

BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:

NORDBY WINE CAVES
1229 North Dutton, Suite C
Santa Rosa, CA 95401

Employer

DOCKET 13-R5D1-3886

DECISION

Statement of the Case

Nordby Wine Caves (Employer) constructs underground structures for the storage of wine. Beginning October 18, 2013, the Division of Occupational Safety and Health (the Division), through Safety Engineering Technician Tricia Browning, conducted a safety inspection at a place of employment maintained by Employer at 200 Long Ranch Road, St. Helena, California. On November 22, 2013, the Division cited Employer for a violation of Title 8, California Code of Regulations, section 2340.22(b), failure to legibly mark each electrical switch box to identify its purpose.¹

Employer filed a timely appeal of the citation, contesting the existence of the violation.

This matter was heard by Kevin J. Reedy, Administrative Law Judge for the California Occupational Safety and Health Appeals Board, at Sacramento, California on June 10, 2014.² Richard R. Shone, President, represented Employer. Douglas Patterson, District Manager, represented the Division. The parties presented oral and documentary evidence. The matter was submitted for decision on June 10, 2014. The submission date was extended to September 10, 2014 by the Administrative Law Judge.

¹ Unless otherwise specified, all references are to Sections of Title 8, California Code of Regulations.

² Exhibits received and testifying witnesses are listed on Appendix A. Certification of the Record is signed by the ALJ.

Issue

1. Were four electrical switch boxes at the main switchboard located and arranged so that their purposes were evident, thus precluding the need to mark them to indicate their purposes?³

Findings of Fact:

1. One electrical switch box at the main switchboard was not marked to indicate its purpose.
2. That same electrical switch box at the main switchboard was not located and arranged so that its purpose was evident.

Analysis:

- 1. Employer failed to legibly mark one electrical switch box at the main switchboard to indicate its purpose, and that electrical switch box was not located and arranged so that its purpose was evident. The violation of §2340.22(b) is established.**

Section 2340.22(b), under Electrical Safety Orders, Low-Voltage Electrical Safety Orders, Requirements for Electrical Installations, Identification of Equipment,” provides the following:

Services, Feeders, and Branch Circuits. Each service, feeder, and branch circuit, at its disconnecting means or overcurrent device, shall be legibly marked to indicate its purpose, unless located and arranged so the purpose is evident.

In the citation, the Division alleges the following:

Four switch boxes at the main switchboard were not marked to indicate their purposes.

The elements of a violation, with respect to each piece of electrical equipment referred to in the citation, are these: (1) Is the equipment within the definition of “services, feeders [or] branch circuits” within the meaning of §2340.22(b)? (2) does each piece of equipment that is within the definition have a specific purpose? (3) for each piece of equipment within the definition, is its

³ The parties stipulated that the primary issue for hearing related to the portion of the regulation which states: “... unless located and arranged so that the purpose is evident.”

purpose legibly marked on it?⁴ (4) if that purpose is not marked on it, is that piece of equipment located and arranged to make its purpose evident?

Section 2340.22(b) applies to “services, feeders and branch circuits.” Section 2300, which includes numerous definitions of works and phrases used in the electrical orders, defines “service” as: “The conductors and equipment for delivering energy from the electrical supply system to the wiring system of the premises served.”

Therefore, if any piece of electrical equipment delivers energy from the electrical supply system to the wiring system of the premises it serves, the safety order requires that it must be either legibly marked to indicate its purpose, or it must be “located and arranged” so that its purpose is evident. The parties to this appeal stipulated that “four switch boxes at the main switchboard were not marked to indicate their purposes.” None of the four electrical boxes depicted in Exhibit 3 were labeled on the day of the inspection.⁵ Therefore, the issue to be decided is whether *one or more* of the four pieces of equipment at issue here fits within the definition of “service” and was (or were) inadequately “located and arranged” so that its (or their) purpose was (were) not evident.

