Statement of the Case

Kenai Drilling Limited (Employer or Kenai) conducts oil, gas, and geothermal drilling. Beginning August 11, 2017, the Division of Occupational Safety and Health (the Division), through Associate Safety Engineer Daniel Pulido, commenced an accident investigation at a job site located at Gill Station Coso Road and Cinder Road, in Olancha, California (the work site). On December 12, 2017, the Division cited Employer for one violation of California Code of Regulations, title 8: failure to ensure that the brakes for the hoist drum on the drilling machinery were designed, constructed, installed, and maintained to control the load being handled.

Employer filed a timely appeal of the citation, contesting the existence of the violation, the classification, abatement requirements, and the reasonableness of the proposed penalty. Employer also asserted a series of affirmative defenses.

This matter was heard by J. Kevin Elmendorf, Administrative Law Judge for the California Occupational Safety and Health Appeals Board, in Bakersfield, California, on April 17, 2019. Attorney Thomas P. Feher, of the firm LeBeau-Thelen, LLP, represented Employer. Efren Gomez, District Manager, represented the Division. The matter was submitted on July 19, 2019.

Issue

1. Were the brakes for the hoist drum on the drilling machinery designed, constructed, installed, and maintained to control the load being handled?

Findings of Fact

1. Driller Gabriel Terrasas (Terrasas), an employee of Kenai, was conducting a geothermal drilling operation at the site at the time of the accident.

2. Terrasas engaged the hydromatic brake on the drilling rig to stop the downward motion of the block. The braking mechanism did not stop the downward motion.
motion of the block. The block hit the platform and fell over on the weight indicator housing, causing the housing to pin Terrasas’s finger between the housing and the brake handle. Terrasas’s right small finger was amputated in the accident.

3. The valve handle that controlled the flow of water into the hydromatic brake was not in the proper position at the time of the accident.

4. Failure to place the valve handle in the proper position during the drilling operation resulted in the brake failure.

5. The hydromatic brake system for the hoist drum was of sound design, construction, and was properly installed. There was no issue with the servicing and maintenance of the hydromatic brake for the drilling rig.

6. The hydromatic brake system was in good working order and in good mechanical condition at the time of the accident.

7. The accident would not have occurred had Terrasas set the water valve in the correct position before performing the task.

**Analysis**

1. **Were the brakes for the hoist drum on the drilling machinery designed, constructed, installed, and maintained to control the load being handled?**

California Code of Regulations, title 8, section 6626, subdivision (a), provides:

The brakes for hoist drums for well-servicing machinery and for drilling machinery shall be designed, constructed, installed and maintained to control the load being handled.

In the citation, the Division alleges:

Prior to and during the course of the investigation, the employer did not ensure that the hydromatic brake was maintained to control the load being handled on the drilling rig. As a result, on or about August 1, 2017, an employee suffered a serious injury when his finger was crushed between a hydromatic brake handle and the weight indicator housing on Drilling Rig # 44. The employee was not able to stop the blocks with the hydromatic brake. The blocks fell over and bent the weight indicator housing onto the brake handle. The water discharge valve for the hydromatic brake was not maintained in the proper position, which caused the brake to fail and not control the load being handled.

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1 Unless otherwise specified, all references are to sections of California Code of Regulations, title 8.
The Division has the burden of proving a violation by a preponderance of the evidence. (Howard J. White, Inc., Cal/OSHA App. 78-741, Decision After Reconsideration (June 16, 1983).)

The plain language of section 6626, subdivision (a), sets forth four requirements to ensure that the brakes for hoist drums for drilling machinery are able to control the load being handled. The brakes must be: 1) designed; 2) constructed; 3) installed; and 4) maintained, to control the load. There is no dispute between the parties that the hydromatic brake for the hoist drum was of sound design and construction, and was properly installed. Therefore, in this matter, the Division may establish a violation by demonstrating that Employer failed to maintain the hydromatic braking system.

