

**BEFORE THE  
STATE OF CALIFORNIA  
OCCUPATIONAL SAFETY AND HEALTH  
APPEALS BOARD**

*In the Matter of the Appeal of:*

**ABM FACILITY SERVICES, INC. DBA  
ABM BUILDING VALUE**  
1150 South Milliken Avenue  
Ontario, CA 91767

Employer

**DOCKETS 12-R3D6-3496  
Through 3498**

**DECISION**

**STATEMENT OF THE CASE**

ABM Facility Services, Inc. (Employer) is a provider of building maintenance and facility services in the United States and Canada. On May 18, 2012, Associate Safety Engineer Tomas Micheo (Micheo), employed by the Division of Occupational Safety and Health (the Division) began an inspection at a work site maintained by Employer at 1175 S. Dupont Avenue, Ontario, California (work site). On November 16, 2012, the Division cited Employer for failure to establish, implement and maintain an effective Injury and Illness Prevention Program, failure to ensure that certain conditions were met before commencing work on an energized system, and allowing employees to perform work on an energized 277 volt fluorescent lighting system without locking the disconnecting means.

The Employer filed an appeal contesting the existence of a violation of the safety order, the abatement requirements and the reasonableness of the penalty for Citation 1, Item 1; and the existence of a violation of the safety order, abatement requirements, classification, and the reasonableness of the penalty for Citations 2 and 3. Employer pleaded affirmative defenses as indicated in Employer's Appeal filed with the Occupational Safety and Health Appeals Board (Exhibit 1).

The matter came on regularly for hearing before Clara Hill-Williams, Administrative Law Judge (ALJ) for the California Occupational Safety and Health Appeals Board, at West Covina, California on October 15, 2013, March 13, 2014 and on July 15, 2014. Employer was represented by Attorney Muizz Rafique. Staff Counsel Kathryn Woods represented the

Division. The parties presented oral and documentary evidence.<sup>1</sup> The ALJ extended the submission date to August 18, 2015.

### **ISSUES**

1. Did Employer implement and maintain an effective Injury and Illness Prevention Program for ensuring employees complied with safe and healthy work practices?
2. Was the penalty proposed for failure to implement and maintain an effective IIPP reasonable?
3. Did Employer fail to ensure good work practices and procedures were followed when replacing a lighting system?
4. Was the violation for failing to ensure good work practices and procedures for replacing a lighting system correctly classified as a serious violation?
5. Did Employer demonstrate that it did not and could not with the exercise of reasonable diligence, know of the presence of its employee replacing a lighting system incorrectly?
6. Did the Division establish a nexus between the violation of the safety order in failing to ensure good work practices and procedures for replacing a lighting system and Weeks' fatal injury to sustain the accident-related characterization of the violation?
7. Was the proposed penalty for the serious accident related violation reasonable?
8. Did Employer establish that Weeks' actions were an independent act of an employee?
9. Did Employer allow its employee to work on a de-energized 277 volt fluorescent lighting system without locking the disconnecting means to effectively prevent unexpected or inadvertent energizing of said equipment?

### **FINDINGS OF FACT**

1. Phillip Weeks (Weeks), employed by Employer, was fatally electrocuted while attempting to replace an emergency ballast<sup>2</sup> on May 18, 2012,

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<sup>1</sup> Unless otherwise specified, all section references are to Sections of California Code of Regulations, title 8.

<sup>2</sup> In a fluorescent lighting system, the ballast regulates the current to the lamps and

at Employer's work site.

2. Employee Monty Miles (Miles) was assigned to assist Weeks, who was the lead in replacing the emergency ballast<sup>3</sup>.
3. The emergency ballast has a timing system with more connecting wires than a regular ballast and includes a battery pack, with more steps in the installation process than connecting a regular ballast.
4. Employer had a written Injury Illness Prevention Program.
5. Employer had written "Energy Safety Procedures".
6. A "Job Briefing and Planning Check List" were not completed prior to working on the energized system, nor was an "Equipment/Tool Inspection Check List" completed prior to working on the energized system to replace an emergency ballast at the work site on May 18, 2012.
7. Employer did not conduct a hazard assessment prior to allowing employees to replace the emergency ballast at the work site.
8. Employer's "Energized Work Permit" was not issued to Weeks prior to working on the energized system.
9. Weeks and Miles were not assigned to perform hot work on May 18, 2012.
10. Weeks failed to obtain permission as required by Employer's ESP, to work on energized parts or equipment.
11. The proposed penalty calculations of \$935 for Employer's failure to maintain an effective IIPP is in accordance with the Division's regulations. The Division presented sufficient facts to support its calculations on severity, extent, likelihood and good faith.
12. Weeks did not have any prior experience in replacing emergency ballasts or in electrical practices.

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provides sufficient voltage to start the lamps. Without a ballast to limit its current, a fluorescent lamp connected directly to a high voltage power source would rapidly and uncontrollably increase its current draw. Within a second the lamp would overheat and burn out..."-*NATIONAL LIGHTING PRODUCT INFORMATION PROGRAM*

1. <sup>3</sup> An emergency ballast allows the lighting fixture to operate in an emergency mode if there is a power outage. [www.exitlightco.com](http://www.exitlightco.com)

13. Weeks and Miles did not receive any specific instructions, work techniques or safety instructions regarding the hazards involved in installing an emergency ballast.
14. Weeks did not use suitable personal protective equipment; safeguards (i.e., approved insulated gloves or insulated tools) were not used for installing the emergency ballast.
15. Suitable barriers or approved insulating material was not used to prevent accidental contact with energized parts.
16. Employer allowed its employees to work on exposed energized parts or equipment, which caused the fatality.
17. The penalty may not be reduced by any of the adjustment factors except for size because Employer's violation of the safety order caused a serious injury.
18. Employer did not have a "lead electrician" assigned to the work site to more closely monitor the installation of the emergency ballast to avoid the hazard that resulted in the fatal injury.
19. Miles and Weeks had never changed an emergency ballast before May 18, 2012, and were not given any training regarding changing an emergency ballast.
20. The work site on May 18, 2012 did not have effective supervision. (Shawn Sharifpour), Miles and Weeks supervisor only came to the work site once a week and Employer did not have a lead electrician at the work site.
21. The power at the work site was not de-energized before Miles began assisting Weeks in installing an emergency ballast.

