BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:	**Inspection Number 1703764**
THE DON CHAPIN CO., INC. **560 CRAZY HORSE CANYON ROAD** **SALINAS, CA 93907** **Employer**	**DECISION AFTER RECONSIDERATION**

The Occupational Safety and Health Appeals Board, acting pursuant to authority vested in it by the California Labor Code and having taken this matter under reconsideration on its own motion, renders the following decision after reconsideration.

JURISDICTION

The Don Chapin Co., Inc. (Employer) operates a sand processing plant. The California Division of Occupational Safety and Health (Division) inspected Employer from October 16, 2023, to December 5, 2023, at Employer's job site located in Marina, California. The inspection concerned, among other things, the sand plant ladderway opening to access the discharge box from the maintenance platform. [1]

As a result of the inspection, the Division issued Employer a Repeat, General citation, alleging a violation of section 3212, subdivision (a)(2)(A). [2] The citation alleged that the sand plant ladderway opening to access the discharge box from the maintenance platform did not have a swing gate attached and Employer did not have an equivalent protection or passageway offset in place.

Employer timely appealed the citation on the grounds that the safety order was not violated, the classification is incorrect, and the proposed penalty is unreasonable. Employer filed an unopposed motion to amend its appeal to include additional affirmative defenses, which was granted by Presiding Administrative Law Judge (PALJ) Kerry Lewis. Employer asserted the following affirmative defenses: Employer had no actual or constructive knowledge of the alleged violative condition; Employer exercised reasonable diligence in preventing the alleged violative condition and even through its reasonable diligence, it could not have been aware of the alleged violative condition or circumstances; and no evidence of employee exposure to the alleged violative condition.

[1] Multiple terms are used to describe the platform that is used to access the discharge box; however, for purposes of clarity and consistency, the Board will use the term "maintenance platform" throughout this Decision After Reconsideration (DAR).
[2] Except as otherwise specified, references are to California Code of Regulations, title 8.

This matter was heard by the PALJ on April 15, 2025, and April 16, 2025. The hearing was conducted with the parties and witnesses appearing remotely via the Zoom video platform. Michael Rubin and Steven Boggins, of Ogletree, Deakins, Nash, Smoak & Stewart represented Employer. Katera Rutledge (Rutledge) and Lisa Friedman, Staff Counsel, represented the Division. Also present for the Division, but did not testify, was District Manager Jeff Wallace. At the hearing, two witnesses testified for the Division: Associate Safety Engineers Randell Dutton (Dutton) and Nathan Siemens (Siemens). Three witnesses testified for Employer: Manager Lawrence Rocha (Rocha), Lead Man Justin Lemmon (Lemmon), and Plant Production Foreman Rod Radman (Radman). Also present for Employer, but did not testify, was Safety Director Marshall Redlin.

The Division and Employer stipulated during the hearing that if the Division established a violation, then Employer would not contest the Repeat, General classification. (Transcript (TR), Vol. I, p. 126.) Both the Division and Employer submitted post-hearing briefs and on July 1, 2025, the PALJ issued a Decision, which resulted in the Repeat, General citation and the $1,500 penalty being affirmed. Employer filed a timely petition for reconsideration (Petition), citing subdivisions (c) and (e) of Labor Code section 6617 as the bases for its Petition, asserting that the evidence does not justify the findings of fact and the findings of fact do not support the order or decision.

Employer's Petition requests that the Board reconsider the Decision, and vacate the Repeat, General citation and associated $1,500 penalty. [3] The Division filed an Answer, requesting that the Board affirm the PALJ's Decision. The Board, on September 15, 2025, served all parties with an Order Taking Petition for Reconsideration Under Submission.

In making this decision, the Board has engaged in an independent review of the entire record. The Board additionally considered the pleadings and arguments filed by the parties. The Board has taken no new evidence.

