

**BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD**

In the Matter of the Appeal
of:

LANGER FARMS, LLC
16195 Stephen Street
City of Industry, CA 91745

Employer

DOCKETS 13-R4D7-0231
through 0233

DECISION

STATEMENT OF THE CASE

Langer Farms manufactures fruit juice concentrate. Beginning on September 12, 2012, the Division of Occupational Health and Safety (the Division) through Associate Safety Engineer, Paul Ricker commenced an accident investigation at a place of employment maintained by Employer at 19300 Copus Road, Bakersfield, California (the site). On January 3, 2013, the Division cited Employer for failing to timely report a serious injury within eight hours; failing to ensure that an employee was trained in hazardous energy-control procedures related to cleaning, repairing, servicing, setting-up and adjusting prime movers, machinery and equipment; and failing to have specific written hazardous energy control procedures.

Employer filed a timely appeal contesting the existence of the alleged violations, their classifications, the abatement requirements and the reasonableness of all proposed penalties. Employer alleged several affirmative defenses.

This matter came on regularly for hearing before Clara Hill-Williams, Administrative Law Judge for California Occupational Safety and Health Appeals Board, at West Covina, California on December 4, 2013.¹ Attorney David Pies represented Employer. William Cregar, Staff Counsel, represented

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

the Division. The parties presented oral and documentary evidence which is listed in the certification of record. The ALJ extended the submission date to August 11, 2014, on her own motion.

ISSUES

1. Did Employer timely report an employee's serious injury within eight hours or demonstrate exigent circumstances to extend the reporting time to within 24 hours after the incident?
2. Did Employer fail to train employee Carl Stark on hazardous energy control procedures?
3. Did Employer fail to document the training of hazardous energy control procedures and on hazards related to cleaning, repairing, servicing, setting-up and adjusting prime movers machinery and equipment?
4. Did Employer's failure to have specific written hazardous energy control procedures cause the employee's serious injury?

Findings of Fact:

1. Employer processes apples into juice concentrate.
2. Carl Stark (Stark), Employer's employee, suffered serious burn injuries at the site on July 13, 2012.
3. Stark went to the Irene Sanchez Occupational Medical Clinic on July 15, 2012, and was referred to San Joaquin Community Hospital's burn center.
4. On July 17, 2012, Stark went to the San Joaquin Community Hospital and remained hospitalized until he was discharged on July 26, 2012.
5. Employer became aware of Stark's hospitalization on July 17, 2012 at 1:31 p.m.
6. Employer reported the serious injury to the Division on July 19, 2012 at 2:55 p.m.
7. Stark was trained to clean the machinery tubing shell² which was a step in the process of converting apples into juice. A flexible hose connected a pump to the tubing shell, which was under pressure with apple mash (apple particles and heated water). On July 13, 2012, he was assigned to disconnect the hose from the tubing shell. When Stark disconnected the

² See Photo Exhibit 7, tubing shell identified with yellow tags marked "hot".

- hose, the apple mash sprayed out of the hose onto his chest, back and arms.
8. Stark was not trained on hazardous energy control procedures for cleaning the tubing shell and Employer did not have written documentation of any such training.
 9. Employer did not have written hazardous energy control procedures for cleaning the tubing shell.
 10. On prior occasions there has been apple mash blockage in the tubing shell during Stark's cleaning operation.
 11. At the time of the July 13, 2012 accident, Stark had worked for Employer for one and a half years.

Analysis:

1. Did Employer demonstrate exigent circumstances existed to extend the reporting time to within 24 hours when Employer became aware of the serious injury?

The Division cited Employer for a violation of section 342(a) which states that:

Every employer shall report immediately by telephone or telegraph to the nearest District Office of the Division of Occupational Safety and Health any serious injury or illness, or death, of an employee occurring in a place of employment or in connection with any employer.³

Immediately means as soon as practically possible but not longer than eight hours after the employer knows or with diligent inquiry would have known of the death or serious injury or illness. If the employer can demonstrate that exigent circumstances exist, the time frame for the report may be made no longer than 24 hours after the incident.