### **ANALYSIS**

#### **1. Did Employer implement and maintain an effective Injury and Illness Prevention Program for ensuring employees complied with safe and healthy work practices?**

Section 3203, subdivision (a) provides:

Every employer shall establish, implement and maintain an effective Injury and Illness Prevention Program. The Program shall be in writing and, shall, at a minimum:

- (1) Identify the person or persons with authority and responsibility for implementing the Program.
- (2) Include a system for ensuring that employees comply with safe and healthy work practices. Substantial compliance with this provision includes recognition of employees who follow safe and healthful work practices, training and retraining programs, disciplinary actions, or any other such means that ensures employee compliance with safe and healthful work practices.
- (3) Include a system for communicating with employees in a form readily understandable by all affected employees on matters relating to occupational safety and health, including provisions designed to encourage employees to inform the employer of hazards at the worksite without fear of reprisal. Substantial compliance with this provision includes meetings, training programs, posting, written communications, a system of anonymous notification by employees about hazards, labor/management safety and health committees, or any other means that ensures communication with employees.
- (4) Include procedures for identifying and evaluating work place hazards including scheduled periodic inspections to identify unsafe conditions and work practices. Inspections shall be made to identify and evaluate hazards.  
(B)Whenever new substances, processes, procedures, or equipment are introduced to the workplace that represent a new occupational safety and health hazard;

The Division alleged:

On, and before May 18, 2012, the Employer, ABM Facility Services, Inc. dba: ABM Building Value, had established, but did not implement and maintain an effective Injury Illness Prevention Program. The Employer's system for ensuring that employees comply with safe and health work practices is ineffective in that the Chief Engineer was not following his own safety rules. In addition, the employer did not effectively evaluate unsafe work practices associated with electrical work procedures at the BMW Group Training Center, located at 1175 S. DuPont Ave.

Ontario, CA 9164.

The following company procedures were not followed when working on electrical systems:

1. A Job Briefing and Planning Check List were not completed prior to working on the energized system.
2. An Equipment / Tool Inspection Check list was not completed prior to working on the energized system.
3. A Hazard Risk Evaluation was not performed prior to working on the energized system.
4. An Energized Work Permit had not been issued to the Chief Engineer prior to working on the energized system.

As a result, the Chief Engineer was electrocuted while working on an energized system causing his fatality. The employer had approximately 2 employees working at the BMW Training Center facility.

The Division has the burden of proving a violation, including the applicability of the safety order, by a preponderance of the evidence. (*Howard J. White, Inc.*, Cal/OSHA App. 78-741, Decision After Reconsideration (June 16, 1983).) "Preponderance of the evidence" is usually defined in terms of probability of truth, or of evidence that when weighted 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. (*Lone Pine Nurseries*, Cal/OSHA App. 00-2817, Decision After Reconsideration (Oct. 30, 2001), citing *Leslie G. v. Perry & Associates* (1996) 43 Cal App. 4th 472, 483, review denied.)

To establish an Injury Illness Prevention Program (IIPP) violation, the Division must prove that flaws in the Employer's written IIPP amounted to a failure to "establish" or "implement" or "maintain" an "effective" program. A single, isolated failure to "implement" a detail within an otherwise effective program does not necessarily establish a violation for failing to maintain an effective program where that failure is the sole imperfection. (See *GTE California*, Cal/OSHA App. 91-107, Decision After Reconsideration (Dec. 16, 1991); *David Fischer, dba Fischer Transport, A Sole Proprietorship*, Cal/OSHA App. 90-762, Decision After Reconsideration (Oct. 16, 1991).) Here, Thomas Micheo (Micheo), Associate Safety Engineer cited section 3203, which requires that Employer's IIPP include the health and safety practices and procedures as stated above.

In determining whether Employer identified the person or persons with authority and responsibility in implementing the program as defined in 3203, subdivision (a)(1) above, the Division alleged that the “Chief Engineer”, Weeks, was not following his employer’s program. Micheo’s investigation revealed Weeks was in charge of the assigned job to replace the back-up or emergency ballast on the day the fatal accident occurred. During Micheo’s interview with Miles on May 18, 2012 and his testimony at the hearing, Miles stated he had only changed a regular ballast and had never replaced an emergency ballast system. Based upon Micheo’s investigation and the testimony of Miles, Micheo identified Weeks as the person with authority and responsibility for replacing the emergency ballast. However, Employer’s IIPP did not identify the person or persons with authority and responsibility in implementing the program. Shaurifpour, Miles and Weeks supervisor testified, identifying himself as the person with authority and responsibility to implement the program, which included assigning the task of changing the emergency ballast.

Micheo cited Employer for not ensuring that its employees complied with safe and healthy work practices required in subdivision (2) above. The Division alleged as stated above, that Weeks failed to follow Employer’s safety rules. Micheo explained that changing an emergency ballast was a more difficult procedure than changing a regular ballast. According to Micheo, replacing emergency ballast required a “hot work” permit, requiring electrical power. Micheo stated that an energized emergency ballast has 277 volts, with unprotected contact resulting in a potential for death or serious injury. Employer’s Electrical Safety Program (ESP) required a request for a completed form titled “Energized Work Permit” (Exhibit 12)<sup>4</sup> to perform hot work. The forms Micheo received from Employer were blank. Sharifpour, who was also Employer’s regional manager, testified that Weeks and Miles were not assigned to perform hot work. Weeks' failure to request permission was in violation of Employer’s ESP.

In addressing subdivision (3), requiring a system for communicating with employees in a form readily understandable by all affected employees relating to occupational safety and health, the Division alleged a “Job Briefing and Planning Check List” were not completed prior to working on the energized system, nor was an “Equipment/Tool Inspection Check List” completed prior to working on the energized system. Micheo requested Employer’s procedure for replacing an emergency ballast, but only received

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<sup>4</sup> P.24 of Employer’s Electrical Safety Program

plans for replacing a regular ballast. Miles stated that usually he and Weeks would discuss the next day's assignment and the task they were going to perform. According to Miles, he and Weeks did not have a safety meeting regarding the installation of the ballast on May 17<sup>th</sup>, the day before the May 18<sup>th</sup> accident. May 18<sup>th</sup> was the first time Miles had assisted in installing an emergency ballast. Miles recalled that just prior to the accident, the wrong ballast was ordered. Miles testified that he did not understand, nor could he see what Weeks was doing because Weeks had climbed through an opening in the ceiling to replace the emergency ballast, while Miles handed tools to him. Here, Employer did not have a system for communicating to its employees at the work site that was readily understandable by all affected employees. Failing to complete a job briefing and having an equipment/tool check list before beginning the work to install the emergency ballast affected the safety and health of Miles and Weeks at the work site.

