

STATE OF CALIFORNIA
 DEPARTMENT OF INDUSTRIAL RELATIONS
 OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
 1006 Fourth Street, Third Floor
 Sacramento, California 95814
 (916) 322-3640

In the Matter of an Application for)
 a Permanent Variance by:)
 Hayward Lumber Company)
 680 E. Romie Lane)
 Salinas, CA 93901,)
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 Applicant)

OSHSB FILE NO. 95-V-004
 DECISION

The Occupational Safety and Health Standards Board hereby adopts the attached PROPOSED DECISION by Richard S. Nishite, Hearing Officer.


 JERE W. INGRAM, Chairman


 GWENDOLYN W. BERMAN, Member

OCCUPATIONAL SAFETY AND HEALTH
 STANDARDS BOARD

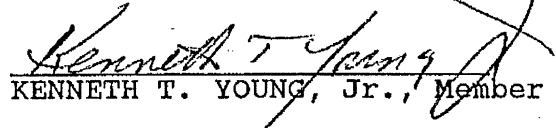

 WILLIAM JACKSON, Member

Date of Adoption: May 18, 1995


 JAMES P. SMITH, Member

THE FOREGOING VARIANCE DECISION WAS ADOPTED ON THE DATE INDICATED ABOVE. IF YOU ARE DISSATISFIED WITH THE DECISION, A PETITION FOR REHEARING MAY BE FILED, BY ANY PARTY, WITH THE STANDARDS BOARD WITHIN TWENTY (20) DAYS AFTER SERVICE OF THE DECISION. YOUR PETITION FOR REHEARING MUST FULLY COMPLY WITH THE REQUIREMENTS OF CALIFORNIA CODE OF REGULATIONS, TITLE 8, CHAPTER 3.5, SECTIONS 427, 427.1 AND 427.2.


 SOPAC M. TOMPKINS, Member


 KENNETH T. YOUNG, Jr., Member

NOTE: A copy of this Order must be posted for the Applicant's employees to read, or a copy thereof provided to the employees' authorized representative(s).

BEFORE THE
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
DEPARTMENT OF INDUSTRIAL RELATIONS
STATE OF CALIFORNIA

In the Matter of an Application)
for a Permanent Variance by:) OSHSB FILE NO. 95-V-004
Hayward Lumber Company)
680 E. Romie Lane) PROPOSED DECISION
Salinas, CA 93901,)
Applicant.)

Jurisdiction

I

This matter came on regularly for hearing before Board Chairman Jere Ingram and Board Member Kenneth T. Young Jr. of the California Occupational Safety and Health Standards Board (Board), constituting the Hearing Panel of the Board. Richard S. Nishite, Hearing Officer, presided at the hearing in Sacramento, California, on May 4, 1995 at 11:00 a.m.

II

William Hayward representing Hayward Lumber Company (Applicant), James Kinney, representing the Division of Occupational Safety and Health (Division), and Fidel Lopez, representing the Board staff, were present at the hearing. Also present at the hearing for the Applicant was Helen Toole.

III

William Hayward filed an application dated January 4, 1995 on behalf of the Applicant, requesting a permanent variance from Title 8, *California Code of Regulations*, section 3664(a)(17) of

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the General Industry Safety Orders with respect to operating rules for industrial trucks located at the following six locations:

1140 Sunset Drive
Pacific Grove, CA 93950

221 San Felipe Road
Hollister, CA 95023

429 Front Street
Salinas, CA 93912

520 Atascadero Road
Morro Bay, CA 93442

944 Pine Street
Paso Robles, CA 93447

236 Higuera Street
San Luis Obispo, CA 93406

The application was completed on January 25, 1995.

IV

The Division submitted an evaluation report dated March 14, 1995, recommending that the variance be denied. The Standards Board's staff submitted an evaluation report dated April 10, 1995, recommending that the variance be granted subject to two conditions.

The parties presented oral and documentary evidence and the matter was submitted on May 4, 1995.