In citing Employer, the Division specifically alleged: "On or about July 13, 2012, at approximately 0430 hours an[d] sic employee received serious burns when [hot] sic he was struck by hot apple pieces and juice. The

³ "Serious injury or illness" means any injury or illness occurring in a place of employment or in connection with any employment which requires inpatient hospitalization for a period in excess of 24 hours for any other than medical observation or in which an employee suffers a loss of any member of the body or suffers any serious degree of permanent disfigurement, but does not include any injury or illness or death caused by the commission of a Penal Code, or an accident on a public street or highway.

employer reported the incident to the Division on July 19, 2012 at 1455 hours. The employer exceeded the 8 hour reporting requirement for a serious injury.”

In *Benicia Foundry & Iron Works, Inc.*, Cal/OSHA App. 00-2976, Decision After Reconsideration (April 24, 2003), the Appeals Board stated the purpose of the reporting requirement is to allow the Division to quickly respond to injuries or illnesses occurring on the job. The Board has long noted that the purpose of requiring a rapid response is necessary to inspect potentially dangerous conditions close to the time of the accident or illness and to examine any equipment that may have caused an injury or illness. (*Alpha Beta Company*, Cal/OSHA App. 77-853, Decision After Reconsideration (Nov. 2, 1979)). Upon learning of Stark’s hospitalization on July 17th⁴, Employer had actual knowledge of the seriousness of Stark’s first and second degree burns⁵ and was required to report the injury to the Division within eight hours and no more than 24 hours.

The accident should have been reported within eight hours after learning of the seriousness of Stark’s injuries on July 17th; or within 24 hours if there were exigent circumstances. Once Stark was hospitalized on July 17, 2012, Employer had a duty to inquire regarding the nature of his treatment and whether the hospitalization was related to the burns Stark sustained on July 13th. Employer learned of Stark’s hospitalization on July 17, 2012, at 1:31 p.m. At the Hearing Employer did not present any reason why a report was not filed with the Division until July 19, 2012, at 2:55 p.m., more than eight hours after learning of the hospitalization or within 24 hours of his hospitalization.

Employer’s report of Stark’s serious injuries was not timely. The Board’s recent holding regarding late reporting is applicable to modify the penalty for Employer’s late report. In *Central Valley Engineering & Asphalt*, Cal/OSHA App. 08-5001, Decision After Reconsideration (Dec. 4, 2012) and *SDUSD-Patrick Henry High School*, Cal/OSHA App. 11-1196, Decision After Reconsideration (Dec. 4, 2012) the Board determined that Labor Code section 6409.1(b) allows for modification of the proposed \$5,000 gravity based penalty, for factors of size, history and good faith in a case of late reporting.

Here, Pete Ricker (Ricker), the Division’s Associate Safety Engineer completed a penalty work sheet (See Exhibit 8) according to the Division’s policies and procedures and Title 8 regulations. Pursuant to *Central Valley Engineering & Asphalt, supra*, Ricker’s calculation of the penalties showed Employer did not have a prior history of citations, which entitled Employer to a

⁴ Valdez testified that he was aware of Stark’s burns when the accident occurred on July 13, 2012 but did not realize the seriousness of the burns based upon Stark returning to work on July 14th and July 15th.

⁵ See Exhibit 3 – “EMPLOYEE ACCIDENT REPORT”.

10 percent history credit. At the time of Ricker's investigation he was told Employer had over a hundred employees. However, at the Hearing, Employer's Human Resources Manager Alma Madrigal (Madrigal) credibly testified that there were 43 employees working for Employer (Langer Farms) at the time of the July 13, 2012, accident⁶. Thus Employer is entitled to a size credit of 20 percent. Ricker rated the good faith of this Employer at 15 per cent. Calculating the history, size and good faith credits allows a 45 percent (\$2,250) deduction from the gravity based penalty of \$5,000, resulting in a penalty assessment of \$2,750 for Citation 1, Item 1.

In conclusion, Employer did not timely report Stark's serious burn injury of July 13, 2012. Employer's late report on July 19, 2012, results in an assessed penalty of \$2,750.

2. Did Employer fail to train Employee, Carl Stark, and document the training of authorized employees on hazardous energy control procedures and on hazards related to performing activities required for cleaning, repairing, servicing, setting-up and adjusting prime movers, machinery and equipment?

