BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:	Inspection No. **1220329**
MANNINGTON MILLS, INC. **dba BURKE INDUSTRIES, INC.** **Employer**	**DECISION**

Statement of the Case

Mannington Mills, Inc., doing business as Burke Industries, Inc. (Employer), is a rubber product manufacturer. Beginning April 4, 2017, the Division of Occupational Safety and Health (the Division), through District Manager Tara Huffman (Huffman), who was at the time an associate safety engineer, conducted an inspection of Employer's jobsite located at 2250 South Tenth Street in San Jose, California (jobsite).

On September 28, 2017, the Division issued 17 citations to Employer, with a total of 34 items. Employer filed timely appeals of the following citations: Citation 1, Items 2, 3, 5, 6, 7, 9, 11, 12, 13, 14, 15, 17, and 18; and Citations 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17. The parties stipulated to settle many of the citations pursuant to terms set forth in an Order Memorializing Partial Settlement (Settlement Agreement) issued on February 28, 2024. The following citations were resolved pursuant to the Settlement Agreement: Citation 1, Items 2, 5, 6, 9, 11, 12, 13, and 18; Citations 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12. The Settlement Agreement, and the terms contained therein, is hereby adopted and incorporated by reference. It is hereby ordered that the citations in the Settlement Agreement are resolved pursuant to the terms of the Settlement Agreement. The citations that remain at issue are Citation 1, Items 3, 7, 14, 15, and 17, and Citations 13, 14, 15, 16, and 17.

Employer asserted various grounds for appeal for each citation at issue. Employer appealed Citation 1, Items 3, 7, 14, 15, and 17, and Citations 13, 14, 15, 16, and 17, by contesting the existence of the alleged violations. Employer appealed Citation 1, Items 3, 14, 15, and 17, and Citations 13, 14, 15, 16, and 17, by contesting that the citations were classified incorrectly. Employer appealed Citation 1, Items 14, and 15, and Citations 13, 15, 16, and 17, on the grounds that the proposed penalties were unreasonable. Employer appealed Citations 13, 15, and 16, on the grounds that the abatement requirements were unreasonable. At hearing, the parties informed the assigned Administrative Law Judge that the issue of abatement was resolved

for all citations except for Citation 13. Finally, Employer asserted various affirmative defenses for each of the citations at issue.[1]

This matter was heard by Christopher Jessup, Administrative Law Judge (ALJ) for the California Occupational Safety and Health Appeals Board (the Appeals Board), from Sacramento County, California. The parties and witnesses appeared remotely via the Zoom video platform on the following dates: May 10, 11, and 12, 2022; July 27 and 28, 2022; September 13, 14, 21, and 22, 2022; October 4, 5, and 6, 2022; December 13, 14, and 15, 2022; March 28 and 29, 2023; April 11, 12, and 13, 2023; October 3, 4, and 5, 2023; January 23, 24, and 25, 2024; March 19, 20, and 21, 2024; August 6, 7, 8, 20, 21, and 22, 2024; and January 14, 2025. Christopher Kanne, Nicolette Zulli, Joseph Ciucci, and Alison Buchanan, attorneys with Duane Morris LLP, represented Employer. T. Michelle Henson, Clara Hill-Williams, and Cynthia Perez, Staff Counsel, represented the Division. The parties stipulated that the court reporter's transcript, created during the course of the proceeding, would be designated as the official record and that the audio record of the hearing, recorded by the ALJ, could be used to supplement or explain the transcript. The matter was submitted for decision on October 9, 2026.

Issues

1. Did Employer fail to ensure that sufficient access and working space were provided and maintained around all electrical equipment to permit for ready and safe operation of the equipment and maintenance of the equipment?

2. Did Employer fail to establish, implement, and maintain an effective Injury and Illness Prevention Program?

3. Did Employer fail to evaluate the workplace to determine if any spaces were permit-required confined spaces?

4. Did Employer's workplace contain a permit-required confined space, and did Employer fail to inform relevant employees of the existence, location, and danger posed by the permit-required confined space through posting danger signs or other equally effective means?

5. Did Employer fail to ensure that each container of hazardous chemicals in the workplace was labeled, tagged, or marked with product identifiers and words, pictures, symbols, or combination thereof, which provided at least general

[1] 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).)

information regarding the hazards of the chemicals, and which, in conjunction with the other information immediately available to employees under the hazard communication program, provided employees with the specific information regarding the physical and health hazards of the hazardous chemicals?

6. Did Employer fail to place a safety bar or cable at the "bite" of in-running open calender rolls where sheeting, duck or other fabric was fed to the calender rolls by hand?

7. Were the abatement requirements for Citation 13 reasonable?

8. Did Employer fail to ensure that an emergency shower was provided in all work areas where, during routing operations or foreseeable emergencies, employees' bodies may come into contact with substances that are corrosive, severely irritating to the skin, or which are toxic by skin absorption?

9. Did Employer fail to ensure enclosed areas, wherein combustible dusts are generated or present, were cleaned as often as necessary to prevent accumulation of dust on floors, ledges, beams, equipment, machines or elsewhere which may present a fire or explosion hazard?

10. Did Employer fail to ensure that dust collectors for combustible dusts which present an explosion hazard were located outdoors or in detached rooms of fire-resistant construction and provided with adequate explosion vents?

11. Did Employer fail to ensure that emergency eyewash facilities were accessible in locations that require no more than 10 seconds for an injured person to reach and that the area of the eyewash equipment was maintained free of items which obstruct its use?

12. Did the Division establish that Citation 1, Item 17, was properly classified as General?

13. Did the Division establish a rebuttable presumption that Citation 13 was properly classified as Serious?

14. Did Employer rebut the presumption Citation 13 was properly classified as Serious by demonstrating that it did not know, and could not, with the exercise of reasonable diligence, have known of the existence of the violation?

15. Is the proposed penalty for Citation 13 reasonable?

Findings of Fact

1. Employer had a wall-mounted electrical disconnect panel with limited accessibility because it was behind metal railings and blocked by nearby shelving.

2. The electrical disconnect panel was made non-operational in the 1980s.

3. Employer had both a vertical compactor and horizontal compactor at the jobsite. At the time of the inspection, both machines were in a state where the rams were capable of moving without having a guard or cover in place because the interlocking safety mechanisms were not functioning.

4. The compactors were operated in a condition where the safety mechanisms were not functional while in plain view.

5. Employer's jobsite had several powered saws that did not have guarding on both sides. These saws were in plain view.

6. Employer's jobsite had several bench grinders where the distance between the grinding wheel and the adjustable tongue guard or end of the peripheral protecting member, at the top, exceeded one-fourth of an inch. The bench grinders were in plain view.

7. Employer did not conduct reasonably diligent periodic jobsite inspections and/or Employer failed to correct hazards identified through such inspections.

8. Employer had a confined space program. The confined space program included a list of locations and additional information about locations, such as whether each location has a hazardous atmosphere, engulfment hazards, or other hazards. The confined space program included a requirement for Employer to evaluate and determine if any spaces met criteria for designation as a confined space.

9. Employer evaluated the jobsite to determine if various spaces were permit-required confined spaces.

10. Employees were not required to enter the baghouse outside of Building B to remove the waste bin or to sweep out the baghouse after removing the bins. The

baghouse outside of Building B contained a waste storage bin that was removed by employees with a forklift and chain.

11. Employer had a chemical, identified as "Chem-Trend," stored in a silver drum container that had a label that only said, "Silicone Tank 2 36 CAL Cove/Carpe[t]."

12. Chem-Trend is a chemical that can cause serious eye damage. Chem-Trend could cause corrosion, severe irritation, or permanent tissue damage to an employee's eyes.

13. Employer had several calender machines at its jobsite, including the 36-inch calender, the 24-inch calender, the 66-inch calender, and the 48-inch calender.

14. Employees pumped the Chem-Trend mixture into the dip tank on the 36-inch calender from the silver drum identified as "Silicone Tank 2."

15. Employer's employees hand fed rubber into the bite of the in-running calender rolls.

16. The calender machines were fed flat, wide, elongated pieces of rubber that were thinner than they were wide or long.

17. Sheets of rubber were taken from the rubber mill and then transported to the various calender machines where they were fed into the nip of the calenders to process the rubber to the desired specifications.

18. The 24-inch calender, the 36-inch calender, and the 48-inch calender did not have a safety bar or cable placed across the full length of the face of the rolls where it was located so that the operator's fingers would trip the stopping device before coming into contact with the bite.

19. The hazards of the calender machines posed a realistic possibility of death or serious physical harm, such as amputation, crushing injuries, or fracture injuries.

