BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:	Inspection No.
SCONZA CANDY COMPANY	**1722031**
Employer	**DECISION**

Statement of the Case

Sconza Candy Company (Employer) is a candy manufacturer. On January 19, 2024, the Division of Occupational Safety and Health (the Division), through Robert Pike (Pike), commenced an inspection of a work site located at 1 Sconza Candy Lane in Oakdale, California, (the facility) after a report of an accident on January 11, 2024.

On May 13, 2024, the Division cited Employer for three alleged safety violations: failure to annually evaluate the effectiveness of hazardous energy control procedures; failure to include separate procedural steps for the safe lockout/tagout of mogul pump machines in its hazardous energy control procedures; and failure to ensure that an employee stopped and de-energized the power source when cleaning the mogul pump machine.

Employer filed timely appeals of the citations, asserting that the safety orders were not violated and the proposed penalties were unreasonable. Employer asserted that the classification was incorrect and the Independent Employee Action Defense for Citation 2.[1] After the conclusion of the hearing, Employer filed a motion to amend its appeal to assert the Unforeseeable Extreme Departure Defense. The Division did not oppose the motion, and it was granted on July 6, 2026.

This matter was heard by Kerry Lewis, Presiding Administrative Law Judge (PALJ) for the California Occupational Safety and Health Appeals Board (the Appeals Board). PALJ Lewis conducted the hearing from Sacramento, California, on April 14 and 15, and May 22, 2026, with the parties appearing remotely via the Zoom video platform. James T. Dufour, Attorney, represented Employer. Javier Castro, Staff Counsel, represented the Division. The parties

[1] Except where discussed in this Decision, Employer did not present evidence in support of its affirmative defenses, and said defenses are therefore deemed waived. (*RNR Construction, Inc*., Cal/OSHA App. 1092600, Denial of Petition for Reconsideration (May 26, 2017).)

stipulated that the transcript of the digital recording is the official record of the proceeding. The matter was submitted on August 3, 2026.

Issues

1. Did the Division establish that Employer did not annually evaluate the effectiveness of its hazardous energy control procedures?

2. Was Employer required to have separate procedures for safe lockout/tagout of the mogul pump machine in its written hazardous energy control program?

3. Did Employer establish it was in compliance with the exception to the lockout/tagout requirements for a machine that needed to be capable of movement during the cleaning task?

Findings of Fact

1. Employer's hazardous energy control procedures are set forth in a 13-page written document and in Employer's training documents.

2. During the accident inspection, the Division did not request documentation of Employer's periodic inspections of its hazardous energy control program.

3. Employer's Maintenance Supervisor, Armando Arellano (Arellano), regularly conducts reviews of Employer's hazardous energy control program with the authorized employees that perform the work on the various machines.

4. The mogul pump machine was one of a group of at least seven machines that had the same or similar disconnect points and the steps to lockout the machines in the group are the same.

5. On January 11, 2024, Employer's employee, Eduardo Rodriguez (Rodriguez), suffered a partial finger amputation as a result of an accident at Employer's manufacturing facility.[2]

6. At the time of his accident, Rodriguez was flushing hot water through the mogul pump machine to clean out the sticky syrup that is pumped through it during the candy making process.

[2] Finding of Fact Number 5 is a stipulation by the parties.

7. The mogul pump machine was not locked out and de-energized during the flushing process being performed by Rodriguez.

8. The mogul pump machine needed to be energized during the flushing process in order to run hot water through the pump.

9. Employer's process for flushing hot water through the mogul pump machine is a closed process that minimizes the hazards posed by the internal mechanism of the pump.

10. Rodriguez was trained on the proper way to attach the hot water hose to flush the machine safely.

11. The yellow hot water hose could not have attached directly to the mogul pump machine without the flow reducer attached.

Analysis

1. Did the Division establish that Employer did not annually evaluate the effectiveness of its hazardous energy control procedures?

California Code of Regulations, title 8, section 3314, subdivision (j), provides:[3]

(j) Periodic Inspection.

The employer shall conduct a periodic inspection of the energy control procedure(s) at least annually to evaluate their continued effectiveness and determine necessity for updating the written procedure(s).

