

CASE SUMMARY

Employer: Robert A. Bothman, Inc.
Address: 650 Quinn St., San Jose, CA 95112
Inspection # 317201556
Optional Report. #: 012-14
CSHO ID K9662

NOTIFICATION OF THE DIVISION

On August 27, 2013, at approximately 1:45 pm the DOSH Oakland District Office received a telephone call from the City of Berkeley Fire Department reporting a fatal workplace injury. The District Manager, Ms. Abigail Fabricante, assigned Mr. Sean Sasser, an Associate Safety Engineer to conduct an investigation. Below are the findings of the investigation as reported by Mr. Sasser.

OPENING CONFERENCE

On August 27, 2013, at approximately 2:10 pm I, Sean Sasser arrived at the place of employment, the Martin Luther King, Jr., Middle School located at 1781 Rose St., Berkeley, CA 94704. I conducted an opening conference with the general contractor, Robert A. Bothman, Inc. Present at the opening conference for Robert A. Bothman, Inc., was Mr. Richard Gonzales, Health and Safety Manager, Mr. Joshua Goodman, Attorney, and Mr. Michael Ningrove, Attorney. I presented my Cal/OSHA identification card, business cards, a Cal/OSHA Form 1AY *Document Request Sheet* and a *Users' Guide to Cal/OSHA* to Mr. Gonzales. At the end of the opening conference Mr. Gonzales gave his consent to conduct the inspection.

SITE EVALUATION

The place of employment is a multi-employer construction project for the renovation of a track and field sports area for a public middle school encompassing approximately 1 acre. The employer is a general contractor with approximately 35 years of experience with approximately 224 employees with 3 employees at the job-site.

During the walkthrough of the accident area I was accompanied by the aforementioned manager and attorneys from the opening conference. At the time of the walkthrough of the work area where the accident occurred no work activities were in progress. The injured employee received fatal injuries while working with 2 other workers repairing a damaged area of asphalt pavement when a three axle dump truck rolled backwards and struck the employee.

A group of 2 employees and an independent contractor were working behind a parked 3 axle dump truck, 50,000 GVW, manufactured by Peterbilt in 1993, Model #378, CA license plate #6C69482, CA #075470, VIN #1XPFD9X4PD324007, owner identification #D-13. The 3 axle dump truck reportedly was parked on a pathway near the top of a small hill that connects the track and field area to the main campus of the school. The path way of the hill measured approximately 70 feet in length by approximately 6 feet in width with a grade of approximately 9 degrees.

The driver of the truck reported that he parked the truck, set the brake, exited the vehicle and was at the rear of the truck where the group of workers was repairing the asphalt pavement when the truck began to roll backwards down the hill. One of the employees was unable to get out of the path of the truck and was struck by the vehicle. All of the witnesses reported that the victim was obviously dead from the injuries he sustained.

On October 11, 2013 at approximately 9:06 am the California Highway Patrol's Major Accident Investigation Team conducted a physical examination of the service brake and parking brake of the 3 axle dump truck and a review of the motor carrier records associated with the vehicle. At the end of the examination the inspectors reported that there was no evidence of pre-existing mechanical conditions or failures of the service brake or parking brake system that could have affected safe operation of the vehicle. On March 26, 2013, a written report from the Major Accident Investigation Team was received by the Oakland District Office.

WITNESS STATEMENTS

WITNESS I

On August 27, 2013, at approximately 3:00 pm I conducted an interview of Alfonso Pedroza, laborer/driver for the employer. The interview was not in private and was not recorded.

WITNESS II

On August 27, 2013, at approximately 3:05 pm I attempted to conduct an interview of David Hutchenson, independent contractor. Mr. Hutchenson declined to be interviewed or provide any other information.

WITNESS III

On August 27, 2013, at approximately 3:00 pm I conducted an interview of Alfonso Pedroza, laborer/driver for the employer. The interview was not in private and was not recorded.

FINDINGS

The accident occurred at the place of employment at approximately 12:45 pm on August 27, 2013. At the time of the accident the injured employee was not a manager or supervisor and was working within his trade and at the task assigned to him. The injured employee received fatal injuries after being stuck by a three axle 50,000 GVW dump truck. The employee was declared dead-at-the-scene and the body was taken by the Alameda County Coroner for an autopsy. The employer by telephone notified the DOSH Oakland District of the accident at approximately 5:03 pm on August 27, 2013, approximately 4 hours after the accident occurred.