ISSUES

1. Did the Division meet its burden of proving a violation of section 3212(a)(2)(A)?
2. If a violation exists, did the Division demonstrate that it properly classified the citation as Repeat, General?
3. Did the PALJ's finding of fact 12, that the discharge box could have failed at any point despite the bottom of the box being lined with concrete, constitute reversible error?
4. Did the PALJ's finding of fact 13, that if the discharge box had failed or the attached hose [4] had needed maintenance, a mechanic would need to access the maintenance platform where the swing gate had fallen due to rusted hinges, constitute reversible error?

FINDINGS OF FACT

Except as modified herein, the Board incorporates by reference the findings of fact contained in the PALJ's July 1, 2025, Decision. [5]

[3] Employer did not dispute how the penalty was calculated in its Petition, and it will not be further discussed. (See Lab. Code § 6618.)

[4] The words "hose" and "chute" are used interchangeably throughout the record; however, for purposes of clarity and consistency, the Board will use the term "hose" throughout this DAR.

DECISION AFTER RECONSIDERATION

1. Did the Division meet its burden of proving a violation of section 3212(a)(2)(A)?

The Citation alleges a violation of section 3212, subdivision (a)(2)(A), which states,

> Every ladderway floor opening or platform with access provided by ladderway, including ship stairs (ship ladders), shall be protected by guardrails with toeboards meeting the requirements of General Industry Safety Orders, Section 3209, on all exposed sides except at entrance to the opening. The opening through the railing shall have either a swinging gate or equivalent protection, or the passageway to the opening shall be so offset that a person cannot walk directly into the opening.

The alleged violation description states:

> Prior to and during the course of the inspection, including, but not limited to October 16, 2023, the employer failed to provide a swinging gate or equivalent protection at the Wash Plant platform entrance to the ladder opening.
>
> The Don Chapin Company Inc. was previously cited for a violation of this occupational safety and health standard or its equivalent standard 3212(a)(2)(A), which was contained in OSHA inspection number 1530299, citation number 1, item number 2 and was affirmed as a final order on 8/13/2021, with respect to a workplace located at 2735 Bolsa Rd, HOLLISTER, CA 95023.

The Division bears the burden of proving an alleged violation by a preponderance of the evidence. (*Benicia Foundry & Iron Works, Inc.*, Cal/OSHA App. 00-2976, Decision After Reconsideration (Apr. 24, 2003).) Here, the Division had to show by a preponderance of the evidence that Employer did not have proper fall protection, such as a swing gate or equivalent protection, or a passageway offset on the maintenance platform. To prove a violation, the Division must also prove that one or more employees at the site were exposed to the identified hazard. (*Papich Construction Company*, *Inc*., Cal/OSHA App. 1236440, Decision After Reconsideration (Mar. 26, 2021).)

We first adopt, and incorporate by reference, those portions of the PALJ's Decision finding a violation of the safety order. (See Decision, p. 4.) Next, we turn to the matters in Employer's Petition.

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[5] Employer does not dispute findings of fact seven through 11, accordingly, only those facts in dispute discussed in Employer's Petition will be discussed in this DAR as any dispute regarding factual findings seven through 11, or other matters not discussed in Employer's Petition, are deemed waived. (See Labor Code § 6618.)

Statute of Limitations:

Labor Code section 6317 requires that the Division issue a citation within six months after the occurrence of an alleged violation. Employer's Petition claims that the citation is barred by the statute of limitations and that the Division did not establish when the violative condition first came into existence. Employer's argument, however, is both legally and factually unconvincing.

First, the violation concerns a continuing violation. The Board has previously found regardless of when a violation is initiated, its "occurrence" continues until it is corrected, or the Division discovers the violation or the duty to comply with the violated requirement ceases to exist. (Lab. Code § 6317(e)(1); *Los Angeles County, Department of Public Works*, Cal/OSHA App. 96-2470, Decision After Reconsideration (Apr. 5, 2002).) The six-month statute begins to run only when employee exposure to the hazard ends. (*Los Angeles County Department of Public Works, supra*, Cal/OSHA App. 96-2470.)