20. At the time of hearing, and as of August 8, 2024, Employer was still operating the 24-inch calender without a safety bar or cable placed across the full length of the face of the rolls where it was located so that the operator's fingers would trip the stopping device before coming into contact with the bite. Additionally,

Employer's employees were still hand feeding sheets of rubber into the calender at the time of hearing.

21. Employer had an emergency shower located in the boiler room area. The boiler room area is located nearby the 36-inch calender line area.

22. A Torit dust collector was present at Employer's jobsite.

23. Employer had an eyewash station in the lab which was nearby the 36-inch calender area. Employer also had an eyewash station adjacent to the emergency shower in the boiler room.

24. It was possible to walk from the 36-inch calender area to the eyewash station in the lab in 6.93 seconds.

25. Employer had approximately 204 employees in 2017.

Analysis

1. Did Employer fail to ensure that sufficient access and working space were provided and maintained around all electrical equipment to permit for ready and safe operation of the equipment and maintenance of the equipment?

California Code of Regulations, title 8,[2] section 2340.16, subdivision (a), provides:

Space about electric equipment.
Sufficient access and working space shall be provided and maintained about all electric equipment to permit ready and safe operation and maintenance of such equipment.

The Alleged Violation Description (AVD) for Citation 1, Item 3, asserts:

Prior to and during the course of the inspection including, but not limited to April 4, 2017, the employer failed to provide sufficient access and working space surrounding the 240-volt electrical disconnect panel mounted to the wall adjacent to the office stairwell in the Cove Carpet Press Area.

The Division has the burden of proving a violation by a preponderance of the evidence. (*Wal-Mart Stores, Inc. Store # 1692,* Cal/OSHA App. 1195264, Decision After Reconsideration

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

(Nov. 4, 2019).) "'Preponderance of the evidence' is usually defined in terms of probability of truth, or of evidence that[,] when weighed 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." (*Sacramento County Water Agency Department of Water Resources,* Cal/OSHA App. 1237932, Decision After Reconsideration (May 21, 2020).) Full consideration is to be given to the negative and affirmative inferences to be drawn from all the evidence. (*Leslie G. v. Perry & Associates* (1996) 43 Cal.App.4th 472, 483.)

In order to establish a violation of section 2340.16, subdivision (a), the Division must prove that an employer failed to provide and maintain sufficient space to access and work on electrical equipment such that it will allow for the ready and safe operation of the equipment and maintenance of the equipment.

The Division presented unrefuted evidence that Employer had a wall-mounted electrical disconnect panel that had limited access by virtue of metal railings and nearby metal shelving. (Exh. 9.) However, the Division's only witness summoned to testify about the panel, Huffman, testified that she did not know to which equipment the panel was connected or whether the panel was active. (Hearing Transcript (Hrg. Tr.) May 11, 2022, pp. 290-292.) Additionally, Michael Guzman (Guzman), a maintenance foreman who worked for Employer since 1976, testified that, during the time of the inspection, the panel was not operable. (Hrg. Tr. Mar. 19, 2024, p. 3732.) Guzman explained that the panel had previously been connected to a blower on the roof, but that, in the 1980s, the panel was disconnected when the wires were removed to make it non-operational. (Hrg. Tr. Mar. 19, 2024, pp. 3732-3733.)

No access or space is required to operate and maintain equipment that has been disconnected and had the wires removed. The preponderance of the evidence establishes that the panel was disconnected and not operable at the time of the inspection in 2017. Therefore, it is held that Employer provided sufficient access space for that equipment. Pursuant to the foregoing, the Division did not meet its burden of proof to establish a violation and Citation 1, Item 3, is dismissed.

2. Did Employer fail to establish, implement, and maintain an effective Injury and Illness Prevention Program?

Section 3203, subdivision (a), in relevant part provides:

(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: […]

(6) Include methods and/or procedures for correcting unsafe or unhealthy conditions, work practices and work procedures in a timely manner based on the severity of the hazard: […]

The AVD for Citation 1, Item 7, asserts:

Prior to and during the course of the inspection, including, but not limited to April 4, 2017, the employer did not implement and maintain and [*sic*] effective Injury and Illness Program.
1. The employer did not maintain an effective system for ensuring employees comply with safe and healthy work practices;
2. The employer's periodic inspections did not identify hazards in the workplace;
3. The employer did not ensure communication with employees included provisions designed to encourage employees to inform the employer of hazards at the worksite without fear of reprisal;
4. The employer did not prevent employees from working in unsafe conditions or from using identified hazardous equipment; and
5. The employer did not provide training and instruction to all supervisors and employees on workplace hazards and protections.

While an employer may have a comprehensive Injury and Illness Prevention Program (IIPP), the Division may still demonstrate an IIPP violation by showing that the employer failed to implement that plan. (*DPR Construction, Inc., et al. dba DPR Construction*, Cal/OSHA App. 1206788, Decision After Reconsideration (Feb. 19, 2021).)

Implementation of an IIPP is a question of fact. [Citation omitted.] Proof of implementation requires evidence of actual responses to known or reported hazards. [Citation omitted.] Further, the corrective action taken by the employer must be sufficient in magnitude and scope to address the particular hazard. [Citation omitted.]

(*Papich Construction Company, Inc.*, Cal/OSHA App. 1236440, Decision After Reconsideration (Mar. 26, 2021).)

In *99 Cents Only Stores, LLC #383*, Cal/OSHA App. 1314092, Decision After Reconsideration (Nov. 8, 2023), the Appeals Board explained plain view hazards in the context of Employer knowledge of hazardous conditions. There, the Appeals Board said, "Hazardous conditions in plain view, by their very nature, can be detected by the exercise of reasonable diligence. [Citation omitted.]" (*Id*.) It is expected that employers will exercise reasonable diligence to identify and correct plain view hazards at jobsites to ensure effective implementation of the IIPP. This is because periodic inspection, required by section 3203, subdivision (a)(4), should be sufficient to identify hazards in plain view given their patent nature.

As an initial matter, the Division did not identify an issue with Employer's written IIPP with regard to its contents. Rather, the Division alleges Employer failed to implement its IIPP by failing to identify and correct unsafe practices at the worksite. (Division of Occupational Safety and Health's Closing Brief, pp. 5-6.)

The Division identified numerous unaddressed plain view hazards at Employer's facility that were discovered during the inspection. By way of example, Huffman testified about both a vertical compactor and a horizontal compactor that were observed at Employer's jobsite. Section 4353, subdivision (a), requires various safeguards for power-driven compaction equipment and balers, including requiring an interlocking mechanism that prevents travel of the ram unless a guard or cover is in place. Turning first to the vertical compactor, Huffman testified that she observed the vertical compactor in operation with the door open, indicating that the safety mechanism that required the door to be closed for operation was not working. (Hrg. Tr. Jul. 27, 2022, pp. 546-556.) Additionally, the Division submitted a video that shows the vertical compactor in operation with the door open, demonstrating that the safety mechanism was not operational. (Exh. 96.) No evidence was presented supporting the conclusion that the issue with the safety mechanism was a recent condition, that Employer had identified the safety hazard, or that Employer had taken efforts to correct hazard prior to the Division's inspection. It is apparent from the video of the operation of the equipment, in conjunction with Huffman's testimony regarding how she observed the equipment in use with the door open, that the hazard was in plain view.

Turning next to the horizontal compactor, Huffman testified that Employer had a horizontal compactor that was being operated with the door open and where the door interlock mechanism was also not functional. (Hrg. Tr. Oct. 4, 2022, p. 1387.) Similarly, the Division offered a video of the horizontal compactor operating with the door open. (Exh. 170.) The pictures, video, and testimony presented at hearing support the conclusion that this was not a new condition. (Exh. 168, 169 and 170.) No evidence was presented that this was new condition, that Employer had identified the safety hazard, or that Employer had taken efforts to correct the hazard prior to the Division's inspection. It is apparent from the video of the operation of the equipment, in conjunction with Huffman's testimony regarding how she observed the equipment

in use with the door open, that the hazard was in plain view. It is inferred that the compactors were unaddressed because Employer had failed to conduct reasonably diligent periodic inspections to detect the hazards and/or failed to correct the hazards in a reasonable time after such inspections.

Evidence was also presented that established Employer had various pieces of equipment that were not properly guarded. Employer's facility had several powered saws that did not have guarding on both sides as required by section 4184, subdivision (b), (with reference to section 4309, subdivision (a)(2)) as shown in Exhibits 160 and 164. Additionally, Employer's facility had bench grinders that did not have guarding in compliance with section 3578, subdivision (g). Several bench grinders had adjustable tongue guards or peripheral protecting members that were more than one-fourth of an inch from the grinding wheels pursuant to the testimony of Huffman and several photographs demonstrating the insufficient guarding. (Exh. 106, 107, 108, 109, 110, and 111.) Based on the testimony and the photographs of the various machines, it was apparent that the equipment deficiencies were patent and in plain view. It is inferred that Employer did not identify the hazards and ensure proper guarding of the equipment was implemented and maintained. It is also inferred that Employer failed to conduct periodic inspections to identify changes to the guards, and/or Employer failed to correct the deficient guards that it would have reasonably identified through such inspections.

