

## ATTACHMENT 7

### DESCRIPTION OF VARIANCE REQUESTED (PART 1)

On behalf of Waste Management Operating Subsidiaries in California (herein, "Petitioner"), the following variance from General Industry Safety Orders (GISO) 8 CCR § 3702(q) is requested.

#### 1. STATEMENT OF FACTS

On March 21, 2011, an employee of a Waste Management subsidiary was fatally injured while operating a dual-driver position refuse collection vehicle from the right-hand driver's position. [See photo at **Exhibit A.**] There were no witnesses to the accident. Based on observations at the scene, the vehicle had crashed into and ran along a wall bordering the residential alley waste collection route and the driver was found behind the vehicle, and based on injuries sustained, had been run over by the wheels of the truck.

As a result of the Division of Occupational Safety and Health's (Division) investigation of the accident, two citations were issued. Citation 1, Item 1 alleges a general violation of the Injury and Illness Prevention Standard [8 CCR § 3203], which is not subject to this variance petition, and Citation 2, a serious willful violation of GISO Article 27 – Transportation of Employees and Materials, Section 3702(q) – Transporting Employees, which is the subject of this variance petition. The specific subsection allegedly violated and the Division's charging statement as set forth in the citation are as follows:

"Subchapter 7. General Industry Safety Orders  
Group 4. General Mobile Equipment and Auxiliaries  
Article 27. Transportation of Employees and Materials

3702. Transporting Employees.

(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.

On March 21, 2011 at approximately 09:50 AM an employee belonging to Waste Management was operating a 1998 Volvo (Ca Lic# 8H80938) and transporting himself along his trash collection route in the Harbor Point Condominium complex in Carlsbad Ca. The victim was working alone and operating the vehicle from the standing position on the right side of the cab when he fell out of the vehicle and sustained fatal crushing injuries when the vehicle rolled over him. The Cal/OSHA investigation determined the right side door had been removed and that the employer was not requiring the use of the factory installed restraint system (safety chain) to protect employees from falling out of the vehicle while being transported."

The citations were timely appealed to the Occupational Safety and Health Appeals Board and docketed as 11-R3D2-2385 and 2386. A hearing has been scheduled for March 15, 2012.

## 2. SUMMARY OF VARIANCE REQUESTED

The purpose of this variance petition is to provide relief from the requirement of use of a chain or cable at all times as required by § 3702(q) for the operator of a refuse collection vehicle during the collection phase of operations. Petitioner believes that this activity should be governed by GISO Articles 60 and 61. Refuse and Trash Collection Equipment and ANSI Z245.1 (1999). Petitioner asserts that Article 27. Transporting Employees does not apply to the operator of a specialized refuse collection vehicle, and that operations consistent with ANSI Z245.1 (1999) provide equivalent safety. Petitioner requests that the Standards Board grant a variance that establishes dual-drive refuse collection vehicles operated from the right side during collection activities in compliance with ANSI Z245.1 (1999) are not subject to GISO Article 27, Section 3702(q) – Transporting Employees requirement.

## 3. SUPPORTING ARGUMENTS

GISO Group 8, Articles 60 and 61 specifically govern refuse collection activities and equipment. Within these articles, the following provisions apply to the type of mobile compaction vehicle that is the subject of this petition:

### Article 60. Refuse and Trash Collection Equipment

§ 4342 Scope. “The requirements of this article apply to mobile refuse and trash collection equipment.”

§4343 Definitions [in relevant part]: “Refuse Collection Vehicle. An engine-powered cab and chassis upon which mobile equipment is mounted for the receiving, compacting, transporting, and unloading of refuse, or for the receiving, transporting, and unloading of containers.”

§ 4344 Refuse and Trash Collection Equipment [in relevant part]: “(a) Mobile collection equipment which compacts refuse shall meet the applicable requirements of Article 61...(d) Grab handles shall be provided in conjunction with riding steps and be so located as to provide employees with a safe and comfortable riding stance.”

### Article 61. Operating Rules for Compaction Equipment

§ 4352(a) Refuse Compaction Equipment [in relevant part]: “(1) Stationary and mobile refuse compaction equipment placed in service on or after January 3, 1996 shall be equipped with a permanent plate or marking which states the compactor is designed and constructed in accordance with the applicable provisions of ANSI Z245.2-1992, ‘American National Standard for Refuse Collection, Processing, and Disposal Equipment-Processing, and Disposal Equipment-Mobile Refuse Collection and Compaction Equipment-Safety Requirements,’ respectively, and, in addition, shall comply with the requirements of these Orders.”

§ 4354 Mobile Compaction Equipment [in relevant part]: “(a) Mobile refuse collection and compaction equipment shall meet the applicable requirements of Article 60.”

§ 4355 Operating Rules for Compaction Equipment [in relevant part]:

“(a) General.

(1) The employer shall develop a written set of operating procedures. These operating procedures shall include at least the applicable operating rules contained in this section.

(2) Employees shall not be assigned or permitted to operate compaction equipment unless they have been trained and instructed in safe methods for such operation. Such training shall include the operating instructions provided by the manufacturer for each machine...

(c) Mobile Collection/Compaction Equipment.

(1) The operator shall be instructed to ascertain that all individuals are clear of the point of operation or any pinch points before actuating the controls, and shall be ready to stop the packing cycle or loading operation.

(2) No employee shall be positioned in the path of the moving vehicle, standing on front or rear steps or on side steps, or in any other location where he cannot be seen by the vehicle operator and is subject to being struck by the vehicle or being thrown off the vehicle.

(3) No employee shall be permitted to ride on a loading sill.

(4) When parts of collection equipment are raised, they shall be blocked in accordance with Section 3314 before work is performed beneath the raised parts.”

As these provisions indicate, Articles 60 and 61 are intended to, and effectively address the unique hazards associated with operation of refuse collection equipment. As described in Part 2 of this Petition (Attachment 8), these provisions are modeled after the refuse industry’s consensus standard ANSI Z245.1.

The Division’s interpretation of GISO Article 27. Transportation of Employees and Materials is inapplicable to refuse collection, as follows:

Article 27. Transportation of Employees and Materials

§ 3700 Definitions: “Primarily. The motor vehicle is assigned to transport employees to and from the working site on a specified schedule.”

“Motor vehicles. Motor cars, buses, trucks, and car/truck trailer combinations.”

Other definitions in § 3700 relate solely to buses and farm labor vehicles.

§ 3702 Transporting Employees, including subsection (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.”

Although the term “primarily” is not consistently used throughout Article 27, the various subsections clearly refer to employees being transported as passengers. None of the provisions specifically refer to a driver or operator, with the exception of subsection (h), which addresses use of seat belts by both driver and each passenger while the vehicle is operated.

There is no definition of the term “transporting” or “transporting employees” in the safety order. Reference to the dictionary definition of “transporting” indicates that the term transporting refers to an object or person being transported by a person or vehicle performing the function. The Division’s use of this term in the charging statement, “transporting himself” is not consistent with the context of Article 27, and not with Articles 60 and 61, which govern the operation of refuse collection vehicles.

#### 4. CONCLUSION (PART 1)

Based on the foregoing, Petitioner asserts that Article 27 either does not apply to a refuse collection operator or is too vague as to how it applies to such an operation to be enforceable. Although it is clear that Articles 60 and 61 govern refuse collection activities, these articles do not currently regulate operation of dual-control refuse collection vehicles. The industry consensus standard for refuse collection activities, ANSI Z245.1 addresses the dual-control operator safe procedures with specificity as shown in Part 2 of this petition (Attachment 8) and should be the basis for a variance from Article 27, Section 3702(q).