Second, the evidentiary record contradicts any assertion that the citation was not issued within the six months of when the hazard was observed.

Dutton observed the violation during his inspection. There is no dispute that the swing gate was propped up against the railing when Dutton was conducting his inspection and Employer did not have an equivalent protection, or offset, such as a zigzag path, which constituted a violation of the safety order. Dutton took photos of the detached swing gate, noted the violation on the day of the inspection, and those photos and notes [6] were admitted into evidence, without objection by Employer, which serves as corroborating evidence of the existence of the violation. (See Exhibits [7] 4, 9-12; TR, Vol. I, pp. 34, 50, 72-74, 83.) While testimony from Radman indicated that the swing gate could not be seen from the ground, Dutton's observation of the detached swing gate from the ground during the inspection, the Division's photos admitted into evidence, and testimony from Rocha successfully rebut Radman's testimony. [8] (Exhibits 11-12; TR, Vol. I, pp. 56, 163, 202.) Dutton issued the citation approximately two months later on December 18, 2023, and we therefore conclude the citation was timely issued.

Equivalent Protection:

During the hearing, Employer proffered testimony about its harness requirement and suggested that use of the harness satisfies the "equivalent protection" requirement of section 3212, subdivision (a)(2)(A). (TR, Vol. I, pp. 145-146.) Manager Rocha testified that his mechanics are trained to wear fall protection harnesses. (TR, Vol. I, p. 145.) However, even if the mechanics wear a harness when they access the maintenance platform to replace the discharge box, that does not excuse Employer's obligation to comply with the safety order. The

[6] Exhibit 4 shows Dutton's notes from the day of the inspection reference the broken swing gate. (TR, Vol. I, p. 74.)
[7] Some exhibits were modified with annotations during the hearing, which were labeled as such, before the exhibits were admitted into the record. (See Exhibits 9-MOD-11-MOD; TR, Vol. I, p. 34, 71-72, 83.)
[8] Employer argues that Dutton's inspection was incomplete and insufficient; however, as discussed above, Employer's argument is unconvincing as Dutton saw from the ground level that the swing gate was broken. (See Petition, p. 6.)

Board has previously found that the purpose behind the regulation is to assure employees are protected from falling through an opening. (*United Parcel Service, Inc. dba UPS*, Cal/OSHA App. 1242676, Decision After Reconsideration (Jun. 8, 2021).)

Additionally, we find that the use of a harness is not "equivalent protection" within the meaning of section 3212(a)(2)(A). The regulation requires the Employer to provide a "swinging gate or equivalent protection." When interpreting a regulation, we first look to the plain meaning, which can be derived from dictionary definitions. (*Papich Construction Company, Inc*., Cal/OSHA App. 1204848, Decision After Reconsideration (Oct. 18, 2019).) The word "equivalent" is defined to mean "equal in force, amount, or value," "like in signification or import," or "corresponding or virtually identical especially in effect or function." [9] A harness is not like a swinging gate in signification or import, nor is it virtually identical in effect or function.

Further, even assuming some ambiguity existed, canons of construction also demonstrate that a swinging gate and harness are not equivalent. The doctrine of *ejusdem generis* states that where general words follow the enumeration of particular classes or persons or things, the general words will be construed as applicable only to persons or things of the same general nature or class as those enumerated. (*Novo-Rados Enterprises, A Joint Venture*, Cal/OSHA App. 75-1170, Decision After Reconsideration (May 29, 1981) [citation omitted].) Application of the doctrine of *ejusdem generis* supports the interpretation that section 3212(a)(2)(A) intended for an "equivalent protection" to mean something like a swinging gate, not a harness. (*Kern Delta Water District*, Cal/OSHA App. 83-1057, Decision After Reconsideration (Dec. 14, 1987) [finding that water is not "of the same nature" as the ground or a floor for purposes of section 3210(a) based on *ejusdem generis* doctrine].) Moreover, a mechanic wearing a harness could still fall down the ladderway and be injured, underscoring the importance of the safety order.

