

JIM GIBBONS
Governor

STATE OF NEVADA

ROGER BREMNER
Administrator

DIANNE CORNWALL
Director



L. TOM CZEHOWSKI
Chief Administrative Officer

(702) 486-9020
Fax: (702) 990-0358

**DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INDUSTRIAL RELATIONS
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
1301 N. Green Valley Parkway, Suite 200
Henderson, Nevada 89074**

September 23, 2008

Occupational Safety and Health Administration
Region 9
San Francisco Federal Building
90-7th Street, Suite 18100
San Francisco, CA 94103

Attention: Mr. Ken Nishiyama Atha
Regional Administrator

Reference: CASPA 07/N-03 and CASPA 07/N-05

Dear Mr. Atha:

We would like to thank you for taking the time on September 17th to allow us to discuss this matter in person. We feel that the discussions and dialogue between Nevada OSHA and Region 9 have led to a greater understanding of what transpired with regard to Boyd /Orleans.

Although Federal OSHA raises some issues which are beyond the scope of the CASPA, we are pleased to see Federal OSHA agrees Nevada OSHA followed its policies and procedures.

Nevada OSHA closing conferences are held in a timely manner usually within 24 days of the opening conference, and we feel this is adequate. Hazards noticed during a walk-around inspection are imparted to the employer/employee representatives at the time of the inspection and discussed with the employer and covered at the closing conference.

The Boyd/Orleans settlement was negotiated in a similar manner as Federal OSHA Section 17 settlements whereby Federal OSHA would change a class of citation to an unclassified citation or other classification.

At the closing conference, Nevada OSHA proposed two willful and six serious citations for a total fine of \$188,000.00. Boyd offered to pay the fine and to forego challenging the citations if the willful violations were reduced to serious. In addition, they proposed to hire a corporate safety director and other safety personnel. They also requested safety training/program help. We accepted their offer as part of a settlement agreement. Boyd paid the fine, hired a corporate safety director and is actively proceeding to update and integrate all of their casino properties into a system wide safety program.

RECEIVED
SEP 23 2008
LEGAL-07 10

As stated in your letter Nevada OSHA conferred with its legal counsel, however, what your investigator did not ascertain was legal counsel was involved within the first 3 weeks of the investigation and subsequently throughout the investigation. When counsel found that certain evidentiary statements from the initial investigation conflicted, he personally extended the time of evidence gathering. He re-interviewed some witnesses and took three depositions which were not attained in the first investigation. This need to re-investigate was a primary reason final settlement was somewhat delayed. Therefore, legal counsel was involved at the early part of the investigation.

Your statement that I was transferred to the Taxi Cab Authority by the Administrator (of the Division of Industrial Relations) is incorrect. The Administrator has no such authority. I was offered the position by the Director of Business and Industry and accepted same. Later I requested a transfer back to Nevada OSHA.

The acting Nevada OSHA CAO, a part of the final settlement "team" at DIR was in fact, a Safety Supervisor for Nevada OSHA. He has had extensive OSHA training and experience. Your suggestion to bring me back from my new position seems unnecessary and impractical.

Boyd requested help from the Safety Consultation and Training Section and is currently receiving training and program advice as well as inspection services. As stated earlier, Boyd has hired a safety consultant and spent over two million dollars in improvements and training to improve the safety and health culture in their nine properties.

As you know, the hotel/casino industry is included with construction and manufacturing as a part of our Nevada OSHA Strategic Plan.

In your conclusion we find your use of the word irregularities questionable. In addition, we do not agree that the handling of this case raises significant concerns. A more thorough investigation by Federal OSHA personnel would have been welcome.

We are in the process of reviewing the Nevada OSHA Operations Manual (NOM) in those areas mentioned in your investigative report, however, changes to our NOM will not be proposed until such time as we receive your revised FIRM and have compared the two documents to ensure continuity.

In deciding the Boyd/Orleans fatality case, it was certainly not our intent to circumvent any rules of Nevada OSHA or Federal OSHA.

Sincerely,



L. Tom Czehowski
Chief Administrative Officer
Nevada OSHA

Cc: D. Roger Bremner
Administrator Division of Industrial Relations

We are working to make your job safer!