The evidence presented at hearing established that Employer had a number of safety hazards at the jobsite that were unaddressed, in plain view, and readily discoverable through reasonably diligent inspection. As discussed above, it is inferred, based on the evidence presented at hearing, that Employer was not conducting reasonably diligent periodic inspections and/or not correcting hazards discovered during those inspections. This inference is drawn because of the condition of the equipment depicted in the photographs and videos presented at hearing, along with Huffman's testimony, and the notable absence of evidence demonstrating that Employer had either identified the hazards or made efforts to correct the hazards. As such, it is found that Employer failed to effectively implement its IIPP to identify and correct patent hazards that were readily discoverable through periodic inspections. Accordingly, the Division established a violation of section 3203, subdivision (a), and Citation 1, Item 7, is affirmed.

3. Did Employer fail to evaluate the workplace to determine if any spaces were permit-required confined spaces?

Section 5157, subdivision (c)(1), provides, in relevant part:

> The employer shall evaluate the workplace to determine if any spaces are permit-required confined spaces.

The AVD for Citation 1, Item 14, asserts:

> Prior to and during the course of the inspection including, but not limited to April 4, 2017, the employer failed to evaluate the workplace to determine if the baghouse outside building B that is maintained and accessed by employees was a permit-required confined space.

In order to establish a violation of section 5157, subdivision (c)(1), the Division must prove that an employer failed to evaluate a jobsite to determine if any spaces are permit-required confined spaces.

The Division offered a copy of Employer's confined space program into the record. (Exh. 4.) The final page of the confined space program is "Appendix A: Identified Confined Spaces" and it includes a table with a list of locations and additional information about the locations, such as, whether each location has a hazardous atmosphere, engulfment hazards, and other hazards. (*Id.*) Further, the confined space program includes the following in Section 2.4:

> Confined Space Listing. Burke Industries, once having evaluated the facility(s) will maintain a detailed listing that permanently identifies locations meeting the criteria for a confined space. A list depicting all identified confined spaces at this facility can be found in the appendix section of this program.

(*Id.*) Finally, the confined space program indicates, between Section 2.2 and 2.3, the following:

> Facility Evaluation: The facility will be evaluated to determine if any spaces meet the criteria for designation as a confined space. The decision flow chart in Appendix A to 29 CFR 1910.146 will be used to facilitate compliance with this requirement. A complete evaluation of the spaces can be found at the end of this program.

(*Id.*)

Based on Employer's confined space program, it is more likely than not that Employer evaluated the jobsite to determine if various spaces were permit-required confined spaces. The Division is the party with the burden of proof and the evidence presented does not support the conclusion that Employer failed to evaluate spaces to determine if any were permit-required confined spaces, as a list of identified spaces is included with the confined space program. The Division did not offer testimony about what efforts Employer actually took to evaluate spaces at the jobsite.

The Division's post-hearing brief focuses on whether Employer evaluated the baghouse outside of Building B. However, the evidence adduced at hearing is insufficient to conclude whether Employer evaluated the baghouse. The Division did not meet its burden of proof to establish that Employer failed to evaluate the workplace to determine if any spaces are permit-required confined spaces.

Pursuant to the foregoing, Citation 1, Item 14, is dismissed.

4. Did Employer's workplace contain a permit-required confined space, and did Employer fail to inform relevant employees of the existence, location, and danger posed by the permit-required confined space through posting danger signs or other equally effective means?

Section 5157, subdivision (c)(2), in relevant part provides:

> If the workplace contains permit spaces, the employer shall inform exposed employees and other employees performing work in the area, by posting danger signs or by any other equally effective means, of the existence, location of and the danger posed by the permit spaces.

The AVD for Citation 1, Item 15, asserts:

> Prior to and during the course of the inspection including, but not limited to April 4, 2017, the employer failed to inform exposed employees and other employees performing work in the area of Baghouse located between building A and B, the dangers of a permit space by posting danger signs or by any other equally effective means.

In order to establish a violation of section 5157, subdivision (c)(2), the Division must prove that (1) a workplace contained a permit-required confined space; (2) the employer had employees that were exposed to the space or performing work in the area of the space; (3) and that the employer failed to inform those employees of the dangers posed by the space by posting signs or other equally effective means that identified the existence, location, and danger posed by the space. Additionally, in *McCarthy Building Companies, Inc.*, Cal/OSHA App. 1235941, Decision After Reconsideration (July 9, 2026), the Appeals Board explained:

> The existence of exposure is critical to affirming a violation. Even if an employer fails to comply with the requirement of a safety order, the citation will be vacated in the absence of employee exposure to the relevant hazard.
>
> […]

> The Board's typical exposure analysis has two facets. Exposure may be demonstrated by: (1) showing "actual exposure" to the zone of danger or (2) demonstrating reasonably predictable access to the zone of danger. [Citations omitted.]
>
> "Actual exposure" may be found when the Division demonstrates an employee was actually exposed to a hazard created by the violation, i.e., the employee has been or is within a zone of danger created by the violative condition. [Citations omitted.] However, to be clear, actual exposure neither means nor requires an actual injury; it simply means proof that employees have been or are in the zone of danger. [Citations omitted.] "The zone of danger is that area surrounding the violative condition that presents the danger to employees that the standard is intended to prevent." [Citations omitted.] The zone of danger is relative to the wording of the safety order and nature of the hazard. [Citations omitted.]
>
> […]
>
> Stated another way, the Board held exposure may be demonstrated, without proof of actual exposure, by showing that 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.'" [Citations omitted.] "Reasonable predictability" requires consideration of such things as "the nature of the work, the work activities required, and the routes of arrival and departure...." [Citations omitted.]
>
> The Board has also recognized limits to the reasonably predictable access standard. The inquiry is not merely whether something is theoretically possible. [Citation omitted.] The reasonable predictability standard requires consideration of the "likelihood" of employee access to make sure exposure determinations are not made solely on tenuous theoretical or hypothetical possibilities. [Citations omitted.]

Central to the citation at issue here, the Division alleges that Employer failed to post a sufficient sign on the baghouse outside of Building B. Exhibit 71, a picture of the baghouse, shows that there was a sign on the upper portion of the baghouse which reads: "DANGER CONFINED SPACE AUTHORIZED PERSONNEL ONLY." Based on the evidence presented, it is not readily apparent that employees would access this upper portion of the baghouse or, if they did, how they would access it. The lower portion of the baghouse has a large sliding door. Guzman testified that the baghouse contained a bin where employees would use a forklift with

chains to extricate the bin so that the waste stored in the bin could be taken away. (Hrg. Tr. Mar. 20, 2024, p. 3773.) Guzman further explained that employees did not have to enter the baghouse and would not have to sweep out the baghouse after removing the bins. (Hrg. Tr. Mar. 20, 2024, p. 3774.) Huffman testified that she did not view the interior of the baghouse. (Hrg. Tr. Sept. 13, 2022, p. 818.) No pictures of the interior of the baghouse, in either portion, were offered into the record.

Insufficient evidence was put forth to establish that the baghouse was a permit-required confined space. Even assuming that it was a permit-required confined space, the Division failed to establish that employees were exposed, either actually or by reasonably predictable access at some point in the future, to the hazard. As noted, it is not established that employees would access the upper portion of the baghouse which has the confined space danger sign or, if they did, how they would access it. Additionally, based on Guzman's testimony, it is not established that employees entered the lower portion of the structure and it is not apparent that the lower portion of the structure is a confined space or a permit-required confined space.

Pursuant to the foregoing, Citation 1, Item 15, is dismissed.

5. **Did Employer fail to ensure that each container of hazardous chemicals in the workplace was labeled, tagged, or marked with product identifiers and words, pictures, symbols, or combination thereof, which provided at least general information regarding the hazards of the chemicals, and which, in conjunction with the other information immediately available to employees under the hazard communication program, provided employees with the specific information regarding the physical and health hazards of the hazardous chemicals?**

Section 5194, subdivision (f)(6)(B), provides, in relevant part:

(f) Labels and Other Forms of Warning.
[…]
(6) Workplace labeling. Except as provided in sections 5194(f)(7) and (f)(8) the employer shall ensure that each container of hazardous chemicals in the workplace is labeled, tagged, or marked with either:
[…]
(B) Product identifier and words, pictures, symbols, or combination thereof, which provide at least general information regarding the hazards of the chemicals, and which, in conjunction with the other information immediately available to employees under the hazard communication program, will provide employees with the specific information regarding the physical and health hazards of the hazardous chemical.

