

DONALD P. CLARK
ALEXANDER C. MCGILVRAY, JR.
PHILIP W. BARTENETTI
KEVIN P. FIORE
JOHN A. LAPINSKI
LEONARD BRAZIL
DEAN I. FRIEDMAN
ROBERT F. DEMETER
ERIC L. DOBBERTEN
LESLIE R. HOROWITZ
JAMES S. ARICO
DAVID S. OLSON
ROBERT W. RENKEN
RAJNISH PURI

DEBORAH H. PETITO
KIMBERLY S. WINICK
JOEL A. GOLDMAN
JONATHAN L. SMOLLER
STEPHEN E. HYAM
SCOTT D. PAGE
ALISA S. EDELSON

OF COUNSEL
JAMES O. FISHER
TRAVERS D. WOOD
DOLORES CORDELL
RAIMUND FREIHUBE
CARRIE E. MILLER

RECEIVED

MAY 13 2013

**OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD**

JOEL A. GOLDMAN
DIRECT DIAL: (213) 341-1308
JGOLDMAN@CLARKTREV.COM

May 10, 2013

VIA CERTIFIED MAIL/ RETURN RECEIPT

Ms. Marley Hart
Executive Officer
California Occupational Safety and Health
Standards Board
2520 Ventura Oaks Way, Suite 350
Sacramento, CA 95833

Re: Alimak Hek, Inc. - Petition to Amend

Dear Ms. Hart:

Enclosed is the Petition to Amend being filed on behalf of Alimak Hek, Inc. Please confirm receipt of the Petition to Amend.

If you have any questions, please feel free to contact me.

Very truly yours,



Joel A. Goldman

JAG:mse
Enclosure

cc: Suzanne Marria, w/encl. (via e-mail)
Dale Stoddard, w/encl. (via e-mail)
Al Marchant, w/encl. (via e-mail)

1507804.1 (16865.001)

**Petition to Amend
Title 8
Subchapter 4. Construction Safety Orders
Article 14. Construction Hoists**

Alimak Hek, Inc., (“Alimak”), a licensed elevator contractor in the State of California (CQCC # CC-07-012848; Business ID # 1624962) proposes a change to Construction Safety Order 1604.1(c)(1), 1604.20 and 1604.27 in order to address safety issues resulting from existing provisions and to provide harmonization of requirements stated for like devices regulated in Subchapter 6 Elevator Safety Orders – Article 41 referencing ASME A17.1-2004. The proposed language would also bring the Construction Safety Orders, as they apply to these devices, into harmony with the most recent consensus safety standards such as ASME A17.1, 2010 and ANSI A10.4, 2007.

1. **Proposed Change to general regulation Subchapter 4. Construction Safety Orders – Article 14. Construction Hoists – Regulation 1604.1(c)(1)**

Regulation 1604.1(c)(1) currently provides:

“The employer shall comply with the manufacturer’s specifications and limitations applicable to the operation of all hoists and elevators. Where manufacturer’s specifications are not available, the limitations assigned to the equipment shall be based on the determination of a professional engineer competent in the field.”

This Petition proposes that 1604.1(c)(1) be amended to read as follows:

“The employer shall comply with the manufacturer’s specifications and limitations applicable to the operation of all hoists and elevators. Where the manufacturer’s specifications are not available because the manufacturer is no longer in business or operating, the limitations assigned to the equipment shall be based on the determination of a licensed professional engineer licensed in California and competent in the field. Notwithstanding the foregoing the employer shall in no event directly or indirectly modify, change or circumvent any manufacturer’s published product or design specifications.”

2. **Proposed Change to Subchapter 4. Construction Safety Orders – Article 14. Construction Hoists – Regulation 1604.20:**

This Petition proposes that Regulation 1604.20 be amended to include the following additional subsection:

“(i) Permanently Enclosed Governors.

Speed governors that cannot be internally inspected through an inspection plate shall be replaced by the owner in accordance with instructions on the manufacturer’s data plate. The plate shall state: REPLACE UNIT BY (Month, Day, Year). ”

3. **Proposed Change to Subchapter 4. Construction Safety Orders – Article 14. Construction Hoists – Regulation 1604.27:**

This Petition proposes that Regulation 1604.27 be amended to include the following additional subsection:

“(c) Rack and Pinion Safety. Where the car and/or counterweight safeties are sealed to prevent field adjustment and examination, they shall only be returned to the manufacturer for replacement of components and calibration at the interval recommended by the manufacturer. A data plate shall be installed to show the date that the next maintenance/calibration is due.”