At the hearing the Division presented evidence that Employer failed to implement procedures for identifying and evaluating work place hazards including scheduled periodic inspections to identify unsafe conditions and work practices required under subdivision (4). The Division alleged the employer did not effectively evaluate unsafe work practices associated with electrical work procedures at the work site. Sharifpour acknowledged that he did not have any electrical background or experience. Sharifpour only visited the work site once a week. Sharifpour and Miles both testified that outside vendors were hired to perform any energized or "hot work". Since Sharifpour only visited the site once a week and was did not have electrical experience, there was no one readily available to identify and evaluate hazards, unsafe conditions and work practices involving electrical procedures, as required by Employer's ESP (Exhibit 12)<sup>5</sup>.

In review of the evidence, the Division established that Employer failed to implement the program as defined in 3203, subdivision (a)(1) above. Weeks, did not follow Employer's program for ensuring that its employees

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<sup>5</sup> ABM's Electrical Safety Program p.7 Section 8 "HAZARD/RISK EVALUATION PROCEDURE" states:

A hazard/risk evaluation must be conducted by the Lead Electrician/Engineer before any work is started within the Limited Approach boundary on exposed, energized electrical conductors or circuits parts at 50 volts or more. Results of the hazard/risk evaluation must be incorporated into the written Energized Electrical Work Permit, including required controls and PPE. Steps involved in the hazard/risk evaluation are:

- a. Gather task information and determine task limits
- b. Document hazards associated with each task
- c. Estimate the risk factors for each hazard task
- d. Determine potential for a shock hazard
- e. Determine potential for an arc flash/blast hazard
- f. Determine the degree of the hazard
- g. Specify the protective equipment necessary to minimize the exposure
- h. Secure appropriate authorization to justify executing the work task while the exposed conductor and circuit parts are energized

complied with safe and healthy work practices as required by subdivision (2), which was shown by Weeks' failure to obtain permission or notify Employer that hot work was required. In addressing subdivision (3), the Division established that Employer failed to have a system for communicating with employees by having a job briefing and planning check list or an equipment/tool check list readily understandable by all affected employees. Finally, subdivision (4) is established because Employer did not effectively evaluate unsafe work practices associated with electrical work procedures at the work site, because there was no one readily available to identify and evaluate hazards including scheduled periodic inspections to identify unsafe conditions and work practices involving electrical procedures.

**2. Was the penalty proposed for failure to establish, implement and maintain an effective IIPP reasonable?**

The Division must calculate proposed penalties in accordance with its regulations and present proof sufficient to support its calculations on severity, extent, likelihood and good faith. (*Gal Concrete Construction Co.*, Cal/OSHA App. 89-317/318, DAR (Sept. 27, 1990).) The Division must properly rate the employer's safety program and its experience to justify a penalty. (*Monterey Abalone*, Cal/OSHA App. 75-786, DAR (March 15, 1977).)

In calculating the penalty, Micheo classified the violation as a general violation. A general violation is a violation which is specifically determined not to be of a serious nature, but has a relationship to occupational safety and health of employees.

Micheo rated severity as high. Severity is based upon the type and amount of medical treatment likely to be required or which would be appropriate for the most likely type of injury. Micheo classified severity as high because Employer's inadequate implementation of its IIPP contributed to a serious injury and in this case death.

Micheo evaluated extent as medium. Section 335, subdivision (a)(2) provides that when the safety order violated does not pertain to illness, extent is based on the ratio of the number of violations of a certain order to the number of possibilities for a violation at the work site. Micheo rated the extent as medium because two employees were affected by Employer not effectively implementing its IIPP.

Likelihood as set forth in section 335, subdivision (a)(3) is based on the number of employees exposed to the violative condition and the extent to which the violation has in the past resulted in injury, illness or disease to the Employer's employees or the industry in general. Here, Micheo rated

likelihood as high because the forms requesting “hot work” were blank, and because two employees were exposed, resulting in an employee fatality.

Micheo allowed a 50 percent abatement credit resulting in a proposed penalty of \$935<sup>6</sup>. Micheo’s penalty calculations (C-10 Worksheet - Exhibit #7) were determined in accordance with the Division’s policies and the California Code of Regulations. At the hearing Employer did not object to Reyes’ calculation of the penalty and is deemed waived (See *Stockton Tri*, Cal/OSHA App. 02-4946, Decision After Reconsideration (Mar. 27, 2006).

**3. Did Employer fail to ensure good work practices and procedures were followed when replacing a lighting system?**

Section 2320.2, Subdivision (a) Energized Equipment or Systems, provides:

(a) Work shall not be performed on exposed energized parts of equipment or systems until the following conditions are met:

(1) Responsible supervision has determined that the work is to be performed while the equipment or systems are energized.

(2) Involved personnel have received instructions on the work techniques and hazards involved in working on energized equipment.

(3) Suitable personal protective equipment and safeguards (i.e., approved insulated gloves or insulated tools) are provided and used.<sup>7</sup>

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<sup>6</sup> An error was made on the C-10 but the final amount is correct.

<sup>7</sup> Exception: The use of approved insulating gloves or insulated tools or other protective measures are not required when working on exposed parts of equipment or systems energized at less than 50 volts provided a conclusive determination has been made prior to the start of work by a qualified person that there will be no employee exposure to electrical shock, electrical burns, explosion or hazards due to electric arcs.

(A) Rubber insulating gloves shall meet the provisions of the American Society for Testing Materials (ASTM) D 120-02a, Standard Specification for Rubber Insulating Gloves, and be maintained in accordance with ASTM F 496-02a, Standard Specification for In-Service Care of Insulating Gloves and Sleeves, which are hereby incorporated by reference. Note: The ASTM F 496-02a standard contains provisions regarding the care, inspection, testing and use of insulating gloves and sleeves. Among other requirements, this standard provides that electrical retests shall not exceed 6 months for insulating gloves and 12 months for insulating sleeves and that insulating gloves and sleeves that have been electrically tested but not issued for service shall not be placed into service unless they have been electrically tested within the previous twelve months.

