

BEFORE THE  
STATE OF CALIFORNIA  
OCCUPATIONAL SAFETY AND HEALTH  
APPEALS BOARD

In the Matter of the Appeal of:

**ORANGE COUNTY SANITATION  
DISTRICT**

10844 Ellis Avenue  
Fountain Valley, CA 92708

Employer

DOCKET 13-R3D1-0287

**DECISION**

**STATEMENT OF THE CASE**

On July 19, 2012, the Division of Occupational Health and Safety (the Division) through Associate Safety Engineer, Brandon Hart (Hart) commenced an investigation at a place of employment maintained by Orange County Sanitation District (Employer) at 10844 Ellis Avenue, Fountain Valley, California (the site). On January 11, 2013, The Division cited Employer for failure to adequately block out the moveable parts on a “Foul Air Fan” (FAF) to prevent inadvertent movement or the release of stored energy while performing periodic maintenance.

Employer filed a timely appeal contesting the existence of the alleged violation.

The matter came on regularly for hearing before Clara Hill-Williams, Administrative Law Judge (ALJ) for California Occupational Safety and Health Appeals Board, at West Covina, California on February 19, 2014. Employer was represented by Health and Safety Supervisor, Wesley Bauer. District Manager, Richard Fazlollahi represented the Division. The parties presented oral and documentary evidence which is listed in the certification of the record<sup>1</sup>. The ALJ extended the submission date to December 31, 2014.

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<sup>1</sup> Exhibits received and testifying witnesses are listed on Appendix A. Certification of the Record is signed by the ALJ. Unless otherwise specified, all section references are to Sections of Title 8, California Code of Regulations.

## ISSUES

1. Did Employer fail to ensure that its employees adequately blocked out the moveable parts on a “Foul Air Fan” (FAF) to prevent inadvertent movement, or the release of stored energy while performing periodic maintenance on July 17, 2012?
2. Was Employer aware of the hazard that caused the employee’s injury while attempting to service and maintain a FAF?

## FINDINGS OF FACT

1. During the performance of the preventive maintenance on July 17, 2012, an employee followed Employer’s approved procedures for lock-out/tag-out and de-energizing the FAF.
2. Employer did not have a procedure to block the movement of the fan belt.
3. In performing preventive maintenance on a FAF at the work site on July 17, 2012, an employee’s fingers became entangled between the belt and the pulley (pinch point) which resulted in an amputation of the digit of his left index finger and an avulsion of the tip of his middle finger.
4. Employer’s failure to have a procedure for blocking or locking moveable parts capable of inadvertent movement created a hazard that an employee could come in contact with pinch points resulting in an injury.

## ANALYSIS

- 1. Did Employer fail to ensure that its employees adequately blocked out the moveable parts on a “Foul Air Fan” (FAF) to prevent inadvertent movement or the release of stored energy while performing periodic maintenance on July 17, 2012?**

The Division cited Employer for a violation of section 3314(c) which states:

Machinery or equipment capable of movement shall be stopped and the power source de-energized or disengaged, and, if necessary, the moveable parts shall be mechanically blocked or locked out to prevent inadvertent movement, or release of stored

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energy during cleaning, servicing and adjusting operations. Accident prevention signs or tags or both shall be placed on the controls of the power source of the machinery or equipment.

The Division specifically alleged that “on and prior to July 17, 2012, the employer failed to ensure that employees adequately blocked out the moveable parts on the Foul Air Fan to prevent inadvertent movement, or the release of stored energy, while performing periodic maintenance. As a result, on July 17, 2012, an employee suffered an amputation while attempting to service and maintain the Foul Air Fan.”

The Division has the burden of proving a violation, including the applicability of the safety order, by a preponderance of the evidence. (See, e.g., *Travenol Laboratories, Hyland Division*, Cal/OSHA App. 76-1073, DAR (Oct. 16, 1980), at pp. 2-3; and *Howard J. White*, Cal/OSHA App. 78-741, DAR (June 16, 1983).) The Division has the burden of proving each element of its case by a preponderance of the evidence. (*Cambro Manufacturing Co.*, Cal/OSHA App. 84-923 through 925, DAR (Dec. 31, 1986).

The Board has interpreted the operative language in the safety order as follows:

[The] Section ... imposes two primary safety requirements prior to cleaning, adjusting and servicing machinery: (1) machine parts capable of movement must be stopped, and (2) the power source must either be de-energized or disengaged. If the two primary requirements are not effective to prevent inadvertent movement, another requirement applies--the parts capable of movement must be mechanically blocked or locked in place. *Rialto Concrete Products, Inc.*, Cal/OSHA App. 98-413, DAR (Nov. 27, 2001), citing *Maaco Constructors, Inc.*, Cal/OSHA App. 91-674, DAR May 27, 1993.)

