BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:	Inspection No. **1384029**
USA WASTE OF CALIFORNIA, INC. **dba BLUE BARREL DISPOSAL SERVICES** **25772 SPRINGBROOK RD** **SANTA CLARITA, CA 91350** **Employer**	**DECISION**

Statement of the Case

USA Waste of California, Inc, DBA Blue Barrel Disposal Services (Employer) is a waste management company that repairs its own hoses. Beginning March 7, 2019, the Division of Occupational Safety and Health (the Division), through Compliance Officer Ramin Behani (Behani), conducted a scheduled inspection at 25772 Springbrook Road, in Saugus, California (the site).

On July 17, 2019, the Division issued two citations to Employer alleging violations of California Code of Regulations, title 8.[1] Citation 1, Item 1, alleges that Employer failed to post industrial truck operating rules in Spanish in a place frequented by drivers. Citation 1, Item 2, alleges that Employer failed to certify its 2014 through 2018 OSHA Forms 300A. Citation 1, Item 3, alleges that Employer failed to evaluate collection vehicles to determine if the spaces inside the packer bodies were permit-required confined spaces. Citation 2, Item 1, alleges that Employer failed to guard the point of operation of a crimping machine.

Employer filed timely appeals of the citations, contesting the existence of the violations and the reasonableness of the proposed penalties.[2] Additionally, Employer contested the classification, reasonableness of abatement requirements, and asserted various affirmative defenses for Citation 2, including the assertion that different safety orders applied, and lack of employer knowledge.[3]

[1] Unless otherwise specified, all references are to sections of California Code of Regulations, title 8.
[2] At the commencement of the proceedings, Employer withdrew its appeal of Citation 1, Items 1 through 3.
[3] Except where discussed in this Decision, Employer did not present evidence in support of its affirmative defenses, and said defenses are therefore deemed waived. (*RNR Construction, Inc.*, Cal/OSHA App. 1092600, Denial of Petition for Reconsideration (May 26, 2017).)

This expedited matter came before Rheeah Yoo Avelar, Administrative Law Judge (ALJ) for the California Occupational Safety and Health Appeals Board (Appeals Board), in West Covina, California on January 24, 2020. James Dufour, Esq., represented Employer. Emelinda Lim, Senior Safety Engineer for the High Hazard Unit, represented the Division. At the commencement of the proceedings, the Parties stipulated that Employer used the crimping machine at issue. The matter was submitted on February 24, 2020.

Issues

1. Did the Division establish that Employer violated 4184, subdivision (b), by failing to ensure the point of operation on the crimping machine was guarded?

Findings of Fact

1. Employer used the crimping machine to attach metal fixtures to the bare ends of hoses.
2. Operation of the crimping machine requires one hand to power the movement of the crimp ring up or down and requires another hand to hold the work piece.
3. The movement of the crimp ring around a die cage produces a squeezing or pressing action which pushes the die segments in the cage inwards, creating one point of operation. The compressed die segments apply force around the cuff of the metal fixture, squeezing it and thereby anchoring it to the hose, creating a second point of operation.
4. The crimping machine is not guarded and is located in plain sight inside a shop with limited access to employees.

Analysis

1. Did Employer violate 4184, subdivision (b), by failing to ensure the point of operation on the crimping machine was guarded?

Section 4184, subdivision (b), provides:

> All machines or parts of machines, used in any industry or type of work not specifically covered in Group 8, which present similar hazards as the machines covered under these point of operation orders, shall be guarded at their point of operation as required by the regulations contained in Group 8.

In citing Employer, the Division alleges:

> Prior to and during the course of the inspection, including, but not limited to, on March 7, 2019, employees were utilizing MATCHMATE PLUS Crimp System

> [located in the shop] that had unguarded point of operation (unguarded crimp die). The unguarded crimp die had grinding, shearing, punching, pressing, squeezing, drawing, cutting, rolling, mixing and/or similar action while in operation.