We therefore conclude that the Division established a violation of section 3212(a)(2)(A) by a preponderance of the evidence.

Employee Exposure:

Employer's Petition asserts that the Division failed to demonstrate employee exposure to the hazard addressed by the safety order. For the violation to be affirmed, the Division must prove that one or more employees at the site were exposed to the identified hazard. (*Papich Construction Company, Inc.*, *supra*, Cal/OSHA App. 1236440.)

In *Benicia Foundry & Iron Works*, the Board held "the Division may establish the element of employee exposure to the violative condition without proof of actual exposure by showing employee access to the zone of danger based on evidence of reasonable predictability that employees while in the course of assigned work duties, pursuing personal activities during work, and normal means of ingress and egress would have access to the zone of danger. (*Benicia Foundry & Iron Works, Inc.,* Cal/OSHA App. 00-2976, Decision After Reconsideration (Apr. 24, 2003).) The zone of danger is that area surrounding the violative condition that presents the

[9] (Merriam Webster, definition of equivalent <https://www. https://www.merriam-webster.com/dictionary/equivalent> [as of Oct. 19, 2026].)

danger to employees that the standard is intended to prevent. (*Benicia Foundry & Iron Works, Inc., supra*, Cal/OSHA App. 00-2976 [citations omitted].) The scope of the zone of danger is relative to the wording of the standard and the nature of the hazard at issue. (*Dynamic Construction Services, Inc.* Cal/OSHA App. 14-1471, Decision After Reconsideration (Dec. 1, 2016.) [citations omitted].)

Here, Employer introduced testimony that mechanics would access the maintenance platform to replace the discharge box. (TR, Vol. II, p. 180.) By offering testimony about which employees access the maintenance platform from the ladderway, Employer clarifies which of its employees would be in the zone of danger, namely, mechanics. The evidence demonstrates that it is reasonably predictable by operational necessity that mechanics would have access to the zone of danger in the event of a discharge box failure, which would require ascending the ladderway to replace the discharge box.

Employer's Petition claims that the PALJ erred when finding it was reasonably predictable that its employees would be in the zone of danger when accessing the maintenance platform by ladderway, asserting the finding was essentially based on conjecture.[10] (Petition, pp. 10-11.) However, even if a discharge box failure can be seen from the ground, two mechanics would still need to ascend the ladderway to replace the discharge box, putting them into the zone of danger. (See Petition, p. 10; TR. Vol. I, p. 159.)

The failure of the discharge box is also reasonably predictable. Nothing in the evidentiary record shows that the discharge box will last indefinitely. To the contrary, while the discharge box was lined with concrete in 2017, by Employer's own testimony, the discharge box would need to be replaced at some point, making it more likely than not that employees would need to ascend the ladderway to access the discharge box. Replacement of the discharge box would necessitate a mechanic's intervention, thus putting a mechanic into the zone of danger (at risk of falling down the ladderway) while in the course of assigned work duties. Even if a mechanic wore a harness while accessing the maintenance platform, as discussed above, that fails to meet the requirements of section 3212(a)(2)(A).

Manager Rocha testified, "[w]e added concrete to the inside of it [the discharge box] so it wouldn't wear out so fast. So it lasted a long time." (TR, Vol. I, p. 160.) When asked what the concrete was made out of Rocha replied, "…[i]t just protects the metal to last long from the abrasion…." (TR, Vol. I, p. 161.) Rocha further testified, "I'm sure this is the third time, the third box that has been up there, I'm pretty sure. So the first two failed. And then we were trying to figure out how we could make it last a lot longer, you know, in those conditions that it was in. So we decided to put some concrete in there to let it wear on that for a while instead of the metal." (TR, Vol. I, p. 162.)