(1) The periodic inspection shall be performed by an authorized employee or person other than the one(s) utilizing the hazardous energy control procedures being inspected.
(2) Where lockout and/or tagout is used for hazardous energy control, the periodic inspection shall include a review between the inspector and authorized employees of their responsibilities under the hazardous energy control procedure being inspected.
(3) The employer shall certify that the periodic inspections have been performed. The certification shall identify the machine or equipment on which the

[3] Unless otherwise specified, all references are to sections of California Code of Regulations, title 8.

> hazardous energy control procedure was being utilized, the date of the inspection, the employees included in the inspection, and the person performing the inspection.

In Citation 1, Item 1, the Division alleges:

> During the course of an inspection on 01/19/24 and prior, Employer failed to annually evaluate the effectiveness of their energy control procedures to determine the necessity for updating written procedures.

The Appeals Board has consistently held that the Division has the burden of proving all elements of a violation by a preponderance of the evidence. (*Wal-Mart Stores Inc. Store #1692*, Cal/OSHA App. 1105264, Decision After Reconsideration, (Nov. 4, 2019).) "Preponderance of the evidence" is usually defined in terms of probability of truth, or of evidence that when weighed with that opposed to it, has more convincing force and greater probability of truth with consideration of both direct and circumstantial evidence and all reasonable inferences to be drawn from both kinds of evidence. (*Leslie G. v. Perry & Associates* (1996) 43 Cal.App.4th 472, 483, review denied.)

The Division cited Employer for failing to annually evaluate its hazardous energy control procedures. Pike claimed that he requested Employer's annual review of its energy control procedures and did not receive any documents, which was the basis for the Division's allegation that no periodic inspections were conducted at least annually. The Division presented no other evidence regarding the lack of inspections.

> Q: And what evidence did you rely upon in -- did you believe support this citation?
> A: The Employer was asked for their review -- their annual review of their energy control procedures on the [document request sheet] during the inspection.
> […]
> A: There are several things that when an evaluation is performed, the qualified or knowledgeable person needs to be documented as well as machine and employees that are being audited.
> Q: So Employer did not produce any records or documentation of any periodic inspections that it conducted?
> A: Yes. Correct.

(Hearing Transcript (Hrg. Tr.) April 15, 2026, pp. 142-144.)

However, a review of the Document Request Sheet (Exh. 9) reveals that there is no request for any certification of periodic inspections of Employer's energy control procedures. Exhibit 9 reflects that there were three items that were not received:

- Safety Inspection Records *Mogul Inspections Past 2 Months*
- Lockout/Tagout Program/Machine Specific *for Mogul Pumps*
- Safety Instructions/Equipment Manuals *SOP for Mogul Pump Cleaning*

(Exh. 9. Italicized/underlined text was handwritten by Pike on the pre-printed Document Request Sheet.)

Pike did not interview anyone about inspections and did not testify about any other evidence supporting the allegation that there were no annual inspections performed. There is no indication that the Division ever requested any documentation of Employer's periodic inspections of its lockout/tagout program. Nonetheless, the Division made an inference, and now asks that the Appeals Board also infer, that the lack of documentation was evidence of a violation. While the Appeals Board will make reasonable inferences when the evidence supports a particular conclusion, there was no evidence from the Division to support such an inference here.

Conversely, Arellano testified that he regularly conducts reviews of Employer's hazardous energy control program with the authorized employees that perform the work on the various machines.

The Division did not meet its burden of proof to establish that Employer did not conduct periodic inspections of its hazardous energy control program to evaluate its effectiveness. Accordingly, Citation 1, Item 1, is dismissed.

2. Was Employer required to have separate procedures for safe lockout/tagout of the mogul pump machine in its written hazardous energy control program?

Section 3314, subdivision (g), requires written hazardous energy control procedures for the "Cleaning, Repairing, Servicing, Setting-Up, and Adjusting Operations of Prime Movers, Machinery and Equipment, Including Lockout/Tagout":

> (g) Hazardous Energy Control Procedures. A hazardous energy control procedure shall be developed and utilized by the employer when employees are engaged in the cleaning, repairing, servicing, setting-up or adjusting of prime movers, machinery and equipment.

[…]

(2) The employer's hazardous energy control procedures shall be documented in writing.

