BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:	Inspection No.
HANSFORD INDUSTRIES, INC. DBA VIKING STEEL **8610 Elder Creek Road** **Sacramento, CA 95828** **Employer**	**1133550** **DECISION AFTER RECONSIDERATION**

The Occupational Safety and Health Appeals Board (Board), acting pursuant to authority vested in it by the California Labor Code issues the following Decision After Reconsideration in the above-entitled matter.

JURISDICTION

Hansford Industries, Inc. dba Viking Steel (Employer) fabricates custom metal products for commercial building projects. On March 19, 2016, the Division of Occupational Safety and Health (the Division), through Associate Safety Engineer Susan Pipes, commenced an accident investigation of Employer's work site located in Sacramento, California (worksite).

On June 23, 2016, the Division issued six citations to Employer, alleging seven violations of California Code of Regulations, title 8.[1] The citations alleged that Employer failed to: certify that its forklift operators had been trained and evaluated as required; identify and evaluate hazards in the workplace and establish safe work practices with regard to movement of fabricated steel components via industrial trucks; prevent employees from standing, passing or working under the elevated portion of a forklift; take extreme care when tilting loads on a forklift; provide initial training to forklift operators on all of the required topics; balance, brace or secure loads so as to prevent tipping and falling; and, secure loads against dangerous displacement.

Employer filed a timely appeal of the citations. The matter was heard by J. Kevin Elmendorf, Administrative Law Judge (ALJ) for the California Occupational Safety and Health Appeals Board, in Sacramento, California on May 17 and 18, 2018; May 7, 8, and 9, 2019; and October 30, 2019. Cynthia Perez, staff counsel, represented the Division. Manuel Melgoza, attorney with the law firm Donnell, Melgoza, and Scates, represented Employer. Both parties submitted post-hearing briefs. Following the hearing, the ALJ affirmed Citation 1, Item 2, and

[1] Unless otherwise specified, all section references are to California Code of Regulations, title 8.

Citations 3, 4, 5, and 6, and affirmed penalties totaling $49,460. The ALJ vacated Citation 1, Item 1 and Citation 2.

Employer timely petitioned for reconsideration. The Division did not file an answer. Employer's petition asserts that the Decision was issued in excess of the ALJ's authority, the evidence does not support the findings of fact, and the findings of fact do not support the decision. (Lab. Code § 6617, subds. (a), (c), and (e).) The Board took Employer's Petition under submission on May 5, 2020.

Employer does not contest the Serious classifications of Citations 3, 4, and 5, the Accident-Related characterizations of Citations 5 and 6, or the dismissal of Citation 1, Item 1 and Citation 2. These findings are established as a matter of law. (Lab. Code § 6618.) Employer also asserted affirmative defenses including the Independent Employee Action Defense (IEAD) in its appeal, but did not raise these defenses in its Petition. These defenses are therefore considered waived. (*Id*.; *RNR Construction Inc.*, Cal/OSHA App. 1092600, Denial of Petition for Reconsideration (May 6, 2017).)

Employer asserts that the ALJ incorrectly decided Citation 1, Item 2, and Citations 3 through 6. Employer contests the classification of Citation 6 as Serious. Employer contests the reasonableness of the assessed penalties for Citations 3 through 6 and Citation 1, Item 2, arguing that the penalties are duplicative. Employer also claims that the ALJ's Decision was biased and relied on inadmissible hearsay evidence.

In making this decision, the Board has engaged in an independent review of the entire record. The Board additionally considered the pleadings and arguments filed by the parties. The Board has taken no new evidence.

ISSUES

1. Was the ALJ's Decision biased or based on impermissible hearsay evidence?

2. Did the Division establish, by a preponderance of the evidence, that Employer failed to effectively implement procedures to inspect, identify, and evaluate hazards at the worksite pertaining to the movement of fabricated steel components by forklift?

3. Did the Division establish, by a preponderance of the evidence, that Employer allowed an employee to tilt an elevated load forward when the load was not being deposited onto a storage rack or equivalent?

4. Did the Division establish, by a preponderance of the evidence, that Employer failed to provide initial training in all required topics to its powered industrial truck operators?

5. Did the Division establish, by a preponderance of the evidence, that Employer failed to ensure a load was balanced, braced, or secured to prevent tipping or falling during handling?

6. Did the Division establish, by a preponderance of the evidence, that Employer failed to secure a load against dangerous displacement?

7. Did the Division establish a rebuttable presumption that Citation 6 was properly classified as Serious?

8. Did Employer rebut the presumption that Citation 6 was properly classified as Serious?

9. Is the proposed penalty reasonable?

FINDINGS OF FACT

1. On March 19, 2016, Employer's employee Christopher Briggs (Briggs) suffered a fatal injury while attempting to remove a clamp securing a 37-foot long, over-2,000 pound staircase (hereinafter "the staircase" or "the load") to the forks of a forklift operated by Employer's employee Jamin Boyd Porter (Porter). (This incident shall be referred to as "the accident.")

2. Prior to the accident, Employer certified that its industrial truck operators had been trained and evaluated in the operation of powered industrial trucks.

3. Employer's Injury and Illness Protection Program (IIPP) contains procedures for identifying and evaluating workplace hazards.

4. Employer did not identify and evaluate workplace hazards, including the hazards associated with transporting and depositing a 37-foot long, over 2,000 pound non-linear metal staircase that was held in place on the forks of a forklift by four clamps.

5. The staircase was non-linear, meaning that it was configured in such a way that its center of gravity was not located in its geometric center. Employer did not provide initial training to its employees Porter, Joel King (King), or Briggs on workplace specific topics including composition of loads and load stability, and load manipulation, including the securing and depositing of loads, with regard to non-linear loads.

6. Porter, with the assistance of King, who acted as his spotter, drove the forklift carrying the staircase from the painting area to the staging area. Briggs followed behind Porter on another forklift to assist in depositing the staircase onto wooden boards (called "dunnage").

7. In the process of removing the clamps, the staircase started to tilt back, towards the mast of the forklift. King directed the forklift operator, Porter, to tilt the forks forward. Once the forks were tilted forward, the stairs stood back upright, and King continued to attempt to remove the right front clamp. Approximately four to five seconds later, the load began rocking back and forth, and it then fell, striking and killing Briggs.

8. No portion of the forklift fell during or immediately preceding the accident.

9. Porter, King and Briggs were unclamping the staircase from the forklift's forks in anticipation of depositing the staircase onto the dunnage, when the accident occurred. The staircase was elevated on the forks approximately four to 12 inches above the dunnage while King and Briggs began to remove the clamps.

10. Porter tilted the staircase while it was elevated above the dunnage.

11. The top of the staircase was not secured to the forklift.

12. The staircase became unstable while Briggs and King were attempting to remove the four clamps. Employer did not balance, brace or secure the staircase to prevent it from tipping and falling while the clamps were being removed.

13. Employer did not secure the staircase against dangerous displacement.

14. Employer elected to not use a sling or any other device to secure the top of the staircase.

15. Tilting the forks of the forklift while the staircase was resting on the forks could cause the staircase to fall and crush an employee, causing broken bones and fatal injuries to an employee's head or torso.

16. Employer's failure to provide initial workplace specific training to its powered industrial truck operators created the possibility that poorly trained forklift operators could operate forklifts unsafely if a load were to become unbalanced or displaced, fall, and strike an employee.

17. Employer did not have any supervisors present while the work that led to the accident was being conducted.

18. Employer's failure to ensure that the staircase was balanced, braced, or secured as to prevent tipping and falling, as well as its failure to secure the staircase against dangerous displacement either by proper piling or other securing means, caused Briggs' death.

19. Porter, King and Briggs were conducting work that was not "routine" when the accident occurred.

20. Porter, King and Briggs did not know that what they were doing was contra to Employer's safety requirements.

21. The penalties for Citations 1, Item 2, Citation 3, and Citation 4 are reasonable.

22. The penalties for Citations 5 and 6 are not reasonable.

DISCUSSION

1. Was the ALJ's Decision fatally biased or based on inadmissible hearsay evidence?

Employer alleges that the ALJ's Decision evinced bias in favor of the Division by "fail[ing] to mention and weigh" certain aspects of Employer's evidence (Petition, p. 2), and by crediting certain testimony of the Division's witness, Associate Safety Engineer Susan Pipes, who conducted the accident inspection, over the testimony of Employer's witnesses. Employer further alleges that Ms. Pipes's testimony should be discredited as hearsay.

Employer's allegations of bias

With regard to Employer's allegations of bias, Employer specifically asserts that the ALJ disregarded testimony from Employer's witnesses that, first, Mr. Briggs was not "assigned … to participate in the task" of moving the staircase, and, second, that King did not know that Briggs "was (or would be) in the danger zone" in the moments immediately before the accident. (Petition, p. 2.) Neither of these questions played any part in the ALJ's findings on the merits, however.

More generally, Employer alleges that the ALJ violated Labor Code sections 6607 and 6608, which require an ALJ to "faithfully and fairly" determine matters and issue a decision including a "summary of the evidence received and relied upon and the reasons or grounds upon which the decision was made." A review of the record, including the hearing transcripts and the Decision, indicates that the ALJ fulfilled this directive. Employer alleges, without supporting evidence beyond the outcome of the Decision itself, that the ALJ ignored or misrepresented aspects of Employer's evidence and testimony. The Board has held that bias is not demonstrated simply because a trier of fact credited one party's witnesses, and not those of the other party. (*Shimmick Construction, Co., Inc.*, Cal/OSHA App. 1080515, Denial of Petition for Reconsideration (Mar. 30, 2017); *T & C General Contractors*, Cal/OSHA App. 91-1199, Petition After Reconsideration (May 20, 1994).) The findings of the ALJ are entitled to great weight and will not be set aside in the absence of contrary evidence of considerable substantiality. (*Sherwood Mechanical, Inc.*, Cal/OSHA App. 08-4692, Decision After Reconsideration (June 28, 2012).) Here, Employer has presented no such contrary evidence.