The Division cited Employer for a violation of Section 3314: The Control of Hazardous Energy for the Cleaning, Repairing, Servicing, Setting up and Adjusting Operations of Prime Movers, Machinery and Equipment, Including Lock out/Tag out. Subsection (j) specifically states:

Training

- (1) Authorized employees shall be trained on hazardous energy control procedures and on the hazards related to performing activities required for cleaning, repairing, servicing, setting-up and adjusting prime movers, machinery and equipment.
- (2) Each affected employee shall be instructed in the purpose and use of the energy control procedure.
- (3) All other employees whose work operations may be in an area where energy control procedures may be utilized shall be instructed about the prohibition relating to attempts to restart or reenergize machines or equipment which are locked out or tagged out.
- (4) Such training shall be documented as required by Section 3203.

⁶ At the Hearing Madrigal testified that Langer Juice is a different corporation, which presently has 140 employees in California. Ricker most likely confused Langer Farms (Employer) with Langer Juice, or combined the number of employees for both corporations.

The Division alleged that “On or about July 13, 2012, at approximately 0430 hours an employee received serious injuries when he was sprayed with a hot mixture of apple pieces and apple juice after he disconnected a hose from a pump. The hose was connected to the pump with camlock (connector) fittings. The pressure in the hose and line was not released prior to disconnecting. The temperature of the mixture was approximately 120 degrees F (Fahrenheit)”.⁷

The Division further alleged that “Employer did not ensure the employee was trained on the machine’s specific hazardous energy control procedures.”

Here, Stark was trained regarding the cleaning of the tubing shell and was specifically assigned to clean the machinery’s tubing one to two times a week according to his testimony and the testimony of his supervisor, Juan Valdez (Valdez). Pursuant to Section 3314(j), Stark is both an *affected* and an *authorized* employee. As an *affected* employee his job required him to clean out the tubing shell, which included lock out/tag out procedures. As an *authorized* employee Stark was required to lock out the tubing shell to perform the cleaning assignment.⁸ However, Stark was not instructed in the purpose and use of the energy control procedure. Despite Stark working in an area where energy control procedures should have been utilized, Stark was not instructed

⁷ The parties stipulated that a substance with a temperature of 120 degrees Fahrenheit is not hazardous and will not cause second degree burns.

⁸ Section 3314:

(a) Application.

(1) This Section applies to the cleaning, repairing, servicing, setting-up and adjusting of machines and equipment in which the unexpected energization or startup of the machines or equipment, or release of stored energy could cause injury to employees.

(2) For the purposes of this Section, cleaning, repairing, servicing and adjusting activities shall include unjamming prime movers, machinery and equipment.

(3) Requirements for working on energized electrical systems are prescribed in Sections 2320.9 or 2940.

(b) Definitions:

Affected employee. For the purpose of this section, an employee whose job requires them to operate or use a machine or equipment on which cleaning, repairing, servicing, setting-up or adjusting operations are being performed under lockout or tagout, or whose job requires the employee to work in an area in which such activities are being performed under lockout or tagout.

Authorized employee or person. For the purposes of this section, a qualified person who locks out or tags out specific machines or equipment in order to perform cleaning, repairing, servicing, setting-up, and adjusting operations on that machine or equipment. An affected employee becomes an authorized employee when that employee's duties including performing cleaning, repairing, servicing, setting-up and adjusting operations covered under this section.

about the prohibition relating to equipment which is locked out or tagged out (See 3314(j) (1) (2) and (3)).

Furthermore, although Stark received training in the operation of the pump; Stark's training was not documented as required by Section 3203 (See section 3314(j)(4). Where a safety order has more than one requirement, a violation of any one requirement is sufficient to support a violation of that safety order. (*Home Depot USA, Inc. #6617, Home Depot, Cal/OSHA App. 10-3284, Decision After Reconsideration (Dec., 24, 2012)*; *California Erectors Bay Area, Inc., Cal/OSHA App. 93-503, Decision After Reconsideration (July 31, 1998)*.)

The evidence established that Employer trained Stark with regard to cleaning the valves to relieve the pressure two times a week. Stark was also shown how to disconnect the tubing lines by his foreman, Darwin⁹, which was not different from what he learned before his employment with Employer. Stark stated that cleaning out the line involved inserting a hose and running a chemical through the hose once or twice a week. At the hearing, Employer's General Manager, Massimo Freda (Freda) and Employer's Production Supervisor, Valdez, both testified that Stark was well trained in the operation of the pump and had successfully performed the pump operation for over a year during his employment with Employer. However, Stark testified that while he was shown how to operate the pump, Employer did not give him any written instructions. Further, Employer failed to present any records of Stark's training involving the hazardous energy control procedures.