(B) Insulated tools shall meet the provisions of the American Society for Testing Materials (ASTM) F 1505-01, Standard Specification for Insulated and Insulating

(4) Approved insulated gloves shall be worn for voltages in excess of 250 volts to ground.

(5) Suitable barriers or approved insulating material shall be provided and used to prevent accidental contact with energized parts.

The Division alleged:

On May 18, 2012, a fatal workplace incident occurred at a place of employment located at 1175 S. DuPont Ave., Ontario, when a Chief Engineer employed ABM Facility Services dba ABM Building Value was electrocuted while working on an energized 277 volt fluorescent lighting system. Prior to commencing work on the energized system at the time of the incident, the employer did not ensure that conditions such as, but not limited to the following were met:

1. Responsible supervision determined that the work needed to be performed while the equipment or system was energized.
2. Suitable personal protective equipment and safeguards were provided and used by the employee, such as insulated gloves.
3. Approved insulated gloves were worn when working on 277 volts.
4. Suitable eye protection was provided and used.
5. An arc flash suit or other suitable apparel was not provided and used.

To establish a violation of section 2320.2, subdivision (a) pertaining to energized equipment or systems. The Division must establish that Employer failed to ensure that work was not performed on exposed energized parts or equipment until (1) Responsible supervision determining that the work to be performed while equipment or systems that are energized; (2) Involved personnel received instructions on the work techniques and hazards involved in working on energized equipment; (3) Suitable personal protective equipment (PPE) and safeguards (i.e., approved insulated gloves or insulated tools) were provided or used; (4) Approved insulated gloves were worn for voltages in excess of 250 volts to ground; and (5) Suitable barriers or

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Hand Tools, which is hereby incorporated by reference.

approved insulating material was provided and used to prevent accidental contact with energized parts.

Here, regarding the first requirement of “responsible supervision determining that the work be performed with equipment or systems that are energized, Micheo has shown that Weeks failed to obtain permission as required by Employer’s ESP, to work on energized parts or equipment. Miles’ testimony as discussed above indicated that he asked Weeks if the power should be turned off during Weeks attempt to replace the emergency ballast with Weeks responding “no”<sup>8</sup>. Sharifpour testified that Weeks did not have any prior experience in replacing emergency ballasts or in electrical practices. Sharifpour also stated Weeks failed to inform him that Weeks was performing work on energized parts or equipment. Miles, Sharifpour and Safsten all testified, as well as Employer’s ESP provided that employees were required to obtain prior permission before performing “hot work”, and under circumstances where power is not turned off. However, there was also a failure to provide supervision. A lead electrician assigned to the work site could have halted Weeks’ attempt to install the emergency ballast on May 18, 2012. Thus, Employer violated the requirements of the safety order, requiring responsible supervision in determining that the work performed is with equipment or systems that are energized.

In examining the second element of the safety order, the Division alleged a violation because Employer’s “involved personnel” (Weeks and Miles) did not receive instructions on the work techniques and hazards involved in working on energized equipment on May 18, 2012. While Employer maintains that pursuant to its ESP, Weeks and Miles were prohibited from working on energized systems, Sharifpour was aware that an emergency ballast was ordered to install on May 18<sup>th</sup> because Miles testified that he and Weeks told Sharifpour that the wrong ballast was previously ordered. Weeks and Miles did not receive any further instructions, work techniques or safety instructions regarding the hazards involved in installing an emergency ballast. Therefore, the second element requiring that involved personnel receive instructions on the work techniques and hazards involved in working on energized equipment was not met.

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<sup>8</sup> The statement attributed to Weeks is hearsay. Evidence Code section 1200 defines “Hearsay evidence” as evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated. Weeks statement is admissible as a “Declaration against interest under section 1230: Evidence of a statement by a declarant having sufficient knowledge of the subject is not made inadmissible by the hearsay rule if the declarant is unavailable as a witness and the statement, when made, was so far contrary to the declarant’s pecuniary or proprietary interest, or so far subjected him to the risk of civil or criminal liability, or so far tended to render invalid a claim by him against another, or created such a risk of making him an object of hatred, ridicule, or social disgrace in the community, that a reasonable person in his position would not have made the statement unless he believed it to be true.

The Board in *Rick's Electric Inc.*, Cal/OSHA App. 95-136, Decision After Reconsideration (Sept. 24, 1997), held that an employer failed to determine if the parts of a system that were to be worked on by an employee were energized. The employer in *Rick's Electric*, *supra*, contended that because its foreman thought the line the employee was working on was de-energized, it made a determination that adequately complied with section 2320.2, subdivision (a)(1). The Board held that an employer is required to treat any electrical system as energized unless it has made an adequate determination that it is not energized. Section 2320.3 provides: "All electrical equipment and systems shall be treated as energized as required by Section 2320.2 until tested or otherwise proven to be de-energized." Here, *Rick's Electric Inc.*, is applicable. Sharifpour failed to determine if the parts of the emergency ballast to be worked on by Weeks and Miles were energized. Despite Employer's policy of its employees not performing "hot work", under *Rick's Electric*, *supra*, the employer is require to treat any electrical system as energized unless it has made an adequate determination that it is not energized. Here, as stated above, Weeks and Miles did not have a job briefing or a check list completed prior to working on the energized system and was without a lead electrician to supervise their assignment.

The safety order's third requirement that suitable personal protective equipment and safeguards (i.e., approved insulated gloves or insulated tools) should be provided and used;<sup>9</sup> was also violated as shown by Miles' testimony stating that on previous occasions when installing regular ballasts, Weeks had worn protective gloves, but while gloves were available on May 18, 2012, Weeks was not wearing gloves at the time the accident occurred. Likewise, the fourth and fifth elements of the safety order as stated above, requiring eye protection and a safety suit to protect against

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<sup>9</sup> Exception: The use of approved insulating gloves or insulated tools or other protective measures are not required when working on exposed parts of equipment or systems energized at less than 50 volts provided a conclusive determination has been made prior to the start of work by a qualified person that there will be no employee exposure to electrical shock, electrical burns, explosion or hazards due to electric arcs.

