

# Report on the Investigation of the Vortex Incident at the N.C. State Fair, Oct. 24, 2013



Issued April 23, 2014

Elevator and Amusement Device Bureau  
and  
Occupational Safety and Health Division

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## Summary

The Labor Department released its findings and issued citations based upon its investigations of the Vortex incident that occurred on the night of Oct. 24 at the 2013 N.C. State Fair. The Labor Department's investigations include citations from the Occupational Safety and Health Division that investigates accidents involving employers and employees and from the Elevator and Amusement Device Bureau that investigates amusement ride accidents.

Attached are copies of the citations issued to Family Attractions Amusement, LLC, and Joshua Macaroni by the N.C. Department Labor's Occupational Safety and Health Division. The Labor Department cited Family Attractions for two alleged willful violations of the Occupational Safety and Health Act of North Carolina with a total penalty of \$56,000. The Labor Department also cited Joshua Macaroni for two alleged willful violations of the Occupational Safety and Health Act of North Carolina with a total penalty of \$56,000.

A willful violation is cited under the North Carolina OSH Act where the evidence shows that the employer committed an intentional and knowing, as contrasted with inadvertent, violation of the act.

The OSH Act provides for the issuance of civil penalties. The maximum penalty for each willful violation is \$70,000. The General Statutes provide that the Labor Department has to take into consideration the size of the business in calculating the penalty.

Both employers have 15 working days from receipt of the citation to request an informal conference with the Labor Department, to file a notice of contest with the Occupational Safety and Health Review Commission of North Carolina (an independent board appointed by the governor to hear appeals of OSH citations), or to pay the penalty.

Also attached are copies of the Notifications of Final Penalty issued to Family Attractions, Joshua Macaroni, Omar Toranzo and Tim Tutterrow by the Elevator and Amusement Device Bureau. The Labor Department cited Family Attractions (\$900), Joshua Macaroni (\$600), Omar Toranzo (\$350), and Tim Tutterrow (\$350) for various violations of the Amusement Device Safety Act of North Carolina.

The Amusement Device Safety Act of North Carolina provides for the issuance of civil penalties ([95-111.13](#)). The maximum penalty for operation not in accordance with article or rules and regulations is \$250 per day. The maximum penalty for the operation of an unsafe device is \$1,000. The General Statutes provide that the Labor Department take into consideration various factors such as the gravity of the violation, the size of the business, good faith of the employer, and the history of previous violations in calculating the penalty.

Family Attractions, Joshua Macaroni, Omar Toranzo and Tim Tutterrow have 15 working days from receipt of the violations and penalties to request an informal conference with the Labor Department, to file a notice of contest with the North Carolina Office of Administrative Hearings, or to pay the penalty.

By law, the civil money penalties collected by the N.C. Department of Labor are not the receipts of the department, but rather must be remitted to the Civil Penalty and Forfeiture Fund, which then distributes the monies to the public school systems.

The Elevator and Amusement Device Bureau is charged by statute with the inspection of each amusement ride—each time it is assembled for public use—prior to opening to the public to ensure rides are mechanically safe for the public to enjoy. NCDOL ride safety inspectors are trained to inspect each amusement device based on the manufacturers' specifications. The ride safety inspector will certify the ride only if it meets the required specifications.

The Elevator and Amusement Device Bureau inspected more than 7,000 amusement devices last year in addition to roughly 20,000 elevators, escalators and other people movers across the state.

Please contact Dolores Quesenberry at [Dolores.quesenberry@labor.nc.gov](mailto:Dolores.quesenberry@labor.nc.gov) or Neal O'Briant at [neal.obriant@labor.nc.gov](mailto:neal.obriant@labor.nc.gov) if any questions.

**NC Department of Labor**

Division of Occupational Safety and Health  
1101 Mail Service Center  
Raleigh, NC 27699-1101  
Phone: (919)779-8570 FAX: (919)420-7966

**INVOICE/  
DEBT COLLECTION NOTICE**

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**Company Name:** Family Attractions Amusement Co., LLC  
**Inspection Site:** 1025 Blue Ridge Road, Raleigh, NC 27607  
**Issuance Date:** 04/21/2014

**Summary of Penalties for Inspection Number 316779610**

<b>Citation 1, Willful - Serious</b>	= \$ 56000.00
<b>TOTAL PROPOSED PENALTIES</b>	= \$ 56000.00

Please remit payment promptly to Attn: Budget - Collections, NC Department of Labor at 1101 Mail Service Center, Raleigh, NC 27699-1101, for the total amount of the uncontested penalties summarized above. Make your check or money order payable to: NC Department of Labor, OSHA Division. For payment by credit card, complete the form provided. Please indicate OSHA's Inspection Number (indicated above) on the remittance. Pay online at [www.nclabor.com](http://www.nclabor.com). We accept VISA, MasterCard, and E-Checks. You may also fax your payment to (919) 715-9094, or mail it to: N.C. Department of Labor, Budget and Management Division, 1101 Mail Service Center, Raleigh, NC 27699-1101.

Pursuant to N.C. Gen. Stat. Section 147-86.23 interest shall be charged at the rate of five percent (5%) per year on a past-due account receivable from the date the account receivable was due until it is paid. In addition, a late payment penalty of ten percent (10%) of the account receivable shall be added to a past-due account receivable. A late-payment penalty may be waived for good cause shown.

OSHA does not agree to any restrictions or conditions or endorsements put on any check or money order for less than full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.



## Citation and Notification of Penalty

**To:**  
Family Attractions Amusement Co., LLC  
and its successors  
1709 A Gortno Road, Box #379  
Valdosta, GA 31601

Inspection Number: 316779610  
Inspection Date(s): 10/30/2013-  
CSHO ID: K0768  
Issuance Date 04/21/2014

**Inspection Site:**  
1025 Blue Ridge Road  
Raleigh, NC 27607

*The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.*

This Citation and Notification of Penalty describes violation(s) of the labor laws of Chapter 95 of the North Carolina General Statutes. The penalty(ies) listed herein is (are) based on these violations. You must correct the violation(s) referred to in this citation by the date(s) listed and pay the penalty proposed, unless within 15 working days (excluding weekends and holidays) from receipt of this Citation and Notification of Penalty, you mail a request for an informal conference or Notice of Contestment to the North Carolina Department of Labor district office at the address shown above.

**Posting** - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer. **The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.**

**Informal Conference** - You may request an informal conference. To request an informal conference, you must return the enclosed form marking the block requesting an informal conference or provide other written notice to the district supervisor within 15 working days of receipt of the citation. **[Do not mark more than one block on the enclosed form if you want an informal conference.]** The informal conference must be held no longer than 20 working days from the date you receive the Citation and Notification of Penalty, so your immediate response is necessary if you choose this option.

If you make a timely request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you preserve your right to contest. The time for contestment does not begin until after

the informal conference is held and you have been notified of the result(s). At that time you have an additional 15 working days during which you may file a notice of contest, should you so desire.