Ricker testified that he classified the violation as serious because there is a realistic possibility of a serious injury in the event of an accident if an employee is not properly trained, including being given written instructions involving the operation of the pump. Stark was trained on the operation, without documentation of the training, and was not properly trained on the specific hazardous energy control procedures. To establish a violation as serious, Labor Code Section 6432(a) provides that there is "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 harm could result from the actual hazard created by the violation." A "realistic possibility" is not defined in the safety orders.

The Board interpreted "realistic possibility" to mean a prediction "clearly with the bounds of human reason not pure speculation." (*Janco Corporation, Cal/OSHA App. 99-565, Decision After Reconsideration (Sept. 27, 2001)*, quoting *Oliver Wire & Plating Co., Inc., Cal/OSHA App. 77-693, Decision After Reconsideration (April 30, 1980)*.) In *Janco, supra*, the Board found that there

⁹ Last name was not given.

was a realistic possibility of injury from the hazard in question, although such an injury was unlikely and the possibility was remote. (Id.)

“Serious physical harm” is not defined in the Labor Code or Title 8 of the California Code of Regulations. However, it has been held to have the same meaning as “Serious Injury or Illness” as defined in Labor Code Section 6302(h). (See, e.g. *Abatti Farms/Produce*, Cal/OSHA App. 81-0256, Decision After Reconsideration (Oct. 4, 1985).) Labor Code Section 6302(h) and Section 330(h) provide as follows:

In *Armour Steel Inc.*, Cal/OSHA 08-2649, Decision After Reconsideration (Feb. 7, 2014), the Board addressing an Employer’s failure to train held the Division may present evidence of a “specific hazard that endangers an employee and the probable consequences of an accident related to the failure to instruct about the hazard.” (*Mascon, Inc.*, *supra*, citing *Blue Diamond Materials, A Division of Sully Miller Construction*, Cal/OSHA App. 02-1268, Decision After Reconsideration (Dec. 9, 2008).) In *Armour Steel Inc.*, *supra*, the Division’s inspector testified that he based the serious classification on the hazard of an employee falling and sustaining serious injuries due to Employer’s lack of training regarding hazards associated with working on steel structures.

Because Stark was not specifically trained on the hazardous energy control procedures and the specific hazards associated with the tubing machine with its lock out tag out procedures there was a realistic possibility that a serious injury could occur. Therefore Stark’s burns over his chest, neck and back fall within the definition of a serious injury. The Division’s evidence established that serious injuries are a realistic possibility. Here, the actual occurrence of a serious injury is evidence of the realistic possibility.

To assess a penalty for the violation the Division must calculate the penalty according to the Division’s policies and procedures as demonstrated in the penalty worksheet (See Exhibit 8), starting with a base penalty of \$18,000, Ricker concluded that Stark was the only employee exposed to the hazard, thus Employer was given a low extent rating. Since there was only one instance, likelihood was also rated as low resulting in a gravity based penalty of \$9,000. Employer was given an adjustment factor, based upon history and good faith. Employer *should* have been given a 20 percent size credit for 43 employees at the time of the inspection (as testified by Madrigal). The Division gave 10 percent history and 15 percent good faith; and 50 percent abatement credit which results in a penalty of \$2,475.

In conclusion, Employer failed to adequately train Stark on hazardous energy control procedures and hazards related to performing activities required for cleaning, repairing, servicing, set-up and adjusting prime movers machinery

and equipment and Employer failed to provide written documentation of Stark's training.

3. Did Employer's failure to have specific written hazardous energy control procedures for relieving pressure in a machine's pump, lines and hoses prior to disconnecting the hose from the pump and lines cause the employee's serious injury?

The Division cited Employer for a violation of section 3314(g)(2)(A): The Control of Hazardous Energy for the Cleaning, Repairing, Servicing, Setting-Up, and Adjusting Operations of Prime Movers, Machinery and Equipment, Including Lock out/Tag out.

(2) The employer's hazardous energy control procedures shall be documented in writing.

(A) The employer's hazardous energy control procedure shall include separate procedural steps for the safe lock out/tag out of each machine or piece of equipment affected by the hazardous energy control procedure¹⁰.

The Division alleged that "On or about July 13, 2012, at approximately 0430 hours, an employee received serious injuries when he was sprayed with a hot mixture of apple pieces and apple juice at a temperature of approximately 120 degrees F."