- (C) Rubber insulating gloves shall meet the provisions of the American Society for Testing Materials (ASTM) D 120-02a, Standard Specification for Rubber Insulating Gloves, and be maintained in accordance with ASTM F 496-02a, Standard Specification for In-Service Care of Insulating Gloves and Sleeves, which are hereby incorporated by reference. Note: The ASTM F 496-02a standard contains provisions regarding the care, inspection, testing and use of insulating gloves and sleeves. Among other requirements, this standard provides that electrical retests shall not exceed 6 months for insulating gloves and 12 months for insulating sleeves and that insulating gloves and sleeves that have been electrically tested but not issued for service shall not be placed into service unless they have been electrically tested within the previous twelve months.
- (D) (B) Insulated tools shall meet the provisions of the American Society for Testing Materials (ASTM) F 1505-01, Standard Specification for Insulated and Insulating Hand Tools, which is hereby incorporated by reference.

arch flashes were all ignored by Weeks in his attempt to install the emergency ballast.

The Division has established a violation of section 2320.2, subdivision (a) by showing that work was performed on exposed energized parts or equipment without (1) Responsible supervision determining that the work to be performed with the emergency ballast involved parts or equipment that was energized; (2) Weeks and Miles as assigned employees to install the emergency ballast did not receive instructions on the work techniques and hazards involved in installing the ballast; (3) Suitable personal protective equipment and safeguards (i.e., approved insulated gloves or insulated tools) were not used; (4) approved insulated gloves were not worn for the emergency ballast that was in excess of 250 volts; and (5) Suitable barriers or approved insulating material was not used to prevent accidental contact with energized parts.

**4. Was the violation for failing to ensure good work practices and procedures for replacing a lighting system correctly classified as a serious violation?**

Labor Code section 6432, subdivision (a) states:

- (a) There shall be a rebuttable presumption that a serious violation exists in a place of employment if the division demonstrates that there is a realistic possibility that death or serious physical harm could result from the actual hazard created by the violation. The demonstration of a violation by the division is not sufficient by itself to establish that the violation is serious. The actual hazard may consist of, among other things:
- (2) The existence in the place of employment of one or more unsafe or unhealthful practices, means, methods, operations, or processes that have been adopted or are in use.

Here, the “practice” or “method of operation . . . adopted or in use” in determining whether the Division presented sufficient evidence to prove the “serious” classification of the violation, the legal standard is expressed in Labor Code section 6432, subdivision (a) which states:

The elements of a serious violation are: (1) a violation exists in a place of employment; (2) a demonstration of realistic possibility of death or serious injury; (3) employee exposure to actual hazard; and (4) if elements 1, 2, and 3 are established; there exists a

rebuttable presumption that the violation is serious.

The first element, of a serious violation is to determine whether “a violation exists in a place of employment”. This element is established by showing that work was performed on exposed energized parts or equipment without supervision in violation of the safety order as discussed above. Weeks attempted to install an emergency ballast without permission to work on an energized system, without protective personal equipment and without supervision.

The second element, a demonstration of “realistic possibility” of death or serious injury is not defined in the Labor Code or safety orders, but has previously been addressed by the Appeals Board. In *Janco Corporation*, Cal/OSHA App. 99-565, Decision After Reconsideration (Sep. 27, 2001), the Appeals Board determined that it was unnecessary for the Division to prove actual splashing of caustic chemicals but only a realistic possibility that splashing of chemicals occurred. The Appeals Board explained: “[c]onjecture as to what would happen if an accident occurred is sufficient to sustain (a violation)... if such a prediction is clearly within the bounds of human reason, not pure speculation.” Micheo testified that suitable personal protective equipment and safeguards (i.e., approved insulated gloves or insulated tools) were not used; (4) approved insulated gloves were not worn for the emergency ballast that was in excess of 250 volts; and (5) Suitable barriers or approved insulating material was not used to prevent accidental contact with energized parts. Wearing the protective equipment would have prevented a realistic possibility of serious burns and electrocution and death.

The third element is whether there is exposure to an actual hazard. Here, the actual hazard was the employees’ exposure to an energized system because Weeks refused to have Miles turn the power off. Employer’s inadequate implementation of its ESP policies and procedures exposed its employees to hazards section 2320, subdivision (a), was designed to address. Thus, Employer’s actions created a hazard that its employees could be seriously injured.

The first element of “a violation existing in a place of employment is established by work performed on exposed or energized parts or equipment. The second element is established because Micheo demonstrated that a realistic possibility of death or serious injury existed as stipulated by the parties that a serious injury occurred at the worksite. The third element showing that employees were exposed to an actual hazard is based upon the energized ballast that could have been avoided by advising Sharifpour and waiting for further instructions rather than proceeding without permission. Because the first, second and third elements are established, there is a rebuttable presumption that the violation is serious. Thus, the employees

were exposed to an actual hazard, establishing (4) a rebuttable presumption of a serious violation.

**5. Did Employer demonstrate that it did not and could not with the exercise of reasonable diligence, know of the presence of its employee replacing a lighting system incorrectly?**

In determining whether the Employer rebutted the presumption of the Division establishing a serious violation, Section 6432, subdivision (c)(2) states:

Notwithstanding subdivision (c)(1), a serious violation shall not be deemed to exist if the employer can demonstrate that it did not, and could not with the exercise of reasonable diligence, know of the presence of the violation. In *Orange County Sanitation*, Cal/OSHA App. 13-0287 Decision After Reconsideration (May 29, 2015), the Board held that an employer need not raise the statutory defense of “lack of knowledge” in its initial appeal (or through appropriate amendment of the appeal), as it is provided within the Labor Code section 6432, subdivision (a) and is automatically available to the employer once the classification is appealed. The Board further cited Labor Code section 6432, subdivision (c), which explicitly provides an employer the opportunity to rebut the presumption of a serious violation. Specifically, a cited employer is provided the opportunity through statute to demonstrate that although it had exercised reasonable diligence, it could not have, and did not, know of the violation.

Here, Employer raised classification as one of the grounds of its appeal as stated in the “Statement of the Case” above. In applying *Orange County Sanitation*, *supra*, lack of knowledge of the violation raised at the hearing follows as a rebuttal to the Division’s serious classification of the safety order. Lack of knowledge of a violation requires the Employer to demonstrate that even with reasonable diligence, the Employer could not, and did not, know of the presence of the condition that violated the safety order. (*C.C. Myers, Inc.*, Cal/OSHA App. 08-952, Decision After Reconsideration (Dec. 6, 2013).) Employer is responsible for the safety of its employees, and cannot delegate those duties to another. Through the exercise of reasonable diligence, Employer should have been able to recognize the violation.

