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NEVADA OCCUPATIONAL SAFETY AND HEALTH

REVIEW BOARD

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CHIEF ADMINISTRATIVE OFFICER
OF THE OCCUPATIONAL SAFETY
AND HEALTH ADMINISTRATION OF
THE DIVISION OF INDUSTRIAL
RELATIONS OF THE DEPARTMENT
OF BUSINESS AND INDUSTRY, STATE
OF NEVADA,

Complainant,

vs.

OLSON PRECAST CO.,

Respondent.

Docket No. LV 18-1939

Inspection No. 1266156

FILED
DEC 4 2024

OSH REVIEW BOARD
BY *[Signature]*

DECISION OF THE BOARD, FINDINGS OF FACT,
CONCLUSIONS OF LAW AND FINAL ORDER

This case arose out of a fatality which occurred in Las Vegas, Nevada, at the Las Vegas Boulevard-St. Rose Parkway to Silverado Ranch Boulevard jobsite, located near Las Vegas Boulevard South and Jonathan Drive. The case came before the Nevada Occupational Safety and Health Board of Review in three separate evidentiary hearings which occurred on January 28, 2020, January 29, 2020 and February 10, 2021. Final deliberations occurred on August 11, 2021. Each of these hearings occurred, in furtherance of a notice, duly provided according to law. *See*, Notice of Rescheduled Hearing, dated October 2, 2019. Salli Ortiz, Esq., appeared on behalf of the complainant, Chief Administrative Officer of the Occupational Safety and Health Administration, Division of Industrial Relations (the State). *See*, 1Tr., p. 2.¹ Dalton Hooks, Esq.,

¹"1Tr." stands for the transcript of the hearing conducted on January 28, 2020. "2Tr." stands for the transcript of the hearing conducted on January 29, 2020. "3Tr." stands for the transcript of the hearing conducted on February 10, 2021. "4Tr." stands for the transcript of the deliberations conducted on August 11, 2021. The designation of the transcript is followed by the page and line number where the matter cited can be found.

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1 Hooks Meng & Clement, appeared on behalf of Olson Precast. *See*, 1Tr., p. 3. Charles R. Zeh,
2 Esq. The Law Offices of Charles R. Zeh, Esq., was present as legal counsel to the Board.

3 In attendance at the January 28, 2020 and January 29, 2020, hearings were Board
4 Chairman Steve Ingersoll, Board members James Halsey, Frank Milligan and Lance Semenko.
5 *See*, 1Tr., p. 2, 2Tr., p. 2. There being four members of the Board present to hear this matter on
6 those dates with at least one member representing management and one member representing
7 labor, in attendance, a quorum was present to hear the matter and conduct the business of the
8 Board. In attendance at the February 10, 2021, hearing were Chairman Steve Ingersoll, Secretary
9 Rodd Weber and Board Member Frank Milligan. There being three members of the Board present
10 to hear this matter on February 10, 2021, with at least one member representing management and
11 one member representing labor, in attendance, a quorum was present to hear the matter and
12 conduct the business of the Board.

13 In attendance at the August 11, 2021, hearing were Chairman Rodd Weber, Secretary
14 William Spielberg, Board Members Frank Milligan, Scott Fullerton and Member Jorge Macias.
15 The new members of the Board had been provided the transcripts of the previous meetings, the
16 evidence packages and all of the pleadings. Therefore, they were capable of participating in the
17 deliberations and deciding the matter. *See*, 4Tr., pp. 7;22-24, 8;1-5. There being five members of
18 the Board present to deliberate on this matter on August 11, 2021, with at least one member
19 representing management and one member representing labor, in attendance, a quorum was
20 present to conduct the business of the Board. Jurisdiction in this matter has been conferred in
21 accordance with Chapter 618 of the Nevada Revised Statutes.

22 On March 16, 2018, the Citation and Notification of Penalty (Citation) was issued to the
23 Respondent alleging fourteen violations of federal regulations. Citation 1 Item 1 charged a wilful-
24 serious violation of 29 CFR 1926.501(b)(4)(i), as stated below:

25 Holes: Each employee on walking/working surfaces shall be protected from falling
26 through holes (including skylights) more than 6 feet (1.8 m) above lower levels, by
personal fall arrest systems, covers, or guardrail systems erected around such holes.

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1 At the Las Vegas Boulevard - St. Rose Parkway to Silverado Ranch Boulevard
2 jobsite, Olson Precast Company did not ensure that each employee on a walking
3 and or working surface was protected from falling through holes more than six feet
4 above a lower level by personal fall arrest systems, covers, or guardrail
5 systems erected around such holes.

6 On September 25, 2017, an employee (Decedent/Attendant) suffered fatal injuries
7 as a result of falling into an open manhole. The employee fell approximately 22
8 feet, came to rest on top of a new sanitary sewer line, and was pronounced dead at
9 the scene. The manhole opening was approximately 39 inches in diameter. A total
10 of three Olson Precast Company employees were exposed to fall hazards of more
11 than 6 feet in the following instances:

12 1. The Superintendent was standing 3-4 feet from the open manhole while an
13 inspection was being performed.

14 2. The Journeyman Commercial Painter/Entrant removed the manhole cover, set up
15 the tripod above the open hole and participated in the inspection of the manhole.

16 3. The Decedent/Attendant helped remove the manhole cover, assisted in the set up
17 of the tripod above the open hole, hoisted sandblast media out of the manhole, and
18 sat on a bucket near the unguarded hole.

19 Olson Precast Company indicated that a dirt berm, company vehicle, and high
20 visibility cones were utilized to protect the general public and other employees
21 from entering the work area. However, Olson Precast Company committed a
22 willful violation with plain indifference to employee safety and health when the
23 exposed Superintendent identified the open manhole as a fall hazard and did not
24 take actions to protect himself and the two employees listed above from falling into
25 the open hole. The Superintendent stated that he and the two other employees were
26 approximately 3-4 feet away from the open manhole while it was being inspected.
27 The Superintendent also stated that the hole was not guarded while the
28 Painter/Entrant was mixing the grout for the next phase but that it was only for 5
minutes. In addition, the Superintendent and the Division Manager for the Special
Coating Division were aware that removing the sandblast media from the bottom
of the manhole was a two man operation, consisting of an entrant and attendant.
The entrant fills the bucket with media and the attendant pulls the bucket of media
out of the manhole. The Superintendent and the Division Manager both stated that
the trigger height for fall protection in the construction industry was 6 feet and that
only one person could connect to the entry tripod. They both also stated that the
company had completed sandblasting and grouting activities in up to 20 manholes
prior to the accident. The Division Manager stated that the manhole is only covered
when employees break for lunch or when they are finished for the day. In the event
of a fall into the manhole, the Superintendent and the Journeyman Commercial
Painter/Entrant were exposed to potentially serious injuries or death. *See, State's
Exhibit 1, pp. 76, 77.*