Hart<sup>2</sup>, testifying on behalf of the Division attributed the cause of the accident to Employer’s failure to ensure that employee, George Crawford

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<sup>2</sup> On May 30, 2014, Employer filed a closing brief regarding the exclusion of Brandon Hart’s testimony due to the Division’s failure to provide training records of Inspector (Associate Safety Engineer) Hart, pursuant to Labor Code Section 6432, which provides: A Division safety engineer or industrial hygienist who can demonstrate, at the time of the hearing, that his or her division-mandated training is current shall be deemed competent to offer testimony to establish each element of a serious violation, and may offer evidence on the custom and practice of injury and illness prevention in the workplace that is relevant to the issue of whether the violation is a serious violation.

After review of Employer’s post hearing brief, ALJ Hill-Williams denied Employer’s motion to exclude Hart’s testimony because Employer failed to file a timely motion to compel Hart’s training records prior to the noticed hearing. Further, ALJ Hill-Williams deemed Hart’s Curriculum Vitae (See Exhibit 2) and his testimony regarding his background sufficient to qualify him competent to offer testimony to establish each element of a serious violation, and

(Crawford) adequately blocked out the moveable parts on the FAF to prevent inadvertent movement while performing the maintenance on the machine.

In applying the Board's ruling in *Rialto Concrete Products, Inc., supra*, the evidence shows that while Employer had extensive LOTO procedures; Employer's procedures were ineffective because they did not include a means to completely stop machine parts capable of movement.

A violation of the safety order is shown by the evidence establishing that parts of the FAF had not stopped moving after Crawford completed the LOTO procedures; nor was the power source de-energized and moveable parts mechanically blocked or locked out.

## **2. Was Employer aware of the hazard which caused the employee's injury while attempting to service and maintain a FAF?**

Employer did not contest the classification or the proposed penalty amount of the citation, however, Employer asserted that Employer was not aware of the hazard prior to Crawford's serious injury on July 17, 2012.

Section 6432(b) requires employer knowledge; "a serious violation shall not be deemed to exist if the employer can demonstrate that it did not, and could not with the exercise of reasonable diligence, know of the presence of the violation." The ALJ in *Pierce Enterprises*, Cal/OSHA App. 00-1951, DAR (March 20, 2002), summarized the ways in which employer's lack of knowledge may be established: by showing that (1) the employer did not know of the hazard; (2) the employer exercised supervision over its employees to ensure adequate safety; (3) the employer ensured that its employees complied with its safety rules; or (4) the violation was not foreseeable.

At the hearing, Employer's Safety Supervisor, Wesley Bauer, testified that Employer's procedure had been performed several times without any type of injury. Employer's LOTO procedure involved stopping or shutting down and isolating the equipment, and verification which is performed by testing and attempting to start the equipment (See Exhibit 5).

Employer listed the "root cause" of Crawford's injury in Employer's accident report (Exhibit 6) to (1) Crawford's finger coming too close to the fan belt while it was still turning; (2) the stored energy in the motor and fan was

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offer evidence on the custom and practice of injury and illness prevention in the workplace that is relevant to the issue of whether the violation is a serious violation.

still being released while the motor was winding down to a stop; and (3) Crawford did not check to see if the fan and belts had come to a complete stop before removing the guard (also referred to as a shroud).

Here Employer believed there was not any way Employer could anticipate this type of injury from performing the maintenance operation. Employer listed compelling factors to support Employer's lack of knowledge of the hazard of failing to provide additional block out procedures when LOTO fails to prevent movement of parts. Employer's LOTO procedures conducted by employees on the FAF had been performed for the past 20 years numerous times without any injuries. The evidence shows Employer's LOTO procedures are not in dispute. However, the safety order requires that moveable parts must be blocked out if necessary to prevent inadvertent movement.

In applying *Pierce Enterprises, supra*, the evidence does not demonstrate that Employer lacked knowledge of the hazard based upon the Employer's investigation finding that the accident causing the injury would not have occurred if Crawford had waited for the fan to stop moving and the machine to de-energize before removing the shroud. Crawford's noncompliance with Employer's safety rules of not waiting until the fan stopped moving, and the Employer's procedure in failing to block out the moveable parts and release of stored energy, were foreseeable and a violation of the safety order.