Employer asserts Weeks violated Employer’s safety rules by working on an energized system. However, in *Southern California Gas Co.*, Cal/OSHA App. 81-0259, Decision After Reconsideration (Sept. 28, 1984) the Board held that the statutory duties relating to employee safety “cannot be delegated by an employer.” Here, Sharifpour was the supervisor and regional manager. He was aware that an emergency ballast was ordered to install at

the work site. Sharifpour also acknowledged his own limited knowledge of electrical systems. Furthermore, Safsten, Employer's director of safety testified that Employer did not have a "lead electrician" at the work site. A lead electrician assigned to the work site could have more closely monitored the installation of the emergency ballast to avoid the hazard that resulted in the fatal injury. Miles credibly testified that no one walked the floor to make sure the work was performed safely. Weeks and Miles were the only employees at the work site. If they had a question about an assignment, Weeks would call Sharifpour (Employer's regional manager) on his mobile phone.

To prove employer knowledge, the Division need not show that the employer's principals or owners were actually aware of an unsafe condition. Failure to exercise supervision adequate to insure employee safety is equivalent to failing to exercise reasonable diligence, and will not excuse a violation on the claim of lack of employer knowledge. (*Stone Container Corporation*, Cal/OSHA App. 89-042, Decision After Reconsideration (March 9, 1990).) Reasonable diligence includes the obligation by foremen or supervisors to oversee the entire work site where safety and health hazards are present if exposure to an unsafe condition exists (See *A. A. Portanova & Sons, Inc.*, Cal/OSHA App. 83-891, Decision After Reconsideration (March 19, 1986).) By failing to provide a lead electrician to supervise and monitor the work assignment of Weeks and Miles, failing to give specific instructions regarding installing an emergency ballast and failing to ensure protective clothing was worn, Employer failed to exercise reasonable diligence to ensure worker safety. As such, Employer may not assert that it lacked knowledge of the existence of the violation. Thus Employer failed to rebut the Division's serious classification of the violation.

**6. Did the Division establish a nexus between the violation of the safety order in failing to ensure good work practices and procedures for replacing a lighting system and Weeks' fatal injury to sustain an accident-related characterization of the violation?**

"To establish the characterization of the violation as accident-related, the Division must show by a preponderance of the evidence a causal nexus between the violation and the serious injury." (*Pierce Enterprises*, Cal/OSHA App. 00-1951, Decision After Reconsideration (Mar. 20, 2002) citing to *Obayashi Corporation*, Cal/OSHA App. 98-3674, Decision After Reconsideration (June 5, 2001). In order for the penalty reduction limitations of Labor Code section 6319, subdivision (d) to apply to the civil penalty as proposed, the Division must prove that a serious violation caused a serious injury. (*Southwest Engineering, Inc.*, Cal/OSHA App. 91-1366, Decision After Reconsideration (July 6, 1993).)

The Board requires a showing of a "causal nexus between the violation and the serious injury" to sustain the classification of accident-related.

(*Sherwood Mechanical, Inc.*, Cal/OSHA App. 08-4692, Decision After Reconsideration (Jun. 28, 2012) citing *Obayashi Corp.*, Cal/OSHA App. 98-3674, Decision After Reconsideration (Jun. 5, 2001).) In other words, where, as here, the evidence establishes that a serious violation caused a serious injury, the violation is properly characterized as “accident-related.” (*Duke Pacific, Inc.*, Cal/OSHA App. 06-5175, Decision After Reconsideration (Mar. 14, 2012), citing *K.V. Mart Company dba Valu Plus Food Warehouse*, Cal/OSHA App. 01-638, Decision After Reconsideration (Nov. 1, 2002).)

Weeks was not wearing any PPE, nor was any PPE found at the accident site. Weeks was working on an energized system. Miles testified that just before the accident occurred he handed Weeks two wire nuts while Weeks was standing on a ladder with his head in the false ceiling. Miles acknowledged that the power was not tested on the day of the fatal accident. Miles stated Weeks was trying to attach the power to the ballast. Within seconds of Weeks telling Miles to keep the power on, Miles heard a loud scream and moments later discovered that Weeks was fatally injured. Because Weeks suffered a serious injury resulting from the hazard created by the violative condition of not turning off the power, the presumption of a serious violation, pursuant to section 6432, subdivision (a), applies, which supports the accident-related characterization.

Micheo classified the violation as accident related for the following reasons: Employer allowed its employees to work on exposed energized parts or equipment without supervision and without instructions regarding the work techniques and hazards involved in installing the ballast; and PPE was not worn in attempting to replace the emergency ballast that was in excess of 250 volts, which created a hazard that resulted in a fatal injury.

**7. Was the proposed penalty for the serious accident related violation reasonable?**

Since the serious violation caused a serious injury, the penalty may not be reduced by any of the adjustment factors except for size<sup>10</sup>. Employer did not receive credit for size because Employer’s IIPP was not operative, resulting in a penalty of \$22,500 (Exhibit 15, “C-10 Penalty Worksheet”).

**8. Did Employer establish that Weeks’ actions were an independent act of an employee?**

Employer raised the independent employee action defense (IEAD) set forth in *Mercury Service, Inc.*, Cal/OSHA App. 77-1133, Decision After Reconsideration (Oct. 16, 1980). The Division asserted IEAD is not applicable because Weeks was a supervisor and not entitled to the IEAD

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<sup>10</sup> Section 336, subdivision (c)(3).

affirmative defense. The Division cited *Brunton Enterprise, Inc.*, Cal/OSHA App. 08-3445, Decision After Reconsideration (Oct. 11, 2013) citing *Davey Tree Surgery Co. v. Occupational Safety & Health Appeals Board*, 167 Cal. App. 3d 1232, 1241 (Cal. App. 1<sup>st</sup> Dist. 1985). The Board has established in previous Decisions After Reconsideration that "to determine whether or not an employee is a supervisor or a foreman . . . the major focus . . . is on the employee's responsibilities for the safety of others." (*City of Sacramento, Department of Public Works*, OSHAB 93-1947, Decision After Reconsideration (Feb. 5, 1998).

Here, the Division relies upon evidence that Weeks' business cards and everyone at the work site referred to him as "Chief". Eric Sorensen (Sorensen), Employer's Senior Vice-President, testified that Weeks was referred to as "Chief" because of his union activities, where he was known as a chief engineer for his experience and pay grade in the union environment.