25 Aside from Citation 1, Item 1, the Respondent withdrew its contest of the remaining
26 thirteen citations and agreed to pay the fines assessed thereon. *See, 1Tr., p. 26;1-16, see also, 2Tr.,*
27 *pp. 15-17.* This agreement was documented by a Notice of Partial Withdrawal of Complaint dated,
28 February 27, 2020. *See, Id.*

1 On April 4, 2018, the Respondent sent its notice of intent to contest the Citation. *See*,
2 State's Exhibit 1, p. 169-170.² On April 23, 2018, the State filed and served its Complaint on the
3 Respondent. *See*, State's Exhibit 1, pp. 171-188. On or about May 8, 2018, Dalton L. Hooks. Jr.,
4 Esq, answered the complaint for the Respondent. *See*, State's Exhibit 1, pp. 189-199. Therein, the
5 Respondent admitted and/or denied the allegations of the complaint and posited certain
6 affirmative defenses. *See, Id.* Among the affirmative defenses offered by Olson Precast, there
7 were a couple of variations of the argument that the wrong regulation was applied. Most relevant
8 to this Decision were affirmative defenses numbered 3 and 6, as follows:

- 9 • The Citation items issued against the Respondent misapply the cited standards.
10 • The standards allegedly violated by the Respondent are inapplicable to the cited
11 conditions, and other more appropriate standards were not referenced.

12 At the hearings on the matter, the State offered Exhibits 1, 2, 3 and 4, with pages 1 through
13 457, and a supplemental evidence packet, Exhibit 5 with pages 458-576. Of the State's initial
14 exhibits 1-4, pages 1-576, excluding 206, 206A and 216, were admitted into evidence. *See*, 1Tr.,
15 p. 19;16-18. As for pages 206, 206A and 216, admission would be granted or denied at the time
16 each is offered. *See*, 1Tr., p. 20;1-3. Exhibit 5 consists of 18 pages of photographs, none of which
17 were Bate-stamped but all of which were hand-numbered 1-18. The State's Exhibit 1, pp. 206
18 206A and 216 were admitted after redacting. *See*, 1Tr., p. 70;11-15, *see also*, 3Tr., p. 7;14-17.
19 Pages 4 through 18 of the State's Exhibit 5 was admitted. *See*, 3Tr., p. 7;5-8.

20 The Respondent offered Exhibits B through H with pages numbered 1 through 225, which
21 included the Expert Report of James W. Stanley, President FDR Safety. The Respondent's exhibits
22 B through H, pages 8 through 225, were admitted into evidence. *See*, 1Tr., p. 20;7-8.

23 FINDINGS OF FACT

24 Olson Precast is a Nevada Corporation with a business address of 2810 N. Nellis Blvd.,
25 Suite 100, Las Vegas, NV 89115. *See*, State's Exhibit 1, pp 1, 3. Olson Precast is a precast
26 concrete contractor. *See, Id.* It was a subcontractor on this job for Las Vegas Paving Corp. (LVP)

27
28 ²The documents identified in the table of contents for the State's Evidence package as being the
Respondent's contest letter are not that document. Instead these are the Respondent's agreement to attend
an informal conference regarding the alleged violations.

1 See, 1Tr., p. 4-10. The project, the site of the fatality, was a 2.9-3.0 mile sewer line that was being
2 installed with Las Vegas Paving as the General Contractor of the project. The project included 77
3 manholes of varying depths to be installed along the 2.9-3.0 mile sewer line. See, 1Tr., pp. 32;23-
4 25, 33;1. The site of the fatality was manhole No. 8 located on S. Las Vegas Blvd., near Johnson
5 Drive. Olson Precast contracted with LVP to install for LVP the manholes the entire length of the
6 sewer line. See, 1Tr., 32;21-25. The incident occurred at manhole No. 8, the 20th manhole to be
7 installed. See, State's Exhibit 1, p. 68. September 25, 2017, was Russell Tracy's first day of
8 employment with Olson Precast. See, State's Exhibit 1, p. 49. Mr. Tracy was sent by the union and
9 purportedly was provided safety training by them before being sent to work for Olson Precast. See,
10 1Tr., 103;1-3. Mr. Tracy met Ralph Jamie at the Olson Precast offices at about 5:00 a.m that day.
11 See, 3Tr., pp. 15;1-4, 16;5-8. The two of them then traveled to the jobsite on Las Vegas Blvd., in a
12 company truck. See, 3Tr., p. 16;9-15. Messrs. Jamie and Tracy arrived at the jobsite at
13 approximately 7:00 a.m. See, 3Tr., p. 17;19-21. When they arrived at the jobsite, the orange cones
14 and caution tape were already on site. See, 3Tr., pp. 30;23-24, 31;1-3.

15 Manhole No. 8 was not immediately accessible to Messrs. Jamie and Tracy because the
16 area was not level. See, 3Tr., p. 18;8-16. LVP brought in a backhoe to flatten out the area so that
17 Messrs. Jamie and Tracy could safely work in and around the manhole No. 8. See, *Id.*, see also,
18 3Tr., pp. 18;8-16, 23;17-24, 24;1-13. However, there was a slope around the manhole, leading
19 into the manhole. See, Respondent's Exhibit E, p. 45, see also, 1Tr., pp. 107;9-24, 108;1-9. After
20 the area was cleared, Messrs. Jamie and Tracy used manhole hooks to remove the cover. See,
21 1Tr., pp. 72;13-24, 73;1. Messrs. Jamie and Tracy then set up the tripod and the air monitoring
22 equipment. See, 3Tr., p. 24;19-23.

23 Mr. Jamie then provided a detailed explanation of the scope of the work to Mr. Tracy.

24 Mr. Hooks: Okay. To the best of your recollection what did you tell [Mr. Tracy]
25 about the work that he would be needing to do that day?

26 Mr. Jamie: I properly showed him how to fill out the monitor sheet, the confined
27 space sheet. He was familiar with the confined space. [Mr. Tracy] just wasn't
28 familiar with our forms. So I properly showed him how to fill them out, showed
him what goes where and he was to be monitoring me in the hole when I go in,
remove the sand media from inside the hole.