The electrical equipment at issue in this appeal was used to provide electrical energy to the interior of wine cave excavation project. This electrical equipment included a 220 kilowatt portable generator providing power by way of a service cable to a distribution box mounted on the rear side of a large control panel (Exhibit 4). The distribution box provides power to an adjacent junction box, which then provides power by way of service cables for lighting and auxiliary use inside the excavation. The distribution box also provides power to two service disconnect boxes located on the front side of the control panel (Exhibit 3). The equipment marked as “S” on Exhibit 3 feeds power to the start-up box immediately to the right of 3-S.⁶ Service cable runs from that starter box to provide power for the ventilation fan in the excavation. The equipment marked as “R” in Exhibit 3 is another disconnect box, which provides power to the start-up box to the left of 3-R. A service cable runs from the starter box connected to 3-R and currently carries no power, as 3-R has

⁴ The parties stipulated as follows: “Four switch boxes at the main switchboard were not marked to indicate their purposes.”

⁵ Tricia Browning (Browning), Safety Engineering Technician, testified that Mike Rose (Rose), Employer’s foreman, told her that he knew that the switch boxes needed to be labeled, but he had not yet had time to do it. The two starter boxes depicted in Exhibit 3 were labeled after the inspection. The foreman’s statement to the inspector serves as an admission that Employer knew that the switch boxes “needed to be labeled.”

⁶ “3-S” refers to the item marked “S” on Exhibit 3, as “3-R” refers to the item marked “R” on Exhibit 3. This identification method which will be used to similarly identify other marked items on exhibits herein.

been designated for future use. Each of the pieces of electrical equipment at issue plays a role (or future role) in delivering electrical energy to the equipment within the wine cave excavation, and therefore is within the definition of “service” in §2340.22(b).

Browning identified four pieces of electrical equipment as the “switch boxes” to which the citation refers. The four were the portable generator (2-X), two disconnect boxes (3-S and 3-R), and one junction box (4-Y). Almost all of the testimony, and the argument of the parties, centered around these four pieces of equipment.

The disconnect box providing power to the ventilation fan (Exhibit 3, Item S) was not labeled. It provides power to the starter box by way of 3-T, from which a cable, by way of 3-V, carries 480 volts to a ventilation fan in the excavation. This disconnect box is an electrical switch box. The disconnect box by definition is a “service,” as it routes energy from the electrical supply system for the purpose of powering the ventilation fan. Disconnect box 3-S had a knife switch which was in the “on” position at the time of the inspection. The fan was powered and in use at the time of the inspection. The parties stipulated that the starter box was not labeled to indicate its purpose at the time of the inspection.

Disconnect box 3-S was not located and arranged so that its purpose was evident. According to Browning, the purpose of this electrical switch box was not evident just by looking at it. Disconnect box 3-S was one of four electrical boxes on the front of the electrical control panel, none of which were labeled on the day of the inspection. Exhibit 3 most clearly demonstrates Brown’s conclusion. In the event of an emergency such as a fire, electrocution, or a cave-in, first responders would be at a loss to determine which switch, if any, controlled the ventilation fan, the lights, or any auxiliary power. The fan, which received the electrical power from this service, was not in the line of sight at the location of disconnect box 3-S, nor was the fan in close proximity to the disconnect box. Adding to any confusion would be the many cables wound around the base of the main distribution box, as evidenced in Exhibit 2. The task of tracing the pathways of the cables would not provide immediate information about the purpose of disconnect box 3-S. Furthermore, disconnect box 3-S is situated next to an almost identical disconnect box (3-R), also not labeled, which was not in use on the day of the inspection. Neither the arrangement of disconnect box 3-S nor its location would be an indicator of its purpose.

The adjacent disconnect box (3-R), not in use at the time of the inspection, was not labeled. However, because it was not in use and was not connected to anything, it had no present purpose. Therefore, the safety order did not require it to be labeled.

In closing, Richard Shone, President of Nordby Wine Caves, argued that he has an experienced crew, and that the purpose and arrangement of the boxes is well known to the people who need to use them, and therefore no identification was needed, despite the provision of the safety order. This contention does consider what first responders would do, or what other employees would do, if the employees “who need to use them” were not available or incapacitated in an emergency situation. Employer provided no evidence to demonstrate that any switches were located and arranged so their purposes were evident.

The Division has established that disconnect box 3-S is an electrical “service” which provides power to the ventilation fan in the excavation. Disconnect box 3-S was not labeled to show that it was the electrical circuit providing power to the ventilation fan. The Division has also established that disconnect box 3-S was not located and arranged so the purpose was evident. Therefore, a violation of §2340.22(b) specific to disconnect box 3-S is established.