BACKGROUND: In 2011, Alimak began meeting with DOSH and CAL – OSHA to report substantial safety concerns associated with the recertification of the sealed safety brakes on Alimak elevators by third parties in a manner contrary to the manufacturer’s published recommendations. Particularly, Alimak learned that an Oregon company, not registered in California, was providing refurbished Alimak safety brakes to a California contractor who was recertifying the safety brake using that brake, all contrary to the original equipment manufacturer’s recommendation, which is to require the sealed brake be returned to the factory for replacement, instead of being unsealed in the field. In connection with permanent elevators, DOSH has already issued Circular Letter E-12-02 to inform Certified Qualified Conveyance Companies in California of the requirements of ASME A 17.1 – 2004, section 8.6, which includes a requirement that safety brakes which “are sealed to prevent field adjustment and examination ... **shall be returned to the manufacturer for replacement of components and calibration** at the interval recommended by the manufacturer”. The identical sealed safety brake is a part of the Alimak brand elevators used in the construction environment. Notwithstanding this directive, one California contractor informally petitioned DOSH to apply an interpretation of Section 1604.1(c)(1) which would permit a professional engineer to avoid the manufacturer’s recommendations requiring factory replacement of the Alimak safety brake. In turn, Alimak made a presentation to a group of DOSH representatives on November 8, 2012. This presentation included the submission of the results from the, testing, dismantling and inspection by the factory in Sweden of a safety brake which had been “recertified” using the Oregon supplied brake and which Alimak obtained in the marketplace. The factory testing, inspection and evaluation revealed that NONE of the internal parts which are either always replaced or routinely replaced in the Alimak factory replacement process had been replaced and, in addition, the brake failed in numerous respects to satisfy the safety standards established by the manufacturer for safe operation of the brake. A summary of the results of this testing and evaluation has been filed with the Division.

This Petition is presented in order to insure that operators and travelers on construction elevators are afforded the same level of safety with respect to the Alimak safety brake as is afforded to operators and travelers on permanent elevators and to clarify the provisions of Safety Order Section 1604.1(c)(1) to accomplish that objective.

RATIONALE: As noted in Circular Letter E-12-02 dated April 16, 2012, the purpose of all safety orders is to “maintain the highest standards possible in certifying conveyance companies, mechanics and others who seek to make their living in an industry that the public relies heavily on for safe transportation” and to insure that “the regulations and safe work practices which have been so successful

at keeping Californians safe while utilizing or working around conveyances are not diminished in any way.” The purpose and intent of 1604.1(c) (1) is require compliance with a manufacturer’s recommendations to provide a means for continued operation of equipment where the manufacturer is no longer operating in California and the manufacturer’s specifications or recommendations are not available in the market place. Section 1604.1 (c) (1) was not intended to provide a means to change or alter a manufacturer’s design requirements or to avoid the manufacturer’s recommendations. Allowing changes, modification, recertification, or replacements by an independent third party, that are contrary to the manufacturer’s recommendations, directly impacts and diminishes both worker and public safety.

Both ANSI A10.4 and ASME A17.1/B44 have acknowledged the separation of responsibility assigned to the respective stakeholders -- original equipment manufacturer; owner, employer, authorities having jurisdiction, etc. Numerous examples are contained in various national standards:

ANSI A10.4-2007

26.8 Hoist Operators Log: Defines the responsibilities between the equipment manufacturer, operator, and the authority having jurisdiction.

26.8 Hoist Operations Log. An inspection and maintenance activity log shall be maintained by the hoist operator or designated competent person. The log shall document acceptance, daily, and periodic inspections in accordance with the manufacturer’s specifications. It shall also contain a record of all maintenance activities, a list of component replacements and associated test results. The log shall be available to hoist personnel and the authority having jurisdiction.

27.3 replacements: Defines the responsibilities of the owner and the manufacturer.

27.3 Replacements. Where a listed/certified device or component is replaced, it shall be subject to the applicable engineering or type test as specified in the requirements of CAN/CSA B44.1 ANSI/ASME A17.5. The device or replacement component shall be labeled by the certifying organization. For a replacement device or component to be used it must be included in the original manufacturer’s directions or specifications listed as an acceptable replacement part or equivalent.

ANSI A17.1/CSA B44 2010

8.6.6 Maintenance and Testing of Elevators with other types of driving machines.

8.6.6.1 Rack-and-Pinion Elevators. The maintenance of rack-and-pinion elevators shall conform to 8.6.1 through 8.6.3 and the applicable requirements of 8.6. Where the car and/or counterweight safeties are sealed to prevent field adjustment and examination, they shall be returned to the manufacturer for replacement of components and calibration at the interval recommended by the manufacturer. A data plate shall be installed to show the date that the next maintenance/calibration is due.

CONCLUSION: The primary purpose of Section 1604.1(c)(1) is to require compliance with the manufacturer's specifications and recommendations. For situations where a manufacturer is no longer operating in the marketplace and its specifications and recommendations are not available, then obviously there has to be a method by which elevators in the field can continue to be used and repaired. But, this exception was not included as a way for a contractor or employer to avoid the manufacturer's recommendations where that manufacturer continues to be in the market place and its recommendations are plainly available. The Petition proposes a change in the Safety Order which makes that objective clear and to avoid diminishing or diluting the clear safety requirement of complying with the manufacturer's recommendations.