The Division has the burden of proving a violation by a preponderance of the evidence. (*ACCO Engineered Systems*, Cal/OSHA App. 1195414, Decision After Reconsideration (Oct 1, 2019).) "Preponderance of the evidence" is usually defined in terms of probability of truth, or of evidence that when weighted with that opposed to it, has more convincing force and greater probability of truth with consideration of both direct and circumstantial evidence and all reasonable inferences to be drawn from both kinds of evidence. (*Timberworks Construction, Inc.*, Cal/OSHA App. 1097751, Decision After Reconsideration (Mar. 12, 2019).) Words within an administrative regulation are to be given their plain and commonsense meaning, and when the plain language of the regulation is clear, there is a presumption that the regulation means what it says. (*AC Transit*, Cal/OSHA App. 08-135, Decision After Reconsideration (Jun. 12, 2013).)

(a) Applicability of the Safety Order

Section 4184, subdivision (a), requires employers to guard points of operation that are a part of specific machines. The safety regulation provides:

> Machines as specifically covered hereafter in Group 8, having a grinding, shearing, punching, pressing, squeezing, drawing, cutting, rolling, mixing or similar action, in which an employee comes within the danger zone shall be guarded at the point of operation in one or a combination of the ways specified in the following orders, or by other means or methods which will provide equivalent protection for the employee.

In determining the applicability of section 4184, subdivision (b), the Division must show a machine is one that is specifically covered in Group 8, or presents similar hazards as the machines covered under these point of operation orders and must therefore be guarded at their point of operation. (*Jensen Precast*, Cal/OSHA App. 05-2377, Decision After Reconsideration (Mar. 26, 2012).) “The Appeals Board has interpreted section 4184, subdivision (b), broadly to include any machine that grinds, shears, punches, presses, squeezes, draws, cuts, rolls, mixes, or acts similarly…and is used in any industry or type of work not specifically covered in Group 8.” (*Supra*, citing *Sonoma Grapevines, Inc.* Cal/OSHA App. 99-875, Decision After Reconsideration (Sep. 27, 2001).) Further, safety orders are to be liberally interpreted to achieve a safe working environment. (*Carmona v. Division of Industrial* Safety (1975) 13 Cal.3d 303.)

The Division must establish that the crimping machine creates a "grinding, shearing, punching, pressing, squeezing, drawing, cutting, rolling, mixing or similar action, in which an employee comes within the danger zone[.]" (*PCC Rollmet, Inc.* Cal/OSHA App. 15-3653, Decision After Reconsideration (Aug. 15, 2017).) "The determinative factor under Section 4184(a) is the similarity of the action of the moving parts and under Section 4184(b) it is the similarity of the hazard presented." (*Guillaume Grapevine Nursery, Inc.* Cal/OSHA App. 08-3273, Decision After Reconsideration (Oct. 25, 2011), citing *United Foods, Inc.*, Cal/OSHA App. 89-197, Order Pursuant to Remand (Aug. 6, 1990); *Nursery Supplies, Inc.*, Cal/OSHA App. 99-2731, Decision After Reconsideration (Aug. 2, 2002).

Employer's refuse collection trucks require many types of hoses. They provide the pressure needed to operate the numerous moving parts that manipulate trash. These hoses wear down and occasionally need replacement. Employer cuts hoses of various lengths and diameters appropriate to the need. The crimping machine places metal fixtures on the ends of hoses which allow them to attach to the pressure systems of the collection trucks.

The crimping machine is generally shaped like a soda dispenser, where a power button is on a top panel and activity occurs in the open area right below the control panel. The crimping machine manual (Exhibit 16) and video demonstrations of a working crimping machine (Exhibit L) show that that a large ring, called a "crimp ring," held by two metal arms from the top, moves up to encircle a smaller stationary ring which holds the die cage. Each die cage, no matter what size, holds eight die segments. The die segments are spring loaded to keep them pointing outwards. The outermost corners of the wedges have larges spaces between the dies. When the crimp ring pulls up around the die cage, it increasingly presses the die segments in the cage together. As the segments press into the interior of the die cage, the spaces between the die segments on the exterior of the cage get smaller, and simultaneously reduce the inner circumference of the cage.

The crimping machine performs an action similar to pressing or squeezing. These actions present similar associated hazards and therefore, the safety order applies.