If you decide to request an informal conference, obtain the date, time and location of the informal conference by contacting the District Supervisor, then complete and post the enclosed Notice to Employees near the Citation and Notification of Penalty. Please bring to the conference all supporting documentation of existing conditions and any corrections made thus far. The results of the informal conference will be a revised citation, a notice of no change or an informal settlement agreement. An informal settlement agreement will resolve the matter without litigation or contestment.

**Right to Contest** - You have the right to contest this Citation and Notification of Penalty now or after an informal conference. You may contest all citation items or only individual items. You may also contest proposed penalties and/or abatement dates without contesting the underlying violations.

**15 working days after you receive this Citation and Notification of Penalty (if you do not request an informal conference) or 15 working days after you receive the results of the informal conference, the citation(s) and/or proposed penalty(ies) will become a final order of the North Carolina Occupational Safety and Health Review Commission and may not be reviewed by any court or agency, unless you file a notice of contestment.**

**Penalty Payment** - Penalties are due within 15 working days of receipt of this notification unless a request for an informal conference or notice of contestment is forwarded. Make your check or money order payable to the North Carolina Department of Labor, OSHA Division and remit to the Budget Division at 1101 Mail Service Center, Raleigh, NC 27699-1101. Pay online at [www.nclabor.com](http://www.nclabor.com). We accept VISA, MasterCard, and E-Checks. You may also fax your payments to (919) 715-9094, or mail it to: N.C. Department of Labor, Budget and Management Division, 1101 Mail Service Center, Raleigh NC 27699-1101. You may also make payment by credit card. A form is provided for your convenience. Please indicate the inspection number on the remittance.

Pursuant to N.C. Gen. Stat. Section 147-86.23 interest shall be charged at the rate of five percent (5%) per year on a past-due account receivable from the date the account receivable was due until it is paid. In addition, a late payment penalty of ten percent (10%) of the account receivable shall be added to a past-due account receivable. A late-payment penalty may be waived for good cause shown.

The North Carolina Department of Labor does not agree to any restriction or conditions or endorsements you put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

**Notification of Corrective Action** - For violations which you do not contest, you should return the OSHA Form 2D (Certification of Abatement) within ten (10) calendar days after the abatement date, to indicate that appropriate corrective action has been taken within the time frame set forth in this citation. You are not required to certify abatement if the inspector observed the abatement during the on-site portion of the inspection or observes within 24 hours after identifying the hazard and notes in the citation that abatement has occurred. The certification that abatement is complete must include, for each cited violation, the date and method of abatement and a statement that affected employees and their representatives have been informed of the abatement.

In addition, for repeat, willful and other serious violations as indicated, additional documents demonstrating that abatement is complete is required. This additional documentation may include, but is not limited to, evidence of the purchase or repair of equipment, photographic or video evidence of abatement or other written records.

If indicated in the citation, you may be required to submit an abatement plan for each cited violation, when time permitted for abatement is more than 90 calendar days. The plan must identify the violation and the steps to be taken to achieve abatement, including a schedule for completing abatement and how employees will be protected from exposure to the violative condition in the interim until abatement is complete. An employer who submits an abatement plan may be required to also submit periodic progress reports for each cited violation. The citation will indicate whether progress plans are due and the date(s) when the progress reports are due.

The employer must include, in each submission required by this notification, company name and address, inspection number, citation and item numbers, a statement that the information submitted is accurate, and a signature of the employer or the employer's authorized representative. The date of the postmark is the date of submission for mailed documents.

**Employee Notification of Corrective Action** - The employer must inform affected employees and their representative(s) about abatement activities, covered by the citations, by posting a copy of each document submitted to the North Carolina Department of Labor, or a summary of the document near the place where the violation occurred, or where it will be readily observable. The employer must inform employees of their right to examine and copy all abatement documents submitted. Posted documents must remain posted for three working days after submission to the Department.

**Employer Discrimination Unlawful** - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 180 days after the discrimination occurred with the NC Department of Labor at the address shown above.

**Notice to Employees** - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be in writing and signed. It must be mailed to the North Carolina Department of Labor at the address shown above and postmarked within 20 days of the receipt by the employer of this Citation and Notification of Penalty.

**Notice to Employer** - Enclosed are citations and proposed penalties levied against your facility resulting from the Division of Occupational Safety and Health's compliance inspection of your facility. The penalty for each violation has been reduced depending on your facility's size, good faith and history.

## CREDIT CARD PAYMENT

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone #: (\_\_\_\_)

Amount: \$ \_\_\_\_\_ (circle one):       MasterCard       Visa

Name (as it appears on credit card): \_\_\_\_\_

Credit Card Number: \_\_\_\_\_ Exp. Date: \_\_\_\_\_  
Mo./Yr.

Cardholder Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Payment for Invoice Nos.:  
\_\_\_\_\_

Pay online at [www.nclabor.com](http://www.nclabor.com). We accept VISA, MasterCard, and E-Checks. You may also fax your payments to (919) 715-9094, or mail it to: N.C. Department of Labor, Budget and Management Division, 1101 Mail Service Center, Raleigh, NC 27699-1101.

Cut along dotted line

**NC Department of Labor**  
**Division of Occupational Safety and Health**

**THIS FORM IS FOR YOUR CONVENIENCE IN REQUESTING AN INFORMAL CONFERENCE OR FOR CONTESTING PART OR ALL OF THE ENCLOSED CITATION(S). THE FORM OR YOUR REQUEST FOR AN INFORMAL CONFERENCE OR NOTICE TO CONTEST MUST BE POSTMARKED WITHIN 15 WORKING DAYS OF RECEIPT OF THE CITATION(S).**

Family Attractions Amusement Co., LLC  
1025 Blue Ridge Road  
Raleigh, NC 27607

Inspection Number 316779610

**Please mark only one of the following boxes and return to the address indicated below. Forms returned with more than one box marked will be treated as a request for an informal conference.**

**PENALTY PAYMENT ENCLOSED IN THE AMOUNT OF \$ \_\_\_\_\_**

Remit to: NC Department of Labor  
ATTN: Budget - Collections  
1101 Mail Service Center  
Raleigh, NC 27699-1101

Pay online at [www.nclabor.com](http://www.nclabor.com). We accept MasterCard, VISA, E-Checks. You may also fax your payment to (919) 715-9094, or mail it to: N.C. Department of Labor, Budget and Management Division, 1101 Mail Service Center, Raleigh, NC 27699-1101.

**REQUEST AN INFORMAL CONFERENCE (YOUR RIGHT TO CONTEST IS RESERVED PENDING THE RESULTS OF THE INFORMAL CONFERENCE)**

**NOTICE OF CONTEST OF CITATION(S) AND/OR PROPOSED PENALTY**

Contest of Violation(s) Date(s)/Abatement Dates(s) \_\_\_\_\_

Contestment of Penalty Amount(s) \_\_\_\_\_

Return to: NC Department of Labor  
Division of Occupational Safety and Health  
Attention: District Supervisor (J1612)  
1101 Mail Service Center  
Raleigh, NC 27699-1101  
Tel:(919) 779-8570 Fax: (919) 420-7966

Signature \_\_\_\_\_ Name(print): \_\_\_\_\_

Title \_\_\_\_\_ Email Address: \_\_\_\_\_

Telephone No.:(\_\_\_\_\_) \_\_\_\_\_ Fax:(\_\_\_\_\_) \_\_\_\_\_ Date: \_\_\_\_\_



## **NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE**

An informal conference has been scheduled with OSHA to discuss the citation(s) issued on 04/21/2014. The conference will be held at the OSHA office located at Division of Occupational Safety and Health, 1101 Mail Service Center, Raleigh, NC, 27699-1101 on \_\_\_\_\_ at \_\_\_\_\_. Employees and/or representatives of employees have a right to attend an informal conference.