1 Mr. Hooks: Okay. Did you talk to him about the -- well, did you talk to him about
2 the work that he was going -- so in addition to the forms did you talk to him about
the work that he was going to be doing?

3 Mr. Jamie: Yes.

4 Mr. Hooks: What did you tell him about that work?

5 Mr. Jamie: I told him after lowering me down into the hole his job was to pull
6 buckets of media, sandblast media out of the hole and, you know, to throw it
7 outside, empty the bucket, and then he would bring me back a bucket so I could
keep removing the sand media from the bottom of the manhole. *See*, 3Tr., 28;1-14.

8 After Mr. Jamie provided these instructions, Mr. Tracy lowered him into the manhole. *See*,
9 3Tr., p. 31;14-16. While in the hole, Mr. Jamie repeatedly filled a bucket with the sand debris
10 located at the bottom of the hole. When the bucket was full, Mr. Tracy would lower a rope into the
11 hole into which Mr. Jamie would attach the bucket. Mr. Tracy then brought the bucket to the
12 surface where he would dispose of the media. *See*, 3Tr., pp. 31;34-24, 32;1-4. This process took
13 about one and one half hours. *See*, 3Tr., 5-8.

14 The work was not incident free. While working at the base of the hole, Mr. Jamie
15 experienced rocks and dirt falling from above. *See*, 3Tr., pp. 33;10-24, 34;1-2. This occurred
16 because Mr. Tracy was afraid to stand directly over the entrance to the manhole. *See, Id.* Instead,
17 Mr. Tracy attempted to raise the bucket from a distance, pulling the rope across the rim. This
18 caused rocks and other debris to fall on Mr. Jamie. *See, Id.* Mr. Jamie suggested that Mr. Tracy
19 could place a plank across the top of the hole, so that he would be less nervous about being close
20 to the open hole. *See, Id.*

21 After being removed from the hole, Mr. Jamie told Mr. Tracy to take a break while he
22 worked with the Clark County Water Reclamation District inspector, Lorenzo Portillo. *See*, 3Tr.,
23 p. 34;7-11. Mr. Tracy took his break sitting on a bucket located next to the company truck,
24 between the compressor and the rear end of the truck between the truck and the hole. *See*, State's
25 Exhibit 1, p. 205, *see also*, 3Tr., p. 39;8-15, 42;1-7. It is odd that Mr. Tracy took a break in close
26 proximity of the open manhole because he was afraid of it.

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1 Mr. Westfall, the Superintendent for Olson Precast, arrived on site at some time
2 immediately before or after Mr. Portillo's inspection. *See*, 3Tr., 39;19-23. Mr. Portillo performed
3 a visual inspection of manhole No. 8 utilizing a flashlight while standing near the unguarded hole.
4 *See*, State's Exhibit 1., p. 30, *see also*, 1Tr., p. 229;7-13. Messrs. Westfall, Portillo, Jamie and
5 Tracy all were in close proximity to the unguarded hole during this time period. *See, Id.*

6 After the inspection was completed, the inspector headed to his truck. *See, Id.* Mr. Jamie
7 walked to the driver's side of a company vehicle to retrieve his tools and get some water. *See, Id.*
8 Shortly thereafter, Mr. Jamie and Mr. Westfield had a brief discussion near the front of the
9 company vehicle. *See, Id.* After their conversation, Mr. Westfall started walking back to his truck.
10 *See*, 3Tr., p. 41;6-8. Mr. Westfall then called out that he believed that Mr. Tracy fell into the
11 manhole. *See, Id.* Mr. Tracy had fallen approximately 22 feet landing on top of a new sanitary
12 sewer line. *See*, State's Exhibit 1., p. 30.

13 Manhole No. 8 was a standard manhole consisting of several sections. *See*, Respondent's
14 Exhibit E, p. 45. The diameter of the precast concrete manhole opening was approximately 39
15 inches. *See*, State's Exhibit 1, pp. 208, 209. This measurement was taken with the 24 inch wide
16 cover and the 7 inch wide ring in place. *See*, State's Exhibit 1, p. 30.

17 After the incident, Olson Precast's management personnel were provided with
18 questionnaires regarding the incident. Mr. Westfall and Mr. Michalsky provided responses thereto.
19 *See*, State's Exhibit 1, pp. 50-75. In his response, Mr. Westfall offered the following: First, he
20 expressly admits that he believes that manhole No. 8 was a hole at the time of the incident. "I
21 consider the open manhole a hole." *See*, State's Exhibit 1, p. 74. This was in response to the
22 question, "[w]hat methods can be used to protect employees from open holes"? Mr. Westfall also
23 admitted that the hole was not guarded during and immediately after the September 25, 2017,
24 inspection. *See*, State's Exhibit 1, p. 69.

25 At the January 28, 2020, hearing on the matter, Aldo Lizarraga testified to the condition of
26 the jobsite at the time of his arrival. Mr. Lizarraga identified State Exhibit 1, p. 201 as a
27 photograph which he took and explained its contents. *See*, 1Tr., pp. 58-60. Three things were
28 changed from the time of the accident, the cones were moved, the yellow tape added and the

1 tripod moved. *See*, 1Tr., pp. 58;9-14. 60;5-8. 61;3-10, 97;3-7. Otherwise, the State's photographs
2 accurately depicted the open manhole, the two berms, the truck and the cones as he understood
3 they were at the time of the accident.

4 On cross examination, Mr. Hooks challenged Mr. Lizarraga's assertion that the area was
5 not an excavation.

6 Mr. Hooks: So if a hole refers to an opening with its smallest dimensions not
7 less than 2 inches in a walking/working surface, does, in your opinion, the
8 below-grade gravel surrounding Manhole No. 8 constitute a walking/working
9 surface?

10 Mr. Lizarraga: Yes.

11 Mr. Hooks: It's not listed in that definition that you just read, is it?

12 Mr. Lizarraga: What is?

13 Mr. Hooks: The gravel area. That's not a floor or ramp or bridge, is it?

14 Mr. Lizarraga: No.

15 Mr. Hooks: What is it, in your estimation, constitutes a walking/working
16 surface around the depressed hole around [manhole] No. 8?

17 Mr. Lizarraga: Because [the employees are] walking in that area and they're
18 also performing work. *See*, 1Tr., p. 113;4-23.