The Board therefore finds the ALJ acted without bias. Employer, who has the burden of proof on this question, has offered no evidence beyond an unfavorable outcome to support its general claim of bias, and no evidence that the specific contentions to which Employer points had any material effect on the outcome of the matter.

Employer's objections to hearsay evidence

Employer asserts that Ms. Pipes's testimony should be entirely discredited because, during the hearing, she at times refreshed her memory by referring to a typed summary of her original, contemporaneous notes, and to other file documents and photographs, in order to recount details of her inspection and interviews made on the day of the accident. The first days of the hearing took place in May, 2018, over two years after the date of the accident; the hearing resumed in May, 2019, and October, 2019, over three years after the accident. Pipes's original notes were destroyed after the typed summary was created, and the summary was made at an unknown time after the date of the accident. (HT 5/7/19, HT 10/30/19, Exhibits 46 and B.)

Employer now argues that this summary, prepared by Ms. Pipes herself, amounts to "secondary writings" in which facts were "manipulated to fit into a particular theory." (Petition, pp. 27-28.) Employer made timely hearsay objections to Ms. Pipes's use of the summary during the hearing, which the ALJ ruled on. Section 376.2 of the Board's Regulations provides that where a timely objection is interposed, hearsay that would be inadmissible in a civil proceeding can only be used to supplement or explain other evidence but is not sufficient in itself to support a finding of fact. Even if the typed summary did not fall under any hearsay exceptions (see, e.g., Evid. Code §§ 1237, 1280), a careful review of the record, including both the Decision and the hearing transcripts, indicates that Pipes's references to it were used only supplement or explain other evidence and were not the basis for findings of fact.

The record indicates that the ALJ credited Pipes's testimony of her personal observations at the accident scene to support certain findings of fact, based on her experience and knowledge as an Associate Safety Engineer for the Division. (See Evidence Code, § 1200; *CC Meyers*, Cal/OSHA App. 94-1862, Decision After Reconsideration (Nov. 25, 1998).) On other findings of fact, where warranted, the ALJ employed Pipes's testimony to supplement or explain the testimony of Hieber, Patterson, or King. (§ 376.2.) Hieber, Patterson, and King all testified and Employer had the opportunity to question them about any inconsistencies between Pipes's testimony regarding her contemporaneous interviews with them and their own recollections.

The Board accordingly finds the ALJ did not impermissibly rely on the Division's hearsay evidence in issuing the Decision.

2. Citation 1, Item 2: Did the Division establish, by a preponderance of the evidence, that Employer failed to effectively implement procedures to inspect, identify, and evaluate hazards at the worksite pertaining to the movement of fabricated steel components by forklift?

Citation 1, Item 2, alleged a violation of section 3203, subdivision (a)(4), which provides, in relevant part:

> (a) Effective July 1, 1991, 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:
> (A) When the Program is first established;
> …
> (B) Whenever new substances, processes, procedures, or equipment are introduced to the workplace that represent a new occupational safety and health hazard; and

> (C) Whenever the employer is made aware of a new or previously unrecognized hazard.

The Division's violation description alleged:

> As a result of an accident investigation initiated March 19, 2016, at a worksite located at 8610 Elder Creek Road in Sacramento, CA, Hansford Industries, Inc. dba Viking Steel was found not to have identified and evaluated work place hazards, and established safe work practices, related to movement of fabricated steel components via industrial truck, including, but not limited to, securing of materials on industrial trucks and offloading materials from trucks.

The Board finds that the procedures for inspecting, identifying, and evaluating workplace hazards contained in Employer's written IIPP did comply with the requirements of section 3203, subdivision (a)(4), as described by the Board in *Brunton Enterprises, Inc.*, Cal/OSHA App. 08-3445, Decision After Reconsideration (Oct. 11, 2013),[2] but Employer did not effectively implement those procedures because it delegated the responsibility for safety decisions to non-management employees. As a result, Employer failed to identify the hazards involved in moving the staircase, which led to the fatal accident.

The operation of moving the staircase triggered Employer's duty to inspect, identify, and evaluate hazards.

Section 3230, subdivision (a)(4) imposes on employers the duty to inspect, identify and evaluate workplace hazards under at least three sets of circumstances: (1) when the program is first established, (2) when new substances, processes, procedures, or equipment are introduced, or (3) whenever the employer is made aware of a new or previously unrecognized hazard. (§ 3203, subd. (a)(4)(A)-(C).)

On Friday, March 18, 2016, shop superintendent Tim Hieber (Hieber) told Porter, who held the position of foreman of Employer's Paint and Parts Department, to move the staircase from the painting area to the staging area on the following day. Hieber testified that he gave Porter no instructions as to how to perform the task. Hieber also testified that such tasks were typically done by a "two man team," but he did not specifically designate either King or Briggs to assist Porter. On Saturday, March 19, 2016, Porter asked King to assist him with the operation, and King and Porter discussed and planned how it would be done. Based on their previous experience, their observations of the staircase and the distance it would be moved (about 500 feet), Porter and King decided how to load and secure the staircase, and the route to take. They made a visual estimate of the staircase's center of gravity and performed test lifts ("test picks") before moving it.

[2] "Section 3203(a)(4) contains no requirement for an employer to have a written procedure for each hazardous operation it undertakes. What is required is for Employer to have procedures in place for identifying and evaluating workplace hazards, and these procedures are to include 'scheduled periodic inspections.'"

Mr. Hieber and CFO/co-owner Jerad Patterson (Patterson) both testified that, per usual practice, it was left to the crew to decide how to move the staircase; Porter was instructed only to move the fabricated piece from the paint shop to the staging area. (Petition, p. 27.) Hieber and Patterson testified that no specific rules existed for such tasks; department foremen, such as Porter, were entrusted to determine how best to accomplish the work in collaboration with their crew members. Neither Hieber nor Patterson were at the worksite on the day the staircase was moved, nor was any other management-level employee.

Division inspector Pipes testified that the task of loading, moving, and depositing the staircase involved a number of hazards, including the risk of dangerous displacement due to the staircase's size, weight, and non-linear nature, and the realistic possibility of a serious or fatal injury should displacement occur. The ALJ credited Ms. Pipes's testimony regarding her personal observations of the staircase at the accident scene, based on her experience and qualifications as an Associate Safety Engineer for the Division.

While an employer may have a comprehensive written IIPP, the Division can demonstrate a violation of section 3203, subdivision (a)(4) by showing that the employer failed to effectively implement that plan; in this case, by failing to inspect, identify, and evaluate the hazards associated with moving the staircase. (*OC Communications, Inc*., Cal/OSHA App. 14-0120, Decision After Reconsideration (Mar. 28, 2016); *HHS Construction*, Cal/OSHA App. 12-0492, Decision After Reconsideration (Feb. 26, 2015).) Contrary to Employer's assertion, the Board has consistently recognized that it is not enough that an employer has written procedures in place for identifying and evaluating workplace hazards; proof of implementation requires evidence of actual responses to known or reported hazards. (*National Distribution*, Cal/OSHA App. 12-0391, Decision After Reconsideration (Oct. 5, 2015), citing *Los Angeles County Department of Public Works*, Cal/OSHA App. 96-2470, Decision After Reconsideration (Apr. 5, 2002).)

Pertinent here, section 3203, subdivision (a)(4)(B) provides that inspections shall be made to identify and evaluate workplace hazards, "Whenever new substances, processes, procedures, or equipment are introduced to the workplace that represent a new occupational safety and health hazard." A violation of the regulation can be proven by evidence from the Division that (1) "new substances, processes, procedures, or equipment … that represent a new occupational safety and health hazard" were introduced, and (2) the employer failed to inspect, identify, and evaluate hazards posed by the new substances, processes, procedures, or equipment. (*Barrett Business Services, Inc.,* Cal/OSHA App. 12-1204, Decision After Reconsideration (Dec. 14, 2016).)

The Division's evidence established that the staircase, and the task of loading, moving, and depositing it, introduced new processes or procedures, representing a new safety hazard, into the workplace. As Employer points out, "moving components from the fabrication and painting areas to storage involves unique circumstances in every case due to the custom-made nature of the products." (Petition, p. 17.) Division inspector Pipes credibly testified as to the hazards involved in the process or procedure of moving the staircase. One major hazard, for example, was the risk of displacement resulting in serious or fatal injury, due to the load's unique non-linear shape, offset center of gravity, weight, and size. Employer was therefore required to inspect, identify, and evaluate these new hazards. Hieber's and Patterson's undisputed testimony established that no management-level employee inspected the staircase to identify and evaluate the new and unique

hazards involved in the process or procedure of moving it, before assigning the operation to Porter. Nor was Porter given any instructions on how to safely accomplish the task.

