

Memorandum

To : Hearing Panel Members

Date: August 22, 2012



From : **Occupational Safety and Health Standards Board**
Hans Boersma, Senior Engineer - Standards

Subject : Board Staff Review of Applications for a Permanent Variance From Waste Management, Inc.,
OSHSB File Nos. 12-V-007 through 12-V-011.

INTRODUCTION

By application received February 1, 2012, Mr. James T. Dufour, representing five subsidiaries of Waste Management, Inc. (Applicants), applied for permanent variances from the California Code of Regulations, Title 8, Sections 3700, 3702, and 4344 of the General Industry Safety Orders (GISO). The variance applications concern the requirement for transportation of employees on refuse collection vehicles operated by the identified Waste Management Inc. owned enterprises in California.

THE PERMANENT VARIANCE APPLICATIONS

Section 3702(q) states:

(q)Where chains or cables are used in lieu of doors on regular means of entrance or exit, the chains or cables shall be securely attached on each side of the opening and be equipped with a quick-release mechanism.

The intent of Section 3702(q) is to protect the employees being transported from falling out of the vehicle while the vehicle is in motion.

The Applicants seek a permanent variance from the above requirement, to guard the opening adjacent to the driver in the secondary operator position pursuant to Section 3702(q), after being cited under this section by the Division following a fatal accident where a dual-control refuse truck operator was apparently crushed by the vehicle he was operating. The Applicants propose to provide equivalent safety by compliance with Article 60- Refuse and Trash Collection Equipment, and Article 61- Compacting Equipment in the General Industry Safety Requirements, and by compliance with American National Standards Institute (ANSI) Z245.1 (1999).

BOARD STAFF SITE VISIT

On June 26, 2012, Board staff, including Hans Boersma, Senior Engineer, and Mike Manieri, Principal Engineer, visited the Applicant's facility in Chico to gather relevant facts regarding these variance applications and to discuss the Board's variance application and hearing process with Mr. Dufour. Present at the Chico facility representing the Applicants, were Mr. Dufour, Mr. Francis Chin, Sr. Legal Counsel, Mr. Michael Crawford, Safety Manager, Mr. Matt Fryer, District Manager, Mr. Ryan West, Route Manager, Mr. Matt Morris, Driver, and Mr. Vance McKinney, Driver. Board staff and the Applicants' representatives reviewed the Applicants' refuse collection operation, the training of employees that operate the subject dual-control refuse collection trucks and the Board's permanent variance application process. Board staff observed the refuse collection process by following a dual-control refuse truck operator as he proceeded on his collection route through residential neighborhoods. The purpose for Board staff observation of the refuse collection process was to evaluate the activities and protocol and the hazards associated with operating dual-control refuse collection trucks and the applicability of the standard from which a variance is requested.

Employees of the Chico site visited by Board staff are not represented by a collective bargaining unit. However, during a July 26, 2012 telephone conversation with the Applicants' representative, Board staff learned that not all the employees of the Waste Management Inc. subsidiary companies are unrepresented. Those employees have been notified of the variance requests and to date, have not expressed any concerns or objections.

FATAL DUAL-CONTROL REFUSE COLLECTION TRUCK ACCIDENT

Division Investigation Summary Report stated that on March 21, 2011, an employee of one of the Applicants sustained fatal crushing injuries when he was run over by the frontloading refuse truck he was operating while servicing a residential trash pick-up route in the Harbor Point condominium complex in Carlsbad, CA. Division staff noted that the refuse truck's right side cab door had been removed and that the entrance had a safety-chain installed that could be hooked across the doorway in lieu of the door. The report concluded that because of the close proximity of the stucco wall to the right side of the truck, the driver was unable to fall free of the wheels and was run over and crushed by the tire(s). The Division cited the Applicant for a "willful serious" accident because it determined that the right side door had been removed and that the employer was not requiring the use of the factory installed safety chain across the right side door opening to protect employees being transported from falling out of the vehicle.

DIVISION OF OCCUPATIONAL SAFETY AND HEALTH EVALUATION (Division)

In the Division evaluation report, dated April 26, 2012, the Division recommends that this variance be denied. The Division asserts that the Applicants failed to demonstrate equivalent safety to requirements in Section 3702(q) that mandate, when transporting employees, that chains or cables are secured across the door opening in lieu of the door. The Division feels that Section 3702(q) is more protective than compliance with ANSI Z245.1 (1999) and Articles 60 and 61 in the GISO as proposed by the Applicants.

STAFF ANALYSIS AND DISCUSSION

The Waste Management Inc. is a leading provider of integrated environmental services in California, providing waste collection, transfer, recycling, and disposal services in communities throughout the State.