19 Mr. Lizarraga also explained that walking/working surfaces are not limited to the items
20 enumerated in subsection 1926.500(b) because the definition commences with the phrase,
21 "including but not limited to."³ *See*, 1Tr., pp. 156;18-25, 157;1-6.

22 Nick LaFronz, OSHA District Manager, was the State's second witness. *See*, 1Tr., p.
23 153;10-21. Mr. LaFronz stated that he did not believe that the excavation standard was appropriate
24 because the manhole was complete. *See*, 1Tr., p. 153;10-21. Further, Mr. LaFronz explained that
25 none of the hazard associated with excavations were found at the jobsite.

26 Ms. Ortiz: You were asked about excavations. Can you tell us, based on your
27 experience, what the typical hazards are of an excavation?

28 ³Walking/working surface means any surface, whether horizontal or vertical on which an
employee walks or works, including, but not limited to, floors, roofs, ramps, bridges, runways, formwork
and concrete reinforcing steel but not including ladders, vehicles, or trailers, on which employees must
be located in order to perform their job duties. *See*, 29 CFR 1926.500(b)

1 Mr. LaFronz: The most common one is cave-ins where the walls may blow out and
2 bury somebody or they may be struck by the material. Other hazards might be
3 excavated material or other nearby materials that could fall or roll into the
4 excavation. Certainly there's other hazards.

5 Ms. Ortiz: Based on those two you identified, do you think those hazards are
6 present in the worksite as it was on the day of the accident?

7 Mr. LaFronz: Um, I don't really think there's a cave-in hazard there.

8 Ms. Ortiz: And why is that?

9 Mr. LaFronz: Because there's nothing to cave in. *See*, 1Tr., p. 203;1-20.

10 Mr. LaFronz testified regarding the State's calculation of the penalty for the alleged
11 violation of Citation 1, Item 1. *See*, State's Exhibit 1, pp. 77, 78, *see also*, 1Tr., pp. 168-170. Mr.
12 LaFronz testified that the State regarded the severity of the alleged violation to be high because
13 the risk was that one of the Respondent's employees could fall more than 20 feet onto a concrete
14 surface. *See*, 1Tr., p. 168;4-24. The State also determined that the probability was greater because
15 of the number of employees exposed to the risk and the frequency of that exposure. *See*, 1Tr., pp.
16 169;9-15, 170;1-3. The gravity of the alleged violation is a function of the severity and
17 probability. *See*, 1Tr., p. 170;4-8. The gravity based penalty is the amount assigned before any
18 adjustments. *See*, 1Tr., p. 170;9-12. In this case the preliminary penalty amount of \$7,000 was
19 determined. *See*, 1Tr., p. 170;13-15. The penalty was subject to a multiplier of ten times because
20 the State alleged the violation to be willful. *See*, 1Tr., p. 170;16-21. Accordingly, the final
21 recommended penalty amount was \$70,000. *See, Id.*

22 Mr. LaFronz also explained why the inspection exception located in 29 CFR
23 1926.500(a)(1) did not apply for several reasons. First, there is an important qualification to this
24 exception. The regulation states, "prior to the actual start of construction work or after all
25 construction work has been completed." *See*, 29 CFR 1926.500(a)(1), *see also*, 1Tr., pp. 205;11-
26 25, 206;1-4. In this instance, Mr. Portillo's inspection lasted just a couple of minutes and was not
27 final for the installation of manhole No. 8. *See*, 1Tr., p. 233;10-22. Second, the exception would
28 not apply to the approximate 90 minutes that Messrs. Jamie and Tracy worked in and around the
manhole before the inspection occurred. *See*, 1Tr., pp. 206;16-25, 207;1-3. Third, no inspection

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1 was occurring at the critical moment when Mr. Tracy fell into manhole No. 8. *See*, 1Tr., pp.
2 218;18-25, 219;1-2.

3 The Respondent's expert witness, Mr. Stanley was subject to *voir dire* after which the
4 Board determined that it would allow him to testify at the hearing. *See*, 2Tr., pp. 20-53. At the
5 hearing, Mr. Stanley testified that he believed that 29 CFR 1926.501(b)(7) was the most
6 appropriate standard.⁴ His opinion was based upon the definition of excavation. *See*, 2Tr., 65;13-
7 19. "Excavation means any man-made cut, cavity, trench, or depression in an earth surface,
8 formed by earth removal." *See*, 29 CFR 1926.650(b). As Mr. Stanley explained, at the time of the
9 incident, manhole No. 8 was an excavation because it was a depression in the surface.

10 Mr. Hooks: This is an excavation because what we still have here is a depression in
11 Earth's surface formed by earth removal; correct?

12 Mr. Stanley: It's depression and also a cavity the way it was done here. It was
13 excavated. *See*, 2Tr., p. 73;10-15.

14 Mr. Stanley's believed the definition applied even to holes located within a depression. He
15 explained his understanding of this concept on cross examination.

16 Ms. Ortiz: Okay. And is it fair to say your testimony is that the manhole is still part
17 of the excavation?

18 Mr. Stanley: Sure it is.

19 Ms. Ortiz: Okay.

20 Mr. Stanley: It's in the excavation.

21 Ms. Ortiz: So it is possible to have a hole inside of an excavation?

22 Mr. Stanley: A hole inside an excavation is still an excavation. Excavation is more
23 specific. [A] more-specific standard.... We call it a hole. It's an opening. It's a
24 manway. Its a shaft. The standard [29 CFR 1926.650(b)] talks shafts and pits and
25 caissons. Not anything but that. A specific standard was put into OSHA that
26 directly relates to those situations. *See*, 2Tr., pp. 99;19-25; 100;5-12.

27 Mr. Stanley was of the belief that any cavity or depression remained an excavation until
28 the project was complete.

29 ⁴"If a particular standard is specifically applicable to a condition, practice, means, method,
30 operation, or process, it shall prevail over any different general standard which might otherwise be
31 applicable to the same condition, practice, means, method, operation, or process." *See*, 29 CFR
32 1926.20(d)(1)

1 Ms. Ortiz: So are you in your opinion stating that this is simply an excavation because the
2 project hasn't been finished.

3 Mr. Stanley: I am saying that once it is completely done and paved over, it now
4 becomes a hole at that point in time. Like in the street but before that during the process it is your
5 working in an excavation. You're inside excavation. You are working in an excavation. *See,*
6 *2tr., p. 102; 21-25, 103;1.*

7 The problem here was that Mr. Stanley was unable to provide any definition of a
8 completed project, without which the applicability of the standard was a matter of individual
9 interpretation.