**NC Department of Labor**

Division of Occupational Safety and Health  
1101 Mail Service Center  
Raleigh, NC 27699-1101  
Phone: (919)779-8570 FAX: (919) 779-8511



**Request for Abatement Date Extensions**

In the event it becomes necessary to request an extension of the abatement date for any violation listed on the enclosed citation(s), certain information must be submitted, in writing, before this request can be considered. Please send your request to:

North Carolina Department of Labor  
Division of Occupational Safety and Health  
1101 Mail Service Center  
Raleigh, NC 27699-1101

The Division of Occupational Safety and Health has the authority to approve or deny any request for abatement extension. However, this approval or denial will not be exercised until the expiration of fifteen (15) working days from the date your employees were notified of the request for an extension. This notification will be accomplished by posting the enclosed "Request for Abatement Date Extension" or by delivering notice to an authorized employee representative. During this fifteen (15) working days period, you are responsible for assuring the safety and health of your employees in the area of the cited hazard.

Attached to this letter is the information you need to include with your request for an extension of any abatement date. Please answer each item completely and forward to this office as soon as it becomes apparent that an extension will be necessary.

If you have any questions regarding this procedure, please call our office at: (919)779-8570.

### **Request for Abatement Date Extension**

The employer must indicate in the boxes below which item(s) of the Citation and Notification of Penalty it wishes to extend. First, the employer must identify the citation and item number(s). (For example, "Citation 1, Item 2" or "1-2.") Then the employer must indicate all actions taken, their dates, to achieve compliance during the original abatement period. The employer must also include: the specific additional time necessary, the reasons for the additional time, all available interim steps being taken to safeguard employees, a certification that a copy of this PMA has been posted and served upon the authorized employee representative, and the date the posting and service was completed.

<b>Inspection Number</b> 316779610	<b>CSHO ID</b> K0768	<b>Issuance Date</b> 04/21/2014
<b>Employer's name and mailing address</b>		

<b>Citation and Item no.</b>	<b>Abatement Date on Citation</b>	<b>Anticipated Completion Date</b>	<b>Reason for requesting an additional abatement period</b>	<b>Interim steps taken to safeguard employees, including dates, during any extended abatement period</b>

The employer completing this form must sign the form.

Name of Employer Representative, Title	Phone
----------------------------------------	-------

Signature	Date
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## **Request for Abatement Date Extension Certificate of Posting**

I hereby certify that the Request for Abatement Date Extension form and this Certificate of Posting were posted as required on \_\_\_\_\_, 20\_\_\_\_\_, and a copy furnished to the authorized employee representative, if appropriate, and will remain posted for a period of 15 days.

If any affected employees, or their representative, feel that this extension should not be granted, they should file an objection to the request in writing to:

North Carolina Department of Labor  
Division of Occupational Safety and Health  
1101 Mail Service Center  
Raleigh, NC 27699-1101

Failure to file such objection within fifteen (15) working days of the date of posting of the petition shall constitute a waiver of any further right to object to the petition.

Company Name \_\_\_\_\_

Authorized Signature \_\_\_\_\_

Date \_\_\_\_\_

A copy of this Certificate of Posting must be returned with your request for abatement extension.



## Citation and Notification of Penalty

Company Name: Family Attractions Amusement Co., LLC  
Inspection Site: 1025 Blue Ridge Road, Raleigh, NC 27607

### Citation 1 Item 1 Type of Violation: **Willful - Serious**

North Carolina General Statute 95-129(1) of the Occupational Safety and Health Act of North Carolina: The employer did not furnish each of his employees conditions of employment and a place of employment free from recognized hazards that were causing or likely to cause death or serious physical harm to employees in that employees were exposed to: The hazard of being struck by moving parts of an amusement device after safety systems were bypassed.

a) Vortex Amusement Ride at the NC State Fair 10/22/13 through 10/24/13 - employees were exposed and an employee was injured on 10/24/13 due to safety devices built into the machine being circumvented by the addition of jumper wiring placed into the wiring mechanism. The jumper wiring effectively negated safety circuits allowing the machine to operate when the emergency and/or safety handles (passenger restraint mechanisms) were not engaged. Safety devices used to prevent device operation while seat restraints were in the open position were bypassed electrically using jumper wires at the electrical terminal in the junction box. Because of the bypass, the device could be operated with one or all restraints in the open position.

Among other methods, one applicable and feasible method to correct this hazard would be to operate the machine with all safety devices operational as designed by the manufacturer

REFERENCE: VORTEX ORIGINAL OWNER/OPERATORS MANUAL STATES "ALL SAFETY CIRCUITS MUST REMAIN AS DESIGNED AND MAY NOT BE BYPASSED."

REFERENCE: NCDOL EAD DIVISION STANDARD 13 NCAC 15.0424 ELECTRICAL SAFETY REQUIREMENTS WHICH STATES "ALL ELECTRICAL WIRING, EQUIPMENT AND APPARATUS USED FOR AMUSEMENT DEVICES OR FOR LIGHTING SHALL COMPLY WITH THE NATIONAL ELECTRICAL CODE, NFPA 70, AND SHALL BE PROPERLY AND LEGALLY INSTALLED, OPERATED, AND MAINTAINED."

Date By Which Violation Must be Abated:	04/24/2014
Proposed Penalty:	\$ 28000.00

See pages 1 through 6 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



### Citation and Notification of Penalty

Company Name: Family Attractions Amusement Co., LLC  
Inspection Site: 1025 Blue Ridge Road, Raleigh, NC 27607

#### Citation 1 Item 2 Type of Violation: **Willful - Serious**

North Carolina General Statute 95-129(1) of the Occupational Safety and Health Act of North Carolina: The employer did not furnish each of his employees conditions of employment and a place of employment free from recognized hazards that were causing or likely to cause death or serious physical harm to employees in that employees were exposed to: The hazard of being struck by moving parts of an amusement device that was not maintained in accordance with manufacturer operating instructions.

a) Vortex ride at North Carolina State Fair, 10/22/13 through 10/24/13 - where the employer failed to maintain the Vortex amusement device in accordance with manufacturers specifications. The employer was required to perform one operational check per day and knew the Vortex was not being maintained per manufacturers instructions. Jumpers inserted into the wiring system bypassed the safety circuit which prevented the ride from operating because the safety restraints were not engaged. The circumvention of the circuit would have been readily apparent because it would result in the "green light" on the control panel staying on even when the restraints were not closed. The malfunction was not recorded on any of the operational checks performed after the jumper was installed. Bypassing the safety circuit exposed the employees working on the ride to the possibility of a struck by hazard if the ride started up while they were loading or unloading ride patrons. Such a start up occurred on 10/24/13 resulting in injuries to an employee. The passenger restraint release button also malfunctioned, requiring attendants to release the restraints by using a release in an electrical control cabinet on the deck of the ride.