Also pertinent, section 3203, subdivision (a)(4)(C) requires, "Inspections shall be made to identify and evaluate hazards…[w]henever the employer is made aware of a new or previously unrecognized hazard." In order to demonstrate a violation of section 3203, subdivision (a)(4)(C), the Division must demonstrate (1) that an employer was made aware of a "new or previously unrecognized hazard," and (2) that the employer failed to conduct an inspection to identify and evaluate that hazard. (*OC Communications*, *supra*, Cal/OSHA App. 14-0120.) Here, there is no question that Employer was aware of the potential hazards posed by the operation of moving a 37 foot staircase weighing over a ton, and knew at least one day in advance that the work was going to occur. Further, this staircase, and the operation of moving it, was a new and previously unrecognized hazard. As noted above, every product fabricated by Employer was unique, and each one thus presented new and previously unrecognized hazards. While Employer was admittedly aware each unique product presented a new hazard, in this instance the hazard was unrecognized because it was not analyzed or addressed. Employer was therefore required to conduct an inspection to identify and evaluate the new and previously unrecognized hazards presented by the task of loading, moving, and depositing the staircase. No party disputes that Employer delegated this task to Porter.

The Division's evidence demonstrates that the operation associated with the staircase triggered, at the least, both subdivisions (a)(4)(B) and (a)(4)(C) of the safety order – it introduced hazardous new procedures and processes into the workplace, and it constituted a new and previously unrecognized hazard in and of itself – both of which required inspection by Employer to identify and evaluate.

Employer delegated the task of implementing its IIPP to non-supervisory employees.

Tasking non-supervisory employees with implementation of an IIPP, and leaving them unsupervised, is failure to effectively implement an IIPP. Employers may not delegate the duty and responsibility of complying with section 3203, subdivision (a)(4) to non-supervisory employees. (*Papich Construction Co.*, Cal/OSHA App. 1236440, Decision After Reconsideration (Mar. 26, 2021).) Labor Code section 6400, subdivision (a) provides, "Every employer shall furnish employment and a place of employment that is safe and healthful for the employees therein." This non-delegable responsibility for ensuring safe working conditions lies on employers, not employees. (See Lab. Code, §§ 6400, 6401, 6402, 6403, 6404; *Granite Construction Company, Inc*., Cal/OSHA App. 1235643, Decision After Reconsideration (March 30, 2021); *National Distribution*, *supra*, Cal/OSHA App. 12-0391; *Staffchex*, Cal/OSHA App. 10-2456, Decision After Reconsideration (Aug. 28, 2014).)

The Board has consistently held that an employer "cannot leave it up to the employee to safeguard himself." (*Kenai Drilling Limited*, Decision After Reconsideration, Cal/OSHA App. No. 00-2326 (Sep. 23, 2002); *HB Parkco*, Cal/OSHA App. 07-1731, Decision After Reconsideration (Mar. 26, 2012); *Bay Area Rapid Transit District*, Cal/OSHA App. 09-1218 (Sep. 6, 2012).) An employer therefore may not delegate the affirmative requirements imposed by safety orders, such as the duty to inspect and identify new hazards, to non-managerial or non-supervisory

employees. (*Southern California Gas Company*, Cal/OSHA App. 81-0259, Decision After Reconsideration (Sep. 28, 1984); *City of Sacramento, Dept. of Public Works*, Cal/OSHA App. 93-1947, Decision After Reconsideration (Feb. 5, 1998).) Specifically addressing section 3203, subdivision (a)(4), the Board has found that an employer's "significant delegation of decision making to [non-supervisory] employees" regarding this safety order "constitutes a failure to effectively implement procedures to identify and evaluate work place hazards, constituting a violation of section 3203, subdivision (a)(4)." (*Papich Construction Co*., *supra*, Cal/OSHA App. 1236440.)

Jamin Porter, his title of foreman notwithstanding, was not a supervisor for Cal/OSHA purposes at the time of the accident.

Mr. Porter, who was in charge of the work at the time of the accident, held the position of foreman of the worksite's paint and parts department. (Exhibits B and 46.) The Board has held that job title is not necessarily determinative regarding status as a supervisor for purposes of the California Occupational Safety and Health Act (Cal/OSHA, or the Act); an employee labeled a foreman might not be a representative of management. (*City of Sacramento, Department of Public Works*, *supra*, Cal/OSHA App. 93-1947; *California Erectors, Bay Area, Inc*., Cal/OSHA App. 84-337, Decision After Reconsideration (Sept. 26, 1985).) Yet the Board has often used terms such as "foreman," "supervisor," and "lead [person]" interchangeably in referring to employees who are management representatives, so it is necessary to examine whether Porter, as a foreman, was a management representative and therefore authorized to implement Employer's IIPP for purposes of section 3203, subdivision (a)(4). We conclude that he was not.

The primary test of whether or not an employee is a "supervisor" is the employee's responsibility for the safety of others. (*City of Sacramento, Department of Public Works*, *supra*, Cal/OSHA App. 93-1947.) Supervisors are responsible for the safety of the workers under their supervision. "They are their employer's representatives at the work site and directly ensure their employer's compliance with statutory and regulatory safety requirements." (*Davey Tree Surgery Co. v. Occupational Safety & Health Appeals Bd*. (1985) 167 Cal.App.3d 1232.) The Board has further stated that it is "the cumulative nature of an employee's responsibilities, rather than the traditional power to hire and fire, which determines one's standing as a foreman or supervisor for purposes of the Occupational Safety and Health Act." (See *Chevron USA, Inc*., Cal/OSHA App. 89-283, Decision After Reconsideration (Feb. 8, 1991).) The significant consideration, therefore, is whether the employee was "invested with and exercise[d] sufficient authority over safety and the actions of the crew to render him a supervisor for purposes of the Act." (*Granite Construction Co.,* Cal/OSHA App. 84-648, Decision after Reconsideration (March 13, 1986).)

When an employee not only directs the activities of other workers, but is also responsible for duties such as conducting employee training and safety meetings, documenting safety matters, and enforcing safety rules, that employee is acting as a supervisor. (See, e.g., *Contra Costa Electric, Inc*., Cal/OSHA App. 90-470, Decision After Reconsideration (May 8, 1991); *Chevron USA, Inc*., *supra*, Cal/OSHA App. 89-283.) For example, in *ABM Facility Services, Inc. dba ABM Building Value*, Cal/OSHA App. 12-3496, Decision After Reconsideration (Dec. 24, 2015), the Board determined that a crew leader fatally injured in a workplace accident was not a supervisor

because the employee "did not have the authority to discipline his coworker[s] for safety violations, did not have any responsibilities related to safety training, and had no jobsite authority generally related to hiring, firing, or disciplinary matters." Similarly, in *City of Sacramento, Department of Public Works*, *supra*, Cal/OSHA App. 93-1947, the Board concluded that an injured employee "was not delegated adequate authority to make him a representative of management at the site," on the basis that the employee had no "authority to enforce safety requirements."

In this matter, Porter did not have the authority to hire or fire, although, as noted, this evidence is not in itself dispositive. Porter did not conduct employee safety training or safety meetings; these were done by Hieber, Patterson, and other managers. Nor did Porter have the authority to discipline other workers for violations of safety rules. (HT 5/9/19.) Porter is not listed on Employer's IIPP as a "person responsible for implementing" the program. (Exhibit 44A.) Patterson described Porter as one of several "lead" persons, each representing a different department, who were responsible for coordinating and overseeing the performance of tasks assigned by Hieber. Patterson stated that every employee was responsible for following and enforcing safe work practices and that Porter had no specific supervisory responsibilities or authority in this regard.

This evidence supports a finding that Porter did not have sufficient authority over workplace safety to render him a supervisor for Cal/OSHA purposes. Interpreting the safety order in a way most protective of employee health and safety, as the Board must do (*Carmona v. Division of Industrial Safety* (1975) 13 Cal.3d 303, 306), also supports a finding that Porter was not a supervisor. The Board therefore concludes that Porter, notwithstanding his title of foreman, was not a supervisor at the time of the accident.

The Board finds that Mr. Porter was not authorized to implement Employer's duties under the safety order, and Employer violated the safety order when it abdicated its responsibility to inspect new hazards by delegating the task to rank and file employees. An employer's ineffective or insufficient inspections cannot be said to comply with the protective standards espoused by the California Supreme Court in *Carmona*. (*A. Teichert & Son, Inc. dba Teichert Rock Products*, Cal/OSHA App. 1047912, Decision After Reconsideration (June 30, 2017).)

Employer's lack of meaningful inspection of the new workplace hazard, and its significant delegation of decision-making to non-supervisory employees, constituted a failure to effectively implement procedures to identify and evaluate work place hazards, establishing a violation of section 3203, subdivision (a)(4). (*Papich Construction Co*., *supra*, CAL/OSHA App. 1236440.)

Even if the Board were to find that Porter was a supervisor, Citation 1, Item 2 would still be upheld.

Even assuming, for purposes of discussion, that Mr. Porter was a supervisor and thus authorized to implement Employer's IIPP procedures to inspect, identify, and evaluate the hazards associated with the operation of moving the staircase, the Board would still uphold Citation 1, Item 2 on the basis that Porter failed to effectively implement those procedures.

A violation of section 3203, subdivision (a)(4) is established if the employer failed to effectively implement its duty and procedures to inspect, identify, and evaluate a hazard. (*OC Communications*, *Inc*., *supra*, Cal/OSHA App. 14-0120; *ABM Facility Services, Inc.*, *supra*, Cal/OSHA App. 12-3496.) Whether an employer failed to implement its IIPP is a question of fact. (*Ironworks Limited*, Cal/OSHA App 93-024, Decision After Reconsideration (Dec. 20, 1996).)