10 Ms. Ortiz: Can you tell me at what point the Federal and Nevada standard says
11 when it is an excavation is completed is only when the entire project is done?

12 Mr. Stanley: No. It just makes common sense. That's what everybody addresses as
13 the standard of care – is what – that is the standard in America and in this type of
14 construction.

15 Under Mr. Stanley's definition, an excavation would remain an excavation until the
16 project is complete. At that time, Part 1926 of 29 CFR would no longer apply. Thus, the rules for
17 holes would not apply in most or all outdoor construction projects.

18 Mr. Stanley also believed that the application of the rules for protecting employees in the
19 case of excavations were quite limited. First, Mr. Stanley advocated that the duty to protect
20 employees only arises when an employee's body is physically located above the excavation.

21 Mr. Hooks: With respect to what you believe is the correct standard, 1926.501
22 (b)(7), at that time, which I believe the records show constituted about an hour and
23 half, would those conditions be violative of the [1926.501 (b)(7)] standard?

24 Mr. Stanley: The answer is no, as long as people stay away from the edge.

25 Mr. Hooks: The edge is defined as?

26 Mr. Stanley: Where the horizontal meets vertical.

27 Mr. Hooks: So literally at the very edge of the hole.

28 Mr. Stanley: Correct.

Mr. Hooks: By toes touching the plane?

Mr. Stanley: Yes, breaking the plane. *See, 2Tr., p. 77;5-19.*

In other words no protection is required until an employee is actually in the zone of danger.

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1 Mr. Stanley further testified that neither 1926.501(b)(7) nor 1926.501(b)(4) require
2 employers to take any precautions when no employees were present.

3 Mr. Zeh: I believe it's your testimony that 501(b)(4) doesn't apply and that
4 501(b)(7) applies only if somebody is at the edge.

5 Mr. Stanley: that's correct.

6 Mr. Zeh: So, if they walk away and they leave the hole like that, is there any duty to
7 provide any kind of protection?

8 Mr. Stanley: In my opinion there is no duty under (b)(7) nor is it a duty under (b)(4).

9 Mr. Zeh: Why?

10 Mr. Stanley: Because there's no hazard if no one's there. And there's no – if it's
11 open and obvious; this is open and obvious. If you have an open and obvious
12 hazard, and no one's there, and it's bright daylight and you're aware – you're a
13 construction worker, and you're aware of your surroundings, the standards don't
14 address that. *See*, 2Tr., pp 162;21-25, 163;1-11.

15 Based upon certain aspects of Mr. Stanley's testimony, there was some concern that his
16 opinions were inconsistent with the Board's and the State's understanding of workers' health and
17 safety law. Accordingly, the Board was not required to agree with Mr. Stanley's conclusions on the
18 matter. *See*, Wright and Miller, 29 Fed. Prac. & Proc. Evid. § 6270. ("Even where a court has
19 determined that expert testimony is admissible under Rule 702, the trier of fact retains the power to
20 determine what weight should be given to that testimony."), *see also*, *U.S. v. 319.88 Acres of Land,
21 More or Less, Situate in Clark County, Nev.*, 1980, 498 F.Supp. 763 (Where the opinion of an
22 expert is based on erroneous assumptions of fact or law, the evidence is incompetent and
23 insufficient to support a verdict.)

24 Mr. Michalsky was the final witness at the hearing. He testified that the employees at
25 manhole No. 8 were protected by several methods after the removal of the cover, specifically, an
26 earth berm, cones, caution tape and the truck with the compressor. *See*, 3Tr., pp. 93;4-17, 100;3-11.
27 The exclusive purpose of the truck was to keep vehicles from hitting employees should one
28 accidentally enter the work area. *See*, 3Tr., pp. 132;17-24, 133;1-24.

Mr. Michalsky was questioned about an illustration of a manhole. *See*, Respondent's
Exhibit E, p. 45. Mr. Michalsky explained that the project was not complete at the time of the
accident because the entrance to the manhole was approximately two feet below grade. *See*, 3Tr., p

1 108;3-12. Mr. Michalsky said that the excavation was still ongoing and there was not a flat
2 walkable surface. *See*, 3Tr., pp. 108;19-24, 109;1-3. Mr. Michalsky testified that the area around
3 the manhole was not a walkable/workable surface because it was not a paved finished surface. *See*,
4 3Tr., p. 115;1-18. Mr. Michalsky agreed with Mr. Stanley that the area was an excavation
5 regardless of whether there was a structure in it. *See*, 3Tr., pp. 119;6-17, 115;2-18.

6 Ms. Ortiz: You were asked if you agreed with Nevada OSHA's reasoning for
7 saying this is not an excavation. Do you recall that?

8 Mr. Michalsky: Yes.

9 Ms. Ortiz: Can you explain for us why you disagree?

10 Mr. Michalsky: It is an excavation. It's a cavity in the ground. The top still is,
11 it's not a finished grade yet within the roadway. There's still putting pipeline in
12 right behind us at that occurrence and it's part of ongoing excavation that the
13 structure is within.

14 Ms. Ortiz: Okay. And you said that because of that -- those reasonings (sic) that
15 you also commented there was no asphalt at the top. Is that part of that
16 reasoning?

17 Mr. Michalsky: Yes. It wasn't within a paved roadway surface, a finished
18 surface.

19 Ms. Ortiz: Okay. And was ...it accurate to say that you said that if it was that
20 ...would change it?

21 Mr. Michalsky: If it was within a paved surface, yes, that would change the
22 situation.

23 Ms. Ortiz: And can you explain to us what you meant by that.

24 Mr. Michalsky: Because if it's a paved surface it's a level walkable surface. *See*,
25 3Tr., pp. 114;21-24, 115;1-18.

26 Mr. Michalsky's response here was at odds with the definition of a walking/working
27 surface. In his mind only paved and/or finished surfaces are included in the definition. The
28 regulation contains no such language. Moreover, it is fairly explicit that it is intended to cover a
broad range of conditions. "Walking/working surface means **any surface**, whether horizontal or
vertical on which an employee walks or works..." *See*, 29 CFR § 1926.500 (Emphasis added).
Further, there would be a significant inconsistency for this important facet of the construction
regulations to only apply to finished work areas.