Among other methods, one applicable and feasible method of abatement to correct this hazard would be to perform maintenance inspections and correct any irregularities.

REFERENCE: VORTEX ORIGINAL OWNER/OPERATORS MANUAL STATES "ALL SAFETY CIRCUITS MUST REMAIN AS DESIGNED AND MAY NOT BE BYPASSED"

REFERENCE: VORTEX OWNERS MANUAL - p.61 - INSTRUCTIONS FOR USE AND MAINTENANCE - "DO NOT CHANGE OR RENDER UNUSABLE THE SAFETY DEVICES OF THE CONNECTIONS." "PERFORM THOROUGH AND REGULAR MAINTENANCE OF THE ASSEMBLIES."

REFERENCE: NC DOL EAD DIVISION STANDARD 13 NCAC 15.0410 DAILY INSPECTION AND TEST WHICH STATES "A DAILY INSPECTION AND TEST SHALL

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See pages 1 through 6 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



**Citation and Notification of Penalty**

**Company Name:** Family Attractions Amusement Co., LLC  
**Inspection Site:** 1025 Blue Ridge Road, Raleigh, NC 27607

INCLUDE THE OPERATION OF CONTROL DEVICES, SPEED-LIMITING DEVICES, BRAKES AND OTHER EQUIPMENT PROVIDED FOR SAFETY."

<b>Date By Which Violation Must be Abated:</b>	04/24/2014
<b>Proposed Penalty:</b>	\$ 28000.00

District Supervisor  
for the Director

See pages 1 through 6 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

**NC Department of Labor**

Division of Occupational Safety and Health  
1101 Mail Service Center  
Raleigh, NC 27699-1101  
Phone: (919)779-8570 FAX: (919)420-7966

**INVOICE/  
DEBT COLLECTION NOTICE**

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**Company Name:** Joshua Macaroni  
**Inspection Site:** North Carolina State Fair Grounds, Raleigh, NC 27607  
**Issuance Date:** 04/21/2014

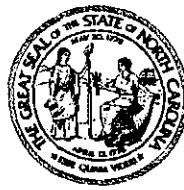
**Summary of Penalties for Inspection Number 316779818**

<b>Citation 1, Willful - Serious</b>	= \$ 56000.00
<b>TOTAL PROPOSED PENALTIES</b>	= \$ 56000.00

Please remit payment promptly to Attn: Budget - Collections, NC Department of Labor at 1101 Mail Service Center, Raleigh, NC 27699-1101, for the total amount of the uncontested penalties summarized above. Make your check or money order payable to: NC Department of Labor, OSHA Division. For payment by credit card, complete the form provided. Please indicate OSHA's Inspection Number (indicated above) on the remittance. Pay online at [www.nclabor.com](http://www.nclabor.com). We accept VISA, MasterCard, and E-Checks. You may also fax your payment to (919) 715-9094, or mail it to: N.C. Department of Labor, Budget and Management Division, 1101 Mail Service Center, Raleigh, NC 27699-1101.

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OSHA does not agree to any restrictions or conditions or endorsements put on any check or money order for less than full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.



## Citation and Notification of Penalty

**To:**  
Joshua Macaroni  
and its successors  
1709 Gronto Road #379A  
Valdosta, GA 31601

Inspection Number: 316779818  
Inspection Date(s): 01/30/2014-  
CSHO ID: K0768  
Issuance Date 04/21/2014

**Inspection Site:**  
North Carolina State Fair Grounds  
Raleigh, NC 27607

*The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.*

This Citation and Notification of Penalty describes violation(s) of the labor laws of Chapter 95 of the North Carolina General Statutes. The penalty(ies) listed herein is (are) based on these violations. You must correct the violation(s) referred to in this citation by the date(s) listed and pay the penalty proposed, unless within 15 working days (excluding weekends and holidays) from receipt of this Citation and Notification of Penalty, you mail a request for an informal conference or Notice of Contestment to the North Carolina Department of Labor district office at the address shown above.

**Posting** - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer. **The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.**

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the informal conference is held and you have been notified of the result(s). At that time you have an additional 15 working days during which you may file a notice of contest, should you so desire.

If you decide to request an informal conference, obtain the date, time and location of the informal conference by contacting the District Supervisor, then complete and post the enclosed Notice to Employees near the Citation and Notification of Penalty. Please bring to the conference all supporting documentation of existing conditions and any corrections made thus far. The results of the informal conference will be a revised citation, a notice of no change or an informal settlement agreement. An informal settlement agreement will resolve the matter without litigation or contestment.

**Right to Contest** - You have the right to contest this Citation and Notification of Penalty now or after an informal conference. You may contest all citation items or only individual items. You may also contest proposed penalties and/or abatement dates without contesting the underlying violations.

**15 working days after you receive this Citation and Notification of Penalty (if you do not request an informal conference) or 15 working days after you receive the results of the informal conference, the citation(s) and/or proposed penalty(ies) will become a final order of the North Carolina Occupational Safety and Health Review Commission and may not be reviewed by any court or agency, unless you file a notice of contestment.**

**Penalty Payment** - Penalties are due within 15 working days of receipt of this notification unless a request for an informal conference or notice of contestment is forwarded. Make your check or money order payable to the North Carolina Department of Labor, OSHA Division and remit to the Budget Division at 1101 Mail Service Center, Raleigh, NC 27699-1101. Pay online at [www.nclabor.com](http://www.nclabor.com). We accept VISA, MasterCard, and E-Checks. You may also fax your payments to (919) 715-9094, or mail it to: N.C. Department of Labor, Budget and Management Division, 1101 Mail Service Center, Raleigh NC 27699-1101. You may also make payment by credit card. A form is provided for your convenience. Please indicate the inspection number on the remittance.

Pursuant to N.C. Gen. Stat. Section 147-86.23 interest shall be charged at the rate of five percent (5%) per year on a past-due account receivable from the date the account receivable was due until it is paid. In addition, a late payment penalty of ten percent (10%) of the account receivable shall be added to a past-due account receivable. A late-payment penalty may be waived for good cause shown.

The North Carolina Department of Labor does not agree to any restriction or conditions or endorsements you put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

**Notification of Corrective Action** - For violations which you do not contest, you should return the OSHA Form 2D (Certification of Abatement) within ten (10) calendar days after the abatement date, to indicate that appropriate corrective action has been taken within the time frame set forth in this citation. You are not required to certify abatement if the inspector observed the abatement during the on-site portion of the inspection or observes within 24 hours after identifying the hazard and notes in the citation that abatement has occurred. The certification that abatement is complete must include, for each cited violation, the date and method of abatement and a statement that affected employees and their representatives have been informed of the abatement.