There is some evidence that Porter and King did take steps to effectively implement the IIPP. Porter, with input and collaboration from King, determined how the job would be done, and their respective roles in the job (Porter operating the forklift, and King acting as spotter). They inspected and assessed the route they would take from the paint department to the staging area, checked for any obstacles, and determined the safest path. They determined where load would be deposited. They visually inspected and assessed the staircase to estimate its center of gravity before attempting to load it. They determined the number of clamps to use and where to place them. They performed test picks after loading, to ensure that the stairs were securely clamped to the forks, before proceeding to move the forklift. As Porter drove the forklift, King made sure the route was clear and guided Porter's navigation. These facts indicate that Porter took affirmative steps to identify and evaluate hazards.

There is, however, one dispositive fact preventing a finding that Porter effectively inspected and identified the hazards of the operation. When King noticed the staircase starting to tilt, and instructed Porter to tilt the forks to "level it out," Porter did not exit the cab of the forklift to assess that situation. (Exhibits B and 46.) He simply tilted the forks as directed. The condition of the staircase leaning on the forks presented or created a new, previously unrecognized hazard of which Porter was made aware when King told him to tilt the forks. (§ 3203, subd. (a)(4)(C).) Porter failed to conduct an inspection to identify and evaluate that hazard. (*OC Communications*, *supra*, Cal/OSHA App. 14-0120.) Porter's failure to inspect, identify, and evaluate the new hazard, created when first clamp was removed and the staircase started to tilt on the forks, directly resulted in the load becoming unbalanced and falling.

For this reason, the violation would still be established in the event that Porter was found to be a supervisor for Cal/OSHA purposes.

The deficiencies in Employer's implementation of its IIPP amounted to a failure to maintain an effective safety program.

Employer advances an additional argument in an effort to defeat the citation. Employer argues the Division cannot establish a violation of section 3304, subdivision (a)(4) based on an "isolated" failure of implementation. Employer contends: "There is no precedent to support a finding that the Division can establish a §3203(a)(4) violation if an employer (who has a system for identifying and evaluating unsafe practices) fails to implement the system in [sic] an isolated occasion. *Brunton Enterprises* rejects such a notion." (Petition, p. 15.) (Underlining in Petition.)

There are several reasons to reject Employer's argument here.

First, in *Brunton Enterprises, Inc.*, *supra*, Cal/OSHA App. 08-3445 (*Brunton Enterprises*), the Board held only that the Division had failed to meet its burden of proof with regard to the alleged violation in that particular case. In addition, *Brunton Enterprises* addressed only what is required for a written IIPP, and the ALJ here cited it exclusively in that context. In that sense, it diverges from other Board decisions interpreting section 3203, subdivision (a)(4), which emphasize the distinction between having written procedures and implementing those procedures.

Second, there is, in fact, Board precedent holding that employers may not avoid the consequences for a violation of this safety order merely because the alleged violation was "isolated." To establish an IIPP violation, the flaw(s) in a program must amount to a failure to "establish," "implement," or "maintain" an "effective" program. (*HHS Construction*, *supra*, Cal/OSHA App. 12-0492*; BHC Fremont Hospital, Inc*., Cal/OSHA App. 13-0204, Denial of Petition for Reconsideration (May 30, 2014).) The Board has held that an IIPP can be found not effectively established, maintained, or implemented on the ground of one deficiency, if that deficiency is shown to be essential to the overall program. (See, e.g., *Keith Phillips Painting*, Cal/OSHA App. 92-777, Decision After Reconsideration (Jan. 17, 1995); *Mountain Cascade, Inc*., *supra*, Cal/OSHA App. 01-3561.) Implementing effective procedures for inspecting, identifying, and evaluating workplace hazards is essential to an overall workplace safety program. (*OC Communications*, *supra*, Cal/OSHA App. 14-0120.)

In *OC Communications*, *supra*, Cal/OSHA App. 14-0120, the Board explicitly rejected the employer's argument, almost identical to the argument Employer presents here, "that the citation should be dismissed as a single, isolated failure to implement a detail within an otherwise effective program." In that matter, the Board upheld a violation of section 3203, subdivision (a)(4)(C), finding that the employer was made aware of, but failed to inspect and evaluate, the new or previously unrecognized hazard of an inexperienced cable installation technician climbing a 25 foot utility pole in conditions of heavy rain and high wind. The employee reported the weather conditions and his safety concerns to his supervisor, who told the employee over the phone to "just get [the job] done." (*Ibid*.) No one came to inspect the worksite. The employee slipped and fell from the pole while attempting to attach his safety harness, and was seriously injured. The employer argued its safety program required, "if an employee reports a safety concern to a supervisor, that supervisor must determine what the hazard is and to do something to address it," and that its company policy was "for supervisors to visit a technician's worksite to address a condition if the technician report[ed] feeling unsafe or uncomfortable climbing." (*Ibid*.) As in this matter, the employer argued that this isolated failure to implement its IIPP should not establish a violation. The Board disagreed, concluding that the employer "failed to conduct an inspection, at a minimum, to evaluate the specific hazard at hand," and observing, "Had Employer followed its own rules it is quite possible the accident may have been avoided and this case may have never arisen." (*Ibid*.)

Similarly, in *ABM Facility Services, Inc.*, *supra*, Cal/OSHA App. 12-3496, the Board upheld a violation of section 3203, subdivision (a)(4) where the employer's written IIPP contained procedures for routine periodic safety inspections and hazard evaluations, but these procedures were not carried out. As a result, the employer failed to effectively identify and evaluate unsafe work practices associated with work on electrical systems, leading to an employee's death by

electrocution. The Board stated, with regard to the alleged violation, "Whether the scheduled periodic inspections that were required by the Employer's own safety rules actually occurred is the issue before the Board." (*Ibid*.)

Furthermore, it is undisputed that Employer's regular practice was for a supervisor, usually Mr. Hieber, to assign jobs to non-supervisory crew foremen, without conducting a hazard inspection himself before delegating the job, and without providing any instructions or guidance for compliance with safety regulations. The foremen were then responsible for appointing other workers to assist in the task and determining how the job would be done. Employer's failure to implement a program of inspections by supervisors or managers prior to assigning work to employees constituted an ongoing substantial deficiency in this regard and was more than an isolated, singular event.

For the reasons discussed, Citation 1, Item 2 is upheld.

3. Citation 3: Did the Division establish, by a preponderance of the evidence, that Employer allowed an employee to tilt an elevated load forward when the load was not being deposited onto a storage rack or equivalent?

Section 3650, subdivision (t) addresses the safe operations of industrial trucks, including forklifts. Section 3650, subdivision (t)(28) provides:

> (t) Industrial trucks and tow tractors shall be operated in a safe manner in accordance with the following operating rules:
> …
> (28) Extreme care shall be taken when tilting loads. Tilting forward with the load engaging means elevated shall be prohibited except when picking up a load. Elevated loads shall not be tilted forward except when the load is being deposited onto a storage rack or equivalent. When stacking or tiering, backward tilt shall be limited to that necessary to stabilize the load.

The Division's violation description alleged:

> On March 19, 2016, employees of Hansford Industries, Inc. dba Viking Steel, loaded a steel staircase onto an industrial truck and moved it to a staging area within the materials yard at a worksite located at 8610 Elder Creek Road in Sacramento. The load was tilted to facilitate removal of clamps securing the load to the forks of the lift, resulting in the load shifting as the clamps were removed, and an employee sustaining a fatal injury.

To prove a violation, the Division must demonstrate that Employer failed to take extreme care when tilting a load. The Division may establish a violation by showing that Employer did any of the following: 1) allowed an industrial truck to be tilted forward with the load-engaging means elevated, except when the truck is picking up a load; 2) allowed an elevated load to be tilted

forward, unless the load was being deposited onto a storage rack or equivalent; or, 3) allowed backward tilt while stacking or tiering, beyond that which was necessary to stabilize the load.

We find that Employer allowed an elevated load to be tilted forward at a time when none of the above exceptions applied.

Employer allowed an elevated load to be tilted forward.

The Division presented evidence that, at the time of the fatal accident, the forks of the forklift were elevated and supporting a load, and that Porter tilted the forks forward at King's direction in an attempt to re-balance the staircase on the forks. The Division also presented evidence that employees were exposed to the hazard of a tilted, elevated load.

Employer presented no evidence that the forks, and the load, were not tilted at the time of the accident.

Based on the undisputed evidence, the Division established this element.

The load was not being deposited onto a storage rack or equivalent when it was tilted forward.

Employer argues that no violation exists, because the load was being deposited onto the dunnage at the time of the accident. We disagree.

The forks were tilted, and the accident occurred, while the clamps were being removed. The load was elevated approximately 4-12 inches above the dunnage. Pipes testified that, in her interview with Porter, he stated it was customary, but not strictly necessary, to remove clamps before lowering the load onto the dunnage. (Exhibits B and 46.) In Pipes's determination, the crew was preparing to offload the staircase, not actually engaged in depositing it, at the time Porter tilted the forks. King's testimony on this point was consistent with Porter's statements to Pipes.

The ALJ reasoned, and we agree, that the removal of the clamps was done in preparation of depositing the load, but the act of removing the clamps was separate and distinct from the act of depositing the load. Therefore, because the staircase was tilted, became displaced, and fell during the removal of the clamps, the crew never reached the stage of actually depositing it.