[10] Employer relies on administrative law judge (ALJ) decisions to dispute that its mechanics do not have exposure to a hazardous condition or circumstances. (Petition, p. 13.) We note that ALJ decisions do not constitute precedent for the Board. (See *Teichert Aggregates,* Cal/OSHA App. 04-2982, Decision After Reconsideration (Jan. 21, 2011), citing *Pacific Ready Mix, Inc.* Cal/OSHA App. 79-1550, Decision After Reconsideration (Apr. 23, 1982) and *Western Plastering Inc.,* Cal/OSHA 79-032, Decision After Reconsideration (Dec. 28, 1983).)

Plant Production Foreman Radman testified, "[n]ot as of yet," when asked if he heard about any box failures since 2017. (TR, Vol. II, p. 181.) In response to the question, "[a]nd you don't know for certain, at this moment, if that box is broken, would break in an hour from now," Radman replied, "[o]nly if you're God." (TR, Vol. II, p. 205.) When asked if he could tell Division staff counsel whether or not it is going to break an hour from now, Radman replied in the negative. (TR, Vol. II, pp. 205-206.)

There is also other evidence of exposure. Reasonable inferences can be drawn from the evidence introduced at a hearing. (*RNR Construction, Inc.*, Cal/OSHA App. 1092600, Denial of Petition for Reconsideration (May 26, 2017), citing *Morrow Meadows Corporation*, Cal/OSHA App. 12-0717, Decision After Reconsideration (Oct. 5, 2016).) There is evidence that Miguel Zamora (Zamora), plant operator, could be in the zone of danger based on the evidentiary record and job description provided by Employer. (TR, Vol. I, pp. 28, 46-48, 73, 81; TR,Vol. II, pp. 190-196; Exhibit A, Exhibit E, pp. 1-2.) [11] Mr. Zamora filled out daily inspection reports prior to Dutton's inspection and Zamora checked off the box for inspecting the safety of handrails, ladders, walkways and guardrails; nothing on the checklist suggests the ladderway that was the subject of this violation was somehow excluded from this list. (Exhibit A pp. 16-18, 20-24, 26-36.) Daily inspection reports admitted into evidence ranged from July 28, 2023, to October 6, 2023, just over a week prior to the inspection. (Exhibit A, pp. 16-18, 20-24, 26-36.)

Further, Zamora's job description requires the following actions: monitoring operations to ensure that health and safety standards are met, keeping records of material or equipment usage or problems encountered, repairing and maintaining equipment, making emergency adjustments or assisting with major repairs as necessary, making sure equipment is in proper operating condition and providing written reports of any deficiency to dispatch and foreman or superintendent manager or both. (Exhibit E.)

Zamora's duties point to additional employees of Employer who could have access to the zone of danger and Employer's evidence *did not* successfully rebut the evidence regarding Zamora. (See TR, Vol. II, pp. 227, 229-230 [Lemmon discusses duties of plant operator].) Employer claims the maintenance platform is not part of the daily inspection. However, if that is the case, then it is unclear why the daily inspection report does not specifically exclude the ladderway to the maintenance platform that services the discharge box. Employer did not offer Zamora as a witness, or obtain any statement from Zamora, to corroborate its position regarding the daily inspection reports and plant operator job duties. The Board has previously found that failure to offer evidence on a certain issue, though production of such evidence is within a party's power, may raise an inference that the evidence, if produced, would have been adverse. (*BHC Fremont Hospital, Inc.*, Cal/OSHA App. 13-0204, Denial of Petition for Reconsideration (May 30, 2014), citing *Macco Constructors, Inc.*, Cal/OSHA App. 84-1106, Decision After Reconsideration (Aug. 20, 1986) [citation omitted].) We find that unexplained ambiguity undermines Employer's position regarding Zamora's daily inspections and job duties.

[11] Employer's Exhibits A and E were admitted into the record. (TR. Vol. II, pp. 232-233.)

The foreging evidence sufficiently demonstrates that based on reasonable predictability employees while in the course of assigned work duties, pursuing personal activities during work, and normal means of ingress and egress would have access to the zone of danger, thereby demonstrating exposure.

We conclude the Division has proven potential exposure.

Neither actual knowledge nor constructive knowledge are required to support a finding of a Repeat, General citation violation.