The AVD for Citation 1, Item 17, asserts:

> Prior to and during the course of the inspection including, but not limited to April 4, 2017, the employer failed to ensure that secondary containers of hazardous chemicals used by employees that were not intended for immediate use were labeled, tagged, or marked with product identifiers, words, pictures, symbols, or a combination thereof which provide at least general information regarding the hazards of the chemicals, and which, in conjunction with the other information immediately available to employees under the hazard communication program, will provide employees with the specific information regarding the physical and health hazards of the hazardous chemical.
> 1. 2 bottles of glue located in the Stair Tread Finishing Area
> 2. 55 gallon silver drum labeled Silicon Tank 2 36 Cal Cove/Carpet

In order to establish a violation of section 5194, subdivision (f)(6)(B), the Division must prove that (1) an employer had a container with hazardous chemicals; (2) that was not labeled, tagged, or marked; (3) with product identifier and words, pictures, symbols, or a combination thereof, which provide at least general information regarding the hazards of the chemicals; (4) and which will provide employees with the specific information regarding the physical and health hazards of the hazardous chemicals in conjunction with the other information immediately available to employees under the hazard communication program.

A hazardous chemical is defined under section 5194, subdivision (c), as:

> Any chemical which is classified as a physical hazard or a health hazard, a simple asphyxiant, combustible dust, pyrophoric gas, a hazard not otherwise classified, or is included in the List of Hazardous Substances prepared by the Director pursuant to Labor Code section 63.

The Division alleged there were two hazardous chemicals stored improperly. The first chemical considered was identified as "Chem-Trend." The testimony of multiple witnesses established that Chem-Trend was mixed and stored in a silver drum barrel shown in Exhibits 75 and 76. The silver drum had a label which said:

Silicone
Tank
2
36 CAL
Cove/Carpe[t]

(Exh. 76, emphasis in original.)

Jesus Alvarez (Alvarez), a production management employee for Employer, testified that Chem-Trend was mixed in the silver drum depicted in Exhibit 75. (Hrg. Tr. Mar. 20, 2024, p. 3862.) Alvarez explained that Chem-Trend was first put into a bucket and then poured into the silver drum and then water was added to mix with the Chem-Trend in the silver drum. (Hrg. Tr. Mar. 20, 2024, pp. 3856-3867.) A Safety Data Sheet for Chem-Trend was submitted at hearing as Exhibit 8. The Safety Data Sheet for Chem-Trend includes hazard identification information that lists, among other information:

> OSHA/HCS status : This material is considered hazardous by the OSHA Hazard Communication Standard (29 CFR 1910.1200).
> Classification of the substance or mixture : SERIOUS EYE DAMAGE – Category 1
> […]
> Signal word : Danger
> Hazard statements : Causes serious eye damage.
> […]

(Exh. 8.) Kevin Sroka (Sroka), Employer's vice president and general sales manager, testified that Chem-Trend was pumped into the dip tank on the 36-inch calender with the Chem-Trend mixture. (Hrg. Tr. Aug. 20, 2024, pp. 4501-4502.) Guzman also testified that the "silicone solution" was pumped into the dip tank from the silver drum. (Hrg. Tr. Mar. 19, 2024, pp. 4501-4502.) It is inferred that employees were exposed to silver drum containing the Chem-Trend mixture both during the mixing process and while operating the 36-inch calender.

The evidence presented establishes that Chem-Trend is a hazardous chemical because Exhibit 8 shows that it poses physical or health hazards. Further, Chem-Trend was stored in a secondary container that was not labeled, tagged, or marked with the information required by the regulation. Employees pumped the Chem-Trend mixture into the dip tank on the 36-inch calender. Pursuant to the foregoing, the Division met its burden of proof to establish a violation of section 5194, subdivision (f)(6)(B), and Citation 1, Item 17, is affirmed.[3]

6. Did Employer fail to place a safety bar or cable at the "bite" of in-running open calender rolls where sheeting, duck or other fabric was fed to the calender rolls by hand?

[3] It is noted that the Division also presented evidence regarding "Pebble Tan Hypalon Adhesive" that was present at Employer's jobsite in inadequately labeled secondary containers. However, having found a violation of the regulation due to the storage of the Chem-Trend, it is unnecessary to further address the storage of the adhesive herein.

Section 4580, subdivision (c), provides:

> At the "bite" of in-running open rolls where sheeting, duck or other fabric is fed by hand, a safety bar or cable, connected to the stopping device, shall be placed across the full length of the face of the rolls. It shall be so located that the operator's fingers will trip the stopping device before coming into contact with the bite.

The AVD for Citation 13 asserts:

> Prior to and during the course of the inspection including, but not limited to April 4, 2017, the employer failed to provide a stopping device connected to a safety bar or cable which ran the full length of the face of the rolls to cover the bite of the in-running open rolls so that if employees hands or fingers come into contact with the safety bar or cable while hand feeding rubber sheeting it would trip the stopping device before coming into contact with the bite.
> 1. 36 inch Calender
> 2. 24 inch Calender
> 3. 66 inch Calender
> 4. WC 2200 Extruder/Roll Machine area

In order to establish a violation of section 4580, subdivision (c), the Division must prove that Employer failed to place a safety bar or cable, that spanned the full length of the face of the rolls and was connected to a stopping device, at the bite of in-running open calender rolls where sheeting or duck or other fabric was fed to the calender by hand.

a. Does the regulation apply to Employer's rubber calender machines?

It is necessary to first establish that Employer's calender machines are governed by section 4580, subdivision (c). It is undisputed that Employer had multiple calender machines where rubber was fed by hand into the bite of in-running calender rolls. As such, the first question posed is whether the rubber fed to the calendars by hand constituted sheeting, duck[4] or other fabric.

As a threshold consideration, it is necessary to consider whether rubber can constitute sheeting, duck or other fabric. The phrase "sheeting, duck or other fabric" in the context of the section 4580, subdivision (c), is lacking a serial comma (also referred to as an Oxford comma).

[4] Duck is defined as a durable closely woven, usually cotton, fabric. (www.merriam-webster.com <accessed October 28, 2026>.)

Additionally, section 4580 appears in Article 71, which is titled "Rubber and Composition Working Machines." This creates ambiguity as to whether "sheeting" is modified or limited by the words "duck or other fabric." To resolve the ambiguity, it is necessary to consider canons of regulatory interpretation as well as the regulatory history of Article 71.

Turning first to a relevant rule of regulatory interpretation, the rule of the last antecedent "provides that 'a limiting clause or phrase… should ordinarily be read as modifying only the noun or phrase that it immediately follows.'" (*Silverado Contractors, Inc.,* Cal/OSHA App. 14-3044, Denial of Petition for Reconsideration (Apr. 28, 2016), citations omitted.) This canon of regulatory interpretation favors an understanding that "sheeting" is not limited by the terms "duck or other fabric." Accordingly, it is not found that the plain language of the regulation supports an interpretation that excludes rubber from the definition of sheeting.

Turning next to the relevant regulatory history, the Final Statement of Reasons (FSOR) for amending Article 71, from 1985, provides that section 4579 was repealed and the definitions were relocated into section 3207. Specifically, the FSOR provides that the terms bite, calender, and mill were relocated because of use in other industries as well as the rubber and composition industries. As such, it is relevant that section 3207 defines calender[5] as "[a] machine equipped with two or more metal rolls revolving in opposite directions and used for continuously sheeting or plying up rubber and plastics compounds and for frictioning or coating materials with rubber and plastics compounds." Further, section 3207 defines a mill as "[a] machine consisting of two adjacent metal rolls, set horizontally, which revolve in opposite directions (i.e., toward each other as viewed from above) used for the mechanical working of rubber and plastics compounds." Given the foregoing, the language in section 4580, subdivision (c), was not written to exclusively consider only calenders that are used on fabric, but instead, the language is written broadly to apply to a variety of materials, including rubber. As such, it is found that section 4580, subdivision (c), applies to rubber if it constitutes sheeting, duck or other fabric.