Although Employer did not contest the classification or penalty, Hart calculated the penalties according to the Division's policies and procedures (See Exhibit 8). Therefore, the total penalty of \$22,500 was properly calculated.

### **CONCLUSION**

The evidence supports a finding that a serious accident-related violation of section 3314(c) occurred because Employer failed to ensure that its employee adequately blocked out the moveable parts on the FAF to prevent inadvertent movement or the release of stored energy while performing periodic maintenance on July 17, 2012, which results in an assessed penalty of \$22,500.

### **ORDER**

It is hereby ordered that the citation is established as indicated above and as set forth in the attached Summary Table.

It is further ordered that the penalties indicated above and set forth in the attached Summary Table be assessed.

Dated: December 22, 2014

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**CLARA HILL-WILLIAMS**  
Administrative Law Judge

CHW: ao

Pursuant to § 364.2(d) of Title 8 of the California Code of Regulations, Employer shall post for 15 working days a copy of this Order.

Pursuant to § 364.2(b) of Title 8 of the California Code of Regulations, the Division shall serve a copy of this disposition on any authorized employee representative if known to the Division to represent affected employees.

# SUMMARY TABLE DECISION

In the Matter of the Appeal of:

**ORANGE COUNTY SANITATION DISTRICT  
Docket 13-R3D1-0287**

Abbreviation Key: Reg=Regulatory  
 G=General                      W=Willful  
 S=Serious                      R=Repeat  
 Er=Employer                  DOSH=Division

IMIS No. 315530105

DOCKET	C I T A T I O N	I T E M	SECTION	T Y P E	AFFIRMATION, MODIFICATION OR WITHDRAWAL	A F F I R M E D	V A C A T E D	PENALTY PROPOSED BY DOSH IN CITATION	PENALTY PROPOSED BY DOSH AT PRE- HEARING	<b>FINAL PENALTY ASSESSED BY BOARD</b>
13-R3D1-0287	1	1	3314(c)	SAR	ALJ affirms the proposed citation and penalty	X		\$22,500	\$22,500	<b>\$22,500</b>
<b>Sub-Total</b>								\$22,500	\$22,500	<b>\$22,500</b>

**Total Amount Due\*** **\$22,500**

NOTE: Payment of final penalty amount should be made to:

Accounting Office (OSH)  
 Department of Industrial Relations  
 P.O. Box 420603  
 San Francisco, CA 94142  
 (415) 703-4291

(INCLUDES APPEALED CITATIONS ONLY)

\*You will owe more than this amount if you did not appeal one or more citations or items containing penalties. Nothing in the Order or this Summary Table shall preclude Employer from seeking a payment plan from the DIR Accounting Office. Please call **(415) 703-4291** if you have any questions.

ALJ: CHW/ao  
 POS: 12/22/2014

**APPENDIX A**

**SUMMARY OF EVIDENTIARY RECORD**

**Orange County Sanitation  
Dockets 13-R3D1-0287**

**Date of Hearing:** February 19, 2014

**Division's Exhibits**

<b>Exhibit Number</b>	<b>Exhibit Description</b>	<b>Admitted</b>
1	Jurisdictional Documents	X
2	Curriculum Vitae	X
3A	Photo - Belt & Pulley (ER)	X
3B	Photo - Shroud Covering (DOSH)	X
3C	Photo - Covering side view (DOSH)	X
3D	Photo - Ducting	X
3E	Photo - Protective cover over prime mover	X
3F	Photo - Measurement of protective cover (DOSH)	X
3G	Photo - Shaft Controlling Exhaust Fan (DOSH)	X
3H	Photo - Prime Mover Belt & Pulley (DOSH)	X
4	P.S of 29 Definition "Blocking Device"	X
5	ER's LOTO Procedures	X
6	ER's Accident Report	X
7	Lockout/Tagout Device Removal Notification	X
8	Plant work order	X
9	Patient Information - hospital report	X
10	Accident Report (CAL/OSHA Form 36)	X
11	C-10	X

**Employer's Exhibits**

<b>Exhibit Letter</b>	<b>Exhibit Description</b>	<b>Admitted</b>
A	Field notes	X
B	OSHA Investigation Summary	X

**Witnesses Testifying at Hearing**

1. Brandon Hart
2. Wesley Bauer

**CERTIFICATION OF RECORDING**

*I, Clara Hill-Williams, the California Occupational Safety and Health Appeals Board Administrative Law Judge duly assigned to hear the above matter, hereby certify the proceedings therein were electronically recorded. The recording was monitored by the undersigned and constitutes the official record of said proceedings. To the best of my knowledge, the electronic recording equipment was functioning normally.*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