Employer essentially argues that the violation should be excused because it did not have knowledge of the violative condition and there is no evidence establishing when the violation of the broken swing gate on the platform in fact occurred. Employer's arguments are unpersuasive because neither actual knowledge nor constructive knowledge are defenses to a General violation. (*C. Overaa & Company*, Cal/OSHA App. 01-3560, Decision After Reconsideration, fn. 8 (Apr. 1, 2004).)

While lack of knowledge might be relevant to certain affirmative defenses and to rebut a serious classification under Labor Code section 6432(c), lack of knowledge, by itself, is not sufficient to overcome the violation. [12] To hold otherwise would have the result of giving employers an incentive to stay ignorant of worksite conditions. (*Webcor Construction LP dba Webcor Builders*, Cal/OSHA App. 08-2499, Denial of Petition for Reconsideration (Oct. 12, 2009).)

Accordingly, we decline to dismiss the violation based on Employer's purported lack of actual or constructive knowledge.

2. If a violation exists, did the Division demonstrate that it properly classified the citation as Repeat, General?

Employer argues that the Division failed to prove multiple elements necessary to establish a "repeat general" violation against Employer under section 3212(a)(2)(A). However, Employer's argument is unpersuasive in light of the testimony, evidence, and stipulations entered into the record that all contradict its position.

Section 334, subdivision (d) states,

> Repeat Violation—is a violation where the employer has abated or indicated abatement of an earlier violation occurring within the state for which a citation was issued, and upon a later inspection, the Division finds a violation of a substantially similar regulatory requirement and issues a citation within a period of five years immediately following the latest of: (1) the date of the final

[12] Employer also argues the broken swing gate could not be discovered through reasonable diligence, which falls under the serious classification argument and as explained above, fails as it is inapplicable to a Repeat, General citation.

> order affirming the existence of the previous violation cited in the underlying citation; or (2) the date on which the underlying citation became final by operation of law. For violations other than those classified as repeat regulatory, the subsequent violation must involve essentially similar conditions or hazards.

During the hearing the PALJ stated, "[i]t is 2:49, and the parties have discussed this with their respective clients, and we have a stipulation related to the classification of the citation. The parties stipulate that if there is a violation established in the citation at issue in this inspection, then employer does not contest the classification of repeat general." (TR, Vol. I, p. 126.)

Based on this stipulation alone, affirmance of the Repeat, General classification is appropriate. A stipulation satisfies the evidentiary burden and establishes the facts contained therein. (*C.A. Rasmussen, Inc.*, Cal/OSHA App. 08-0219, Decision After Reconsideration (Jul. 19, 2012).) A stipulation serves as a substitute for the evidence that might otherwise be submitted as proof. (*Jaguar Farm Labor Contracting, Inc.*, Cal/OSHA App. 09-1135, Denial of Petition for Reconsideration (Oct. 6, 2010), citing *Kinetic Systems, Inc.*, Cal/OSHA App. 06-3627, Decision After Reconsideration (Apr. 8, 2010) [citations omitted].) Where the parties enter into a binding stipulation, it ends the matter because the stipulation serves to remove an item that is not in dispute from contention. (*Ibid*.)

Further, even setting aside the stipulation, the record supports the classification. Dutton cited Employer for a violation of section 3212(a)(2)(A) based on his inspection. When Dutton was completing his review of Employer's history, it revealed that Employer was also cited on May 12, 2021, for a violation of section 3212(a)(2)(A), the same regulatory requirement. Dutton testified, "when I got back to my office and started inputting my inspection in the computer, we cross-reference previous inspections with that Employer, and it shows us what violations or citations have been issued. And that same regulation [Section 3212(a)(2)(A)] popped up." (TR, Vol. I, p. 65.) Dutton further testified, "…once I started inputting into the OASIS system, it flagged it as being previously cited at that Employer." (*Ibid*.)