Employer's post-hearing brief argues: "[s]imply put, this Regulation does not apply to rubber. The regulation only applies to fabric." (Appellant's Post Hearing Brief p. 8.) In *Bigge Crane & Rigging Co*., Cal/OSHA App. 14-1798, Decision After Reconsideration (Mar. 1, 2017), the Appeals Board explained simply, "Interpretations leading to absurd results are to be avoided." As previously noted, section 4580 appears in Article 71, which is titled "Rubber and Composition Working Machines." Further, the definition of calender presently in 3207, which was moved from section 4579, contemplates machines that operate on rubber and plastic compounds. Additionally, section 4580 is entitled "Calender Rolls (Not Paper)." Based on the title of Article 71, the regulatory history of section 4580, and the definitions present in section 3207, it would be an absurd result to find that section 4580 only applies to fabric. Such a narrow

[5] In section 3207, the defined term is spelled "Calendar." However, given the definition and use, this appears to be a typographical error.

reading would not be supported by the FSOR's identified intent to relocate definitions from section 4579 to section 3207 in order to cover calender use in a variety of industries and not just exclusively calenders used in the rubber and plastic compound industries.

b. Was the rubber fed into the calenders by hand considered "sheeting" within the context of section 4580, subdivision (c)?

The next question posed is whether the rubber fed to the calender machines constituted sheeting within the context of section 4580, subdivision (c). The safety order does not define "sheeting." Where a term is not defined, "it can be assumed that the Legislature was referring to the conventional definition of that term." (*OC Communications, Inc*., Cal/OSHA App. 14-0120, Decision After Reconsideration (Mar. 28, 2016), citing to *Heritage Residential Care, Inc. v. Division of Labor Standards Enforcement* (2011) 192 Cal.App.4th 75, 82.) "The rules of statutory and regulatory interpretation require that terms be given their ordinary meaning if not specially defined otherwise." (*California Highway Patrol*, Cal/OSHA App. 09-3762, Decision After Reconsideration (Aug. 16, 2012).) To obtain the ordinary meaning of a word, the Appeals Board may refer to its dictionary definition. (*Fedex Freight, Inc*., Cal/OSHA App. 317247211, Decision After Reconsideration (Dec. 14, 2016).)

"Sheeting" is defined as:

1: material in the form of sheets or suitable for forming into sheets: such as
a: to cause to reach (as in distance or scope)
b: material (such as a plastic) in the form of a continuous film
[…]

(www.merriam-webster.com <accessed August 13, 2026>.)

"Sheet" is defined[6] as:

[…]
3: a broad stretch or surface of something
[…]
5 a: a portion of something that is thin in comparison to its length and breadth
[…]

[6] It is noted for clarity that other definitions of sheet contemplate specific material such as paper or cloth. However, as the question is whether sheeting can have an interpretation that encompasses rubber, the relevant definitions must contemplate the broadest interpretation permitted by the definition.

(www.merriam-webster.com <accessed August 13, 2026>.)

Exhibit 177 is a video of an employee feeding flat, elongated pieces of rubber, by hand, into a calender machine at Employer's jobsite. The rubber fed into the calender is longer and wider than it is thick by a significant margin. Exhibit 174 is a photograph that shows the large flat pieces of rubber resting in the lower left corner of the photograph. The pieces of rubber fall within the definition of sheet either as "broad stretches of material" or as portions of material that are thin in comparison to the portions' length and breadth.

Exhibits 180 and 181 are pictures showing rubber sheeting at another calender at Employer's jobsite. Huffman testified that she observed rubber sheets being fed into the 36-inch calender and the 24-inch calender. (Hrg. Tr. Apr. 11, 2023, p. 2495.) Shawn Jimerson (Jimerson), a planner/scheduler for Employer, testified that sheets of rubber were cut off from the mill, placed on a cart and then transported to a calender where employees would take the sheets of raw rubber and feed it into the nip of the calender to process it to the correct specifications. (Hrg. Tr. Aug. 6, 2024, p. 4070.) Huffman and Jimerson's testimony is credited as to the form and manner in which the rubber was prepared to be fed into the calenders because it aligned with photographs and video exhibits offered into evidence. The above identified exhibits and testimony establish that the rubber being fed into the calenders by hand met the definition of "sheeting" within the context of section 4580, subdivision (c).

Several of Employer's other witnesses used different words to describe the rubber fed into the calenders such as "slab" or "mass" of rubber. Those witnesses avoided or rejected the words sheet or sheeting in their descriptions of the rubber. However, there was no evidence offered that rubber was fed into the calenders in a form that was different than what is displayed in Exhibits 177, 174, 180, and 181. Rather, the testimony of Employer's other witnesses appeared intentionally prepared to consciously avoid describing the rubber as a sheet or sheeting. As such, the credibility of the other descriptions was lacking, and the testimony is not credited.

c. Did Employer violate the safety order?

As set forth above, it is undisputed that Employer had multiple calender machines where rubber sheeting was fed by hand into the bite of in-running calender rolls. (Exh. 177 and 181.) The next question is whether Employer failed to place a safety bar or cable at the bite of an in-running open calender roll where the rubber sheeting was fed by hand.

The 24-inch calender, the 36-inch calender, and the 48-inch calender (also referred to as the Roller Head or Rollerhead) did not have a safety bar or cable placed across the full length of the face of the rolls so that the operator's fingers would trip the stopping device before coming

into contact with the bite.[7] (Exh. 176, 177, 178, and CH.) Based on the foregoing, Employer failed to place a safety bar or cable at the bite of in-running open calender rolls where sheeting was fed by hand to the calender rolls. Accordingly, the Division met its burden of proof and Citation 13 is affirmed.

7. Were the abatement requirements for Citation 13 reasonable?

Labor Code section 6600 provides:

> Any employer served with a citation or notice pursuant to Section 6317, or a notice of proposed penalty under this part, or any other person obligated to the employer as specified in subdivision (b) of Section 6319, may appeal to the appeals board within 15 working days from the receipt of such citation or such notice with respect to violations alleged by the division, abatement periods, amount of proposed penalties, and the reasonableness of the changes required by the division to abate the condition.

The question posed for abatement where a violation is found is whether an employer has subsequently complied with the requirements of the safety order or eliminated the violation in some other manner. At hearing, the Division represented that the only remaining issue for abatement was the 24-inch calender. Sroka testified that, at the time of his testimony, the 24-inch calender was still operating the same way that it did in 2017. (Hrg. Tr. Aug. 8, 2024, pp. 4389-4390.) The evidence put forth at hearing demonstrated that the 24-inch calender did not have a safety bar or cable at the bite of the in-running open calender rolls. (Exh. 178 and 179.) Sroka also testified that employees hand fed rubber into the calender machines in 2017. (Hrg. Tr. Aug. 20, 2024, pp. 4426-4428.) Guzman also testified about the process of feeding rubber to the 24-inch calender. Guzman testified that Exhibit 219 shows rubber being fed into the 24-inch calender. Exhibit 219 shows a rubber sheet in the 24-inch calender that is the same sort of rubber sheet visible in the video of the operation of the 36-inch calender in Exhibit 177. As such, it is found that the 24-inch calender was hand fed rubber sheeting in both 2017 and at the time of hearing.

Having concluded that the 24-inch calender did not have a safety bar or cable at the bite of in-running open calender rolls and that rubber sheeting is still fed to the 24-inch calender rolls by hand, insufficient evidence was provided to support the conclusion that Employer has complied with the regulation. The requirement that Employer comply with section 4580, subdivision (c), is found reasonable. Therefore, Employer is ordered to comply with the requirements of the safety order. However, consistent with the Appeals Board's previous

[7] The Division indicated at hearing and in briefing that the 66-inch calender was compliant with the regulation and, therefore, it is not contemplated further herein.

precedent concerning abatement, this Decision does not specify the method of abatement. (*United Parcel Service*, Cal/OSHA App. 1158285, Decision After Reconsideration (November 15, 2018).) Employer may select the least burdensome means of meeting the requirements of the cited section. (*Id.*)

8. Did Employer fail to ensure that an emergency shower was provided in all work areas where, during routing operations or foreseeable emergencies, employees' bodies may come into contact with substances that are corrosive, severely irritating to the skin, or which are toxic by skin absorption?

Section 5162, subdivision (b), provides:

> An emergency shower which meets the requirements of section 4 or 9 of ANSI Z358.1-1981, incorporated herein by reference, shall be provided at all work areas where, during routine operations or foreseeable emergencies, area of the body may come into contact with a substance which is corrosive or severely irritating to the skin or which is toxic by skin absorption.

The AVD for Citation 14 asserts:

> Prior to and during the course of the inspection, including, but not limited to April 4, 2017, the employer did not provide an emergency shower in the 36 Calender area for employees whose body may come into contact with a substance which is corrosive or severely irritating to the skin or which is toxic by absorption.

In order to establish a violation of section 5162, subdivision (b), the Division must prove that Employer failed to provide an emergency shower, meeting the requirements of Section 4 or 9 of ANSI Z358.1-1981, in all work areas where an area of an employee's body may come into contact with a substance that is corrosive or severely irritating to the skin or which is toxic by skin absorption.