(A) The employer's hazardous energy control procedure shall include separate procedural steps for the safe lockout/tagout of each machine or piece of equipment affected by the hazardous energy control procedure.

In Citation 1, Item 2, the Division alleges:

During the course of an inspection on 01/19/24 and prior, Employer failed to include separate procedural steps for the safe lockout/tagout of mogul pumps, located in the mogul ingredient batching area.

The Division issued Citation 1, Item 2, after reviewing Employer's hazardous energy control program because the program did not set forth separate lockout/tagout procedures for the mogul pump machine. Employer argued that it was not required to have separate procedures based on an exception to the requirements of section 3314, subdivision (g)(2)(A). Exceptions to safety orders are affirmative defenses and the cited employer has the burden of showing it satisfied their conditions. (*Thyssenkrupp Elevator Corporation*, Cal/OSHA App. 11-2217, Decision After Reconsideration (Apr. 18, 2017).)

EXCEPTION to subsection (g)(2)(A): The procedural steps for the safe lockout/tagout of prime movers, machinery or equipment may be used for a group or type of machinery or equipment, when either of the following two conditions exist:

(1) Condition 1:

(A) The operational controls named in the procedural steps are configured in a similar manner, and

(B) The locations of disconnect points (energy isolating devices) are identified, and

(C) The sequence of steps to safely lockout or tagout the machinery or equipment are similar.

(2) Condition 2: The machinery or equipment has a single energy supply that is readily identified and isolated and has no stored or residual hazardous energy.

(§ 3314, subd. (g).)

The Division did not assert that Employer's lockout/tagout procedures were insufficient in general. Rather, the issue was the lack of specific procedures for the mogul pump machine. Employer's hazardous energy control procedures are set forth in a 13-page written document (Exh. 13) and in Employer's training documents (Exhs. K and Y).

Employer presented several photographs of other machines in the facility. (Exhs. T and U.) Each of the six machines depicted in those exhibits is orange in color and has a white box with a black dial that is identical to the lockout point identified on the mogul pump machine. (Exh. S.) Bruce Boyd (Boyd), Employer's Director of Engineering, Maintenance & MRO, testified that the maintenance team locks out all the machines by "turning the black switch on the white box to the off position then placing their lock through it and removing the key." (Hrg. Tr. May 22, 2026, p. 104.)

Boyd testified that the lockout points on all the pieces of equipment are similar because it is "[s]tandard work, standard process, easy to recognize, visual management from the manufacturer" and "[i]t makes it easier to find and know where they need to lock out." (Hrg. Tr. May 22, 2026, pp. 105-106.)

Employer asserted that the sequence of steps to lockout the machines applies to each machine the same way. Arellano testified:

> Q: So what's the idea of having the same appearing lockout point for each piece of a separate piece of equipment?
> A: For the most part we try to standardize the equipment that way everybody's – it's easier for everybody to get used to seeing the same thing and applying their lockouts. They don't have to scatter with different types of lockout or any other differences in the equipment.
> Q: So once they know like the seven steps to lock out a piece of equipment, they apply it the same way to each one of these different pieces of equipment because it looks exactly the same; is that right?
> A: That is correct.

(Hrg. Tr. May 22, 2026, p. 138.)

The lockout controls for the machines are the same, the disconnect points are clearly identified by the white box with a black dial on each, and the steps to lock them out safely are the same. Therefore, Employer met Condition 1 of the Exception to section 3314, subdivision (g)(2)(A). The procedural steps set forth in Employer's general lockout/tagout program are applicable for all the similar equipment, including the mogul pump machine.

Accordingly, Citation 1, Item 2, is dismissed.

3. Did Employer establish it was in compliance with the exception to the lockout/tagout requirements for a machine that needed to be capable of movement during the cleaning task?

Section 3314, subdivision (c), provides:

(c) Cleaning, Servicing and Adjusting Operations.

Machinery or equipment capable of movement shall be stopped and the power source de-energized or disengaged, and, if necessary, the moveable parts shall be mechanically blocked or locked out to prevent inadvertent movement, or release of stored energy during cleaning, servicing and adjusting operations. Accident prevention signs or tags or both shall be placed on the controls of the power source of the machinery or equipment.