In addition, for repeat, willful and other serious violations as indicated, additional documents demonstrating that abatement is complete is required. This additional documentation may include, but is not limited to, evidence of the purchase or repair of equipment, photographic or video evidence of abatement or other written records.

If indicated in the citation, you may be required to submit an abatement plan for each cited violation, when time permitted for abatement is more than 90 calendar days. The plan must identify the violation and the steps to be taken to achieve abatement, including a schedule for completing abatement and how employees will be protected from exposure to the violative condition in the interim until abatement is complete. An employer who submits an abatement plan may be required to also submit periodic progress reports for each cited violation. The citation will indicate whether progress plans are due and the date(s) when the progress reports are due.

The employer must include, in each submission required by this notification, company name and address, inspection number, citation and item numbers, a statement that the information submitted is accurate, and a signature of the employer or the employer's authorized representative. The date of the postmark is the date of submission for mailed documents.

**Employee Notification of Corrective Action** - The employer must inform affected employees and their representative(s) about abatement activities, covered by the citations, by posting a copy of each document submitted to the North Carolina Department of Labor, or a summary of the document near the place where the violation occurred, or where it will be readily observable. The employer must inform employees of their right to examine and copy all abatement documents submitted. Posted documents must remain posted for three working days after submission to the Department.

**Employer Discrimination Unlawful** - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 180 days after the discrimination occurred with the NC Department of Labor at the address shown above.

**Notice to Employees** - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be in writing and signed. It must be mailed to the North Carolina Department of Labor at the address shown above and postmarked within 20 days of the receipt by the employer of this Citation and Notification of Penalty.

**Notice to Employer** - Enclosed are citations and proposed penalties levied against your facility resulting from the Division of Occupational Safety and Health's compliance inspection of your facility. The penalty for each violation has been reduced depending on your facility's size, good faith and history.

## CREDIT CARD PAYMENT

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone #: ( ) \_\_\_\_\_

Amount: \$ \_\_\_\_\_ (circle one):       MasterCard       Visa

Name (as it appears on credit card): \_\_\_\_\_

Credit Card Number: \_\_\_\_\_ Exp. Date: \_\_\_\_\_  
Mo./Yr. \_\_\_\_\_

Cardholder Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Payment for Invoice Nos.: \_\_\_\_\_  
\_\_\_\_\_

Pay online at [www.nclabor.com](http://www.nclabor.com). We accept VISA, MasterCard, and E-Checks. You may also fax your payments to (919) 715-9094, or mail it to: N.C. Department of Labor, Budget and Management Division, 1101 Mail Service Center, Raleigh, NC 27699-1101.

Cut along dotted line

NC Department of Labor  
Division of Occupational Safety and Health

**THIS FORM IS FOR YOUR CONVENIENCE IN REQUESTING AN INFORMAL CONFERENCE OR FOR CONTESTING PART OR ALL OF THE ENCLOSED CITATION(S). THE FORM OR YOUR REQUEST FOR AN INFORMAL CONFERENCE OR NOTICE TO CONTEST MUST BE POSTMARKED WITHIN 15 WORKING DAYS OF RECEIPT OF THE CITATION(S).**

Joshua Macaroni  
North Carolina State Fair Grounds  
Raleigh, NC 27607

Inspection Number 316779818

**Please mark only one of the following boxes and return to the address indicated below. Forms returned with more than one box marked will be treated as a request for an informal conference.**

**PENALTY PAYMENT ENCLOSED IN THE AMOUNT OF \$ \_\_\_\_\_**

Remit to: NC Department of Labor  
ATTN: Budget - Collections  
1101 Mail Service Center  
Raleigh, NC 27699-1101

Pay online at [www.nclabor.com](http://www.nclabor.com). We accept MasterCard, VISA, E-Checks. You may also fax your payment to (919) 715-9094, or mail it to: N.C. Department of Labor, Budget and Management Division, 1101 Mail Service Center, Raleigh, NC 27699-1101.

**REQUEST AN INFORMAL CONFERENCE (YOUR RIGHT TO CONTEST IS RESERVED PENDING THE RESULTS OF THE INFORMAL CONFERENCE)**

**NOTICE OF CONTEST OF CITATION(S) AND/OR PROPOSED PENALTY**

Contest of Violation(s) Date(s)/Abatement Dates(s) \_\_\_\_\_

Contestation of Penalty Amount(s) \_\_\_\_\_

Return to: NC Department of Labor  
Division of Occupational Safety and Health  
Attention: District Supervisor (J1612)  
1101 Mail Service Center  
Raleigh, NC 27699-1101  
Tel:(919) 779-8570 Fax: (919) 420-7966

Signature \_\_\_\_\_ Name(print): \_\_\_\_\_

Title \_\_\_\_\_ Email Address: \_\_\_\_\_

Telephone No.:(\_\_\_\_\_) \_\_\_\_\_ Fax:(\_\_\_\_\_) \_\_\_\_\_ Date: \_\_\_\_\_



## NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with OSHA to discuss the citation(s) issued on 04/21/2014. The conference will be held at the OSHA office located at Division of Occupational Safety and Health, 1101 Mail Service Center, Raleigh, NC, 27699-1101 on \_\_\_\_\_ at \_\_\_\_\_. Employees and/or representatives of employees have a right to attend an informal conference.

NC Department of Labor  
Division of Occupational Safety and Health  
1101 Mail Service Center  
Raleigh, NC 27699-1101  
Phone: (919)779-8570 FAX: (919) 779-8511



### **Request for Abatement Date Extensions**

In the event it becomes necessary to request an extension of the abatement date for any violation listed on the enclosed citation(s), certain information must be submitted, in writing, before this request can be considered. Please send your request to:

North Carolina Department of Labor  
Division of Occupational Safety and Health  
1101 Mail Service Center  
Raleigh, NC 27699-1101

The Division of Occupational Safety and Health has the authority to approve or deny any request for abatement extension. However, this approval or denial will not be exercised until the expiration of fifteen (15) working days from the date your employees were notified of the request for an extension. This notification will be accomplished by posting the enclosed "Request for Abatement Date Extension" or by delivering notice to an authorized employee representative. During this fifteen (15) working days period, you are responsible for assuring the safety and health of your employees in the area of the cited hazard.

Attached to this letter is the information you need to include with your request for an extension of any abatement date. Please answer each item completely and forward to this office as soon as it becomes apparent that an extension will be necessary.

If you have any questions regarding this procedure, please call our office at: (919)779-8570.

### Request for Abatement Date Extension

The employer must indicate in the boxes below which item(s) of the Citation and Notification of Penalty it wishes to extend. First, the employer must identify the citation and item number(s). (For example, "Citation 1, Item 2" or "1-2.") Then the employer must indicate all actions taken, their dates, to achieve compliance during the original abatement period. The employer must also include: the specific additional time necessary, the reasons for the additional time, all available interim steps being taken to safeguard employees, a certification that a copy of this PMA has been posted and served upon the authorized employee representative, and the date the posting and service was completed.