At issue is whether a failure by an operator to correctly position a valve falls within the plain meaning of the word “maintain.” Based on the parties’ differing interpretation of the word “maintain,” it is necessary to turn to the rules of statutory/regulatory construction to determine the correct definition. The rules of statutory construction were delineated in Key Energy Services, LLC., Cal/OSHA App. 13-2239, Denial of Petition for Reconsideration (Dec. 24, 2014), which states:

The rules of statutory construction also apply to interpreting regulations. (The Home Depot, Cal/OSHA App. 98-2236, Decision After Reconsideration (Dec. 20, 2001), citing Auchmoody v. 911 Emergency Services, (1989) 214 Cal.App.3d 1510, 1517.) Perhaps the prime rule of statutory interpretation is that courts and agencies apply the plain meaning of the words of the regulations. If the plain, commonsense meaning of the words is unambiguous, the plain meaning controls. (Borikas v. Alameda Unified School Dist., (2013) 214 Cal. App. 4th 135, 146; Neville v. County of Sonoma, (2012) 206 Cal. App. 4th 61, 70.) … Where a statutory or regulatory term “is not defined, it can be assumed that the Legislature was referring to the conventional definition of that term.” (Heritage Residential Care, Inc. v. Division of Labor Standards Enforcement, (2011) 192 Cal. App. 4th 75, 82.)

The parties agree that the water valve left in the wrong position on the hydromatic brake during the drilling operation caused the accident. The word “maintained” is not defined in the regulation, nor is it defined in the safety orders. Safety Engineer Daniel Pulido (Pulido) testified that there was no failure of the valve or the brake. Pulido asserted that the operator’s failure to put the valve in the correct position during the drilling operation caused the accident, which allegedly constituted a failure to properly maintain the hydromatic brake. Employer asserts that such an omission by the operator did not constitute a failure to maintain the brake.

The Division asserted that the incorrect valve position could have been discovered by inspections required by Employer’s Injury and Illness Prevention Program (IIPP). However, an alleged flaw in implementation of the IIPP is not relevant to the citation issued to Employer.

The testimony is clear that the accident was caused by an oversight by the operator, when he failed to check the position of the water valve prior to conducting the task. A failure by the operator to correctly position a valve does not fall with the plain meaning of the word “maintain.” The Division presents no authority to support its contention that such an omission by an operator is tantamount to failure to maintain. The Division has misconstrued the purpose and meaning of the safety order.

The testimony provided at hearing established that the brakes existed in a state of repair and efficiency at the time of the accident. The brakes for the hoist drum on the drilling machinery at the work site were designed, constructed, installed, and maintained to control the load being handled. Accordingly, Employer’s appeal is granted.

Conclusions

The Division failed to establish that Employer violated section 6626, subdivision (a). The brake was properly maintained to control the load being handled.

ORDER

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

Dated: 07/22/2019

J. Kevin Elmendorf
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.
APPENDIX A
SUMMARY OF EVIDENTIARY RECORD

Inspection No.: 1253399
Employer: KENAI DRILLING LIMITED
Date of hearing: April 17, 2019