Employer argues that removal of the clamps was encompassed in the act of depositing the load. Employer further argues that the Board has recognized that acts which are even indirectly "preparatory to a regulated activity are deemed to be encompassed and included in the regulated activity." (Petition, p. 19, fn. 14, citing *Tri-Valley Growers*, Cal/OSHA App. 93-1971, Decision After Reconsideration (Feb. 25, 1997); *Caldwell-Roland Roofing, Inc*., Cal/OSHA App. 03-2905, Decision After Reconsideration (June 9, 2010); *Macco Constructors, Inc*., Cal/OSHA App. 91-674, Decision After Reconsideration (May 27, 1993); *AG Labor, Inc*., Cal/OSHA App. 96-168, Decision After Reconsideration (May 24, 2000); and *Lights of America,* Cal/OSHA App. 89-400, Decision After Reconsideration (Feb. 19, 1991). (Underlining in Petition).)

Addressing Employer's argument, the ALJ pointed out that, most recently, the Board has stated that acts "preparatory of *and integrally related to* a regulated activity ... have been found to be covered as part of that activity under appropriate circumstances." (Decision, p. 19, citing

Caldwell-Roland Roofing, Inc., *supra*, Cal/OSHA App. 03-2905.) (Italics in Decision.) Applying this reasoning, the ALJ found that removal of the clamps was not "integral" to depositing the load, reasoning that "integral" is commonly understood to mean "necessary to the completeness of the whole."[3] (*Ibid*.) King testified that depending on the height of the dunnage, clamps could be removed either before or after depositing a load. Removing the clamps prior to depositing the staircase was thus, the ALJ concluded, a choice made by Porter and King rather than an act integral to depositing the load on the dunnage.

However, Employer and the ALJ have misconstrued both the purpose of the "preparatory acts" rule and the activity that the safety order is intended to regulate. Section 3650, subdivision (t)(28) pertains to, and regulates, the safe operation of industrial trucks such as forklifts, and for that purpose sets forth rules limiting when elevated loads may be tilted. Employer twists the Board's reasoning in the above-cited cases to interpret the "regulated activity" as, instead, the depositing of loads, in an effort to narrow the scope of the workplace protections that the safety order intends.

Employer cites the Board decisions listed above in support of its argument that removing the clamps should be considered an act "preparatory of," and thus a part of, depositing the load. A closer reading of the decisions indicates that they do not support Employer's argument. With the exception of *Caldwell-Roland Roofing, Inc*., *supra*, Cal/OSHA App. 03-2905, all of these decisions relate to the Board's interpretation of section 3314, subdivision (a). That safety order "applies to the cleaning, repairing, servicing, setting-up and adjusting of machines and equipment in which the unexpected energization or start up of the machines or equipment, or release of stored energy could cause injury to employees." (§3314, subd. (a)(1).) In *Tri-Valley Growers*, *supra*, Cal/OSHA App. 93-1971, the Board noted: "The clear purpose of Section 3314(a) is to keep employees away from the danger zone created by moving machinery." The Board explained, in that matter, that the Board "has refused to get drawn into the fruitless task (akin to counting angels on pinheads) of deciding whether a particular action taken around energized machinery is a cleaning, servicing or adjusting operation." (*Ibid*.) The Board has therefore chosen to interpret the safety order broadly, finding that, subject to narrow exceptions, "cleaning and servicing operations subject to section 3314(a) begin when preparatory work for cleaning and servicing begins." (*AG Labor, Inc*., *supra*, Cal/OSHA App. 96-168, citing *Lights of America*, *supra*, Cal/OSHA App. 89-400.)

In *Caldwell-Roland Roofing, Inc*., *supra*, Cal/OSHA App. 03-2905, the employer argued that the Division had cited the wrong safety order, section 1670, subdivision (a), which requires fall protection for employees exposed to falls of more than 7 ½ feet. The injured employee fell fifteen feet from a roof while sweeping leaves and debris without fall protection. The employer argued that the employee was engaged in "roofing operations" at the time he fell, and section 1730, which deals specifically with "Roofing Operations and Equipment," not the more general fall protection provisions of section 1670, subdivision (a), should apply. Section 1730 does not require fall protection until the employee is exposed to the hazard of a 20 foot fall. The Board rejected the employer's argument, finding that at the time of the fall, the employee's activities were unrelated

[3] <https://www.dictionary.com/browse/integral>

to any roofing operation. The Board reasoned that "the Standards Board carefully and unambiguously confined the applicability of the roofing safety orders to the work of removing and applying materials forming the outer covering of the roof." (*Ibid*, citing *Pinnacle Builders, Inc.,* Cal/OSHA App. 97-2963, Decision After Reconsideration (July 27, 2001).) The Board therefore refused to find that the employee was engaged in "work or measures which, although indirect, are preparatory of and integrally related to a regulated activity" with regard to the roofing safety order.

These decisions demonstrate that the Board has found it appropriate to include "preparatory" acts within the scope of a regulated activity only when such an interpretation, first, directly relates to the purpose of a safety order, and second, allows the safety order to be more protective of workers. (See also *Aluminite Northwest, Inc*., Cal/OSHA App. 00-1220, Decision After Reconsideration (Sep. 25, 2002) [finding "set up operations" are encompassed in the activity regulated by §4002(a), requiring guards on moving machinery parts].)

Employer's application of the principle, that preparatory activities are part of a regulated activity, is therefore inapposite to the current situation. First, as noted above, it misstates the activity that the safety order is intended to regulate. The purpose of 3650, subdivision (t)(28) is to prevent employees from being exposed to the hazard of tilted, elevated loads on industrial trucks. The activity being regulated is the tilting of elevated loads. The act of depositing a load is a specified exception to the rule against tilting an elevated load, not the activity being regulated. Since depositing the load is not the regulated activity, acts preparatory to it cannot not fall within the purview of the "preparatory acts" rule.

Second, Employer argues that this exception should be broadly interpreted to exclude acts performed in preparation of offloading from the protection of the safety order, thereby exposing more workers to the hazard the safety order seeks to address. Employer's interpretation, if adopted, would narrow the scope of the safety order by expanding the "being deposited" exception to include an ambiguous category of acts undertaken in preparation of off-loading/depositing. The Board explicitly rejected such a proposition in *Caldwell-Roland Roofing, Inc*., *supra*, Cal/OSHA App. 03-2905. We reject it here as well.

Citation 3 is upheld.

4. Citation 4: Did the Division establish, by a preponderance of the evidence, that Employer failed to provide initial training in all required topics to its powered industrial truck operators?

Section 3668, "Powered Industrial Truck Operator Training," contains a detailed list of requirements for training and evaluation of industrial truck operators. In subdivision (c), "Training program content," (c)(1)(A) through (M) specifies 13 "truck-related topics" the training must cover. Subdivision (c)(2)(A) through (I) specifies an additional 9 "workplace-related topics" that must be included. Among the "truck-related topics" are "Operating instructions, warnings, and precautions for the types of truck the operator will be authorized to operate." Among the "workplace-related topics" are "composition of loads to be carried and load stability," and "load manipulation, stacking and unstacking."

The Division's violation description alleged:

> As a result of an accident investigation initiated March 19, 2016, at a worksite located at 8610 Elder Creek Road in Sacramento, CA, Hansford Industries, Inc. dba Viking Steel was found not to have provided specific training for powered industrial truck operators covering both truck-related and workplace-related topics required by the standard, including, but not limited to, the composition of loads to be carried and load stability, load manipulation, including safe practices for securing and depositing loads, and manufacturer operating instructions, warnings, and precautions for a Caterpillar Lift Truck, Model DP70.

To establish a violation, the Division must demonstrate that Employer failed to ensure employees tasked with operating powered industrial trucks received initial training on the enumerated topics, except for topics that Employer can show were not relevant to the worksite.

The Division presented evidence that Employer's employees did not receive initial workplace-specific training on the enumerated topics of load composition and stability, load manipulation, and stacking/unstacking. Employer presented no evidence at the hearing that these topics were not relevant to the worksite, nor does it so argue now. The Division also presented evidence that employees were exposed to the hazard of Employer permitting employees to operate industrial trucks without receiving training on all enumerated topics.

First, although Hieber testified that he personally assessed and approved employees before permitting them to operate a forklift, the Division requested, but did not receive, documentation that this assessment had included the enumerated topics cited by the Division. (Exhibits 35, 36, and G.) Although employees had completed a basic training program in safe forklift operation and took part in safety meetings on various topics (Exhibits G and K), these documents do not indicate that all enumerated topics were covered. Employer's Code of Safe Practices (Exhibit I) also does not address the specific topics of load composition and load stability, load manipulation, or stacking and unstacking. Employer's "Operating Rules for Industrial Trucks" (Exhibit J) simply reprinted title 8 section 3650, subdivision (t); it did not address the specific categories required by section 3668.

The Division also presented evidence that Employer's training was not workplace-specific. Ms. Pipes testified that she requested, but did not receive, documentation from Employer on workplace-specific training and safe operating procedures regarding the traffic flow and conditions of the worksite, safe configuration of fabricated loads, and loading, transporting, and depositing such loads.

Finally, the ALJ's Decision considered Mr. Heiber's testimony that employees did not receive specific training on the various steps of a task such as moving the staircase, and Mr. Patterson's testimony that work done on weekends was different from the "routine" work done during the week. Patterson had the opportunity to elaborate on what employee training was provided with regard to non-routine work, but did not. Ms. Pipes testified that Employer's

employees told her that it is up to the employees doing the work to determine how to secure loads to the forks; this testimony was consistent with that of King, Hieber, and Patterson.