CONCLUSION

Based upon the evidence gathered during the investigation the Division finds that the employer did not ensure that the vehicle was under positive control at all times by ensuring that the parking brake was set and the wheels were chocked or otherwise effectively prevented from movement by effective mechanical means.

REGULATORY ACTION INFORMATION MEMORANDIUMS

None

NOTICE-IN-LIEU OF CITATIONS

None

REGULATORY CITATIONS

None

GENERAL CITATIONS

8 C.C.R 1593(b) Haulage Vehicle Operation.

SERIOUS CITATIONS

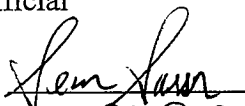
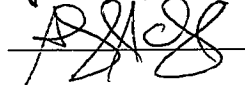
None

ACCIDENT-RELATED SERIOUS CITATIONS

8 C.C.R 1593(h) Haulage Vehicle Operation.

Management Contacted	Title
Mr. Richard Gonzales	Health and Safety Manager

Witnesses Contacted				
Name and Title	Address	Phone #	Signed Statement	Oral Statement
Alfonso Pedroza, Laborer/Driver	[REDACTED]	[REDACTED]	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Martin Arroyo, Foreman	[REDACTED]	[REDACTED]	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
David Hutchenson, Inspector	declined to provide	declined to provide	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

	Official	Title	Date
Prepared by:	Sean Sasser 	Associate Safety Engineer	28 JAN 14
Reviewed by:	Abigail Fabricante 	District Manager	
Reviewed by:	Chris Grossgart	Acting Regional Manager	
Reviewed by:	Cora Gergha	Acting Deputy Chief of Enforcement	
Reviewed by:	Julieann Summ	Acting Chief of the Division	

State of California
Division of Occupational Safety and Health
1515 Clay Street, Room 1303, Box 41
Oakland, CA 94612
Telephone: (510) 622-2916



Citation and Notification of Penalty

To:
Robert A. Bothman, Inc.
and its successors
650 Quinn Ave.,
San Jose, CA 95112-2604

Inspection Number: 317201556
Inspection Date(s): 08/27/2013 01/30/2014
Issuance Date: 01/30/2014
CSHO ID: K9662
Optional Report #: 012-14
Reporting ID: 0950614

Inspection Site:
1781 Rose St.,
Berkeley, CA 94704

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 Section 6317 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 attorneys as 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, 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, 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 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.

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, (916) 274-5751 or (877) 252-1987

PENALTY PAYMENT

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 that are not appealed. Enclosed for your use is a Penalty Remittance Form for payment.

If you are paying electronically, please have the Penalty Remittance 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 in order to ensure that the payment is accurately posted to your account. Please go to www.dir.ca.gov/dosh to access the secure payment processing site.

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
Cashier, Accounting Office
P. O. Box 420603
San Francisco, CA 94142-0603

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 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 Form 160 and/or 161 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 serious and general violations **has already been** reduced by 50% on the presumption that the employer will correct the violations by the abatement date." **If the CAL/OSHA Form 161 is not received in the District Office within 10 days following the abatement date, the abatement credit is revoked, causing the penalty to double.**

Note: Return the CAL/OSHA Form 160/161 to the District Office listed on the Citation and as shown below:

Division of Occupational Safety and Health
1515 Clay Street, Room 1303, Box 41
Oakland, CA 94612
Telephone: (510) 622-2916

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

Division of Occupational Safety and Health
1515 Clay Street, Room 1303, Box 41
Oakland, CA 94612
Telephone (510) 622-2916

Inspection Number: 317201556
Inspection Dates: 08/27/2013 - 01/30/2014
Issuance Date: 01/30/2014
CSHO ID: K9662
Optional Inspection Nbr: 012-14



Citation and Notification of Penalty

Company Name: Robert A. Bothman, Inc.
Inspection Site: 1781 Rose St., Berkeley, CA 94704

Citation 1 Item 1 Type of Violation: General

Title 8 C.C.R. 1593(b) Haulage Vehicle Operation.

Haulage vehicles shall be under positive control during all periods of operation. When descending grades, the vehicles shall be kept in gear.

Machinery or Equipment:

(1) Three axle dump truck. Manufacturer: Peterbilt Motors Company, Division of Paccar Incorporated. Model: 378. Date of Manufacture: June 1992. Vehicle Identification Number: #1XPFDR9X4PD324007. Employer Identification Number: D-13. CA Number: #075470.