DIVISION'S EXHIBITS

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<thead>
<tr>
<th>Exhibit Number</th>
<th>Exhibit Description</th>
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<tr>
<td>1</td>
<td>Jurisdictional packet.</td>
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<td>2-A</td>
<td>Photograph of Work Site</td>
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</tr>
<tr>
<td>2-B</td>
<td>Photograph of Work Site</td>
<td>Admitted Into Evidence</td>
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<tr>
<td>2-C</td>
<td>Photograph of Work Site</td>
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<tr>
<td>2-D</td>
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<tr>
<td>2-E</td>
<td>Photograph of Work Site</td>
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<tr>
<td>2-F</td>
<td>Photograph of Work Site</td>
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<tr>
<td>2-G</td>
<td>Photograph of Work Site</td>
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<tr>
<td>3</td>
<td>Investigation Report - Root Cause</td>
<td>Admitted Into Evidence</td>
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<td>4</td>
<td>Notice of Intent to Classify Citation as Serious - (1BY)</td>
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<td>5</td>
<td>Photograph of hand with amputated &quot;Pinky&quot; finger.</td>
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<td>6</td>
<td>Proposed Penalty Worksheet (C10)</td>
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<tr>
<td>7</td>
<td>Rig #44 Specifications</td>
<td>Admitted Into Evidence</td>
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<td>8</td>
<td>PARMAC Hydromatic &amp; Hydrotarder Auxiliary Brakes</td>
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<tr>
<td>9</td>
<td>Statement of Eric Cervantes</td>
<td>Admitted Into Evidence</td>
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<tr>
<td>10</td>
<td>Employer's Injury and Illness Prevention Program. Pages 10 &amp; 11</td>
<td>Admitted Into Evidence</td>
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<td>11</td>
<td>Employer's Injury and Illness Prevention Program. Pages 11 &amp; 12</td>
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<td>12</td>
<td>Statement by Driller Gabriel Terrasas</td>
<td>Admitted Into Evidence</td>
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Witnesses testifying at hearing:

<p>| | |</p>
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<tr>
<td>Daniel Pulido</td>
<td>Associate Safety Engineer</td>
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<td>Eric Cervantes</td>
<td>Rig Manager</td>
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<tr>
<td>Gabriel Terrasas</td>
<td>Driller (Injured Worker)</td>
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<td>Kevin Stevenson</td>
<td>Drilling Supervisor</td>
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APPENDIX A
CERTIFICATION OF HEARING RECORD

Inspection No.: 1253399
Employer: KENAI DRILLING LIMITED

I, J. Kevin Elmendorf, the California Occupational Safety and Health Appeals Board Administrative Law Judge duly assigned to hear the above-entitled matter, hereby certify the proceedings therein were electronically recorded or recorded by a certified court reporter. If the proceedings were recorded electronically, the recording was periodically monitored during the hearing. Either the electronic recording or the recording made by a certified court reporter constitutes the official record of the proceedings, along with the documentary and other evidence presented and received into evidence during or after the hearing. To the best of my knowledge the recording equipment, if utilized, was functioning normally and exhibits listed in this Appendix are true and correct, and accurately represent the evidence received during or after the hearing.

J. Kevin Elmendorf

07/22/2019
Date
### SUMMARY TABLE

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

In the Matter of the Appeal of:
KENAI DRILLING LIMITED

**Inspection No.** 1253399

**Citation Issuance Date:** 12/12/2017

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<th>FINAL PENALTY ASSESSED</th>
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<td>V</td>
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**Sub-Total**

|          |          |      |                          |          | $18,000.00                      | $0.00                  |

**Total Amount Due***  

$0.00

*You may 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.

**PENALTY PAYMENT INFORMATION**

1. Please make your cashier’s check, money order, or company check payable to:  
   Department of Industrial Relations

2. Write the **Inspection No.** on your payment

3. If sending via US Mail:  
   CAL-OSHA Penalties  
   PO Box 516547  
   Los Angeles, CA 90051-0595

   If sending via Overnight Delivery:  
   US Bank Wholesale Lockbox  
   c/o 516547 CAL-OSHA Penalties  
   16420 Valley View Ave.  
   La Mirada, CA 90638-5821

*Online Payments can also be made by logging on to [http://www.dir.ca.gov/dosh/CalOSHA_PaymentOption.html](http://www.dir.ca.gov/dosh/CalOSHA_PaymentOption.html)*

**-DO NOT** send payments to the California Occupational Safety and Health Appeals Board

**Abbreviation Key:**

- **G** = General
- **R** = Regulatory
- **Ee** = Employer
- **S** = Serious
- **W** = Willful
- **Ee** = Employee
- **A/R** = Accident Related
- **RG** = Repeat General
- **RR** = Repeat Regulatory
- **RS** = Repeat Serious

OSHAB 201  
SUMMARY TABLE  
Rev. 02/18