Employer broadly argues that all three crew members were certified forklift operators with years of experience, and that this is sufficient evidence that the crew had "received instruction on all the topics broadly alleged in the citation." (Appellant's Post-Hearing Brief, p. 19.[4]) This, however, misapprehends the violation alleged. The violation alleges Employer did not provide initial training with respect to certain items enumerated in safety order; specifically, load composition and stability, load manipulation, and stacking/unstacking of loads. The Division presented the above evidence that these elements were missing from Employer's training. Employer did not present evidence to the contrary.

Based on this evidence, the Board finds Employer did not provide initial training to its forklift operators on the enumerated topics of load composition, load stability, load manipulation, and stacking and unstacking. Citation 4 is upheld.

5. Citation 5: Did the Division establish, by a preponderance of the evidence, that Employer failed to ensure a load was balanced, braced, or secured to prevent tipping or falling during handling?

Section 3650, subdivision (l) provides:

> Loads shall be so balanced, braced, or secured as to prevent tipping and falling. Only stable or safely arranged loads shall be handled.

The Division's violation description alleged:

> On March 19, 2016, employees of Hansford Industries, Inc. dba Viking Steel, loaded a steel staircase onto an industrial truck and moved it to a staging area within the materials yard at a worksite located at 8610 Elder Creek Road in Sacramento. The load was not balanced, braced, or secured to prevent tipping and falling, resulting in an employee sustaining a fatal accident-related injury when the load tipped and fell onto the employee during offloading of the staircase.

To establish a violation, the Division must present evidence that the employer allowed its employees to handle an unstable load, and that the employer did not take measures to balance, brace, or secure the load to prevent it from tipping and falling during handling.

The unrefuted evidence in the record shows that Porter and King secured the staircase only by the four clamps attaching it to the blades of the forklift. The staircase became unstable, tipped, and fell when King and Briggs began to remove the clamps. The load was still attached to the forks

[4] Although the ALJ's Decision vacated Citation 1, Item 1, Employer's Petition combines its arguments regarding Citation 4 with similar arguments for vacating Citation 1, Item 1 in a single section. Rather than fully flesh out its arguments for vacating Citation 4 in its Petition, Employer incorporates by reference its arguments on this topic "as detailed further in [Employer's] Post-Hearing Brief." (Petition, p. 14.)

by at least two clamps when the staircase shifted and fell. Pipes testified that, in her opinion, tilting the forks while removing the clamps changed the center of gravity and weight distribution of the non-linear staircase, causing it to tip and fall. This opinion was based on Pipes's interviews with Porter and King, her own observations at the accident scene, and her training and experience as an Associate Safety Engineer with the Division. An inspector's opinions that are sufficiently supported by education, training, or experience support a finding. (*See Home Depot USA, Inc., # 661, Home Depot*, Cal/OSHA App. 10-3284, Decision After Reconsideration (Dec., 24, 2012); *Davis Brothers Framing Inc.*, Cal/OSHA App. 05-634, Decision After Reconsideration (Apr. 8, 2010).)

The staircase moved after two clamps had been removed. Even if the staircase was stable prior to the moment King began to remove the clamps, substantial evidence shows that the staircase became unstable during handling, exposing the employees to the hazard of an unbalanced and unsecured load. King testified that the staircase began to tilt as he attempted to remove the first clamps, and that when Porter tilted the forks, the staircase rocked back to its original position. Seconds later, after a clamp was removed, the staircase rocked again, became terminally unbalanced, and fell. No additional measures were taken to balance, brace, or secure the load while the clamps were being removed, and as a result, the load fell, killing Briggs.

Employer presented no evidence that any measure (other than tilting the forks, the subject of Citation 3) was taken to balance, brace, or secure the staircase against tipping or falling while the clamps were being removed. Employer argues instead that Porter and King "took measures intended to ensure the load was balanced" during the process of loading and transport, and that these measures, although ultimately unsuccessful, amounted to "substantial compliance" with the safety order. (Petition, p. 21.) (Underlining in Petition.)

In light of the Division's unrefuted evidence that Employer failed to balance, brace, or secure the staircase against tipping and falling during handling, Citation 5 is upheld.

6. Citation 6: Did the Division establish, by a preponderance of the evidence, that Employer failed to secure a load against dangerous displacement?

Section 3704 provides: "All loads shall be secured against dangerous displacement either by proper piling or other securing means."

The Division's violation description alleged:

> On March 19, 2016, employees of Hansford Industries, Inc. dba Viking Steel, loaded a steel staircase onto an industrial truck and moved it to a staging area within the materials yard at a worksite located at 8610 Elder Creek Road in Sacramento. The load was not secured against dangerous displacement, resulting in an employee sustaining a fatal accident-related injury when the load tipped and fell onto the employee during offloading of the staircase.

To establish a violation of section 3704, the Division must demonstrate by a preponderance of the evidence that the staircase was not secured against dangerous displacement, and that employees were exposed to the hazard that section 3704 was designed to protect against.

The requirement to secure a load before transporting it is preventative in nature, and has been required even without an employer having any indication that the load could become unstable or displaced. (*Traylor Bros. Inc.*, Cal/OSHA App.98-2345, Decision After Reconsideration (Jun. 12, 2002) [construing the same language in § 1593, subd. (f), i.e. "loads shall be secured against displacement."].) The words "secured against displacement" require that "the load be safe from the type of movement that may . . . occur" at any time. (*Forklift Sales of Sacramento, Inc.*, Cal/OSHA App. 05-3477, Decision After Reconsideration (July 7, 2011), citing *Obayashi Corporation*, Cal/OSHA App. 98-3674, Decision After Reconsideration (Jun. 5, 2001) [construing § 1593, subd. (f)].) Language appearing in one enactment which is identical to that of another enactment should be given the same meaning. (*Outdoor Resorts etc. Owners' Assn. v. Alcoholic Beverage Control Appeals Board* (1990) 224 Cal App. 3d 696, 701.)

Here, as discussed with regard to Citation 5, the Division presented evidence that the load was not secured against dangerous displacement while the clamps were being removed, just as it was not balanced, braced, or secured against tipping and falling. Employees were exposed to the hazard of the unsecured load becoming displaced between the time that King and Briggs began removing the clamps and the time the staircase actually fell. Employer did not use any means other than the four clamps on the forks to secure the staircase to the forklift, and as a result the load became displaced and fell when the clamps were removed.

Employer presented no evidence that the crew took any measures to secure the staircase against dangerous displacement while it was being unclamped. Instead, Employer argues that "the load was secured 99.99% of the time before that instant" after the first clamp was removed. (Petition, p. 21.) Employer further argues that the dangerous displacement occurred so quickly during "the brief instant in time when a clamp was removed," that the crew "could not act in time to avert the hazard." (*Id*., p. 23.) This reasoning does not support a conclusion that the citation should be vacated. Tragic accidents can, and do, happen in seconds. The safety order recognizes and seeks to address that danger, by requiring that loads are secured against displacement at all times during loading, transport, and unloading.

The Board has long upheld violations of section 3704 in cases with substantially similar circumstances as those surrounding the accident that killed Briggs:

- *Hood Corporation*, Cal/OSHA App. 85-672, Decision After Reconsideration (Dec. 2, 1987): Pipes were being unloaded from a truck, bands securing pipes were removed without making sure the pipes did not disengage, pipes rolled off the truck.
- *Bragg Crane & Rigging Co.*, Cal/OSHA App. 01-2428, Decision After Reconsideration (June 28, 2004): Straps were removed from a load on a truck during the unloading process, the unsecured load fell from the truck.

- *Duininck Bros. Inc.*, Cal/OSHA App. 06-2870, Decision After Reconsideration and Order of Remand (Apr. 13, 2012): Pipes were being unloaded from the back of a truck, employees cut the straps securing the pipes, pipes rolled off the truck.

In each of these cases, employees had secured a load before transporting it, then removed the securing means preparatory to or during unloading. When the securing means were removed, the load unexpectedly became displaced, and injured or killed an employee. The displacement occurred anywhere from seconds to 15 minutes after the means of securing the load was removed. In every matter, the Board found that the employer failed in its obligation to see that the load was secured from dangerous displacement after removal of the securing means that had been used during transport, thus exposing employees to the danger of the unsecured loads becoming displaced.

Here, the record shows that Porter and King secured the staircase to the forklift with clamps before transporting it, then began to remove the clamps without taking any further action to secure the staircase while the clamps were being removed. The staircase became displaced and fell within seconds after the first clamps were removed. The ALJ found this evidence sufficient to support a determination that Employer violated section 3704 by failing to secure the staircase against dangerous displacement. We agree.

Employer also asserts the ALJ refused to hear evidence that using a sling to secure the top of the load to the forklift would have been inappropriate in the situation of moving the staircase across the yard. The safety order, however, does not require a sling. It requires "proper piling or other securing means." Whether a sling could have been employed in this instance is not relevant, because Employer could have used any other means to secure the staircase against displacement, and did not.

In light of the Division's unrefuted evidence that Employer failed to secure the staircase against dangerous displacement while the clamps were being removed, Citation 6 is upheld.

7. Did the Division establish a rebuttable presumption that the violation identified in Citation 6 was properly classified as Serious?

Employer contests the Serious classification of Citation 6. Employer does not contest the classification of any other citation at issue in this matter; the classifications of Citation 1, Item 2, and Citations 3, 4, and 5 are therefore established as a matter of law. (Lab. Code, § 6618.) Nor does Employer contest the Accident-Related characterization of Citations 5 and 6; these characterizations are therefore established as a matter of law. (*Id*.)

