State of New Mexico
ENVIRONMENT DEPARTMENT
OCCUPATIONAL HEALTH AND SAFETY BUREAU
525 Camino de los Marquez, Suite 3
P.O. Box 5469
Santa Fe, New Mexico 87502-5469
Phone: (505) 476-8700 or (877) 610-6742
Fax: (505) 476-8734

Contest Procedures

If you wish to contest any or all parts of the citation(s) or the proposed penalt(y/ies), the following procedures, extracted from 11 5.5 NMAC, Occupational Health & Safety – Review Commission Procedures, must be followed:

302. NOTICE OF CONTEST—

A. Who may file. – A Notice of Contest may be filed by any responsible employer.

B. Grounds.—A Notice of Contest may be based upon any combination of:

1. the existence or classification of any violation alleged in the Citations;
2. the amount of the penalty proposed for any violation; or
3. the reasonableness of the abatement period for any violation alleged in the Citation.

C. Deadline.—A Notice of Contest shall be filed with the Department within fifteen (15) working days after the employer's receipt of the Citation(s). It is recommended that the Notice of Contest be filed via "Certified Mail".

D. Format.—A Notice of Contest shall:

1. substantially comply with the format illustrated in Section 1011;
2. name the Department as the Complainant, and the responsible employer filling the Notice as the Respondent;
3. for each Citation contested, identify the Items within the Citation that are contested;
4. for each Item contested, state whether the contest relates to:

    a. the alleged violation itself (either the existence of the alleged conditions or that such conditions constitute a violation of the cited provision);

b. the classification of the alleged violation;
c. the proposed penalty;
d. the abatement date; or
e. a specified combination of any of the foregoing; and

5. have attached to it:

a. a copy of each Citation to which the contest applies, with each such Citation being marked as a separate exhibit; or
b. if the contest applies only to certain Items within the Citation, a copy of each page on which any contested Item appears, with each such Item being marked as a separate exhibit (except that if two or more contested items appear on the same page, that page may be marked as a single exhibit).

E. Employee notification requirements.—

1. Upon filing of a Notice of Contest, except as provided in Paragraph 2 of this subsection, the responsible employer shall post, at one or more locations reasonably accessible to the affected employees, a Notice to Affected Employees (Contest of Citation), as illustrated in Section 1004, with an attached copy of the Notice of Contest (including all exhibits thereto). Such notice shall remain posted until the earliest of the following events;

a. the filing of a Notice of Withdrawal of Contest by the Respondent;
b. the Respondent's receipt of a copy of a Notice of Vacation of Citation filed by Department;
c. the posting of a Notice to Affected Employees (Informal Administrative Review);
d. the posting of a Notice to Affected Employees (Pendency of Hearing); or
e. the Respondent's receipt of any order of the Commission dismissing the Notice of Contest or vacating all Citations in the case.

2. Posting of the Notice specified in Paragraph 1 of this subsection is not required if, at the time the Notice of Contest is filed, the responsible employer has no affected employees.

3. The responsible employer shall file, with the Notice of Contest:

a. an Affidavit of Posting in the format illustrated in Section 1009, attesting to posting of the Notice specified in Paragraph 1 of this subsection; or
b. under the circumstances specified in Paragraph 2 of this subsection, an Affidavit of Explanation for Non-Posting in the format illustrated in section 1010.

Fill-in-the-blank copies of forms for the Notice of Contest, Notice to Affected Employees (Contest of Citation), and Affidavit of Posting are provided for your convenience. To expedite your contest, please send the required forms and information, within 15 working days after your receipt of the Citation (s), to the address on this notice. You may use the enclosed forms, or your own forms, so long as they contain all required information and are substantially in the same format as the enclosed forms.

If you believe that Sections 302.E.2 & 302.E.3.b, above, apply to you, you may obtain a copy of the Affidavit of Explanation for Non-Posting form by calling 505-476-8700. Normally, all employees at the work site where a violation is alleged to have occurred are considered "affected employees" unless they could not, under any circumstances, be exposed to the cited conditions (whether or not you dispute the existence of the conditions, your responsibility for the conditions, or the actual exposure of your employees on the cited occasion). You should be aware that if you file an Affidavit of Explanation for Non-Posting, and the Department subsequently determines that you did have affected employees at the time of filing, the Department will seek dismissal of your Notice of Contest, or other appropriate relief, for failure to comply with 11 5.5 NMAC.