The Division further alleged "the Employer did not have machine specific written hazardous energy control procedures in place for relieving pressure in the pump, lines and hoses in building #1 prior to disconnecting the hose from the pump and lines."

Section 3314(g) (2) must be read in conjunction with section 3314(g) (1), which requires:

The procedure (hazardous energy control procedure) shall clearly and specifically outline the scope, purpose, authorization, rules, and techniques to

¹⁰ Exception to subsection (g)(2)(A): The procedural steps for the safe lock out/tag out of prime movers, machinery or equipment may be used for a group or type of machinery or equipment, when either of the following two conditions exist:

(1) Condition 1:

(A) The operational controls named in the procedural steps are configured in a similar manner, and

(B) The locations of disconnect points (energy isolating devices) are identified, and

(C) The sequence of steps to safely lock out or tag out the machinery or equipment is similar.

(2) Condition 2: The machinery or equipment has a single energy supply that is readily identified and isolated and has no stored or residual hazardous energy.

be utilized for the control of hazardous energy, and the means to enforce compliance including but not limited to the following:

- (A) A statement of the intended use of the procedure;
- (B) The procedural steps for shutting down, isolating, blocking and securing machines or equipment to control hazardous energy;

Section 3314(g)(2)(A) requires "*separate* procedural steps for the safe lock out/tag out of *each* machine or piece of equipment affected by the hazardous energy control procedure" which may only be made applicable for a group or type of machinery under specified conditions. The absence of a lock out/tag out procedure specific to the pump machine is a material deficiency in Employer's safety program. Stark testified that he was shown how to perform the cleaning operation, but was not given any written instructions.

At the hearing Ricker testified that during his inspection of the work site in November 2012¹¹, he did not observe a relief valve or anything that could be put in the line to slowly release the pressure, so the pressure is not released all at once. Ricker further testified that he determined Employer had a general procedure for cleaning the apple mash from the tubes, but did not have a specific procedure for lock out/tag out. Ricker explained that a procedure with a written checklist would minimize any errors in cleaning the apple mash from the tubes. Ricker testified that he had previously requested but did not receive any written procedures from Employer regarding lock out/tag out for cleaning the apple mash tubes.

Employer asserted that a general lock out tag out procedure was permissible; since the Division's alleged violation description (AVD) of the citation 3314(g) (2) (A) did not specify a particular machine. However, Employer acknowledged in its response to the Division's 1BY (notice of citing a serious violation) that Employer "was still in the process of formalizing the specific procedural instruction in the operation of the pump in Building #1" (See Exhibit 3 p. 3). From Employer's acknowledgment that a specific written procedure was being formulated for the apple mash pump in Building #1, an inference¹² can be made that the creation of a written document regarding its lock out/tag out procedures for the operation of the tubes and pump in Building #1 had not been completed before the July 13, 2012 accident.

¹¹ Ricker testified that he believes his investigation could have been on November 10, 11, or 12, 2012. Ricker also testified that he returned to take photographs on November 19, 2012.

¹² The Appeals Board has held that reasonable inferences can be drawn from evidence introduced at hearing. (*Arb, Inc.*, Cal/OSHA App. 93-2984, DAR (Dec. 22, 1997).) "An inference is a deduction of fact that may logically and reasonably be drawn from another fact or group of facts found or established in the action." (Evidence Code § 600(b).)

Employer did not submit any written documents that described lock out and tag out procedures for cleaning the apple mash tubing as required by this section. The Appeals Board has repeatedly held that Section 3314(g) “requires employers to develop a procedure for each individual machine.” *Los Angeles County Internal Services*, Decision After Reconsideration, Cal/OSHA App. 03-4600 (June 20, 2007).

Ricker testified that he classified the violation as serious because Employer’s failure to have a written lock out/tag out procedure created a hazard that an employee could err or omit a step in the lock out/tag out procedure and that created a realistic possibility of a serious injury. Section 6432 (a) requires the Division to demonstrate a realistic possibility that death or serious physical harm could result from the actual hazard created by the violation in order to establish a rebuttable presumption that a “serious violation” exists in a place of employment.