In this matter, evidence was presented at hearing that Employer had an emergency shower at its facility. Multiple witnesses, including Huffman, Guzman, Jimerson, and Sroka, all testified that there was an emergency shower[8] located in the boiler room area. Chem-Trend, as discussed above, was used at the 36-inch calender area. The preliminary consideration is whether the location of the emergency shower in the boiler room area was in the "work area" of the 36-inch calender.

[8] No evidence was presented as to whether not the shower met the requirements of section 4 or 9 of ANSI Z358.1-1981 and so it is not discussed further herein.

Section 5162, subdivision (c), specifically addresses the location of emergency eyewash facilities and deluge showers. Section 5162, subdivision (c), in relevant portion provides:

> Location. Emergency eyewash facilities and deluge showers shall be in accessible locations that require no more than 10 seconds for the injured person to reach.

"Work area" in the context of section 5162, subdivision (b), must harmonize with the location requirement set forth in section 5162, subdivision (c). As such, locations that are accessible and require no more than 10 seconds for an injured person to reach are considered to be in the "work area."

Exhibit BX is a facilities map showing the 36-inch calender line and the nearby boiler room. It is not readily determined from the facilities map how long it would take to reach the boiler room from 36-inch calender. Further, the other evidence in the record does not establish whether the emergency shower located in the boiler room was reachable within 10 seconds from the 36-inch calender line. However, the Division bears the burden of proof to establish that there was not an emergency shower within 10 seconds distance of the 36-inch calender line because there was uncontestably an emergency shower present in a nearby location. The Division did not establish how long it would take to reach the emergency shower. As such, the Division did not meet its burden of proof to establish that there was no emergency shower within the work area. Accordingly, Citation 14 is dismissed.

9. Did Employer fail to ensure enclosed areas, wherein combustible dusts are generated or present, were cleaned as often as necessary to prevent accumulation of dust on floors, ledges, beams, equipment, machines or elsewhere which may present a fire or explosion hazard?

Section 5174, subdivision (f), provides:

> All enclosed areas wherein combustible dusts are generated or are present, except in closed or covered containers shall be cleaned as often as necessary to prevent accumulation of dust on floors, ledges, beams, equipment, machines or elsewhere which may present a fire or explosion hazard. Safe means of access for cleaning of all surfaces shall be provided.

The AVD for Citation 15[9] asserts:

[9] At hearing the Division moved to amend Citation 15 to remove instances 1, 2, and 3, leaving only instance 4. The Division's motion to amend the Citation was granted and, as such, only instance 4 will be discussed herein.

> Prior to and during the course of the inspection, including but not limited to April 4, 2017, the employer did not ensure the following enclosed areas where combustible dusts are generated and present were cleaned as often as necessary to prevent accumulation of dust on floors, ledges, beams, equipment, machines or elsewhere which may present a fire or explosion hazard:
> 1. Electrical panels adjacent to Compounding area #9
> 2. Banbury area #9
> 3. Banbury area #11
> 4. Baghouse at Bldg. B

In order to establish a violation of section 5174, subdivision (f), the Division must prove that an employer failed to clean an enclosed area where combustible dusts were generated or were present as often as necessary to prevent accumulation of dust on floors, ledges, beams, equipment, machines or elsewhere that could present a fire or explosion hazard or that Employer failed to provide safe means of access for cleaning the enclosed area.

The only location that remains at issue is the baghouse at Building B. Huffman testified that she did not observe inside the baghouse at Building B. The Division did not offer photographs of the inside of the baghouse and did not have witnesses testify about the inside of the baghouse. The Division did not present evidence as to whether dust had accumulated on floors, ledges, beams, equipment, machines, or elsewhere.

Additionally, the Division did not establish that the dust present inside the baghouse presented a fire or explosion hazard. As an effort to establish that the dust that gathered in the waste bin in the baghouse posed a fire or explosion hazard, the Division presented an "Air Sampling Report" from the U.S. Department of Labor. (Exh. 192.) The Air Sampling Report in Exhibit 192 identifies that the dust tested is explosive and states that the explosion severity was 0.64. However, Exhibit 192 is a summary page and does not include important additional details to help decipher the result, such as the testing methods relied upon and the significance of the findings. Further, the significance of the information present in Exhibit 192 is called into question by other statements within the document. Exhibit 192 contains the following statements:

> The results obtained from this instrument can NOT be used in designing or engineering protective safety equipment. […]
>
> Bulk samples are analyzed to provide an estimate of the composition of the material submitted. The results reported should be considered semi-quantitative only. […]

The information provided in Exhibit 192, alone, does not establish an explosion or fire hazard. At best, it establishes that the dust in baghouse B *could be* explosive or flammable. However, the report references a sieving and drying of materials that suggests that the tested material was not in the same state as it existed in the baghouse.

In *McCarthy Building Companies, Inc.*, *supra*, Cal/OSHA App. 1235941, the Appeals Board addressed the issue of reliability of evidence without sufficient foundation. The Appeals Board explained:

> The absence of any meaningful authentication or foundation, and the failure to seek the admission of several of the exhibits, reduces the reliability and weight of the information, and leaves us with more questions than answers. We do not know who made the various diagnoses, what testing or methodology they used, what documents and evidence they relied upon, or how they linked the diagnoses to the worksite. […]

(*McCarthy Building Companies, Inc.*, *supra*, Cal/OSHA App. 1235941.)

As discussed, a lack of sufficient foundational information for documents can reduce the reliability and weight of the evidence. In the instant matter, Exhibit 192 suffers from a lack of reliability and weight because it lacks sufficient foundational information to explain what the document means and to demonstrate that testing that was used resulted in information applicable to the conditions present at Employer's jobsite. Further, information on the face of Exhibit 192 tends to show that the material that was tested was altered for testing from the condition that it was in at Employer's jobsite.

Pursuant to the foregoing, the Division failed to meet its burden of proof to establish a violation of section 5174, subdivision (f), and Citation 15 is dismissed.

10. Did Employer fail to ensure that dust collectors for combustible dusts which present an explosion hazard were located outdoors or in detached rooms of fire-resistant construction and provided with adequate explosion vents?

Section 5174, subdivision (i), provides:

> Dust collectors for combustible dusts which present an explosion hazard shall be located outdoors or in detached rooms of fire-resistant construction and provided with adequate explosion vents, except that liquid-spray type collectors may be located within buildings.

The AVD for Citation 16 asserts:

Prior to and during the course of the inspection, including, but not limited to April 4, 2017, the employer did not ensure that all of the combustible dust collectors in the Stair Tread Finishing area were located outdoors or in detached rooms or fire-resistant construction and provided with adequate explosion vents.

In order to establish a violation of section 5174, subdivision (i), the Division must prove that an employer failed to ensure that a dust collector, for combustible dusts that present an explosion hazard, was located outdoors or in a detached fire-resistant room, unless the dust collector was a liquid-spray type dust collector.

The focus of Citation 16 is on Employer's Torit dust collector. (Exh. 194.) Notably, the Division relied upon very similar evidence to the evidence provided for Citation 15. As with Citation 15, the Division offered Air Sampling Reports from the U.S. Department of Labor to prove that the dust posed an explosion hazard. (Exh. 198 and 199.) Exhibits 198 and 199 include the same language discussed with regard to Exhibit 192 that indicates that the dust tested was altered for testing so it was in a different condition that it normally was in at Employer's jobsite. Insufficient foundation was offered for Exhibits 198 and 199 to rely on them to establish that the dust posed an explosion hazard. The Division did not provide additional evidence to establish why the dust in the Torit dust collector presented an explosion hazard.

Pursuant to the foregoing, the Division failed to meet its burden of proof to establish a violation of section 5174, subdivision (i), and Citation 16 is dismissed.

11. Did Employer fail to ensure that emergency eyewash facilities were accessible in locations that require no more than 10 seconds for an injured person to reach and that the area of the eyewash equipment was maintained free of items which obstruct its use?

Section 5162, subdivision (c), provides:

Location. Emergency eyewash facilities and deluge showers shall be in accessible locations that require no more than 10 seconds for the injured person to reach. If both an eyewash and shower are needed, they shall be located so that both can be used at the same time by one person. The area of the eyewash and shower equipment shall be maintained free of items which obstruct their use.

The AVD for Citation 17 asserts:

Prior to and during the course of the inspection, including but not limited to April 4, 2017, the employer did not ensure the emergency eyewash facility was

accessible in the 36 Calender area that requires no more than 10 seconds for the injured person to reach.

Mannington Mills, Inc. dba: Burke Industries, Inc. was previously cited for a violation of this occupational safety and health standard or its equivalent standard 8CCR 5162(c), which was contained in Cal/OSHA inspection number 316888460, citation number 1, item number 7 and was affirmed as a final order on October 2, 2013, with respect to a workplace located at 2250 S. 10th Street San Jose, CA 95112.