Labor Code 6432 provides:

> (a) There shall be a rebuttable presumption that a "serious violation" exists in a place of employment if the division demonstrates that there is a realistic possibility that death or serious physical harm could result from the actual hazard created by the violation. The demonstration of a violation by the division is not sufficient by itself

> to establish that the violation is serious. The actual hazard may consist of, among other things:
> […]
> (2) The existence in the place of employment of one or more unsafe or unhealthful practices, means, methods, operations, or processes that have been adopted or are in use.
> […]
> (e) "Serious physical harm," as used in this part, means any injury or illness, specific or cumulative, occurring in the place of employment or in connection with any employment, that results in any of the following:
> (1) Inpatient hospitalization for purposes other than medical observation.
> (2) The loss of any member of the body.
> (3) Any serious degree of permanent disfigurement.
> (4) Impairment sufficient to cause a part of the body or the function of an organ to become permanently and significantly reduced in efficiency on or off the job, including, but not limited to, depending on the severity, second-degree or worse burns, crushing injuries including internal injuries even though skin surface may be intact, respiratory illnesses, or broken bones.

Ms. Pipes testified that she had been an Associate Safety Engineer with the Division for six years and was current in her mandated Division training at the time of the hearing. (Exhibit 4.) Pipes was therefore competent and qualified to testify as to the Serious classification of Citation 6. (Lab. Code, § 6432 subd. (g).)

With regard to Citation 6, Pipes testified that the staircase became displaced while the clamps were being removed and no other means was used to secure the staircase to the forklift. Pipes testified that because the staircase was not secured against dangerous displacement, the violation created a realistic possibility that employees could be struck by a displaced load, resulting in serious physical injury or death.

The Board has defined the term "realistic possibility" to mean a prediction that is within the bounds of human reason, not pure speculation. (*Shimmick Construction Co*., Cal/OSHA App. 1059365, Decision After Reconsideration (July 5, 2019), citing *Langer Farms, LLC*, Cal/OSHA App. 13-0231, Decision After Reconsideration (Apr. 24, 2015).) Here, Chris Briggs was fatally injured when he was struck by the displaced staircase. His head was crushed and a portion of his skull and brain were severed from his body. He suffered the loss of a member of his body, permanent disfigurement, and destruction of his brain and body sufficient to end his life. Mr. Briggs undeniably suffered serious physical harm as a result of the accident. The evidence of Chris Briggs's fatal injury resulting from the violation demonstrates that the violation not only created a realistic possibility of serious physical harm, but that the violation actually resulted in serious physical harm that caused an employee's death.

The Division accordingly established a rebuttable presumption that the violation cited in Citation 6 was properly classified as Serious.

8. Did Employer rebut the presumption that Citation 6 was properly classified as Serious by demonstrating that it did not, and could not with the exercise of reasonable diligence, know of the existence of the violation?

Labor Code section 6432, subdivision (c) provides that an employer may rebut the presumption that a violation is serious by demonstrating that the employer did not know and could not, with the exercise of reasonable diligence, have known of the presence of the violation. The employer must demonstrate both of the both of the following:

> (1) The employer took all the steps a reasonable and responsible employer in like circumstances should be expected to take, before the violation occurred, to anticipate and prevent the violation, taking into consideration the severity of the harm that could be expected to occur and the likelihood of that harm occurring in connection with the work activity during which the violation occurred. Factors relevant to this determination include, but are not limited to, those listed in subdivision (b) [;and]
>
> (2) The employer took effective action to eliminate employee exposure to the hazard created by the violation as soon as the violation was discovered.

Labor Code section 6432, subdivision (b) provides that the following factors may be considered: (A) Training for employees and supervisors relevant to preventing employee exposure to the hazard or to similar hazards; (B) Procedures for discovering, controlling access to, and correcting the hazard or similar hazards; (C) Supervision of employees exposed or potentially exposed to the hazard; and (D) Procedures for communicating to employees about the employer's health and safety rules and programs.

Employer failed to adequately supervise the activities of its employees at the time of the accident.

To rebut the presumption that Citation 6 was not properly classified as Serious, Employer argues that Porter, the crew foreman, was not a supervisor for Cal/OSHA purposes, and that Employer therefore did not have knowledge of the violation. We agree with Employer that Mr. Porter was not a supervisor for Cal/OSHA purposes, as discussed in relation to Citation 1, Item 2. We do not agree, however, that Employer did not know and could not, with the exercise of reasonable diligence, have known of the presence of the violation

Mr. Hieber was not at the worksite on the day of the accident, a Saturday. Nor was CFO/co-owner Patterson or any other member of management. Hieber arrived at the worksite after he received a phone call notifying him of the accident. The testimony of Ms. Pipes, Mr. Hieber, and Mr. Patterson established that no supervisor was present at the worksite and overseeing operations when the accident occurred.

Reasonable diligence includes the obligation of supervisors to oversee the work site where safety and health hazards are present if exposure to an unsafe condition exists. (*West Coast*

Arborists, Cal/OSHA App. 1108192, Denial of Petition for Reconsideration (Apr. 26, 2019), citing *Robert Onweller dba Pacific Hauling & Demolition*, Cal/OSHA App. 14-1087, Decision After Reconsideration (June 15, 2015); *A.A. Portonova & Sons, Inc*. Cal/OSHA App. 83-891, Decision After Reconsideration (March 19, 1986).) Failure to exercise supervision adequate to ensure employee safety is equivalent to failing to exercise reasonable diligence, and will not excuse a violation on the claim of lack of employer knowledge. (*Gateway Pacific Contractors, Inc*., Cal/OSHA App. 10-1502, Decision After Reconsideration (Oct. 4, 2016); *Stone Container Corporation*, Cal/OSHA App. 89-042, Decision After Reconsideration (March 9, 1990).) Moreover, an employer must exercise reasonable diligence to ensure that safe work practices are actually followed in order to successfully defend against a serious violation classification. (*Bragg Crane & Rigging Co.*, Cal/OSHA App. 01-2428, Decision After Reconsideration (June 28, 2004).)

Employer's business regularly involved using forklifts to transport large fabricated metal items within the worksite. Shop superintendent Hieber assigned the work of moving the staircase to Mr. Porter a day before the work was performed. It cannot reasonably be said that Employer was unaware of the potential hazards associated with moving the staircase. Yet Hieber gave Porter no instructions or supervision to ensure the staircase was moved, unloaded, and deposited safely.

In addition, the Board has held that hazardous conditions in plain view constitute serious violations since the employer could detect them by exercising reasonable diligence. (*Shimmick Construction Company Inc*., *supra*, Cal/OSHA App. 1059365; see also *Home Depot USA, Inc*., Cal/OSHA App. 15-2298, Decision After Reconsideration (May 16, 2017), citing *Fibreboard Box & Millwork Corp*., Cal/OSHA App. 90-492, Decision After Reconsideration (June 21, 1991).) The violations that occurred at the worksite on the day of the accident would have been in plain view of a supervisor, had one been present at the worksite. A supervisor exercising reasonable diligence would have had the opportunity to detect the hazards identified by the Division in Citation 6 and take corrective action prior to Briggs being killed.

We note that our result would be the same even if Porter had been a supervisor for Cal/OSHA purposes at the time of the accident. A supervisor or foreman who is responsible for safety is a management representative whose knowledge is imputed to the employer. (See, e.g., *Tri-Valley Growers, Inc.*, Cal/OSHA App. 81-1547, Decision After Reconsideration (Jul. 25, 1985), citing *Greene & Hemly, Inc.*, Cal/OSHA App. 76-435 Decision After Reconsideration (Apr. 7, 1978).) Whether supervisors know the condition is unlawful is immaterial, since ignorance of the specific safety order's mandates is no defense. (*McKee Electric Company*, Cal/OSHA App. 81-0001, Decision After Reconsideration (May 29, 1981); *Southwest Metals Company,* Cal/OSHA App. 80-068, Decision After Reconsideration (May 22, 1985).) Porter's knowledge of his involvement in activities that violated various safety orders found in title 8 would therefore be imputed to Employer, were he a supervisor.

Accordingly, regardless of whether Mr. Porter was a supervisor for Cal/OSHA purposes or not, Employer cannot rebut the presumption that Citation 6 was properly classified as Serious based on a claim that it lacked knowledge of the violation. The Division's unrefuted evidence demonstrates that Employer knew, or through the exercise of reasonable diligence should have known, of the violation.

9. Was the penalty assessment set forth in the ALJ's Decision reasonable?

Labor Code section 6319, subdivision (c) provides the factors which the Division considers when assessing penalty regulations: the size of the employer, good faith, gravity of the violation, and history of any previous violations. The enacting regulations can be found at CCR title 8, sections 333 through 336. (*M1 Construction*, Cal/OSHA App. 12-0222, Decision After Reconsideration (Jul. 21, 2014).) Penalties calculated in accordance with the penalty-setting regulations (sections 333 through 336) are presumptively reasonable. Penalties will not be reduced absent evidence that the amount was miscalculated, the regulations were improperly applied, or the totality of circumstances warrants a reduction. (*RNR Construction, Inc*., Cal/OSHA App. 1092600, Decision After Reconsideration (May 26, 2017) citing *Stockton Tri-Industries*, Cal/OSHA App. 02-4946, Decision After Reconsideration (Mar. 27, 2006).) The ALJ applied these factors to reduce the penalties proposed by the Division for Citations 3 and 4, from $8,100 to $4,385 and from $16,200 to $11,700, respectively. We find these adjusted penalties reasonable.