In Citation 2, the Division alleges:

On or about 01/11/24, an employee cleaning and washing a mogul pump located in the mogul ingredient batching area, failed to stop and de-energize the power source prior to placing their right hand fingers inside the pump, resulting in serious injury.

a. Applicability of the Safety Order

Section 3314, subdivision (a)(1), sets forth the applicability of the section:

This Section applies to the cleaning, repairing, servicing, setting-up and adjusting of machines and equipment in which the unexpected energization or start up of the machines or equipment, or release of stored energy could cause injury to employees.

One of the issues in dispute was whether the task that Rodriguez was performing was "cleaning" the machine. Employer referred to the hot water running through a hose into the pump as "flushing" or "sanitizing" the machine, which occurs frequently to get the sticky liquid product out of the machine between runs of different candy products. In contrast, Employer's witnesses testified that the maintenance team engages in a separate procedure that involves locking out and taking the machine apart to clean the individual parts.

The term "cleaning" is not defined in the safety order. Where a statutory (or regulatory) term is not defined, "it can be assumed that the Legislature was referring to the conventional

definition of that term." (*OC Communications, Inc*., Cal/OSHA App. 14-0120, Decision After Reconsideration (Mar. 28, 2016), citing to *Heritage Residential Care, Inc. v. Division of Labor Standards Enforcement* (2011) 192 Cal.App.4th 75, 82.) "The rules of statutory and regulatory interpretation require that terms be given their ordinary meaning if not specially defined otherwise." (*California Highway Patrol*, Cal/OSHA App. 09-3762, Decision After Reconsideration (Aug. 16, 2012).) To obtain the ordinary meaning of a word the Appeals Board may refer to its dictionary definition. (*Fedex Freight, Inc*., Cal/OSHA App. 317247211, Decision After Reconsideration (Dec. 14, 2016).) "Flushing" is defined as "a rinsing or cleansing with or as if with a flush of water" or "to pour liquid over or through, especially**:** to cleanse or wash out with or as if with a rush of liquid." (www.merriam-webster.com <accessed Aug. 13, 2026>.) "Sanitize" is defined as "to make (something) sanitary (as by cleaning or disinfecting)." (*Id.*) Thus, the definitions of the two terms include the word "clean" or "cleanse."

While there are two separate tasks, one of which involves a flushing to sanitize the machine and one that involves deenergizing and taking it apart, the concept of "cleaning" applies to both tasks.

Because Rodriguez was cleaning a machine that could potentially cause injury if it was unexpectedly energized, section 3314 is applicable.

b. Violation of the safety order

There was no dispute that the mogul pump machine was not de-energized and locked out at the time of the accident. At no time did Rodriguez lock out the machine, nor was he in possession of a lock in order to do so. Employer did not dispute that Rodriguez was not expected to lock out the machine as part of the flushing process, and Rodriguez was not an "authorized" employee who was trained and tasked with projects that required implementing Employer's lockout/tagout protocols.

Employer asserted that Rodriguez was not required to lockout the mogul pump machine based on section 3314, subdivision (c)(1).

Machine Must be Capable of Movement During Cleaning

Section 3314, subdivision (c)(1), "recognizes that there are occasions or types of machines which must be in operation for cleaning, adjusting, and so on." (*Stanislaus Food Products Company*, Cal/OSHA App. 13-572, Decision After Reconsideration (Apr. 23, 2015).) Section 3314, subdivision (c)(1), provides:

(1) If the machinery or equipment must be capable of movement during this period in order to perform the specific task, the employer shall minimize the hazard by providing and requiring the use of extension tools (e.g., extended swabs, brushes, scrapers) or other methods or means to protect employees from injury due to such movement. Employees shall be made familiar with the safe use and maintenance of such tools, methods or means, by thorough training.

The subdivision is in the nature of an affirmative defense. Therefore, Employer bore the burden of proof at hearing of establishing its compliance with the provision. (*Thyssenkrupp Elevator Corporation*, *supra*, Cal/OSHA App. 11-2217.) Evidence of compliance with the provision requires proof of three elements: "(1) the equipment must be moving; (2) alternative means or methods to minimize the hazards are furnished; and (3) employees are trained in such alternatives." (*Stanislaus Food Products Company*, *supra*, Cal/OSHA App. 13-572.)