Sorensen stated Week's business card indicating "Chief Engineer", was generated loosely, where the approval required was only the cost of the card. According to Sorensen, Weeks never supervised, but was supervised by Sharifpour. According to Safsten, Weeks did not conduct safety training and did not have the authority to conduct safety meetings.

In applying *City of Sacramento, Department of Public Works, supra*, the weight of the evidence substantiates Weeks position with Employer as an employee and not as a supervisor, based upon his experience, his specific job duties and his lack of training authority as discussed above. While Weeks may have had more experience than Miles, he cannot be viewed as a supervisor as discussed above. Thus, the IEAD is applicable since Weeks is not deemed to be a supervisor.

According to *Mercury Service, supra*, Employer has the burden of proof to show:

- 1) The employee was experienced in the job being performed.
- 2) The employer has a well-devised safety program which includes training employees in matters of safety respective to their particular job assignments.
- 3) The employer effectively enforces the safety program.
- 4) The employer has a policy of sanctions against employees who violate the safety program.
- 5) The employee caused a safety infraction which he or she knew was contra to the employer's safety requirements.

In considering the first element, whether the employee was experienced in the job being performed, Miles and Sharifpour both testified that Weeks was the lead at the worksite. Miles stated Weeks always wore gloves for safety and lock out/tag out (LOTO) was always performed before

replacing regular ballasts. Miles also indicated that he and Weeks were required to complete a checklist before beginning work on the ballasts. (Exhibit 12 – ESP, p. 23). Miles also confirmed Employer’s safety policy of not allowing them to perform energized work because Employer hired electrical contractors to perform energized electrical work. Weeks had experience in replacing regular ballasts. Sharifpour indicated Weeks and Miles’ job duties at the work site included anything from changing ballasts, and HVAC (air conditioning units) to addressing plumbing problems.

The second element of IEAD requires Employer to have a well-devised safety program which includes training employees in matters of safety respective to their particular job assignments. Miles stated employees were required to take monthly online training sessions. Each training lesson had four sessions. At the end of each session they were required to answer (true/false or multiple choice) questions before they could proceed to the next training topic. Miles acknowledged receiving training in lock-out/tag-out procedures. At the hearing, Sharifpour and Mark Safsten (Safsten), Employer’s Director of Safety, both stated Employer had a comprehensive online training program as well as classroom training. Safsten confirmed that Weeks and Myles received all of the required training including lock out/tag out and changing ballasts. However, Miles testified that he and Weeks had never changed an emergency ballast before May 18, 2012, and were not given any training regarding changing an emergency ballast.

The third element concerns whether “Employer effectively enforces the safety program”. As shown by Miles testimony above, no one walked the floor to make sure the work was performed safely. Weeks and Miles were the only employees at the work site. If they had a question about an assignment, Weeks would call Sharifpour (Employer’s regional manager) on his mobile phone. Sharifpour visited once a week and was otherwise only available by phone.

In considering the fourth element of whether Employer has a policy of sanctions against employees who violate the safety program, Miles stated he was previously disciplined for failing to isolate the power when he was working with another engineer named “Micah”. Miles stated that under Employer’s policies if an employee receives more than two “write-ups” or infractions the employee will be dismissed.

In reviewing the fifth element, whether the employee caused a safety infraction which he or she knew was contra to the employer's safety requirements”, there is substantial evidence to demonstrate Weeks caused a safety infraction, which he knew was contra to the employer’s safety requirements: Weeks failed to complete a Job Briefing and Planning checklist (Employers ESP - Exhibit 12 – P. 23); Miles testified that he and Weeks did not discuss the assignment or have a safety meeting regarding the installation before beginning the installation; Miles credibly testified that

Weeks was not wearing gloves while he was attempting to install the emergency ballast just before the fatal accident occurred; Weeks told him not to shut off the power; and Weeks did not request permission to perform work on energized or “hot work” ballast on May 18<sup>th</sup>, which was in violation of Employer’s ESP.

In reviewing the five elements of the IEAD, Employer does not meet the second element of IEAD. Miles and Weeks had never changed an emergency ballast before May 18, 2012, and were not given any training regarding changing an emergency ballast. Nor does Employer satisfy the third element of effectively enforcing the safety program. The work site on May 18, 2012 did not have effective supervision. Weeks’ supervisor, Sharifpour, only came to the work site once a week. Furthermore, the work site lacked a lead electrician at the work site that had the training and experience to effectively enforce Employer’s safety program on a daily basis. To establish the IEAD, an employer must prove all the following elements by a preponderance of the evidence. Since Employer failed to establish the second element of not being trained in the matters of safety regarding assignment, the third element of effectively enforcing the safety program and the fifth element of causing a safety infraction he knew was contra to the Employers’ safety requirement, the defense is not established.

**9. Did Employer allow its employee to work on a de-energized 277 volt fluorescent lighting system without locking the disconnecting means to effectively prevent unexpected or inadvertent energizing of said equipment?**

Section 2320.4, subdivision (a)(2). De-Energized Equipment or Systems, provides.

- (a) An authorized person shall be responsible for the following before working on de-energized electrical equipment or systems unless the equipment is physically removed from the wiring system:
- (4) Locking the disconnecting means in the “open” position with the use of lockable devices, such as padlocks, combination locks or disconnecting of the conductor(s) or other positive methods or procedures which will effectively prevent unexpected or inadvertent energizing of a designated circuit, equipment or appliance.<sup>11</sup>

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<sup>11</sup> Note: See also Section 3314 of the General Industry Safety Orders (GISO) for lock-out requirements pertaining to the cleaning, repairing, servicing and adjusting of prime movers, machinery and equipment.

The Division alleged:

Prior to a fatal workplace incident at a place of employment located at 1175 S. DuPont Ave., Ontario, a Chief Engineer employed ABM Facility Services dba ABM Building performed work on a de-energized 277 volt fluorescent lighting system without locking the disconnecting means in the “open” position with the use of lockable devices, such as padlocks, combination locks or disconnecting of the conductor(s) or other positive methods or procedures which would effectively prevent unexpected or inadvertent energizing of said equipment.