In order to establish a violation of section 5162, subdivision (c), the Division must prove that Employer failed to provide eyewash facilities and deluge showers, where required under section 5162, subdivision (a) or (b), in a location that is accessible within 10 seconds for an injured employee. Alternatively, the Division may establish a violation by demonstrating that the area of an eyewash and/or shower equipment was not maintained free of items which obstructed their use or that, where both an eyewash and shower were needed, they were not located such that both could be used at the same time by one person.

Section 5162, subdivision (a), provides:

Plumbed or self-contained eyewash or eye/facewash equipment which meets the requirements of sections 5, 7, or 9 of ANSI Z358.1-1981, Emergency Eyewash and Shower Equipment, incorporated herein by this reference, shall be provided at all work areas where, during routine operations or foreseeable emergencies, the eyes of an employee may come into contact with a substance which can cause corrosion, severe irritation or permanent tissue damage or which is toxic by absorption. Water hoses, sink faucets, or showers are not acceptable eyewash facilities. Personal eyewash units or drench hoses which meet the requirements of section 6 or 8 of ANSI Z358.1-1981, hereby incorporated by reference, may support plumbed or self-contained units but shall not be used in lieu of them.

The Division alleged that the 36-inch calender area required an emergency eyewash. The Safety Data Sheet for Chem-Trend, which was in use in the 36-inch calender area, includes sufficient language to render it clear that it could cause corrosion, severe irritation, or permanent tissue damage to an employee's eyes. (Exh. 8.)

It is undisputed that Employer had an eyewash station in a nearby area referred to as "the lab." There was no indication that items were present in the lab that would obstruct the use of the eyewash. (Exh. 206.) Sroka testified that he walked from the 36-inch calender area to the eyewash and that the journey took only 6.93 seconds. (Hrg. Tr. Aug. 20, 2024, p. 4466; Exh.

CM.) The Division did not put on evidence demonstrating that the location of the eyewash was greater than a 10-second walk. As such, the Division did not establish that Employer failed to provide an eyewash in an accessible location that is reachable within 10 seconds for an injured employee. Additionally, the Division did not establish that there were items in the area of the lab that would obstruct the use of the eyewash. Exhibit CI shows an eyewash station located next to the emergency shower. As discussed with regard to Citation 14, the Division did not establish the distance to the emergency shower, so the Division similarly did not establish that the eyewash present in Exhibit CI did not satisfy Employer's obligations under section 5162, subdivision (c).

The Division focused its argument on the idea that Employer did not maintain the path to the eyewash in the lab free of obstructions. Exhibit 203 shows the approximate path to the eyewash. Although there was testimony that forklifts drove through the path between the 36-inch calender and the lab, there was no evidence supporting that this resulted in an obstruction in the pathway to the lab from the 36-inch calender area. Although there are objects that exist along the pathway to the lab around which an injured employee would need to navigate, it is not a complex route or one that would involve climbing or other advanced maneuvers to navigate. Further, it is not clear what, if any, obstructions would exist for reaching the eyewash station appearing in Exhibit CI or if that eyewash station was located within 10 seconds of the 36-inch calender area. Although the Division claims that there are potential hazards faced by injured employees traveling to the eyewash, such as potential forklift travel in the area, section 5162, subdivision (c), does not govern those hazards that may be contemplated by another safety order.

Pursuant to the foregoing, the Division did not meet its burden of proof to establish a violation of section 5162, subdivision (c), and, accordingly, Citation 17 is dismissed.

12. Did the Division establish that Citation 1, Item 17, was properly classified as General?

Section 334, subdivision (b), provides: "General Violation - is a violation which is specifically determined not to be of a serious nature, but has a relationship to occupational safety and health of employees."

Citation 1, Item 17, focuses on labels that provide warning to employees for containers with hazardous chemical contents. There is a relationship to the occupational safety and health of employees where employees are exposed to containers containing hazardous chemicals and where those containers are not labeled to identify the chemical or the hazards. The preponderance of the evidence supports an inference that employees were using containers that were not labeled to identify the hazardous chemicals or the type of hazards the chemicals posed. As such, the Division met its burden of proof to establish that Citation 1, Item 17, was properly classified as General.

13. Did the Division establish a rebuttable presumption that Citation 13 was properly classified as Serious?

Labor Code section 6432, subdivision (a), in relevant part states:

> 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 that have been adopted or are in use.

"Serious physical harm" is defined as an injury or illness occurring in the place of employment or in connection with any employment that results in:

> (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.

(Lab. Code §6432, subd. (e).)

The Appeals Board has defined the term "realistic possibility" to mean a prediction that is within the bounds of human reason, not pure speculation. (*Sacramento County Water Agency Department of Water Resources*, *supra,* Cal/OSHA App. 1237932.)

Labor Code section 6432, subdivision (g), 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.

Huffman testified that she was current on her Division-mandated training and, at the time of the inspection, she was an associate safety engineer. Therefore, under Labor Code section 6432, subdivision (g), Huffman was deemed competent to offer testimony to establish each element of the Serious violation and to 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. Huffman testified that hazards posed by the calender machines created a realistic possibility of death or serious physical harm, such as amputation, crushing injuries, or fracture injuries. There is no evidence that casts doubt upon Huffman's assessment and it is found that hand feeding material into the bite of the calender machines, without the safety precautions required by the regulation, poses a realistic possibility of serious physical harm or death.

Accordingly, the Division established a rebuttable presumption that Citation 13 was properly classified as Serious.

14. Did Employer rebut the presumption Citation 13 was properly classified as Serious by demonstrating that it did not know, and could not, with the exercise of reasonable diligence, have known of the existence of the violation?

Labor Code section 6432, subdivision (c), provides that an employer may rebut the presumption that a Serious violation exists 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. In order to satisfactorily rebut the presumption, the employer must demonstrate both:

(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 taken into account:

(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.

Citation 13 focuses on a failure to install a safety bar or cable, attached to a stopping device, at the in-running feed of a calender where the calender was fed by hand. Employer's post-hearing brief does not provide argument regarding the Serious classification. The record does not establish that Employer installed the required safety bar or cable on several calender machines. As such, Employer did not establish that it did not know and could not, with the exercise of reasonable diligence, have known of the presence of the violation. Instead, the preponderance of the evidence, through the testimony of Employer's own witnesses, suggests that Employer was well aware that several calender machines did not have the safety bar or cable in place as required by the regulation.

Accordingly, Employer did not meet its burden of proof to rebut the presumption that Citation 13 was properly classified as Serious.

15. Is the proposed penalty for Citation 13 reasonable?

The Appeals Board addressed penalty calculations thoroughly in *Hampton Tedder Electric,* Cal/OSHA App. 1233597, Decision After Reconsideration (Oct. 30, 2024) (*Hampton Tedder)*. In that matter, the Appeals Board explained:

> Penalties calculated in accordance with the regulations set forth in sections 333 through 336 will be deemed presumptively reasonable. (*Plantel Nurseries*, Cal/OSHA App. 01-2346, Decision After Reconsideration (Jan. 8, 2004).) However, the Board has repeatedly noted that "while there is a presumption of reasonableness to the penalties proposed by the Division in accordance with the Director's regulations, the presumption does not immunize the Division's proposal from effective review by the Board...." (*Plantel Nurseries*, *supra*, Cal/OSHA App. 01-2346, quoting *DPS Plastering, Inc.*, Cal/OSHA App. 00-3865, Decision After Reconsideration (Nov. 17, 2003).) The Division must still demonstrate that it, in fact, calculated penalties in accordance with the penalty-setting regulations. (*Plantel Nurseries, supra*, Cal/OSHA App. 01-2346, Decision After Reconsideration (Jan. 8, 2004); *RII Plastering, Inc*, Cal/OSHA App. 00-4250, Decision After Reconsideration (Oct. 21, 2003).) The Board does not simply rubber stamp the Division's penalty calculations. Rather we must engage in a critical review of all the relevant evidence to ensure that the Division's

> actions are supported by the law. We have also held that maximum credits and the minimum penalty allowed under the regulations are to be assessed when the Division fails to demonstrate its proposed penalty is properly calculated by a preponderance of the evidence. (*Armour Steel Co.*, Cal/OSHA App. 08-2649, Decision After Reconsideration (Feb. 7, 2014); *Plantel Nurseries*, *supra*, Cal/OSHA App. 01-2346.)