(1) Equipment must be moving

During the candy making process, the mogul pump machine is attached to a large "tote," or box, full of syrup. The thick syrup is heated in the tote and is pulled into the mogul pump machine, to be distributed to other machines involved in the candy making process. The pump is connected to the tote by a gray corrugated hose, which is attached to the pump using a cone-shaped flow reducer. (Exh. B.) The syrup is pulled from the tote by the movement of the mechanisms within the pump.

The witnesses testified that the flushing process is needed to clean out the sticky syrup between different product runs. The process involves attaching a yellow water hose to the pump machine and turning the pump on at the control panel located several yards away. The hot water is then turned on and is pulled into and through the machine by the impeller in the same manner that syrup would normally process through the machine to make candy. The hot water would not be able to cycle through the machine without the power turned on.

As such, Employer established the first element of the exception: the machine must be capable of movement in order to perform the task.

(2) Alternative means or methods to minimize hazards

The flushing process occurs at the end of a product run to prepare the pump for the next product. The process that Employer's witnesses described involves leaving the reducer and gray corrugated hose attached to the pump, detaching the other end of the gray hose from the syrup tote, and attaching the yellow water hose to the far end of the gray hose.

Arellano testified that the flushing task undertaken by Rodriguez was a "CIP" process, which means "clean in place."

> The equipment, everything is contained, everything is sealed the pipes and everything is put together and the system just circulates hot water or some type of chemical or soap to flush the pipes. It's a – it's a closed loop so it circulates the water through the system. […] If they – if they need to remove the impellers, then we [maintenance employees] remove the face plate of the pump and do that with the – with the pump locked.

(Hrg. Tr. May 22, 2026, pp. 145-146.)

This CIP process results in no contact with the internal workings of the pump machine, the employee is several feet away from the machine, and the gray hose gets cleaned with the hot water at the same time that the machine itself is being flushed. When the gray hose needs extra sanitizing, it is removed from the machine, leaving the reducer attached to the pump, and washed by hand in a designated sink. Employer's witnesses testified unequivocally that there was no point in the flushing process that required or permitted removal of the reducer.

The reducer is five inches long (Exh. V) and the inlet is another 2.5 inches from the impeller (Exh. W), resulting in no possibility of inadvertent contact with a hazardous part of the machine.

The hazards posed by the rotating impeller are eliminated by the reducer that extends away from the machine and the methods put into effect by Employer's CIP flushing process. Thus, Employer established the second element of the exception.

(3) Employees are trained in the alternative means or methods

Rodriguez's injury occurred when he attempted to pry a gasket off the inlet when it was stuck due to the sticky syrup. Rodriguez claimed that he was trained to attach the yellow hose directly to the machine without the reducer, that he had done it numerous times, and that his supervisors had seen him do it that way. He claimed that there was no reducer on the machine on the date of his accident, and that he performed the flushing procedure by attaching the yellow water hose directly to the inlet, without the reducer, on the pump machine. However, Rodriguez's testimony is called into question based on the credible testimony of three experienced employees who appeared as witnesses for Employer. The scenario described by Rodriguez was definitively refuted by the detailed and persuasive testimony of Employer's witnesses.

Boyd, an experienced maintenance engineer for nearly 20 years, testified that it is not possible to attach the yellow hose directly to the pump without the reducer. (Hrg. Tr. May 22, 2026, pp. 117 and 122.) The reducer is a cone-shaped apparatus that allows the larger-diameter hoses to attach to the smaller-diameter pump inlet. (Exh. C, L, 30, 31, 33.) The yellow water hose and gray corrugated hose attach to the large end and, therefore, cannot securely attach to the inlet directly without the reducer. Boyd testified that the yellow hose has a connector that allows it to connect to the gray hose. With the connector or without, the yellow hose could "absolutely not" be connected directly to the inlet. (Hrg. Tr. May 22, 2026, pp. 122-123.)

> Q: And, so you have concluded that it would be impossible to use the fitting at the end of the yellow hose in order to connect it directly to the pump?
> A: You could -- you could set it on there, but as soon as you turn the water on, you're going to have a giant garden hose running everywhere, it does not securely connect. It does not connect.