Inspection Number 316779818	CSHO ID K0768	Issuance Date 04/21/2014
Employer's name and mailing address		

Citation and Item no.	Abatement Date on Citation	Anticipated Completion Date	Reason for requesting an additional abatement period	Interim steps taken to safeguard employees, including dates, during any extended abatement period

The employer completing this form must sign the form.

Name of Employer Representative, Title \_\_\_\_\_ Phone \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

## **Request for Abatement Date Extension Certificate of Posting**

I hereby certify that the Request for Abatement Date Extension form and this Certificate of Posting were posted as required on \_\_\_\_\_, 20\_\_\_\_\_, and a copy furnished to the authorized employee representative, if appropriate, and will remain posted for a period of 15 days.

If any affected employees, or their representative, feel that this extension should not be granted, they should file an objection to the request in writing to:

North Carolina Department of Labor  
Division of Occupational Safety and Health  
1101 Mail Service Center  
Raleigh, NC 27699-1101

Failure to file such objection within fifteen (15) working days of the date of posting of the petition shall constitute a waiver of any further right to object to the petition.

Company Name \_\_\_\_\_

Authorized Signature \_\_\_\_\_

Date \_\_\_\_\_

A copy of this Certificate of Posting must be returned with your request for abatement extension.



### Citation and Notification of Penalty

Company Name: Joshua Macaroni  
Inspection Site: North Carolina State Fair Grounds, Raleigh, NC 27607

#### Citation 1 Item 1 Type of Violation: Willful - Serious

North Carolina General Statute 95-129(1) of the Occupational Safety and Health Act of North Carolina: The employer did not furnish each of his employees conditions of employment and a place of employment free from recognized hazards that were causing or likely to cause death or serious physical harm to employees in that employees were exposed to: The hazard of being struck by moving parts of an amusement device after safety systems were bypassed.

a) Vortex Amusement Ride at the NC State Fair 10/22/13 through 10/24/13 - Employees were exposed and an employee was injured due to safety systems built into the machine being circumvented by the addition of jumper wiring placed into the wiring mechanism. The jumper wiring effectively negated safety circuits allowing the machine to operate when the emergency and/or safety handles (passenger restraint mechanisms) were not engaged. Safety devices used to prevent device operation while seat restraints were in the open position were bypassed electrically using jumper wires at the electric terminal in the junction box. Because of the bypass, the device could be operated with one or all restraints in the open position.

Among other methods, one applicable and feasible method to correct this hazard would be to operate the machine with all safety devices operational as designed by the manufacturer.

REFERENCE: VORTEX ORIGINAL OWNER/OPERATORS MANUAL STATES "ALL SAFETY CIRCUITS MUST REMAIN AS DESIGNED AND MAY NOT BE BYPASSED."

REFERENCE: NC DOL EAD DIVISION STANDARD 13 NCAC 15.0424 ELECTRICAL SAFETY REQUIREMENTS WHICH STATES "ALL ELECTRICAL WIRING, EQUIPMENT AND APPARATUS USED FOR AMUSEMENT DEVICES OR FOR LIGHTING SHALL COMPLY WITH THE NATIONAL ELECTRICAL CODE, NFPA 70, AND SHALL BE PROPERLY AND LEGALLY INSTALLED, OPERATED AND MAINTAINED"

Date By Which Violation Must be Abated:	04/24/2014
Proposed Penalty:	\$ 28000.00

See pages 1 through 6 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.



## Citation and Notification of Penalty

Company Name: Joshua Macaroni  
Inspection Site: North Carolina State Fair Grounds, Raleigh, NC 27607

### Citation 1 Item 2 Type of Violation: Willful - Serious

North Carolina General Statute 95-129(1) of the Occupational Safety and Health Act of North Carolina: The employer did not furnish each of his employees conditions of employment and a place of employment free from recognized hazards that were causing or likely to cause death or serious physical harm to employees in that employees were exposed to. The hazard of being struck by moving parts of an amusement device that was not maintained in accordance with manufacturer operating instructions.

a) Vortex ride at North Carolina State Fair, 10/22/13 through 10/24/13 - where the employer failed to maintain the Vortex amusement device in accordance with manufacturers' specifications. The employer was required to perform one operational check per day and knew the Vortex was not being maintained per manufacturers instructions. Jumpers inserted into the wiring system bypassed the safety circuit which prevented the ride from operating because the safety restraints were not engaged. The circumvention of the circuit would have been readily apparent because it would result in the "green light" on the control panel staying on even when the restraints were not closed. The malfunction was not recorded on any of the operational checks performed after the jumper was installed. Bypassing the safety circuit exposed the employees working on the ride to the possibility of a struck by hazard if the ride started up while they were loading or unloading ride patrons. Such a start up occurred on 10/24/13 resulting in injuries to an employee. The passenger restraint release button also malfunctioned, requiring attendants to release the restraints by using a release in an electrical control cabinet on the deck of the ride.

Among other methods, one applicable and feasible method of abatement to correct this hazard would be to perform maintenance inspections and correct any irregularities.

REFERENCE: VORTEX ORIGINAL OWNER/OPERATORS MANUAL STATES "ALL SAFETY CIRCUITS MUST REMAIN AS DESIGNED AND MAY NOT BE BYPASSED."

REFERENCE: VORTEX OWNERS MANUAL - p.61 - INSTRUCTIONS FOR USE AND MAINTENANCE - "DO NOT CHANGE OR RENDER UNUSABLE THE SAFETY DEVICES OF THE CONNECTIONS." "PERFORM THOROUGH AND REGULAR MAINTENANCE OF THE ASSEMBLIES."

REFERENCE: NC DOL EAD DIVISION STANDARD 13 NCAC 15.0410 DAILY INSPECTION AND TEST WHICH STATES "A DAILY INSPECTION AND TEST SHALL



**Citation and Notification of Penalty**

Company Name: Joshua Macaroni  
Inspection Site: North Carolina State Fair Grounds, Raleigh, NC 27607

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INCLUDE THE OPERATION OF CONTROL DEVICES, SPEED-LIMITING DEVICES,  
BRAKES AND OTHER EQUIPMENT PROVIDED FOR SAFETY."