YOUR CONTEST MUST BE EITHER MAILED OR HAND-DELIVERED BY THE APPLICABLE DEADLINE; FACSIMILE TRANSMISSION IS NOT AN ALLOWABLE METHOD OF FILING. USE OF A PRIVATE COURIER SERVICE WILL BE DEEMED THE EQUIVALENT OF HAND-DELIVERY.

STATE OF NEW MEXICO
BEFORE THE
OCCUPATIONAL HEALTH AND SAFETY REVIEW COMMISSION

NEW MEXICO ENVIRONMENT DEPARTMENT,

Complainant,

v.

_____ [NAME OF RESPONDENT],

Respondent,

NOTICE OF CONTEST

TO: Compliance Program Manager
NMED Occupational Health and Safety Bureau
P.O. Box 5469
Santa Fe, New Mexico 87502

_____ [Name of Respondent] Contests

the following portions of the Citation (s) issued by the New Mexico Environment

Department on _____ [date of issue]:

[List, by Citation and Item number, each item being contested, and state what specific aspect (existence of cited condition that cited condition constitutes a violation, classification, penalty, or abatement date) is being contested.] Use additional sheets if necessary.

A copy/copies of the relevant Citation (s) / item (s) is/are attached hereto as Exhibit [s] A (through _____ [last exhibit letter]).

[Select appropriate alternatives where applicable.]

Dated:_____
[Date of filing]

_____[Signature]
_____[Printed Name]
_____[Address]
_____
_____[Phone number]

Attach copies of appropriately labeled Citations, NO OTHER ATTACHMENTS ARE NECESSARY AT THIS TIME.

STATE OF NEW MEXICO
BEFORE THE
OCCUPATIONAL HEALTH & SAFETY REVIEW COMMISSION

NEW MEXICO ENVIRONMENT DEPARTMENT,

Complainant,

v. No.

_____,

Respondent.

NOTICE TO AFFECTED EMPLOYEES
(CONTEST OF CITATIONS)

(Respondent) is filing the attached Notice of Contest pursuant to the Occupational Health and Safety Act. This contest will be subject of an Informal Administrative Review before the New Mexico Environment Department, and may be the subject of a hearing before the Occupational Health and Safety Review Commission. Any affected employee or representative of affected employees is entitled to participate as a party in these proceedings, as provided in the Occupational Health and Safety Act and in 11 5.5 NMAC, Occupational Health and Safety Review Commission Procedures. You may obtain a copy of the Review Commission Procedures from the Commission Secretary by calling (505) 660-4305. Copies of all documents filed in this matter may be inspected at

525 Camino de los Marquez, Suite 3, Santa Fe, New Mexico 87505.

_____ _____
(Date of Posting) (Signature)

_____
(Typed or Printed Name)

(This document must be posted with an attached copy of the Notice of Contest, in accordance with section 11 5.5.302.E NMAC, NEITHER THE ORIGINAL NOR A COPY SHOULD BE FILED)

STATE OF NEW MEXICO
BEFORE THE
OCCUPATIONAL HEALTH AND SAFETY REVIEW COMMISSION

NEW MEXICO ENVIRONMENT DEPARTMENT

Complainant,

No.

v.

_____,

Respondent.

AFFIDAVIT OF POSTING

STATE OF _____ [NAME OF STATE]

SS.

COUNTY OF _____ [NAME OF COUNTY]

_____ [Name of Signer], being duly sworn, states:

1. I am the _____ [Title] of the Respondent, _____ [Name of Respondent], and I am authorized to make this affidavit.

2. I posted copies of the Notice to Affected Employees **(Contest of Citations)**, Form 1004, with an attached copy of the Notice of Contest, in accordance with Paragraph 1 of Subsection E of 11 5.5.302 NMAC on _____ (Date)

[Signature] _____

[Printed Name] _____

[Address] _____

_____

Phone Number] _____

SUBSCRIBED AND SWORN TO before me by _____ [Name of Signer]

on _____ [Date].

_____

Notary Public

My Commission expires:

_____

[This completed form must be submitted with, BUT NOT ATTACHED TO, any Notice of Contest filed.]