The portable generator depicted in Exhibit 2, Item X, was not labeled to indicate its purpose at the time of the inspection. The portable generator produces 220 kilowatts of electricity, and supplies power for the ventilation, lighting, and auxiliary use. The portable generator provides all the electricity required in the excavation project. This generator provides 480 volts of power to the distribution box by way of cable 2-Y. Browning testified that the portable generator was not labeled to indicate its purpose at the time of the inspection. In closing the Division argued that the switch on the generator was not labeled to indicate its purpose. The citation at issue specified “switch boxes at the main switchboard.” Therefore, the lack of labeling of any switch on the generator, located several feet from the main switchboard, requires no further analysis, as it was not part of the main switchboard, and not specified on the citation.

The junction box, which provides power for lighting and auxiliary use inside the excavation, was not labeled. Exhibit 4, Item Y, depicts a junction box which provides 220 volt power by way of cable 4-X to spider boxes inside the excavation. The lighting in the excavation receives its power from the spider boxes. The spider boxes also provide power for electrical hand tools used inside the excavation. There is no disconnect switch at this junction box. The

only method to disconnect the power near the junction box would be to unplug the service cable at the junction box outlet. The only disconnect switch for this electrical circuit is at the portable generator. Brown testified that this junction box was not labeled to indicate its purpose at the time of the inspection. The Division provided no evidence to establish that the junction box was a “switch box.” The citation at issue specified “switch boxes at the main switchboard.” Therefore, the lack of labeling of the junction box requires no further analysis, as the Division did not establish that the junction box could also be characterized as a switch box, specific to the citation.

Conclusion

Employer exposed its employees to the hazards associated with an unlabeled electrical switch box at the workplace. The above facts are sufficient to establish a violation of §2340.22(b), specific to switch box 3-S.

ORDER

The citation is sustained and a penalty of \$150 is assessed for the violation.

Dated: October 8, 2014

KEVIN J. REEDY
Administrative Law Judge

APPENDIX A

SUMMARY OF EVIDENTIARY RECORD

NORDBY WINE CAVES

Docket 13-R5D1-3886

Date of Hearing: June 10, 2014

Division's Exhibits

Exh. No.	Exhibit Description	
1	Jurisdictional documents	ADMITTED
2	Photo of "9 Suns" work project on 10/18/13	ADMITTED
3	Electrical control board	ADMITTED
4	Junction box where 220 volts exits	ADMITTED
5	Junction box	ADMITTED

Employer's Exhibits - NONE

Witnesses Testifying at Hearing

Richard Stone
Tricia Browning

CERTIFICATION OF RECORDING

*I, **Kevin J. Reedy**, the California Occupational Safety and Health Appeals Board Administrative Law Judge duly assigned to hear the above matter, hereby certify the proceedings therein were electronically recorded. The recording was monitored by the undersigned and constitutes the official record of said proceedings. To the best of my knowledge, the electronic recording equipment was functioning normally.*

Signature

Date

SUMMARY TABLE

DECISION

<i>In the Matter of the Appeal of:</i> NORDBY WINE CAVES DOCKET 13-R5D1-3886					ABBREVIATION KEY: Reg=Regulatory G=General S=Serious ER=Employer DOSH=Division W=Willful R=Repeat 					
IMIS No. 317132694										
DOCKET NO.	CIT. NO.	ITEM NO.	SECTION NO.	TYPE	MODIFICATION OR WITHDRAWAL	A	V	PENALTY PROPOSED BY DOSH IN CITATION	PENALTY PROPOSED BY DOSH AT HEARING	FINAL PENALTY ASSESSED BY BOARD
13-R5D1-3886	1	1	2340.22(b)	G	ALJ affirmed violation	X		\$150	\$150	\$150
						Sub-Total		\$150	\$150	\$150
						Total Due				\$150
NOTE: <i>Please do NOT send payments to the Appeals Board.</i> All penalty payments must be made to:					(INCLUDES APPEALD CITATIONS ONLY)					
Accounting Office (OSH) Department of Industrial Relations P.O. Box 420603 San Francisco, CA 94142					*You will 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 questions					

ALJ: KR
POS:10/8/14