(b) Violation of the Safety Order

Section 4184, subdivision (a) requires guarding of a machine at the point of operation so that employees who come into the danger zone are protected. Terms found in section 4188, Points of Operation and Other Hazardous Parts of Machinery, Definitions, are useful for interpreting the regulation. In particular, it provides the following definitions of "Danger Zone" and "Point of Operation":

> Point of Operation. That part of a machine which performs an operation on the stock or material and/or that point or location where stock or material is fed to the machine. A machine may have more than one point of operation.
>
> Danger Zone. Any place in or about a machine or piece of equipment where an employee may be struck by or caught between moving parts, caught between moving and stationary objects or parts of the machine, caught between the material and a moving part of the machine, burned by hot surfaces or exposed to electric shock.

A spring-loaded switch located at the front of the machine raises the crimp ring to engage with the die cage. The switch needs continuous pressure to keep the crimp ring moving up. When pressure is released, the crimp ring stops. The machine does not cycle automatically, and continuous movement of the ring towards a full crimp requires continuous pressure on the switch. The crimping machine is capable of inching, requiring the operator to apply intermittent pressure on the power switch to create this kind of movement. Toggling the switch by pressing in the other direction lowers, or retracts, the crimp ring. Retraction may also be inched or continuous depending on the kind of pressure an operator applies on the switch. Observation of the videos in Exhibit L shows that the crimp ring engaging in a crimp moves up slowly relative to the speed of typical human hand or arm movement.

Operation of the crimping machine requires one hand to depress the switch and the other hand to hold a hose upright from below the crimp ring and the die cage. Two main points of operation are created by the upward movement of the crimp ring around the die cage, and then from the inwards movement of the die segments that are displaced by the crimp ring. The first point of operation is where the crimp ring touches the outside of the die cage. The second point of operation is where the die segments press on the metal fixture. There are no guards on any of these points of operation.

Exposure

The Appeals Board has articulated several tests for determining employee exposure. In *Dynamic Construction Services, Inc.*, Cal/OSHA Insp. 1005890, Decision After Reconsideration (Dec. 1, 2016), the Appeals Board stated:

> The Division may establish exposure in one of two ways. First, the Division may demonstrate employee exposure by showing that an employee was actually exposed to the zone of danger or hazard created by a violative condition. (*Benicia Foundry & Iron Works, Inc.*, Cal/OSHA App. 00-2976, Decision After Reconsideration (April 24, 2003).) Actual exposure is established when the

evidence preponderates to a finding that employees actually have been or are in the zone of danger created by the violative condition. (*Gilles & Cotting, Inc*., 3 O.S.H. Cas (BNA) 2002, 1975-76 O.S.H. Dec. (CCH) P 20448, 1976 OSAHRC LEXIS 705 (Feb. 20, 1976) fn 4.)

Alternatively, "the Division may establish the element of employee exposure to the violative condition without proof of actual exposure by showing employee access to the zone of danger based on evidence of reasonable predictability that employees while in the course of assigned work duties, pursuing personal activities during work, and normal means of ingress and egress would have access to the zone of danger." (*Benicia Foundry & Iron Works, Inc.*, Cal/OSHA App. 002976, Decision After Reconsideration (April 24, 2003).) Stated another way, employee exposure may be established by showing the area of the hazard was "accessible" to employees such that it is reasonably predictable by operational necessity or otherwise, including inadvertence, that employees have been, are, or will be in the zone of danger. (*River Ranch Fresh Foods-Salinas, Inc.* Cal/OSHA App. 01-1977, Decision After Reconsideration (July 21, 2003); *Benicia Foundry & Iron Works, Inc.*, Cal/OSHA App. 00-2976, Decision After Reconsideration (April 24, 2003).) Under this "access" exposure analysis, the Division may establish exposure by showing that it was reasonably predictable that during the course of their normally work duties employees "might be" in the zone of danger. (*Field & Associates, Inc*., 19 O.S.H. Cas (BNA) 1379, 2001 O.S.H. Dec. (CCH) P 32,330, 2001 OSAHRC LEXIS 19 (April 17, 2001).) "The zone of danger is that area surrounding the violative condition that presents the danger to employees that the standard is intended to prevent." (*Benicia Foundry & Iron Works, Inc*., Cal/OSHA App. 00-2976, Decision After Reconsideration (April 24, 2003) [citations omitted].) The scope of the zone of danger is relative to the wording of the standard and the nature of the hazard at issue. (*Fabricated Metal Products, Inc*. 18 O.S.H. Cas (BNA) 1072, 1997 OSAHRC LEXIS 118 (Nov. 7, 1997).)

i. Actual Exposure

The parties stipulated that the crimping machine was in use at the work site. Behani credibly testified that the crimping machine was located in plain view inside a shop that had limited access. The inspection did not arise from any injury.