(Hrg. Tr. May 22, 2026, p. 118.)

Gabriel Ramirez (Ramirez), an experienced candymaker, trainer, and supervisor who has worked for Employer for eight years and was the person who trained Rodriguez, testified that the yellow hose cannot connect directly to the mogul pump machine due to the size difference between the hose and the pump inlet. The yellow hose was too large to connect to the mogul pump directly without the reducer:

> Q: And if that flow reducer is not there, let's say hypothetically, that flow reducer, the cone, was not connected to the mogul pump, is it possible to connect the yellow hose directly to the mogul pump?
> A: No, based on the size difference.
> Q: Can you explain what you mean?
> A: So the hose has its connector which feeds to the clear or gray hose which that same hose connects to the reducer cone and that reduces through smaller to fit into the pump.

(Hrg. Tr. May 22, 2026, pp. 44-45.)

Crispin Minero, who has worked for Employer for 22 years and was originally a candymaker, also testified that the yellow hose cannot be directly attached to the mogul pump without the reducer. (Hrg. Tr. May 22, 2026, p. 76.) Contrary to Rodriguez's claims, Minero testified that he has not seen the reducer removed from the mogul pump during the sanitation flushing process. (*Id*., at p. 75.)

Additionally, Ramirez testified that he never trained Rodriguez to remove the reducer during the flushing process and that there is no reason for a candymaker to ever remove the reducer. (Hrg. Tr. May 22, 2026, p. 30.) Ramirez further testified that he has never seen any candymaker remove the reducer. (*Id.* at 40.)

Finally, Minero testified that he has previously observed Rodriguez perform the flushing process. Contrary to Rodriguez's claims, Minero testified that he had previously observed Ramirez attach the yellow hose to the end of the gray corrugated hose, that he never saw him attach the yellow hose directly to the reducer instead of the gray hose, and that he never previously observed Rodriguez take the reducer off the machine. (*Id.* at 48.)

Rodriguez's claims that he was trained to perform the flushing process by attaching the yellow hose directly to the pump machine are called directly into question given the fact that it is physically impossible to do so. Combined with the credible testimony from Ramirez that he trained Rodriguez to flush the machine by attaching the water hose to the end of the gray hose, there is sufficient evidence that Employer trained its employees how to use the safe procedures and equipment that prevent the employees from being exposed to the hazard posed by unexpected energization of the machine during the flushing task.

Employer established the exception found in section 3314, subdivision (c)(1). The mogul pump machine needed to be moving during the flushing procedure, Employer's CIP process with the water hose attaching to the end of the gray corrugated hose or, at the very least, to the reducer, minimized the hazard, and Rodriguez was trained how to perform the process safely.

Accordingly, Citation 2 is dismissed.

Conclusions

The Division did not establish that Employer failed to perform periodic inspections of its hazardous control energy procedures.

Employer was not required to have machine-specific hazardous energy control procedures for the mogul pump machine due to the Exception to section 3314, subdivision (g)(2)(A).

Employer established that the mogul pump machine needed to be moving in order to perform the flushing process, and that Employer had minimized the hazard by providing other methods to protect employees from injury due to such movement and training the employees how to safely use the alternative methods.

Order

It is hereby ordered that Citation 1, Item 1, is dismissed, and the penalty is vacated.

It is hereby ordered that Citation 1, Item 2, is dismissed, and the penalty is vacated.

It is hereby ordered that Citation 2 is dismissed, and the penalty is vacated.

/s/ Kerry Lewis

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Dated: 08/28/2026

Kerry Lewis
Presiding Administrative Law Judge

The attached decision was issued on the date indicated therein. If you are dissatisfied with the decision, you have thirty days from the date of service of the decision in which to petition for reconsideration. Your petition for reconsideration must fully comply with the requirements of Labor Code sections 6616, 6617, 6618 and 6619, and with California Code of Regulations, title 8, section 390.1. **For further information, call: (916) 274-5751.**

If no petition is filed, the penalty amount set forth in the Summary Table is due and payable 30 days after the Order or Decision is issued. If the Appeals Board approved a payment plan, all payments are due in accordance with the dates indicated in the Summary Table. If a Petition for Reconsideration is filed, no payment should be made until the final outcome of the appeal.