On the inspection of August 27, 2013, the employer did not maintain a three axle dump truck, CA license plate #6C69482 under positive control at all times which resulted in the death of an employee.

Date By Which Violation Must be Abated: 03/04/2014
Proposed Penalty: \$ 7000.00

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

State of California

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1515 Clay Street, Room 1303, Box 41
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Citation and Notification of Penalty

Company Name: Robert A. Bothman, Inc.
Inspection Site: 1781 Rose St., Berkeley, CA 94704

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

Title 8 C.C.R. 1593(h) Haulage Vehicle Operation.


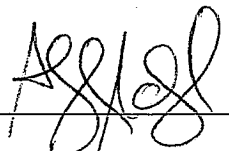
Parking Brakes. Whenever the equipment is parked, the parking brake shall be set. Equipment parked on inclines shall have the wheels chocked and the parking brake set or be otherwise prevented from moving by effective mechanical means.

Machinery or Equipment:

(1) Three axle dump truck. Manufacturer: Peterbilt Motors Company, Division of Paccar Incorporated. Model: 378. Date of Manufacture: June 1992. Vehicle Identification Number: #1XPFDR9X4PD324007. Employer Identification Number: D-13. CA Number: #075470.

On the inspection of August 27, 2013, the employer did not ensure that the parking brake was set and the wheels were chocked or otherwise prevented from movement by effective mechanical means of a three axle dump truck, CA license plate #6C69482 which resulted in the death of an employee.

Date By Which Violation Must be Abated: abated
Proposed Penalty: \$ 16200.00



Enforcement Officer/Abigail Fabricante, 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
1515 Clay Street, Room 1303, Box 41
Oakland, CA 94612
Telephone: (510) 622-2916

NOTICE OF PROPOSED PENALTIES

Company Name: Robert A. Bothman, Inc.
Inspection Site: 1781 Rose St., Berkeley, CA 94704
Mailing Address: 650 Quinn Ave., San Jose, CA 95112-2604

Issuance Date: 01/30/2014

Reporting ID: 0950614
Index Code: 4014

Summary of Penalties for Inspection Number 317201556

Citation 1, General	= \$	7000.00
Citation 2, Serious	= \$	16200.00
TOTAL PROPOSED PENALTIES	= \$	23200.00

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.

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 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**

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 / OSHA
Cashier, Accounting Office
P.O. Box 420603
San Francisco, CA 94142-0603
Phone (415) 703-4291 or (415) 703-4295 FAX (415) 703-3037

PENALTY REMITTANCE FORM

CIVIL PENALTY INFORMATION INSPECTION NUMBER 317201556 REPORTING ID 0950614 INDEX CODE 4014

ESTABLISHMENT NAME Robert A. Bothman, Inc.

CONTACT PERSON _____

PHONE NO. _____

FAX NO. _____

SITE ADDRESS 1781 Rose St... Berkeley

MAILING ADDRESS 650 Quinn Ave... San Jose, CA. 951122604

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 is for the following Citation Items: (e.g. Citation 1, Items 1-5; Citation 3)

TYPE OF PAYMENT ENCLOSED

CHECK OR MONEY ORDER INFORMATION

CHECK ENCLOSED IN THE AMOUNT OF \$ _____

MONEY ORDER ENCLOSED IN THE AMOUNT OF \$ _____

(Please make check or money order payable to CAL/OSHA and mail to the Cashier, Accounting Office, at the above address. Reference the Inspection Number on the "memo" portion of your check or money order.)

Go to www.dir.ca.gov/dosh to access the on-line third party secure payment processing site
OR Complete this section and fax to (415) 703-3037 **CREDIT CARD INFORMATION**

CREDIT CARD NO. _____ EXPIRATION DATE _____

CREDIT (Visa, MC, Amex, etc.) _____ SECURITY CODE: (last 3 digits on back of card) _____ (4 digits on front of Amex card)

NAME OF CARDHOLDER _____ SIGNATURE _____

EMAIL ADDRESS _____

CARDHOLDER PHONE NO. _____ FAX NO. _____

AMOUNT OF PAYMENT \$ _____

FOR OFFICE USE ONLY -----

AUTHORIZATION NO. _____ DATE PROCESSED _____

PROCESSED BY _____

Please call (415) 703-4291 or (415) 703-4295 or complete the information above and fax to (415) 703-3037

Cal/OSHA-2 PRF REV 6/10