The Division’s reasoning suggests that if Stark had been provided written hazardous energy control procedures, however long ago, he would not have “forgotten” the procedures on the date of the accident. The Division’s reasoning that if specific written instructions for hazardous energy control procedures for lock out/tag out of the tubes had been included in Stark’s training the accident would not have occurred does not prove that the absence of specific written hazardous energy control procedures created a hazard that could result in a realistic possibility of a serious injury or death occurring. The evidence does not support a hazard existed at the work site because Employer failed to provide specific written instructions for energy control procedures for lock out/tag out of the tubes. Rather, an inference is made that the cause of the accident was Employer’s failure to have a relief valve to slowly release the pressure so the pressure is not released all at once.

Although a serious violation is not supported by the evidence, in order to establish a general violation the Division need only show that the safety order was violated and that the violation has a relationship to occupational safety and health of employees. (*California Dairies, Inc.*, Cal/OSHA App. 07-2080, Denial of Decision After Reconsideration (June 25, 2009), citing *A. Teichert & Sons, Inc.* Cal/OSHA App. 97-2733 (Dec. 11, 1998).) Under section 334(b), a general violation is a violation which is not of a serious nature, but has a relationship to occupational safety and health of employees. A general violation is established based upon uncontroverted evidence of Employer’s failure to provide written procedures for its lock out/ tag out procedures for relieving pressure in the machine’s pump, lines and hoses prior to disconnection.

As an affirmative defense Employer asserted that it is excused from liability because the violation resulted from an independent employee act. The

independent employee action defense relieves an employer of responsibility for violations by employees who "act against their employer's best safety efforts." (*Mercury Service, Inc.*, OSHAB 77-1133, Decision After Reconsideration (Oct. 16, 1980).

The independent employee action defense is a Board created defense to the existence of a violation. Because it is an affirmative defense, the burden of proving by a preponderance of the evidence (*Central Coast Pipeline Construction Co., Inc.*, Cal/OSHA App. 76-1342, Decision After Reconsideration (July 16, 1980)) rests upon the employer. (*Ernest W. Hahn, Inc.*, Cal/OSHA App. 77-576, Decision After Reconsideration (Jan.25, 1984).)

The Appeals Board in *Mercury Service, Inc.*, *supra*, held that establishing the independent employee action defense requires affirmatively proving the following elements:

1. The employee was experienced in the job being performed;
2. The employer has a well-devised safety program which includes training employees in matters of safety respective to their particular job assignments;
3. The employer effectively enforces the safety program;
4. The employer has a policy of sanctions against employees who violate the safety program; and
5. The employee caused a safety infraction which he or she knew was contra to the employer's safety requirements.

Failure to prove any one of the elements negates the independent employee action defense in its entirety. (*Ferro Union, Inc.*, Cal/OSHA App. 96-1445, Decision After Reconsideration (Sep. 13, 2000).) The second element requires the employer to have a well-devised safety program which includes training employees in matters of safety respective to their particular job assignments. Employer failed to train Stark on hazardous energy control procedures, and failed to document Stark's training regarding hazardous energy control procedures and hazards related to cleaning, repairing, servicing, setting-up and adjusting prime movers machinery and equipment.

Employer cannot affirmatively establish all of the elements of the independent employee action defense. Employer's response that it was in the process of formalizing the lock out /tag out procedures during Employer's ongoing process of training shows Employer did not satisfy the second element of having a well-devised safety program which included training employees in matters of safety respective to their particular job assignment.

The second element has not been established. Pursuant to *Ferro Union, Inc., supra*, failure to prove any one of the elements negates the Independent Employee Action Defense and does not relieve Employer of its responsibility for this violation.

In calculating penalties for a general violation, pursuant to the Division's policies and procedures as demonstrated in the penalty worksheet (See Exhibit 8), Ricker rated the severity high for Employer failing to have specific written hazardous energy control procedures. However, Ricker did not present evidence at the hearing to demonstrate that failure to have specific written instructions would warrant a high severity rating. High severity anticipates an injury requiring medical treatment for more than 24 hours of hospitalization. Ricker's inspection did not establish a sufficient nexus between the failure to have specific written procedures and any type of injury. Because Ricker did not properly support the high severity rating, it must be reduced to low and the penalty adjusted accordingly, the base penalty is \$1,000, with a low extent and likelihood adjustment (See extent and likelihood calculation discussed in Citation 2.1), resulting in gravity based penalty of \$500. Employer is given a 45 percent adjustment factor, based upon size, history and good faith, with 50 percent abatement credit, which results in a penalty of \$135.