In *Hampton Tedder*, the Appeals Board considered a record where the Division's inspector was "the sole witness to offer testimony explaining how the Division arrived at its penalty calculations." (*Hampton Tedder, supra,* Cal/OSHA App. 1233597.) The Appeals Board found that the inspector's testimony did not demonstrate that the Division calculated all penalties in compliance with the penalty-setting regulations. (*Id*.) Further, the Appeals Board expressed a concern with merely accepting the inspector's testimony and penalty calculations without engaging in meaningful analysis. (*Id.*)

In the instant matter, the Division submitted the proposed penalty worksheet, Exhibit 2, and offered the testimony of Huffman in support of its penalty calculations. Therefore, to determine whether the testimony supports the penalty calculations, it is necessary to engage in analysis of the regulation in accordance with *Hampton Tedder*. The only citation where the penalty remains at issue is Citation 13.

Severity

The Severity of the violation for Citation 13 was rated as High because it was classified as Serious. (§ 336, subd. (c)(2).) The Serious classification was found herein to be appropriate. As such, the Base Penalty for a Serious violation is $18,000. (§336, subd. (c)(1).)

Extent

Section 335, subdivision (a)(2), defines Extent:

> […]
>
> ii. When the safety order violated does not pertain to employee illness or disease, Extent shall be based upon the degree to which a safety order is violated. It is related to the ratio of the number of violations of a certain order to the number of possibilities for a violation on the premises or site. It is an indication of how widespread the violation is. Depending on the foregoing, Extent is rated as:

> LOW-- When an isolated violation of the standard occurs, or less than 15% of the units are in violation.
>
> MEDIUM-- When occasional violation of the standard occurs or 15-50% of the units are in violation.
>
> HIGH-- When numerous violations of the standard occur, or more than 50% of the units are in violation.

The Division rated Extent as High. Huffman testified that Extent was classified as High because more than 50 percent of the units in the facility were involved. (Hrg. Tr. Mar. 29, 2023, p. 2454.) Based on the evidence presented at hearing, Extent was properly calculated as High, which increases the Base Penalty by 25 percent. (§336, subd. (c)(1).)

Likelihood

Section 335, subdivision (a)(3), defines the adjustment for Likelihood:

> Likelihood is the probability that injury, illness or disease will occur as a result of the violation. Thus, Likelihood is based on (i) the number of employees exposed to the hazard created by the violation, and (ii) the extent to which the violation has in the past resulted in injury, illness or disease to the employees of the firm and/or industry in general, as shown by experience, available statistics or records. Depending on the above two criteria, Likelihood is rated as:
>
> LOW, MODERATE OR HIGH

Huffman testified that Likelihood was rated as High. However, the Division did not present evidence on the number of employees exposed to the hazard created by the violation and the extent to which the violation has, in the past, resulted in injury, illness, or disease to employees of the firm and/or industry in general.

The testimony presented by the Division regarding Likelihood is insufficient to support a High rating. Accordingly, Employer is afforded maximum credit for Likelihood for Citation 13. (*RII Plastering, Inc*, *supra*, Cal/OSHA App. 00-4250.) The Low Likelihood results in a 25 percent reduction of the Base Penalty. (§ 336, subd. (c)(1).)

Thus, for Citation 13 the Gravity-based Penalty resulting from applying the reductions for Extent and Likelihood is $18,000.

Having determined that the Gravity-based Penalty is $18,000, it is next necessary to consider the adjustment factors for Good Faith, Size, and History.

Good Faith

Section 335, subdivision (c), provides:

> Good Faith of the Employer – is based upon the quality and extent of the safety program the employer has in effect and operating. It includes the employer's awareness of Cal/OSHA, and any indications of the employer's desire to comply with the Act, by specific displays of accomplishments. Depending on such safety programs and the efforts of the employer to comply with the Act, Good Faith is rated as: GOOD—Effective safety program; FAIR—Average safety program; POOR—No effective safety program.

Huffman testified that Good Faith was determined to be Poor because Employer had an ineffective IIPP. As discussed above, Citation 1, Item 7, was affirmed finding that Employer did not have an effectively implemented IIPP. Section 335, subdivision (c), poses the question as to whether Employer had an effective safety program, an average safety program, or no effective safety program. Here, Employer had numerous hazards identified by the Division's inspection that were in plain view and were unaddressed by Employer. As such, it is found that Employer did not have an effective safety program. Accordingly, Good Faith was properly determined to be Poor, and the Gravity-based penalty is not reduced on the basis of Good Faith.

Size

Section 335, subdivision (b), and section 336, subdivision (d)(1), provide that a Gravity-based Penalty may be reduced for employers with 100 or fewer employees, but not for employers with more than 100 employees. Sroka testified that in 2017 Employer had 200 hourly associates and approximately four supervisors. (Hrg. Tr. Aug. 8, 2024, p. 4289.) The proposed penalty worksheet shows that the Division provided no reduction for Size. Given the number of employees Employer had, it was appropriate that the penalty was not reduced for Size.

History

Section 335, subdivision (d), provides:

> (d) The History of Previous Violations--is the employer's history of compliance, determined by examining and evaluating the employer's records in the

> Division's files. Depending on such records, the History of Previous Violations is rated as:
>
> GOOD-- Within the last three years, no Serious, Repeat, or Willful violations and less than one General or Regulatory violation per 100 employees at the establishment.
>
> FAIR-- Within the last three years, no Serious, Repeat, or Willful violations and less than 20 General or Regulatory violations per 100 employees at the establishment.
>
> POOR-- Within the last three years, a Serious, Repeat, or Willful violation or more than 20 General or Regulatory violations per 100 employees at the establishment.
>
> For the purpose of this subsection, establishment and the three-year computation, shall have the same meaning as in Section 334(d) of this Article.

Section 336, subdivision (d)(3), provides a 10 percent reduction to the Gravity-based Penalty for employers with a Good rating for History and a five percent reduction to the Gravity-based Penalty for employers with a Fair rating for History. The Division rated Employer's History as Good, which provides the maximum credit of a 10 percent reduction to the Gravity-based penalty.

The adjustment factors result in a 10 percent reduction of the Gravity-based Penalty, for an Adjusted Penalty of $16,200, which is found to be reasonable.

Conclusions

The evidence did not establish that Employer violated section 2340.16, subdivision (a).

The evidence established that Employer violated section 3203, subdivision (a), because Employer failed to implement and maintain an effective IIPP by failing to identify or correct hazards at the jobsite in plain view.

The evidence did not establish that Employer violated section 5157, subdivision (c)(1).

The evidence did not establish that Employer violated section 5157, subdivision (c)(2).

The evidence established that Employer violated section 5194, subdivision (f)(6)(B), by failing to ensure that each container of hazardous chemicals in the workplace was labeled, tagged, or marked with product identifiers and words, pictures, symbols, or combination thereof, which provided at least general information regarding the hazards of the chemicals, and which, in conjunction with the other information immediately available to employees under the hazard communication program, provided employees with the specific information regarding the physical and health hazards of the hazardous chemicals. Citation 1, Item 17, was properly classified as General.

The evidence established that Employer violated section 4580, subdivision (c), by failing to place a safety bar or cable at the bite of in-running open calender rolls where sheeting, duck or other fabric was fed to the calender rolls by hand. Citation 13 was properly classified as Serious. The penalty, as modified herein to $16,200, is reasonable. Finally, the abatement requirements, as discussed herein, are reasonable.

The evidence did not establish that Employer violated section 5162, subdivision (b).

The evidence did not establish that Employer violated section 5174, subdivision (f).

The evidence did not establish that Employer violated section 5174, subdivision (i).

The evidence did not establish that Employer violated section 5162, subdivision (b).

Order

It is hereby ordered that Citation 1, Item 3, is dismissed and the associated penalty is vacated.

It is hereby ordered that Citation 1, Item 7, is affirmed.

It is hereby ordered that Citation 1, Item 14, is dismissed and the associated penalty is vacated.

It is hereby ordered that Citation 1, Item 15, is dismissed and the associated penalty is vacated.

It is hereby ordered that Citation 1, Item 17, is affirmed.

It is hereby ordered that Citation 13, Item 1, is affirmed and the penalty is modified to $16,200.

It is hereby ordered that Citation 14, Item 1, is dismissed and the associated penalty is vacated.

It is hereby ordered that Citation 15, Item 1, is dismissed and the associated penalty is vacated.

It is hereby ordered that Citation 16, Item 1, is dismissed and the associated penalty is vacated.

It is hereby ordered that Citation 17, Item 1, is dismissed and the associated penalty is vacated.

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

/s/ Christopher Jessup

Dated: 10/29/2026

Christopher Jessup
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.**

If no petition is filed, the penalty amount set forth in the Summary Table is due and payable 30 days after the Order or Decision is issued. If the Appeals Board approved a payment plan, all payments are due in accordance with the dates indicated in the Summary Table. If a Petition for Reconsideration is filed, no payment should be made until the final outcome of the appeal.