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1 Mr. Michalsky was questioned about the protections provided at in the proximity of
2 manhole No. 8 by the truck, cones, berm and tape. *See*, 3Tr., pp. 132-136. However, all of these
3 purported protections did not serve to physically protect the Respondents and/or other persons.
4 Instead, all of them were there as warning devices to prevent people from accessing the hazzard.
5 *See, Id.*

6 Mr. Michalsky provided his opinion that there were no feasible methods to provide fall
7 protection around the manhole. *See*, 3Tr., pp. 100;17-24, 101;1-14. Mr. Michalsky also claimed
8 that the use of a lift incorporated into the guardrails would not work because it violated the
9 manufacturer's instructions for use. *See*, 3Tr., pp. 101;15-24, 102;1-11. However, no testimony was
10 provided as to whether the Respondent made any effort to bring the job into compliance with the
11 manufacturer's instructions so that the guardrail lift system could be employed.

12 To the extent that any of the Conclusions of Law constitute Findings of Fact, they are
13 incorporated herein.

14 CONCLUSIONS OF LAW

15 In this case, the burden is on the State to prove its *prima facie* case against Olson Precast by
16 a preponderance of the evidence. *See*, NAC 618.788(1), *see also*, *Original Roofing Company LLC*
17 *v. Chief Administrative Officer of the Nevada OSHA*, 442 P.3d 146, 149 (Nev. 2019). The State is
18 obligated to demonstrate the alleged violation by a preponderance of the reliable evidence in the
19 record. Mere estimates, assumptions and inferences fail this test. Conjuncture is also insufficient.
20 Findings must be based upon the kind of the evidence which responsible persons are accustomed to
21 rely in serious affairs. *See*, *William B. Hopke Co., Inc.* 1982 OSHARC LEXIS 302 * 15, 10 BNA
22 OSHC 1479 (No. 81-206, 19820 (ALJ)). The Board's decision must be based on consideration of
23 the whole record and shall state all facts officially noticed and relied upon. 29 CFR 1905.27(b).
24 *Armor Elevator Co.*, 1 OSHA 1409, 1973-1974 OHSD ¶ 16, 958 (1973). *Olin Construction Inc. v.*
25 *OSHARC and Peter J Brennan, Secretary of Labor*, 525 F.2d 464 (1975).

26 Pursuant to NAC 618.788, the States carries the burden of proof in demonstrating a
27 violation of OSHA law by establishing: (1) the applicability of the OSHA regulation; (2)
28 noncompliance with the OSHA regulation; (3) employee exposure to a hazardous condition; and

1 (4) the employer's actual or constructive knowledge of the violative conduct or consideration. *See,*
2 *Original Roofing Co., LLC v. Chief Admin. Officer of Occupational Safety & Health Admin.*, 135
3 Nev. 140, 143, 442 P.3d 146, 149 (2019); *Secretary of Labor v. Atl. Battery Co.*, 16 BNA OSHC
4 2131, 2135, 1994 WL 682922 (No. 90-1747, 1994).

5 Turning to the citation for the alleged violation of 29 CFR 1926.501(b)(4)(i), the State
6 provided evidence supporting its *prima facie* case for the alleged violations. The standard applied
7 because it mandates the use of fall protection equipment around holes more than six feet deep.
8 Citation 1, Item 1, alleged a violation of 29 CFR 1926.501(b)(4)(i), Fall Protection. It provides:
9 “...(4) Holes (i) Each employee on walking/working surfaces shall be protected from falling
10 through holes (including skylights) more than 6 feet (1.8 m) above lower levels, by personal fall
11 arrest systems, covers, or guardrail systems erected around such holes.”

12 The State alleges that the opening within the earth’s surface through which the decedent
13 fell met the definition of a “hole” as defined at 29 CFR 1910.21(b). There, “hole” “... means a
14 gap or open space in a floor, roof, horizontal walking-working surface, or similar surface that is at
15 least 2 inches (5 cm) in its least dimension.” The State then contended that 29 CFR
16 1926.501(b)(4)(i) applied as the parties were dealing with a hole.

17 Olson and its expert witness, Mr. Stanley, argued that the opening in the earth through
18 which the decedent fell to his death, was not a hole but an excavation. Olson Precast, thus, pointed
19 to 29 CFR 1926.502(b)(7)(ii) which addresses fall protection in connection with excavations. This
20 regulation provides: “Excavations: ...(ii) Each employee at the edge of a well, pit, shaft, and
21 similar excavation 6 feet (1.8 m) or more in depth shall be protected from falling by guardrail
22 systems, fences, barricades, or covers.” The term “excavation” means “... any man-made cut,
23 cavity, trench, or depression in an earth surface, formed by earth removal.” 29 CFR 1926.650(b).

24 According to Olson Precast, this was an excavation situation, rather than a hole situation,
25 and that, therefore, 29 CFR 1926.501(b)(7)(ii) should apply. In fact, Olson Precast introduced
26 multiple documents and provided significant testimony attempting to prove 29 CFR
27 1926.501(b)(7)(ii) applied. Accordingly, the Board was required to decide which Regulation, 29
28 CFR 1926.501(b)(4)(i), “holes,” or 29 CFR 1926.501(b)(7)(ii), “excavations,” applies.

1 When interpreting statutes, the concepts of verticality and the horizontal come into play.
2 Vertical standards apply to a particular industry or particular conditions, standards and the like.
3 One could think of the concept of verticality as if it were a silo, cabining with specificity a
4 situation, condition and the like, walling off all other concerns. Horizontal standards are more
5 general, applicable to multiple industries. 29 CFR 1910.5(c). When a hazard is covered by both a
6 vertical and horizontal standard, the vertical obtains based upon the notion, the specific prevails
7 over the general. 29 CFR 1910.5(c)(1). 29 CFR 1910 is basically a general series of Regulations
8 as its title indicates. *See*, “OSHA General Industry-29 CFR 1910.” On the other hand, according
9 to 29 CFR 1910.12 (a),

10 ... [t]he standards prescribed in part 1926 of this chapter are adopted as
11 occupational safety and health standards under section 6 of the Act and shall apply,
12 according to the provisions thereof, to every employment and place of employment
13 of every employee engaged in construction work. Each employer shall protect the
14 employment and places of employment of each of his employees engaged in
15 construction work by complying with the appropriate standards prescribed in this
16 paragraph.