The June 26, 2012, site visit provided Board staff with the following relevant facts regarding these variance applications:

- 1) The refuse collection operation the Applicants request a variance from uses one employee (the driver) to operate the dual-control refuse truck and to collect the refuse or recyclables.
- 2) The dual-control refuse truck's second operator station, subject to these variance applications, is located on the right side of the operator cab.
- 3) When the operator travels to the residential collection route, the truck operator is in the primary operator position on the left side of the cab, seated in the driver's seat, with the seatbelt on and traveling on highways and streets at posted speeds.
- 4) When the dual-control refuse truck operator arrives at the beginning of the residential collection route, the operator prepares the secondary control position on the right side of the cab for refuse collection as follows:
 - The truck's operator controls at the secondary operator position are activated. This automatically deactivates the controls at the primary operator position.
 - The motorized rearview mirrors and the backup video monitor are positioned for the operator in the secondary operator position.
 - The right side cab door at the secondary operator position is folded up and locked in open position during the collection process. In California regions where weather is mild, this right side door may be removed from the truck.
- 5) While on the residential refuse collection routes, the refuse truck is operated as follows:
 - The operator drives the truck from the secondary operator position on the right side of the truck cab.
 - The operator proceeds along the route at speeds less than 20 MPH (mostly 5-10 MPH) and stops at each of the refuse containers routinely 3 to 100 feet apart.
 - The accelerator at the secondary operator position has a governor that limits the driving speed to 20 MPH.
 - When the refuse truck is in motion the operator leans backwards into a body rest, without the use of a restraint system and without a chain or cable across the door opening.
 - The operator stops at the container(s) to be emptied and engages the parking brake that is interlocked to disengage the truck's transmission,
 - The operator leaves the secondary operator position, collects and empties the refuse container and returns to the secondary operator position, releases the parking brake and proceeds to the next refuse container(s), without operator restraints or chain across the cab's door opening.
- 6) The refuse truck operator routinely empties 700-800 refuse containers per shift.
- 7) Once the residential collection route is completed, the operator activates the primary operator controls, and repositions rearview mirrors and the backup video monitor back to the primary operator position on the left side of the cab.
- 8) The operator will proceed to the refuse transfer station, Applicant's facility or to the next residential collection route seated in the primary operator position (driver's seat), secured by a seatbelt and a

closed driver-side cab door, traveling on streets and highways at posted speeds. The right side door opening may remain open, without the chain across the door opening.

- 9) The Applicants mandate that when there is a passenger traveling in the dual-control refuse truck for training or supervisory purposes, a chain or strap will be placed across the passenger's side door opening, and the passenger uses a fold-down seat and the accompanying seatbelts. However, the cyclical refuse pick up operation described above is a one man operation and there are no passengers.

Board staff observed one dual-control refuse truck drive into an Applicant's facility that was carrying a passenger, and noted that the passenger was seated in the fold-down seat, and secured by both a seatbelt and a chain across the passenger side door opening.

The Applicants' representative stated that in the absence of operator safety requirements in Title 8 for the dual control refuse collection trucks, they use the most current ANSI Z245.1 standard as a model for the dual control refuse collection truck safety program to protect their employees.

American National Standards Institute (ANSI) Z245.1 For Equipment Technology And Operations For Waste And Recyclable Materials

Board staff notes that the ANSI Z245.1-1992 standard, referred to in Articles 60 and 61 of the GISO, is silent on the operation of dual-control refuse trucks. However, both the 1999 and 2008 editions of the ANSI Z245.1 contain safety standards that apply to waste and recyclable material collection, transportation and compaction equipment that specifically address the operation of the Applicants' dual control refuse collection trucks that are the subject of these variance applications.

Section 6.2.5.5.1 limits the speed of the dual-control refuse truck to a maximum of 20 mph when the operator drives the refuse truck from the secondary operator position in the stand-up position.

Section 6.2.5.5.3 requires that the operator is protected by a locking or latching bar, safety chain(s), or strap(s), installed across any door openings when the dual-control refuse truck travels from the employer's yard to the collection route, from the end of the collection route to the disposal or processing facility, from the disposal or processing facility back to the employer's yard, and operations between various facilities or when traveling between collection points at speeds that exceed 20 mph.

Board staff notes that the ANSI Z245.1-(2008) also addresses passenger safety. Section 8.3.3 requires that the secondary position shall have provisions for a rider to be seated. Section 8.3.4.2 requires either a complete occupant protection system or a belt system at each "seating position." This would include the seat on the driver side, or primary operator position in the cab, and the fold-down seat in the secondary operator position on the right side of the truck cab.

California Vehicle Code Requirements

Board staff notes that Section 27315 contains the mandatory vehicle operator and passenger restraint requirements. However, Section 27315(o) specifically exempts the driver of refuse trucks engaged in the collection of solid waste or recyclable materials along the driver's collection route provided the driver is properly restrained by a safety belt prior to commencing and subsequent to completing the collection route. This means that when driving the refuse truck on the collection route, where refuse is picked up, the Applicants are exempt from the mandatory vehicle operator and passenger restraint

(seatbelt) requirements. Board staff notes that this is consistent with the above ANSI Z245.1-2008 standards where refuse truck operators are permitted to drive the refuse trucks without operator restraints while on the refuse collection route, and must again be protected by seatbelts after completing the collection route provided the truck's speed does not exceed 20 MPH. Board staff determined that there are no requirements in the vehicle code that mandate doors for the dual-control refuse collection trucks subject to this variance, neither are there Federal Department of Transportation regulations that apply.