To establish a violation of section 2320.4, subdivision (a)(2), the Division was required to show that Employer failed to have an authorized person responsible for working on de-energized electrical equipment, by first locking the disconnecting means in the “open” position with the use of a lockable device. The Division must first establish that the electrical equipment was de-energized. As discussed above, on May 18, 2012, the power was not turned off before Miles began assisting Weeks, who was attempting to install an emergency ballast. The cited safety order, section 2320.4, applies only when work is done on a de-energized system. It is found that work was performed on an intentionally energized system because Weeks told Miles not to turn the power off, thereby making section 2320.4 inapplicable.

The Division failed to meet its burden of proof to establish that Employer violated section 2320.4, subdivision (a)(2) because the lighting system was not de-energized, which is required by the safety order. Therefore, the safety order is vacated and the proposed penalty is dismissed.

### **Conclusion**

The Division has established the following: The Employer failed to implement and maintain an effective Injury and Illness Prevention Program for ensuring employees complied with safe and healthy work practices, with an assessed penalty of \$935; and Employer failed to ensure good work practices and procedures for replacing a lighting system were followed, which was correctly classified as a serious, accident related violation, with an assessed penalty of \$22,500. The Employer failed to demonstrate that it did not and could not with the exercise of reasonable diligence, know of the presence of the violation regarding ensuring good work practices and procedures for replacing a lighting fixture; and that Weeks violation of Employer’s ESP was an independent employee act. Finally the Division did

not establish that Employer failed to lock the disconnecting means with lockable devices to prevent unexpected or inadvertent energizing of the fluorescent lighting system. Therefore Citation 3 is vacated and the proposed penalty is dismissed.

**ORDER**

It is hereby ordered that Citation 1, Item 1 and Citation 2 are affirmed. Citation 3 is dismissed and Employer's appeal is granted.

It is further ordered that the penalties indicated above and set forth in the attached Summary Table are assessed.

**IT IS SO ORDERED.**

Dated: September 15, 2015

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**CLARA HILL WILLIAMS**  
Administrative Law Judge

CHW: ao

## SUMMARY TABLE DECISION

In the Matter of the Appeal of:

**ABM FACILITY SERVICES INC., DBA ABM BUILDING VALUE**  
**Docket 12-R3D6-3496-3498**

Abbreviation Key: Reg=Regulatory  
 G=General            W=Willful  
 S=Serious            R=Repeat  
 Er=Employer        DOSH=Division

IMIS No. 316343896

DOCKET	C	I	T	I	SECTION	T	Y	P	E	MODIFICATION OR WITHDRAWAL	A	V	PENALTY PROPOSED BY DOSH IN CITATION	PENALTY PROPOSED BY DOSH AT HEARING	FINAL PENALTY ASSESSED BY BOARD
12-R3D6-3496	1		1		3203(a)			G		Affirmed	X		\$935	\$935	<b>\$935</b>
12-R3D6-3497	2		1		2320.2(a)			SAR		Affirmed	X		\$22,500	\$22,500	<b>\$22,500</b>
12-R3D6-3498	3				2320.4(a)(2)			S		Dismissed		X	\$9,000	\$9,000	<b>\$0</b>
<b>Sub-Total</b>													\$32,435	\$32,435	<b>\$23,435</b>

**Total Amount Due\***

(INCLUDES APPEALED CITATIONS ONLY)

**\$23,435**

NOTE: Please do not mail payments to the Appeals Board. All penalty payments must be made to:

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 any questions.

ALJ: CHW/ao  
 POS: 09/15/2015

**APPENDIX A**

**SUMMARY OF EVIDENTIARY RECORD**

**ABM FACILITY SERVICES INC., DBA ABM BUILDING VALUE**

**Docket 12-R3D6-3496-3498**

**Date of Hearing:** October 15, 2013 & July 15, 2014

**Division's Exhibits**

<b>Exhibit Number</b>	<b>Exhibit Description</b>	<b>Admitted</b>
1	Jurisdictional documents	X
2	Accident Report (excluding Wikipedia p.1)	X
3	Photo – reception area	X
4	Photo – four photos	X
5	Photo – Identification of Phillip Weeks	X
6	Photo – tools found near Phillip Weeks	X
7	Photo – close-up of Exhibit #6	X
8	Photo –tools depicted in Exhibit #6	X
9	Photo – ballast	X
10	Photo – Weeks' right arm	X
11	Photo – timer, tag breaker and lower right electrical panel	X
12	ABM Electrical Safety Program	X
13	ABM invoice report (incomplete) pp. 2	X

14	Request for Doc	X
15	Request for Doc	X
16	Letter to Tomas Micheo, dated 11/7/12 from Attorney Rafique	X
17	IBY – Sent to ER	X
18	Ltr. From ER resp. to IBY	X
19	C-10 Penalty Worksheet	X

**Employer’s Exhibits**

<b>Exhibit Letter</b>	<b>Exhibit Description</b>	<b>Admitted</b>
A	Orientation to Safety/Major Program Points	X
B	Policies & Procedures – General Safety Rules	X
C	Acknowledgement	X
D	2012 Safety Training	X
E	Avoiding Slip, Trips & Falls/ Major Program Points	X
F	Email – Safety Corner August 27, 2012	X
G	Safety Corner/Message from Don Bruhn, September 28, 2011	X
H	Records of Safety Meetings	X
I	Workplace Accident Incident Questionnaire	X
J	IB Documentation Worksheet	X

K	Close up of Emerg. Ballist	X
L	Form 170	X
M-1	Office photo	X
M-2	Photo supplies	X
N	Incident reporting and Inv.	X
O	ABM Electrical safety program (same as exhibit 11)	X
P	Employee corrective notice of action	X
Q	Notice of corrective action 8/1/12	X
R	Employee warning notice	X
S	Notice of corrective act on 4/12/12	X
T	Employee warning notice	X
U	Employee warning notice	X
V	Quality assurance form	X
W	Notice of corrective action	X
X	Notice of corrective action	X
Y	Application for employment needs – Phillip Weeks	X
Z	Application for Employment – Phillip Weeks	X
AA	Installation instructions	X

**Witnesses Testifying at Hearing**

1. Ray Towne
2. Christopher Kohns
3. Monty Miles
4. Shawn Sharifpour

5. Rosalyn Lavin
6. Tomas Micheo
7. Mark Safsten
8. Eric Sorensen

**CERTIFICATION OF RECORDING**

*I, Clara Hill-Williams, 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.*

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Signature

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Date