17 The Regulations offered up by each party land in Part 1926. They are found in a chapter of
18 the Regulations marked by verticality. It goes further. 29 CFR 1926.501 comes under the specific
19 heading of “1926.500-503 M. Fall Protection.” The Regulations then go more specific.
20 “1926.501 Duty to have fall protection.” The specific Regulations, themselves, fall under the
21 duty to have fall protection. One addresses fall protection for situations involving “holes,” 29
22 CFR 1926.501(b)(4)(i). The other also addresses fall protection, but directed at falls in
23 connection with excavations, 29 CFR 1926.501(b)(7)(ii).

24 Given this structure of the two Regulations in relation to each other and the internal
25 language of each, this case presents two vertical regulations. One treats falls in holes and the
26 requisite protections. The other treats falls in excavations and the requisite protections. Since
27 both are vertical regulations, this is not a situation where one trumps the other or they jointly
28 apply. Rather, here, two vertical regulations give rise to the situation where it must be determined
based upon the facts and circumstances, which Regulation is the more appropriate one to apply.

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1 This inquiry required the Board to assess what is the most dominant feature or
2 characteristic of the situation. Is this a "hole" for which subsection (b)(4) of 29 CFR 1926.501
3 mandates protection or is this an "excavation," for which subsection (b)(7) of 29 CFR 1926.501
4 mandates protection? Is this a situation, where there is excavation that took place that just
5 happened to have a hole in the middle of it? In the alternative, is this a situation where there is a
6 hole that has some earth that was moved around the hole? Another way to look at the problem is
7 to analyze what condition presented the greater threat to safety, the presence of a hole or the
8 excavation work around the hole? In other words, what was the condition from which protection
9 is really needed? This required the Board to conduct meaningful analysis of the conditions on the
10 ground, to determine which Regulation should be applied to determine whether the Respondent
11 may have violated a regulation.

12 In this instance the Board focused upon the permanent nature of the manhole. *See*, 4Tr.,
13 pp. 18;19-24, 19;1-12. Access to the area required removal of manhole cover and ring. *See*, 4Tr.,
14 p. 19;19-24. As Board Member Macias explained;

15 I think when you're talking about shoring and you're talking about a trench box
16 and excavation, you're talking about a temporary structure. And with this manhole
17 it's a permanent structure that's going to be there. It's not going anywhere. It's
18 made there for people to continue working in it, continue doing maintenance in it at
19 future times. *See*, 4Tr., p. 19;3-9.

18 Chairman Weber agreed on this point arguing that excavation was complete at the time of
19 the accident.

20 But for all intents and purposes the excavation part of it was done. There wasn't
21 like a trench. There wasn't an open trench or an excavation that I saw in any of the
22 photos. Now, they had scrapes over the dirt vac (sic), around the edge to be able
23 to get access to the hole and to get down in there which then left this sloped kind
24 of embankment around the edge a little bit. *See*, 4Tr., p. 20;5-8.

23 Additionally, there was the walking/working surface clause of the regulation. Specifically,
24 the regulation provides, "each employee on a walking/working surface shall be protected...." Mr.
25 Jamie's testimony made it clear that LVP used a backhoe to create a walking/working surface
26 from which he could be lowered into manhole No. 8. *See*, 3Tr., pp. 18;17-16, 23;22-24, 24;1-10.

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1 Finally, there was the express admission of Mr. Westfall that it was a hole. "I consider the
2 open manhole to be a hole." *See*, State's Exhibit 1, p. 74. Based upon the evidence presented the
3 State made its *prima facie* case that the standard, 29 CFR 1926.501(b)(4)(i), is applicable.

4 The Respondent violated the standard. The Respondent did not utilize fall preventive
5 equipment without which any of its employees could fall into the hole for a distance of more than
6 six feet. That's exactly what happened. Lacking fall protective equipment, Mr. Tracy fell into the
7 manhole which was 22 feet deep and fatally impacted upon the lower level. *See*, State's Exhibit 1,
8 pp. 61, 206.

9 While the occurrence of an accident is evidence of a violation of the regulatory standard, it
10 is not *per se* proof that the standard was violated. *See, Koppers Co., Inc.*, 1 OSHRC 666
11 (O.S.H.R.C. 1972); *Secretary of Labor v. American Roof Slab Company, Inc.*, 1 OSAHRC 481
12 (O.S.H.R.C.A.L.J. 1972). Instead, the State must offer evidence establishing that circumstances
13 existed in the workplace which were likely to give rise to the alleged hazard. *See, Pratt & Whitney*
14 *Aircraft v. Donovan*, 715 F.2d 57, 63-67 (2nd Cir., 1983).

15 Here, Olson Precast did not utilize any guardrails, netting or PFAS. *See*, 1Tr., p. 33;4-6,
16 43;1-5, 1Tr., pp. 114;20-25, 51;13-14. Instead, the Respondent used a tripod, cones, berms and a
17 truck to guard the hole. *See*, 1Tr., p. 34;4-6, 1Tr., p. 88;19-15. The intent of the Respondent in
18 using cones, berms, etc., was to protect the general public and other employees. *See*, 1Tr., 160;10-
19 24. However, no efforts were taken to protect the employees working in and around the hole. *See*,
20 *Id.* Accordingly, the standard was violated.

21 The Respondent exposed its employees. Specifically, Messrs. Westfall, Jamie and Tracy
22 were exposed to the hole without any fall prevention devices employed. *See*, State's Exhibit 1, p.
23 30, *see also*, 1Tr., p. 229;7-13. Mr. Tracy was exposed for a period of about an hour and one half.
24 *See*, State's Exhibit 1, pp. , *see also*, 3Tr., p. 32;5-8. During this time, he was shaken by the
25 experience. *See, Id.* The State presented evidence of the employer's knowledge of the violative
26 condition.

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1 The knowledge element can be established by demonstrating “that the employer either
2 knew or with the exercise of reasonable diligence, could have known of the presence of the
3 violative condition.” *Original Roofing, supra*, at 143 quoting *Pride Oil Well Serv.*, 15 BNA
4 OSHC 1809, 1814 (No. 86-692, 1992). In this case, the State provided evidence that the
5 Respondent possessed actual knowledge of the violative condition.