Date By Which Violation Must be Abated:	04/24/2014
Proposed Penalty:	\$ 28000.00

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District Supervisor  
for the Director

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See pages 1 through 6 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

**AMUSEMENT DEVICE –  
 PROPOSED PENALTY CALCULATION WORKSHEET**

Amusement Device ID Number:  9699	Name/Type of Amusement Device:  Vortex	Inspection Date:  10/16/13-10/17/13	Inspection Invoice Number: 327-101713
Owner/Agent/Company Name: Family Attractions Amusement, LLC	Address: 1709 A Gornto Rd. #379	City: Valdosta	State: GA Zip Code: 31601
Location of Amusement Device: NC State Fairgrounds	County: Wake	City: Raleigh	

During the investigation of the above-referenced amusement device or equipment, which is subject to the provisions of Chapter 95, Article 14B of the N.C. General Statutes (the Amusement Device Safety Act of North Carolina), the EAD discovered certain violations of the Act. These violations are noted below. As a result, pursuant to N.C. Gen. Stat. § 95-111.13, you are hereby assessed the following penalties:

	Statutory Violation	Penalty Amount	# of Days	# of Devices	Total Amount of Penalty
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.7(a) or (b) – Operation Without Certificate; Operation Not In Accordance With Article or Rules and Regulations.	\$250.00 <i>(each day/each device)</i>	X 8	X 1	\$ 2000.00
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.7(c) – Operation After Refusal to Issue or After Revocation of Certificate.	\$500.00 <i>(each day/each device)</i>	X	X	\$
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.8 – Failure to File a Location Notice.	\$500.00 <i>(each day/any device)</i>	X		\$
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.9 – Operation of Unsafe Device.	\$1,000.00 <i>(maximum penalty)</i>			\$1000.00
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.10(c) – Operation After Occurrence Without Approval of Commissioner.	\$500.00 <i>(each day/each device)</i>	X	X	\$
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.10(d) – Removal or Repair of Device Prior to Investigation of Occurrence.	\$500.00 <i>(maximum penalty)</i>			\$
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.11(a) – Operator Requirements.	\$500.00 <i>(maximum penalty)</i>			\$
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.11(b) – Operation While Impaired	\$1,000.00 <i>(maximum penalty)</i>			\$
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.12 – Operation Without Liability Insurance.	\$500.00 <i>(each day/each device)</i>	X	X	\$
<b>Total Proposed Penalty Amount</b>					<b>\$3000.00</b>

**THIS IS NOT A FINAL PENALTY CALCULATION –  
 YOU ARE NOT REQUIRED TO REMIT PAYMENT AT THIS TIME.**

In the near future, you will be receiving a Notification of Final Penalty which will contain the Total Penalty Amount which you will be required to pay, pursuant to N.C. Gen. Stat. § 95-111.13. The Final Penalty Amount will be based upon the Total Proposed Penalty Amount listed above, as well as certain factors regarding the appropriateness of the penalty which are required by N.C. Gen. Stat. § 95-111.13(f) (such as the size of the business, the gravity of the violation, the good faith exhibited by the business, and the record of previous violations of the business). After your receipt of the Notification of Final Penalty, you will be required to take certain steps which will be outlined in that document.

Your signature on this Proposed Penalty Calculation Worksheet indicates that the above has been explained to you and that you understand the penalties involved in operating any amusement device or equipment after the certificate of operation has been revoked/suspended/amended/not renewed.

\_\_\_\_\_  
**Inspector Signature**

\_\_\_\_\_  
**Owner/Operator Signature**

\_\_\_\_\_  
**Date**

**§ 95-111.7. Operation without certificate; operation not in accordance with Article or rules and regulations; operation after refusal to issue or after revocation of certificate.**

- (a) No person shall operate or permit to be operated or use any device subject to the provisions of this Article without a valid certificate of operation.
- (b) No person shall operate or permit to be operated or use any device subject to the provisions of this Article otherwise than in accordance with this Article and the rules and regulations promulgated thereunder.
- (c) No person shall operate or permit to be operated or use any device subject to the provisions of this Article after the Commissioner has refused to issue or has revoked the certificate of operation for such device.

**§ 95-111.8. Location notice.**

No person shall operate for the public or permit the operation for the public any device subject to the provisions of this Article after initial assembly or after reassembly at any location within this State without first notifying the Commissioner of the intention to operate for the public. Written notice of a planned schedule of operation or use shall be received at least 10 days prior to the first planned date of operation or use.

**§ 95-111.9. Operation of unsafe device.**

No person shall operate, permit to be operated or use any device subject to the provisions of this Article if such person knows or reasonably should know that such operation or use will expose the public to an unsafe condition which is likely to result in personal injury or property damage.

**§ 95-111.10. Reports required.**

- (a) The owner of any device regulated under the provisions of this Article, or his authorized agent, shall within 24 hours, notify the Commissioner of each and every occurrence involving such device when:
  - (1) The occurrence results in death or injury requiring medical treatment, other than first aid, by a physician. First aid means the one time treatment or observation of scratches, cuts not requiring stitches, burns, splinters and contusions or a diagnostic procedure, including examination and x-rays, which does not ordinarily require medical treatment even though provided by a physician or other licensed personnel; or
  - (2) The occurrence results in damage to the device indicating a substantial defect in design, mechanics, structure or equipment, affecting the future safe operation of the device. No reporting is required in the case of normal wear and tear.
- (b) The Commissioner, without delay, after notification and determination that an occurrence involving injury or damage as specified in subsection (a) has occurred, shall make a complete and thorough investigation of the occurrence. The report of the investigation shall be placed on file in the office of the division and shall give in detail all facts and information available. The owner may submit for inclusion in the file results of investigations independent of the department's investigation.
- (c) No person, following an occurrence as specified in subsection (a), shall operate, attempt to operate, use or move or attempt to move such device or part thereof, without the approval of the Commissioner, unless so as to prevent injury to any person or persons.
- (d) No person, following an occurrence as specified in subsection (a), shall remove or attempt to remove from the premises any damaged or undamaged part of such device or repair or attempt to repair any damaged part necessary to a complete and thorough investigation. The department must initiate its investigation within 24 hours of being notified.

**§ 95-111.11 Operators.**

- (a) Any operator of a device subject to the provisions of this Article shall be at least 18 years of age. An operator shall operate no more than one device at any given time. An operator shall be in attendance at all times the device is in operation.
- (b) No person shall operate any amusement device equipment while under the influence of alcohol or any other impairing substance as defined by G.S. 20-4.01(14a). It shall be a violation of this subsection to knowingly permit the operation of any amusement device while the operator is under the influence of an impairing substance.

**§ 95-111.12. Liability insurance.**

- (a) No owner shall operate a device subject to the provisions of this Article, unless at the time, there is in existence a contract of insurance providing coverage of not less than one million dollars (\$1,000,000) per occurrence against liability for injury to persons or property arising out of the operation or use of such device or there is in existence a contract of insurance providing coverage of not less than five hundred thousand dollars (\$500,000) per occurrence against liability for injury to persons or property arising out of the operation or use of the amusement devices if the annual gross volume of the devices does not exceed two hundred seventy-five thousand dollars (\$275,000); provided waterslides shall not be required to be insured as herein provided for an amount in excess of one hundred thousand dollars (\$100,000) per occurrence. The insurance contract to be provided must be by any insurer or surety that is acceptable to the North Carolina Insurance Commissioner and authorized to transact business in this State; provided, however, that insurance for waterslides may be purchased under Article 21 of Chapter 58 of the General Statutes or under G.S. 58-28-5(b).
- (b) No certificate of operation shall be issued by the Commissioner until such time as the owner or his authorized agent provides proof of the required contract of insurance.
- (c) The Commissioner shall have the right to request from the owner of a device regulated by this Article, or his authorized agent, proof of the required contract of insurance, and upon failure of the owner or his authorized agent to provide such proof, the Commissioner shall have the right to prevent the commencement of or to stop the operation of the device until such time as proof is provided.
- (d) Operators of waterslides, as defined in G.S. 95-111.3(h), shall notify the Commissioner of all incidences of personal injury involving the waterslides, as required by G.S. 95-111.10(a).

