

**OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD**

BOARD STAFF'S REVIEW OF THE PETITION

Petition File No. 565
James T. Dufour, JD, CIH
on behalf of the
California Date Commission
and a coalition of growers and labor contractors

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Title: Senior Safety Engineer
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Introduction

The Occupational Safety and Health Standards Board (Board) received a petition dated April 28, 2017, from James T. Dufour, JD, CIH, Attorney and Counselor at Law, representing the California Date Commission and a coalition of growers and labor contractors (Petitioner). The Petitioner requests that the Board amend various Title 8 safety orders “preventing the use of engineered platforms mounted on lift vehicles to improve safety and working conditions for date palm tending employees.”

Labor Code Section 142.2 permits interested persons to propose new or revised regulations concerning occupational safety and health and requires the Board to consider such proposals and to render its decision no later than six months following their receipt. In accordance with Board policy, the purpose of this evaluation is to provide the Board with relevant information upon which to base a reasonable decision.

History

According to an industry website, California produces about 41 million pounds of dates annually, employing about 2,500 people in the area of the Coachella Valley.¹ Title 8, Section 3458 “Fall Protection for Date Palm Operations” and Section 3458.1 “Ladders Attached to Date Palm” directly address harvesting dates from elevated locations. Section 3657 “Elevating Employees with Lift Trucks” is also used by date harvesters and is the subject of several granted permanent variance requests.

Section 3458 requires that employees be protected from falling at heights greater than 7½ feet by the use of “elevating work platforms or aerial devices, or fall protection as provided in accordance with this Section.”

Section 3458.1 contains requirements for ladders permanently attached to date palms.

Section 3657 details requirements for work platforms and the lift trucks that support them. It also contains requirements for the lift truck operators.

As mentioned in the petition application, several variances have been granted by the Board to Section 3657 to allow the lift truck operator to leave the operator’s seat of the truck and to allow repositioning of the work platform without requiring employees to dismount the platform.

¹ <http://www.seecalifornia.com/farms/california-dates.html>

Reason Given for the Petition

The Petitioner requests the Board amend “several Safety Orders preventing the use of engineered platforms mounted on lift vehicles to improve safety and working conditions for date palm tending employees.”

The Petitioner notes that 15 employers have received permanent variances to allow the use of engineered platforms subject to similar variance conditions. He opines that the employees of the 92 grower-members of the California Date Commission and many other growers and contract employers will benefit from the increased safety afforded by the platforms.

National Consensus Standard

Personnel platforms specifically designed for date harvesting are not the subject of a consensus standard. However, they are designed and constructed with the guidance of registered professional engineers and/or lift truck manufacturers using sound engineering practice.

Federal OSHA Standards

Federal OSHA 1910.67 “Powered Platforms, Manlifts, and Vehicle-Mounted Work Platforms” does not prohibit the use of aerial device platforms as long as they are designed and constructed in accordance with ANSI A92.2-1969 “Vehicle Mounted Elevating and Rotating Work Platforms.” The federal standard has similar requirements to the California standard for employees working on the platforms.

Division of Occupational Safety and Health (Division) Report

The Division report dated August 24, 2017, recommends that an advisory committee be convened to discuss amendments to Group 4, Article 25 that apply to date palm operations and that any amendments remain within that group of regulations. The Division also states that the Petitioner’s proposal to allow an operator to leave the controls of the lift truck while employees are on the mounted platform does not sufficiently address the hazards addressed by subsection 3657(e), and therefore recommends that part of the proposal be denied.

Staff Evaluation

Permanent variances are granted to employers in accordance with Labor Code Section 143 “upon a showing of an alternate program, method, practice, means, device, or process which will provide equal or superior safety for employees.” Three past variance hearings at the Occupational Safety and Health Standards Board (Board) have resulted in the granting of 15 permanent variances to employers desiring to use an engineered platform in conjunction with the harvesting of dates in California.

In 2009, twelve variances were granted as Docket Numbers 08-V-212 through 08-V-223. In 2014, two more variances were granted as Docket Numbers 14-V-103 and 14-V-104. The latest variance to be granted for this process was Docket Number 14-V-230, which was given to Chuchian, Inc., dba Sundate on January 15, 2015.

Each of the variance applications requested a variance from the requirements of 3657(e), which requires the lift truck operator to be “in the control position on the truck while employees are on the elevated platform” and 3657(j)(7), which prohibits lift truck travel while employees are on the work platform. The latest variance to be granted was granted subject to 24 conditions.

According to the Chuchian, Inc., variance decision adopted by the Board, using the elevating work platform “will minimize employee exposure to falls, heat related stress from overexertion, and reduce accidents from contact with moving equipment.” The decision also states that allowing the lift operator to leave the operator’s seat [as prohibited by 3657(e)] allows the operator to have a better view of the workers on the platform “thereby improving their ability to respond to health or safety emergencies.” Regarding 3657(j)(7) (movement of the lift truck while employees are on the platform), the decision says that “Remaining on the platform reduces the risk of falling, repetitive motion injuries, heat illness, and exposure to moving vehicles while on the ground.”

Also included in the decision is testimony from the Division that “the methods addressed in the proposal of the Applicant provide a safer work environment than the requirements of Section 3458.” Specifically, the decision reads, “Allowing the operator to leave the controls of the forklift, [improves] the communication and visibility for the work crew on the platform,” and “Allowing employees to ride on the platform while it is repositioned from tree to tree, [minimizes] employees exposure to overexertion and inadvertent contact with moving equipment.” Board staff is noted as agreeing with the Division.

On a cautionary note, however, granting a variance to one or several employers does not necessarily indicate that a change in a regulation is appropriate. In many cases, the

detailed and specific scrutiny given to an employer as part of the variance process is necessary to ensure that employees are protected to the same degree they would otherwise be if the employer complied with the existing regulation. Conditions for the variance are tailored to the employer to ensure equivalent safety.

In the present case, though, several variance conditions are already common practice for date harvesters and can readily be added to Title 8 regulations. Further, a potential benefit to allowing the increased use of engineered platforms is the opportunity for improvements in engineered platform technologies from lift truck manufacturers as the practice becomes more mainstream.

To ensure that employer requirements for using the platforms can be applied generally to the entire date industry, an advisory committee should be convened by the Board staff to develop the necessary language to allow the practice. Hazards such as varying tree heights, soil and ground conditions, lift capacity of the trucks, etc., should be thoroughly addressed by the committee. Conditions from the 15 variances can be used as a reference for the development of proposed amendments, in keeping with the Petitioner's request.

Recommendation

Consistent with the foregoing discussion, Board staff believes the Petitioner's request has merit and should be granted to the extent that the staff be directed by the Board to convene an advisory committee discussing amendments to Title 8 to ensure the safe use of employee work platforms for the harvesting of dates. The Petitioner and other stakeholders should be extended an invitation to participate in the advisory committee deliberations.