Behani testified that he used a tape measure to measure the machine's parts. The inside diameter of the crimp ring is about 4.5 inches. The distance from the bottom of the fully retracted crimp ring to the bottom of the die cage is about 2.25 inches. The space between the fully retracted crimp ring and the die cage is about 0.5 inch. The inside diameters of die cages range

from about 1.5 to 2.25 inches. Extrapolating from these measurements, and watching the video in Exhibit L, the crimp ring height is about 1.5 inches and appears to be the same height as the crimping die. Behani testified that the crimp ring applied hydraulic pressure equivalent to the weight of three or four trucks per square inch. Further, he testified that he measured the diameter of his fist at 3 inches and the height of his thumb at 2 inches.

Behani did not observe actual operation of the crimping machine. He inspected the crimping machine in person then reviewed videos on YouTube, researched on Google, reviewed the operator's manual, and stated he had a good picture of how the machine operates. He considered it hazardous for a hand to hold a hose under the crimp ring. He thought it was possible for hands to reach the point of operation from the bottom of the machine.

Behani testified that the crimping machine has "tons of pinch points" but specifically declined to find exposure from the front, discounted front and side guards "as not part of the conversation here," and focused rather only on the bottom of the machine. He called the area below the crimp ring a danger zone because it was near the point of operation, but did not delineate where a zone of danger would begin or end.

Thus, the Division did not establish actual exposure.

ii. Access to the Zone of Danger

The Division established that although access to the shop housing the crimping machine was limited, the machine itself was in plain view and accessible to anyone inside the shop. The actuating switch is located on the front of the machine. The ring and die cage are below the power panel and the point of operation is open on three sides, in addition to being open on the top and the bottom.

As cited above, the Appeals Board has held the Division may establish exposure by showing that it was reasonably predictable that during the course of normal work duties, or inadvertently, employees might be in the zone of danger.

Behani testified that it is easy to have a hand inside the crimp ring. Behani stated that he could not see why the machine was designed in such a way to make it so likely for fingers to get pinched. The Division, however, did not show that it would be reasonably predictable that body parts could reach into any point of operation during the course of normal operation. The Division did not demonstrate how hands or fingers could, deliberately or inadvertently, enter into any point of operation.[4] The Division did not offer evidence that any point of operation posed a risk

[4] The Division did not present any evidence or testimony showing how body parts could reach the point of operation, for example whether in changing die cages or extracting something stuck. There was no evidence or

to employees requiring positive guarding from below or otherwise. Thus, the record does not support a finding that the points of operation, and any associated zones of danger, were accessible.

For these reasons, the Division failed to establish the violation of the safety order.

Conclusion

Division established that the crimping machine contains one or more points of operation but failed to demonstrate that there was actual exposure or access to the zone of danger and that the points of operation require guarding. Accordingly, Employer's appeal of Citation 2, Item 1, is granted.

Order

It is hereby ordered that Citation 1, Item 1, be affirmed, and the penalty assessed as set forth in the Summary Table.

It is further ordered that Citation 1, Item 2, be affirmed, and the penalty assessed as set forth in the Summary Table.

It is further ordered that Citation 1, Item 3, be affirmed, and the penalty assessed as set forth in the Summary Table.

It is further ordered that Citation 2, Item 1, be dismissed and the penalty be vacated.

Dated: 03/12/2020

Rheeah Yoo Avelar
Administrative Law Judge

The attached decision was issued on the date indicated therein. If you are dissatisfied with the decision, you have thirty days from the date of service of the decision in which to petition for reconsideration. Your petition for reconsideration must fully comply with the requirements of Labor Code sections 6616, 6617, 6618 and 6619, and with California Code of Regulations, title 8, section 390.1. **For further information, call: (916) 274-5751.**

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testimony showing that the crimp ring is capable of inadvertent movement. Nor was there contemplation of an errant part of the body reaching the point of operation, for example the likelihood of someone falling forward, getting tangled in the crimp ring and the space designed to hold a die cage, while another part of the body inadvertently presses the power switch.