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Title 8, California Code of Regulations, section 3664(a)(17)

Summary of Evidence

The Applicant operates a retail business selling building materials. The Applicant has six stores where industrial trucks are used to load and unload materials. The Applicant was cited by the Division of Occupational Safety and Health for violation of a forklift operating rule which requires that lifting forks be fully lowered, the control neutralized, and the brakes set, whenever the industrial truck operator is dismounted and within 25 feet of the industrial truck.

The Applicant requests a permanent variance to permit the operator to elevate and position the forks so as to facilitate loading or unloading of building materials. The loading or unloading will be done by the industrial truck operator. This loading procedure, according to the Applicant, should reduce the risk of back injuries associated with repeated lifting, bending, stooping and/or twisting while handling loads because the distance between lifting forks and the stack will be minimized when unloading and similarly when loading.

The Applicant proposes to provide equivalent safety in this situation by requiring the operator, and others who may be providing assistance, to remain outside the area of the elevated forks. The Applicant also complies with the other two features of the regulation, i.e., the controls will be neutralized and the brakes will be set.

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Section 3664(a)(17) of the General Industry Safety Orders provides:

(a) Every employer using industrial trucks or industrial tow tractors, shall post and enforce a set of operating rules including the appropriate rules listed below:

(17) When the operator of an industrial truck is dismounted and within 25 feet (7.6 meters) of the truck which remains in the operator's view, the load engaging means shall be fully lowered, controls neutralized, and the brakes set to prevent movement.

The intent of this regulation is to provide safeguards for the operator from overhead hazards of material falling from the forks when the industrial truck operator has dismounted and is within 25 feet of the industrial truck.

The Division evaluated the application and recommended that the variance be denied. The Division was concerned about the maintenance and inspection of the industrial truck hydraulic components and the brake system. The Division also expressed concern about the hazard of falling materials due to sudden downward movement of the lift system. At the hearing the Division's concerns were satisfactorily addressed and the Division representative modified its recommendation. Rather than recommending that the request for permanent variance be denied, the Division representative recommended that the variance be granted.

The Board staff also evaluated the application and recommended the variance be granted subject to two conditions:

1. The fork lifts shall not be elevated more than waist high of the person performing the material transfer.

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2. The person(s) performing the material transfer shall remain outside the area defined by the elevated forks.

Findings and Reasons for Decision

The Applicant has complied with all statutory and regulatory requirements precedent to the granting of a request for a permanent variance.

The facts in the Summary of Evidence are found to be facts in this Decision.

The record establishes that the Applicant's proposal, combined with the conditions set forth below, will provide employment and a place of employment that are as safe and healthful as those provided by Section 3664(a)(17).

In light of the evidence presented at the hearing, the Hearing Panel recommends that Standards Board staff further research the issue raised by this application for permanent variance and take the steps necessary to modify Section 3664(a)(17) to address the concerns raised by the Applicant and which are applicable to other industries.

Decision and Order

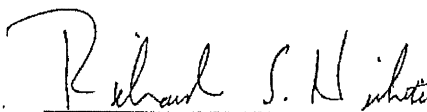
The application by Hayward Lumber Company, for a permanent variance from Title 8, *California Code of Regulations*, section 3664(a)(17), with respect to operating rules for industrial trucks wheelchair lift located at the six sites referred to above is GRANTED, subject to the following conditions:

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1. The fork lifts shall not be elevated more than waist high of the person performing the material transfer.
2. The person(s) performing the material transfer shall remain outside the area defined by the elevated forks.
3. The Applicant shall notify employees or their authorized representative(s), or both, of this order in the same manner it notified them of the application for a permanent variance.
4. This Decision and Order shall remain in effect unless modified or revoked upon application by the Applicant, employee, the Division of Occupational Safety and Health, or by the Board on its own motion, in the manner prescribed for its issuance.

I hereby certify that the above Proposed Decision is the decision of the Hearing Panel, and the Hearing Panel recommends its adoption by the Occupational Safety and Health Standards Board as the Board's decision in the proceeding.

DATED: May 8, 1995



Richard S. Nishite
Hearing Officer