Siemens also confirmed through testimony that he completed a program planned inspection on Employer on May 12, 2021. (TR, Vol. I, pp. 121-126.) Employer was cited for the same violation within a period of five years immediately following the date on which the underlying citation became final by operation of law (as a result of Employer not appealing that earlier citation). (See Lab. Code § 6601.)

We conclude that the Division established a Repeat, General classification was appropriate.

3. Did the PALJ's finding of fact 12, that the discharge box could have failed at any point despite the bottom of the box being lined with concrete, constitute reversible error?

In finding of fact number 12, the PALJ concluded the discharge box could have failed at any point notwithstanding the concrete lining at the bottom of the discharge box. During the hearing, Employer's witnesses testified that the discharge box had not failed since 2017, which was when the discharge box was lined with concrete to prevent the discharge box from corroding, and it had not needed further maintenance since then.

In its Petition, Employer argues that the evidence does not justify finding of fact 12. Employer argues that the evidence demonstrates the discharge box was reinforced with a concrete lining in 2017 to mitigate corrosion; no testimony or documentation indicates subsequent corrosion or imminent failure; and the record shows no instances of failure or maintenance needs since 2017, which renders finding of fact 12 speculative.

Review of the witness testimony during the hearing contradicts Employer's position. As discussed above, both Rocha's and Radman's testimony points to the discharge box inevitably failing at some point in the future, even with the presence of a concrete lining within, as corrosion causes discharge box failures. (TR, Vol. I, pp. 159-164; TR, Vol. II, pp. 181, 205-206.) Further, as discussed above, Employer admitted that no one could predict when a failure might occur and conceded it could happen, "an hour from now." (TR, Vol. II, pp. 205-206.)

We conclude that finding of fact 12 is supported by the evidence and affirmed.

4. **Did the PALJ's finding of fact 13, that if the discharge box had failed or the attached hose had needed maintenance, a mechanic would need to access the maintenance platform where the swing gate had fallen due to rusted hinges, constitute reversible error?**

As noted above, in finding of fact 13 of the Decision, the PALJ concluded the maintenance platform would need to be accessed to fix the hose and that the swing gate had fallen due to rusted hinges. Employer argues the record establishes that the discharge box and hose did not require regular maintenance; access to the maintenance platform was only necessary for the rare event of a complete discharge box failure; testimony reveals that employees are trained to identify and address safety hazards; and no evidence supports the assumption that the swing gate had fallen due to rusted hinges.

Dutton testified that the maintenance platform would need to be accessed to unclog the hose and that rusted swing gate hinges could be attributed to the plant being close to the ocean. (TR, Vol. I, pp. 43-44, 55, 57, 116.) In contrast, Rocha testified that a hose would be unclogged from the ground and that the hose is maintenanced from a different ladderway than the maintenance platform that services the discharge box. (TR, Vol. I, p. 145; TR, Vol. II, pp. 212-214, 217.) Dutton's testimony about accessing the maintenance platform to unplug the hose and the swing gate falling due to rusted hinges is not corroborated by any evidence or testimony in the record. Nevertheless, it does not change our findings in this DAR as it is harmless error because the safety order was still violated as explained above. The ladderway would still have to be accessed to get onto the maintenance platform to replace the discharge box if it failed, which requires a functional swing gate. There is no dispute the swing gate was detached from the ladderway opening, which constituted a violation of the safety order.

We therefore conclude the PALJ's finding of fact regarding the hose maintenance and rusted hinges on the swing gate constitute harmless error and otherwise affirm the PALJ. (See *Kaiser Steel Corporation, Steel Manufacturing Group*, Cal/OSHA App. 80-154, Decision After Reconsideration (Dec. 20, 1984) [finding no prejudice to Employer when ALJ made harmless error regarding motion to amend as employer had sufficient notice of the violation].)

Based on the foregoing, we affirm Citation 1, Item 1 as a Repeat, General violation.

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

/s/ Ed Lowry, Chair
/s/ Judith S. Freyman, Board Member
/s/ Marvin Kropke, Board Member

FILED ON: 11/05/2026