Board precedent holds that while the Division may issue multiple citations to an employer for a single hazard, it is proper to assess only one penalty where a single means of abatement is needed to address the hazard. (*A. Teichert & Son Inc.*, Cal/OSHA App. 09-0459 Decision After Reconsideration (Nov. 9, 2012); *Sherwood Mechanical, Inc.*, Cal/OSHA App. 08-4692, Decision After Reconsideration (Jun. 28, 2012); *A & C Landscaping, Inc.*, Cal/OSHA App. 04-4795, Decision After Reconsideration (Jun. 24, 2010); *Strong Tie Structures*, Cal/OSHA App. 75-856, Decision After Reconsideration (Sep. 16, 1978).) Employer argues that the proposed penalties assessed for Citation 1, Item 2, and Citations 3 through 6 are duplicative in that, because they relate to the same incident, they must necessarily require a single means of abatement.

The Division cited Employer under different but interrelated safety orders. The means of abatement are not the same for every alleged violation in this matter. Although the specific means of abatement are up to Employer, general means of abatement for each citation are as follows:

- Citation 1, Item 2 alleged a failure of Employer's duty to effectively implement its procedures to inspect, identify, and evaluate hazards. Abatement requires compliance with the inspection and evaluation procedures contained in Employer's IIPP to ensure that hazardous conditions are identified and properly evaluated. (Final penalty assessed: $975.00.)

- Citation 3 alleged a failure of Employer's duty to ensure proper forklift operations. Abatement requires implementation of procedures to detect unsafe conditions, such as effective supervision. This is distinct from the means of abatement in Citations 5 and 6. Although all relate to the employer's duty to detect unsafe conditions, supervision to prevent load tilting is distinct from supervision to ensure proper securement of loads. (Final penalty assessed: $4,385.00.)

- Citation 4 alleged a failure of Employer's duty to train employees on specified topics. Abatement requires training on these topics. (Final penalty assessed: $11,700.00.)

- Citation 5 alleged a failure of Employer's duty to balance, brace, or secure a load against tipping and falling. Abatement requires implementation of procedures to detect unsafe conditions, such as effective supervision. (Final penalty assessed: $16,200.00.)

- Citation 6 alleged a failure of Employer's duty to ensure that a load was secured against dangerous displacement. Abatement requires implementation of procedures to detect unsafe conditions, such as effective supervision. (Final penalty assessed: $16,200.00.)

The hazards identified in Citations 5 and 6 are substantially identical or duplicative. In view of the availability of a single means of abatement of the hazards addressed by Citations 5 and 6, the Board orders modification of these two penalties to impose a single $16,200.00 penalty.

DECISION

For the foregoing reasons, the Board affirms Citation 1, Item 2, Citations 3, 4, 5, and 6, and the Serious classification of Citation 6. The total penalties are modified from $49,460.00 to $33,260.00

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

Ed Lowry, Chair

Judith S. Freyman, Board Member

Marvin Kropke, Board Member

FILED ON: 08/13/2021

SUMMARY TABLE
OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

Inspection Number: **1133550**
In the Matter of the Appeal of: **HANSFORD INDUSTRIES, INC. DBA VIKING STEEL**
Site address**:** 8610 Elder Creek Road, Sacramento, CA 95828
Citation Issuance Date: 06/23/2016

Citation	Item	Section	Type*	Citation/Item Resolution	Affirm(A) or Vacate(V)	Final Type*	DOSH Proposed Penalty in Citation	FINAL PENALTY ASSESSED
1	1	3668 (f)	R	ALJ dismissed citation and penalty is vacated.	V	R	$325.00	**$0.00**
1	2	3203 (a) (4)	G	ALJ affirmed citation. Penalty remains as issued. DAR issued. ALJ affirmed.	A	G	$975.00	**$975.00**
2	1	3650 (t) (6)	S	ALJ dismissed citation and penalty is vacated.	V	S	$8,100.00	**$0.00**
3	1	3650 (t) (28)	S	ALJ affirmed citation. Penalty reduced. DAR issued. ALJ affirmed.	A	S	$8,100.00	**$4,385.00**
4	1	3668 (c)	S	ALJ affirmed. Penalty reduced. DAR issued. ALJ affirmed.	A	S	$16,200.00	**$11,700.00**
5	1	3650 (l)	S	ALJ affirmed Citation. Penalty remains as issued. DAR issued ALJ affirmed.	A	S	$16,200.00	**$16,200.00**
6	1	3704	S	DAR issued. Citation affirmed, penalty vacated as duplicative of penalty at citation 5.	A	S	$16,200.00	**$0.00**
						Sub-Total	$66,100.00	**$33,260.00**
						Total Amount Due**		**$33,260.00**

*See Abbreviation Key
**You may owe more than this amount if you did not appeal one or more citations or items containing penalties.
Please call 415-703-4310 or email accountingcalosha@dir.ca.gov if you have any questions.

SUMMARY TABLE
OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

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PENALTY PAYMENT INFORMATION

Please make your cashier's check, money order, or company check payable to **Department of Industrial Relations**
Write the **Inspection Number** on your payment.

If sending via US Mail:
CAL-OSHA Penalties
PO Box 516547
Los Angeles, CA 90051-0595

If sending via Overnight Delivery:
US Bank Wholesale Lockbox
c/o 516547 CAL-OSHA Penalties
16420 Valley View Ave.
La Mirada, CA 90638-5821

Credit card payments can also be made on-line at www.dir.ca.gov/dosh/calosha_paymentoption.html

DO NOT send payments to the California Occupational Safety and Health Appeals Board.

Classification/Other Type Abbreviation Key:

Abbreviation	**Classification Type**	Abbreviation	**Classification Type**	Abbreviation	**Classification Type**
FTA	Failure to Abate	RR	Repeat Regulatory	WR	Willful Regulatory
G	General	RS	Repeat Serious	WRG	Willful Repeat General
IM	Information Memorandum	S	Serious	WRR	Willful Repeat Regulatory
NL	Notice in Lieu of Citation	SA	Special Action	WRS	Willful Repeat Serious
R	Regulatory	SO	Special Order	WS	Willful Serious
RG	Repeat General	WG	Willful General		

DECLARATION OF SERVICE BY MAIL OR EMAIL

Inspection Number 1133550

I, Sarsvati Patel, declare:

1. I am at least 18 years of age, not a party to this action, and I am employed in Sacramento County at 2520 Venture Oaks Way, Suite 300, Sacramento, CA 95833.

2. On _____, I served a copy of the attached DECISION AFTER RECONSIDERATION in an envelope addressed as shown below and placed the envelope for collection and mailing on the date and at the place shown in item 3 following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

3. Date mailed: Place mailed: (city, state): Sacramento, CA

4. On 08/13/2021, I electronically served the document listed in item 2 as follows:

NAME OF PERSON SERVED	ELECTRONIC SERVICE ADDRESS
Chris Grossgart, DOSH Legal	cgrossgart_doshlegal@dir.ca.gov
Rocio Reyes, DOSH Legal	rreyes_doshlegal@dir.ca.gov
DOSH Northern Office	doshlegal_oak@dir.ca.gov
Manuel M. Melgoza	office@oshalaw.net
Cynthia Perez	clperez@dir.ca.gov
Darin Wallace	DWallace@dir.ca.gov

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Sarsvati Patel
(TYPE OR PRINT NAME OF DECLARANT)

S Patel
(SIGNATURE OF DECLARANT)

BEFORE THE

STATE OF CALIFORNIA

OCCUPATIONAL SAFETY AND HEALTH

APPEALS BOARD

In the Matter of the Appeal of: **HANSFORD INDUSTRIES, INC. DBA VIKING STEEL** **8610 Elder Creek Road** **Sacramento, CA 95828** **Employer**	Inspection No. **1133550** **ERRATA TO DECISION AFTER RECONSIDERATION**

On August 13, 2021, the Occupational Safety and Health Appeals Board (Board) issued a Decision After Reconsideration (DAR) in the above-entitled matter. A typographic error has been noted in the Decision section of the DAR. By this Errata, the Board corrects the DAR as follows:

The first line of the second full paragraph on page 7 contains an error.

The paragraph reads: **Section 3230, subdivision (a)(4) imposes on employers the duty to inspect, identify and evaluate workplace hazards under at least three sets of circumstances: (1) when the program is first established, (2) when new substances, processes, procedures, or equipment are introduced, or (3) whenever the employer is made aware of a new or previously unrecognized hazard. (§ 3203, subd. (a)(4)(A)-(C).)**

The typographic error is found in the reference to Section 3230. The correct section is 3203.

Therefore, the paragraph should read: **Section 3203, subdivision (a)(4) imposes on employers the duty to inspect, identify and evaluate workplace hazards under at least three sets of circumstances: (1) when the program is first established, (2) when new substances, processes, procedures, or equipment are introduced, or (3) whenever the employer is made aware of a new or previously unrecognized hazard. (§ 3203, subd. (a)(4)(A)-(C).)**

The remainder of the DAR is unaffected.

This Errata to the DAR relates back to the original date of issuance: February 24, 2021, and is effective as of that date.

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

Ed Lowry, Chair

Judith S. Freyman, Board Member

Marvin Kropke, Board Member

FILED ON: 08/23/2021