6 Mr. Westfall said that he and Mr. Michalsky both knew that the trigger height for fall
7 protection in the construction industry is six feet. *See*, State’s Exhibit 1, pp. 40, 53, 65. Mr.
8 Michalsky knew that open manholes are dangerous because he stated that the manhole is covered
9 when the employees go to lunch and when they are finished for the day. *See*, 3Tr., 142;17-24,
10 143;1-7. Mr. Michalsky explained that this was done because the workers were not there to deter
11 others from possibly coming near the hole. *See, Id.*

12 Mr. Jamie would also be considered to be Mr. Tracy’s supervisor in this matter. *See, A.P.*
13 *O’hora Co.*, 14 O.S.H.R.C. 2004, (Jan. 31, 1991) (An employee who has been delegated authority
14 over other employees, even if only temporarily, is considered to be a supervisor for the purposes
15 of imputing knowledge to an employer.) Here, Mr. Jamie gave a series of detailed instructions to
16 Mr. Tracy about the job they were to perform on the morning of August 25, 2017. *See*, 3Tr. 28;1-
17 4. Mr. Jamie knew that Mr. Tracy was afraid of the open manhole and that his fear was adversely
18 affecting his work. *See, Id.* Sadly, Mr. Jamie’s proposed solution was to place a board over the
19 manhole. *See*, 3Tr., 33;10-24, 34;1-2.

20 The Respondent attempted to invoke the defense of infeasibility. *See*, 3Tr., pp. 100-101. In
21 making this affirmative defense, Olson Precast had the burden to prove that there was no safe way
22 to protect its employees from the danger presented by manhole No. 8. *See, A.J. McNulty & Co. v.*
23 *Sec’y of Lab.*, 283 F.3d 328, 334 (D.C. Cir. 2002). In fact, the State was able to provide
24 information regarding a personal fall arrest system (PFAS) which mounts on a guardrail. *See*,
25 State’s Exhibit 1, p. 278, *see also*, State’s Exhibit 2, pp. 307-330. The device is known as a
26 MSA/XTIRPA Manhole Guard System. *See, Id.* Olson Precast seemed to be unaware of the
27 existence of this device up until the closing conference, long after the date of the incident. *See*,
28 3Tr., pp. 95;18-24, 96:1-14. Thus, the Respondent failed to meet its burden of proof at the outset.

1 Even after learning of the device, the Respondent appears to have dismissed the option
2 without inquiry. *See*, 3Tr., pp. 101;15-24, 102;1-11. To wit, the device requires a hard and level
3 surface. *See*, State's Exhibit 2, p. 325. However, the Respondent made no effort to create a
4 workable surface at manhole No. 8. *See*, 3Tr., pp. 18-24. Accordingly, the defense of infeasibility
5 was not available to Olson Precast.

6 The Board also considered whether the citation was to be considered willful. The standard
7 for finding an employer's conduct to be willful requires one of two states of mind, either an
8 intentional disregard of, or plain indifference to OSHA's requirements. *A.E. Staley Mfg. Co. v.*
9 *Sec'y of Lab.*, 295 F.3d 1341 (D.C. Cir. 2002). None of the Board Members believed that Olson
10 Precast acted with intentional disregard to health and safety mandates. *See*, 4Tr., pp. 23-25.

11 The indifference prong was more problematic. As Board Member Macais explained:
12 I don't believe it to be willful. I believe if it was willful or anything to that extent that they
13 wouldn't have provided a fence. They wouldn't have provided the tripods. I believe that
14 they believed that they were protecting their employees for the type of work that they were
15 doing. So I believe it was a citation, a serious citation but I do not believe it was willful.
16 *See*, 4Tr., pp. 23;19-24, 24;1.

17 Board Member Milligan agreed with this assessment. *See*, 4Tr., p. 24, 2-1.

18 Board Member Milligan moved to uphold the citation as a serious but not a willful violation of 29
19 CFR 1926.501(b)(4)(i). *See*, 4Tr., p. 24;14-18. The motion was seconded by Member Spielberg.
20 *See*, 4Tr., pp. 24;24, 25;1. The motion was adopted upon a vote of 4 in favor of the motion and 1
21 against the motion. *See*, 4Tr., p. 25;4-23. Chairman Weber opposed the motion because he
22 believed the Respondent's conduct was sufficient for the violation to be considered willful. *See*,
23 *Id.* Olson Precast was accordingly assessed the fine of \$7,000.

24 On November 13, 2024 the Board convened to consider adoption of this decision, as
25 written or as modified by the Board, as the decision of the Board.

26 Those present and eligible to vote on this question consisted of the 3 current members of
27 the Board, to-wit, Chairman Jorge Macias, Board Secretary William Spielberg and Board
28 Member, Scott Fullerton. Tyson Hollis and Gled Bautista were ineligible to vote. Upon a motion
by William Spielberg, seconded by Scott Fullerton, the Board voted 3-0-2. (Tyson Hollis and
Gled Bautista abstaining as they were not members of the Board or in attendance when the matter

1 was decided), to approve this Decision of the Board as the action of the Board and to authorize
2 Chairman Jorge Macias, after any grammatical or typographical errors are corrected, to execute,
3 without further Board review, this Decision on behalf of the Nevada Occupational Safety and
4 Health Review Board.

5 On November 13, 2024 this Decision is, therefore, hereby adopted and approved as the
6 Final Decision of the Board of Review.

7 Dated this 26th day of November, 2024.

NEVADA OCCUPATIONAL SAFETY
AND HEALTH REVIEW BOARD

8
9
10 By:  _____
Jorge Macias, Chairman

11
12 NOTICE: Pursuant to NRS 233B.130, any party aggrieved by this Final Order of the Nevada
13 Occupational Safety and Health Review Board may file a petition for judicial review to the
14 District Court within thirty (30) days after service of this order.
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1 **CERTIFICATE OF SERVICE**


2 Pursuant to NRCP 5(b), I certify that I am an employee of the Law Offices of Charles R.
3 Zeh, Esq., and that on this date I served the attached *Decision of the Board*, on those parties
4 identified below by placing an original or true copy thereof in a sealed envelope, certified
5 mail/return receipt requested, postage prepaid, placed for collection and mailing in the United
6 States Mail, at Reno, Nevada:

7 Salli Ortiz, Esq.
8 DIR Legal
9 1886 East College Pkwy., Suite 110
10 Carson City, NV 89706.

11 Dalton Hooks, Esq.
12 Hooks Meng & Clement
13 2820 West Charleston Blvd., Suite C-23
14 Las Vegas, NV 89102

15 Ms. Meredith Tracy
16 8916 Ochoa Street
17 Las Vegas, NV 89143

18 Dated this 4th day of December, 2024.

19 
20 Employee of
21 The Law Offices of Charles R. Zeh, Esq.

22 S:\Clients\OSHALV 18-1939, Olson Precast Co\Final Decision.wpd

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