Division vs. CVC/Local Law Enforcement Jurisdiction - Refuse Collection

Labor Code Section 6303(a) excludes places of employment from Division jurisdiction where the health and safety jurisdiction is vested by law in, and actively exercised by, any state or federal agency other than the Division. Because the operation of dual-control refuse trucks on public streets or highways are subject to the vehicle code which is enforced by local and state law enforcement agencies, the Division does not have jurisdiction over these activities by the Applicants' employees. This interpretation of the Labor Code Section 6303(a) is consistent with the Division's Policy and Procedures Manual, C-36, B, Requirements for Reporting Work-Related Accident Events, which states that fatalities and serious injury or illness caused by: (1) the commission of a Penal Code violation except the violation of P.C. Sec. 385 (contact with high voltage lines), or (2) a motor vehicle accident on a public street or highway are not reportable by the employer. Board staff notes that these variance applications would therefore apply only to the Applicants' dual-control refuse truck operations that are not on public streets and highways. Board staff notes that because the Applicant's fatal accident occurred on private property, controlled by the home owners association, the Division did have jurisdiction over the Applicant's fatal accident in Carlsbad, CA.

Other Refuse Collection Related Standards In Title 8

Board staff notes that Articles 60 and 61 of the GISO regulate refuse collection and compaction operations as well as the mobile and stationary equipment used to perform these tasks. Although some equipment requirements in these two articles mandate compliance with the ANSI Z245.1-1992 standard, there are no specific requirements in either Article 60 or 61 that address operator safety for the dual-control side-loading refuse trucks.

The Regulatory Intent of Section 3702

Board staff notes that Section 3702 is contained in Article 27, which is titled "Transportation of Employees and Materials." Section 3702, clarifies that the scope and purpose of the section is to ensure safety when a vehicle is used to transport employees. The types of vehicles regulated when used to transport employees include buses, farm labor vehicles and trucks such as pick-up trucks, dump trucks, and flat-bed trucks. Subsections (a) through (q) regulate vehicles involved in the transportation of employees inside passenger compartments. Subsection (r) regulates pick-up trucks, dump trucks, and flat-bed trucks involved in the transportation of employees in the truck's bed.

Subsection (p) and (q) regulate the door openings, with subsection (p) requiring that regular entrance and exit doors to the passenger compartments, other than the driver's cab on trucks and buses, must have an unobstructed opening not less than 24 inches wide and, where possible, 60 inches high. And subsection (q) permitting "the regular means of entrance or exit," to be guarded by chains or cables when used in lieu of doors, provided the chains or cables are securely attached on each side of the

opening and equipped with a quick-release mechanism. The intent of this particular requirement is to protect workers (passengers) from falling out of the passenger carrying portions of the vehicle that is transporting them.

To gain further clarity on the intent of subsection (q), Board staff referred to rulemaking documents of Section 3702(q) where the current language of subsection (q) was adopted by the Board on October 25, 1984. Board staff notes that the Final Statement of Reason, the Informative Digest and Notice of Proposed Action in the Notice Register all state: "Subsection (p) [currently subsection (q)] allows the use of chains or cables in lieu of doors as barriers for the access and egress ways into passenger carrying vehicles." In the absence of the Title 8 definition for the word "passenger", Board staff refers to the plain English definition of the word "passenger" in the American Heritage dictionary as "a person who travels in a conveyance, such as a car or train, without participating in its operation." Board staff opines that Section 3702, and specifically the subsection (q) requirement for chain or cable restraints only apply to vehicles carrying one or more passengers.

STAFF CONCLUSION

Board staff notes that the refuse collection operation, for which the Applicants request a variance, uses one employee (the driver) to operate the dual-control refuse truck and collect the refuse or recyclables and does not involve passengers. This is an important fact given the preceding discussion of the intent of Section 3702, which in staff's opinion clearly applies to vehicles when a passenger is being transported. Therefore, during collection route activities, the operator, standing and operating the refuse truck from the secondary operator position, is not regulated by Section 3702(q) and therefore does not require protection by a chain or cable across the door opening pursuant to this section. Therefore, Board staff opines that since the primary standard from which the variance is being requested, section 3702(q) does not apply, no variance from Section 3702(q) is necessary.

Board staff found no other Title 8 standards that would require a solitary operator, standing and operating a dual control refuse truck from the secondary operator or service position, to be protected by either a door or chain/cable in lieu of the door.

In reviewing the Board's variance log, Board staff found that no similar variance(s) to this variance application have been granted or denied by the Board in the past.

STAFF RECOMMENDATION

Board staff has discussed the applications for permanent variance with the Applicants' representative and Division staff and for the stated reasons feels a variance from Section 3702(q) is not necessary.

Therefore, Board staff recommends that the variance requests be denied as unnecessary.