In conclusion Employer's failure to have a written hazardous energy control procedure for relieving pressure in the machine's pump, lines and hoses prior to disconnecting the hose from the pump and lines is a general violation that did not cause Stark's serious injuries.

Conclusions

In Citation 1, Item 1, the evidence supports a finding that Employer violated section 342(a) for not timely reporting Stark's serious burn injury of July 13, 2012. Employer's late report on July 19, 2012, results in an assessed penalty of \$2,750 for Citation 1, Item 1.

In Citation 2, the evidence supports a finding that Employer violated section 3314(j) because Employer failed to adequately train Stark on hazardous energy control procedures and hazards related to performing activities required for cleaning, repairing, servicing, set-up and adjusting prime movers machinery and equipment and Employer failed to provide written documentation of Stark's training. A penalty of \$2,475 is assessed for Citation 2.

In Citation 3, the evidence supports a finding that Employer violated section 3314(g)(2)(A) in failing to have a written hazardous energy control procedure for relieving pressure in the machine's pump, lines and hoses prior to disconnecting the hose from the pump and lines is a general violation that did not cause Stark's serious injuries. The penalty assessed is \$135.

ORDER

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

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

Dated: September 9, 2014

CLARA HILL-WILLIAMS
Administrative Law Judge

CHW: ao

APPENDIX A

**SUMMARY OF EVIDENTIARY RECORD
Langer Farms, LLC
Dockets 13-R4D7-0231 through 0233**

Date of Hearing: December 4, 2013

Division's Exhibits

Exhibit Number	Exhibit Description	Admitted
1	Jurisdictional Documents	Yes
2	Medical Records – San Joaquin Community Hospital	Yes
3	Documents produced by Employer in response to Division's Document Request	Yes
4	Divisions 1BY Notice	Yes
5	Division's Form 36 – Employer's Report of Accident	Yes
6	Field Document Worksheet, Dated 9/16/12	Yes
7	7A, 7B, 7C, and 7D Photos taken by Ricker on 11/19/12	Yes
8	C-10 Penalty Worksheet	Yes

Employer's Exhibits

Exhibit Letter	Exhibit Description	Admitted
A	Time and Attendance Card	Yes
B	Diagram of Apple Mill (tubing, pumps, hoses, valves, thermometer and "PIXSYS)	Yes

C	C-1: Temperature/ph. graph; C-2: Temperature Conversion Chart; and C-3: Information sheet regarding machine's maximum temperature limit of 120 degrees	Yes
D	Curriculum Vitae – Massimo Freda	Yes

Witnesses Testifying at Hearing

1. Carl Stark
2. Paul Ricker
3. Alma Madrigal
4. Massimo Freda
5. Juan Valdez

CERTIFICATION OF RECORDING

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

Signature

Date

**SUMMARY TABLE
DECISION**

In the Matter of the Appeal of:

LANGER FARMS, LLC
Dockets 13-R4D7-0231 through 0233

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

IMIS No. 313387649

DOCKET	CITATION	SECTION	TYPE	MODIFICATION OR WITHDRAWAL	AVFCIRME D	VAFCIRME D	PENALTY PROPOSED BY DOSH IN CITATION	PENALTY PROPOSED BY DOSH AT HEARING	FINAL PENALTY ASSESSED BY BOARD	
13-R4D7-0231	1	1	342(a)	Reg	ALJ modified penalty for a finding of late reporting	X	\$5,000	\$5,000	\$2,750	
13-R4D7-0232	2	1	3314(j)	S	ALJ affirmed violation and modified penalty adjustment increasing size to 20%	X	\$3,375	\$3,375	\$2,475	
13-R4D7-0233	3	1	3314(g)(2)(A)	SAR	ALJ reclassified the citation as a general violation. The proposed penalty is modified and further reduced.	X	\$18,000	\$18,000	\$135	
Sub-Total								\$26,150	\$26,375	\$5,360

\$5,360

(INCLUDES APPEALED CITATIONS ONLY)

NOTE: *Please do not send payments to the Appeals Board.*

All penalty payments should be made to:
Accounting Office (OSH)
Department of Industrial Relations
P.O. Box 420603
San Francisco, CA 94142

*You will owe more than this amount if you did not appeal one or more citations or items containing penalties. Please call (415) 703-4291 if you have any questions.

ALJ: CHW/ao
POS: 09/09/2014

