted in Colorado | BRIAN E. CIEHAWSKI ¹ | FRED B. LEE ¹ |
| 5 Admitted in Wisconsin | LIZA M. VELAZCO ¹ | CORY R. LACY ¹ |
| 6 Admitted in Washington D.C. | MARCUS D. TAPPE ¹ | JUSTIN F. CANNON ¹ |
| 7 Admitted in Oregon | MATTHEW GUTTIERREZ ^{1,2} | ROBERT K. FECK ¹ |
| 8 Admitted in Wyoming | AMBER B. DERHAM ¹ | BRAD D. CITRON ¹ |
| 9 Admitted in Washington | BRIAN W. SKALSKY ¹ | PHILIP P. STEMLER ¹ |
| 10 Admitted in New Jersey | VANESSA NOVAK ¹ | JIMMY LEE ¹ |
| 11 Admitted in New York | CARL J. BASILE ¹ | NICOLE L. SCHMIDT ¹ |
| 12 Admitted in Illinois | JONATHAN A. KAPLAN ¹ | REN LIHO ¹ |
| 13 Certified Family Law Specialist | PAUL O. MITTELSTADT ¹ | RICK J. NEUBER ¹ |
| 14 The State Bar of California Board of Legal Specialization | JAMES K. ANDRADE ¹ | BRADLEY S. BEHERNS ¹ |
| | KATHERINE SHRAGER ¹ | MICHAEL J. GIANELLONI ¹ |
| | SCOTT W. DUN ¹ | AUGUST B. HOJCHICKY ¹ |

February 5, 2014

VIA FACSIMILE & U.S. MAIL
(916) 274-5785

Occupational Safety and Health Appeals Board
2520 Venture Oaks Way, Suite 300
Sacramento, Ca. 95833

RECEIVED
FEB 05 2014

OSH Appeals Board

Re: **Kern Power Plant -Notice of Intent to Appeal Citations and Notification of Penalty**
BWBO Client: Demtech, Inc.
BWBO File No.: 1299.032
Inspection Number: 316980630

Dear Appeals Board:

Please accept this as notice of Demtech LLC's intent to appeal the issuance of Citations and Penalties issued to Demtech, LLC.

It is Demtech's intent to Appeal the issuance of (1) Citation 1 Item 1, (2) Citation 2 Item 1, and (3) Citation 3 Item 1 of inspection number 316980360, inspection dates August 22, 2013- January 30, 2014, inspection site 7825 Rosedale Hwy, Bakersfield, Ca. 93308.

The Citations and Notification of Penalties which Demtech, LLC is appealing are enclosed for your reference.

Occupational Safety and Health Appeals Board
BWB&O File No.: 1299.032
February 5, 2014
Page 2

If there is any other information needed to initiate the appeals process, please contact the undersigned immediately.

Very truly yours,

BREMER WHYTE BROWN & O'MEARA LLP

Eileen J. Gaisford

Eileen Gaisford

Enclosures

egaisford@bremerwhyte.com

EG