**§ 95-111.13. Violations; civil penalties; appeal; criminal penalties.**

- (a) Any person who violates G.S. 95-111.7(a) or (b) (Operation without certificate; operation not in accordance with Article or rules and regulations) shall be subject to a civil penalty not to exceed two hundred fifty dollars (\$250.00) for each day each device is so operated or used.
- (b) Any person who violates G.S. 95-111.7(c) (Operation after refusal to issue or after revocation of certificate) or G.S. 95-111.10(c) (Reports required) or G.S. 95-111.12 (Liability insurance) shall be subject to a civil penalty not to exceed five hundred dollars (\$500.00) for each day each device is so operated or used.
- (c) Any person who violates G.S. 95-111.8 (Location notice) shall be subject to a civil penalty not to exceed five hundred dollars (\$500.00) for each day any device is operated or used without the location notice having been provided.
- (d) Any person who violates the provisions of G.S. 95-111.10(d) (Reports required) or knowingly permits the operation of an amusement device in violation of G.S. 95-111.11(a) (Operator requirements) shall be subject to a civil penalty not to exceed five hundred dollars (\$500.00).
- (e) Any person who violates G.S. 95-111.9 (Operation of unsafe device) or G.S. 95-111.11(b) (Operation of an amusement device while impaired) shall be subject to a civil penalty not to exceed one thousand dollars (\$1,000).
- (f) In determining the amount of any penalty ordered under authority of this section, the Commissioner shall give due consideration to the appropriateness of the penalty with respect to the size of the business of the person being charged, the gravity of the violation, the good faith of the person and the record of previous violations.
- (g) The determination of the amount of the penalty by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, the person charged with the violation takes exception to the determination, in which event final determination of the penalty shall be made in an administrative proceeding and in a judicial proceeding pursuant to Chapter 150B of the General Statutes, the Administrative Procedure Act.
- (h) The Commissioner may file in the office of the clerk of the superior court of the county wherein the person, against whom a civil penalty has been ordered, resides, or if a corporation is involved, in the county wherein the corporation maintains its principal place of business, or in the county wherein the violation occurred, a certified copy of a final order of the Commissioner unappealed from, or of a final order of the Commissioner affirmed upon appeal. Whereupon, the clerk of said court shall enter judgment in accordance therewith and notify the parties. Such judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though said judgment had been rendered in a suit duly heard and determined by the superior court of the General Court of Justice.
- (i) Any person who willfully violates any provision of this Article, and the violation causes the death of any person, shall be guilty of a Class 2 misdemeanor, which may include a fine of not more than ten thousand dollars (\$10,000); except that if the conviction is for a violation committed after a first conviction of such person, the person shall be guilty of a Class 1 misdemeanor, which may include a fine of not more than twenty thousand dollars (\$20,000). This subsection shall not prevent any prosecuting officer of the State of North Carolina from proceeding against such person on a prosecution charging any degree of willful or culpable homicide.



## **AMUSEMENT DEVICE – NOTIFICATION OF FINAL PENALTY**

Family Attractions Amusement, LLC		
Owner/Agent/Company Name		
1709 A Gornto Road, #379		
Address		
Valdosta	GA	31601
City	State	Zip Code

327-101713  
**Invoice Number**  
10/16/13-10/17/13  
**Inspection Date(s)**  
4/21/2014  
**Penalty Issuance Date**

9699  
Amusement Device Identification Number(s)  
North Carolina State Fairgrounds  
Location of Amusement Device  
Raleigh Wake  
City County

*The violation(s) described in this Notification of Final Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.*

This Notification of Final Penalty describes violation(s) of Chapter 95, Article 14B of the N.C. General Statutes (the Amusement Device Safety Act of North Carolina). The penalty(ies) listed herein is (are) based on these violations, and are also listed on the Amusement Device Proposed Penalty Calculation Worksheet issued by the EAD. You must correct the violation(s) referred to in this Notification of Final Penalty by the date(s) listed and pay the total penalty amount, unless within fifteen (15) days from receipt of this Notification of Final Penalty you either (a) mail a request for an informal conference to the N.C. Department of Labor – Elevator and Amusement Device Bureau office at the address shown above, or (b) file a written petition for a contested case hearing with the Office of Administrative Hearings (OAH) under Chapter 150B, Article 3 of the North Carolina General Statutes and serve a copy of such petition on the NCDOL General Counsel, process agent for the North Carolina Department of Labor, at 1101 Mail Service Center, Raleigh, North Carolina 27699-1101.

**Informal Conference** – You may request an informal conference. To request an informal conference, you must return the enclosed form marking the block requesting an informal conference or provide other written notice to the Bureau Chief of the Elevator and Amusement Device Bureau within fifteen (15) days of your receipt of this Notification of Final Penalty (**do not mark more than one block on the enclosed form if you want an informal conference**). The informal conference must be held no longer than twenty (20) days from the date you receive the Notification of Final Penalty, so your immediate response is necessary if you choose this option.

If you make a timely request for an informal conference to discuss any issued related to this Notification of Final Penalty, you preserve your right to contest the penalty(ies). The time for contestment does not begin until after the informal conference is held and you have been notified of the result(s). At that time, you have an additional fifteen (15) days during which you may file a written petition for a contested case hearing with the OAH under Chapter 150B, Article 3 of the North Carolina General Statutes.

If you decide to request an informal conference, you must submit the enclosed form and then contact the Bureau Chief of the Elevator and Amusement Device Bureau at (919) 807-2770 in order to obtain the date, time and location of the informal conference. Please bring to the informal conference all supporting documentation

of existing conditions and any corrections made thus far. The results of the informal conference will be a revised Notification of Final Penalty, a Notice of No Change, or an Informal Settlement Agreement. An Informal Settlement Agreement will resolve the matter without litigation or contestment.

**Right to Contest** – You have the right to contest the violations and penalty amounts contained in this Notice of Final Penalty now or after the Informal Conference. You may contest all the violations and all the penalty amounts, or you may contest only individual violations or individual penalty amounts. You may also contest proposed penalty amounts without contesting the underlying violations.

**Fifteen (15) days after your receipt of this Notice of Final Penalty (if you do not request an informal conference), or fifteen (15) days after you receive the results of the informal conference, the Notification of Final Penalty will become final unless, pursuant to 13 N.C.A.C. 15.0502, you file a written petition for a contested case hearing with the OAH under Chapter 150B, Article 3 of the N.C. General Statutes and pay the requisite filing fee. The address for the OAH is 6714 Mail Service Center, Raleigh, North Carolina 27699-6714. Notice of your petition also must be served on the NCDOL General Counsel, process agent for the N.C. Department of Labor, at 1101 Mail Service Center, Raleigh, North Carolina 27699-1101. The requirements for a legally effective hearing request are established by N.C. General Statutes § 150B-23, a copy of which is included herein.**

**Penalty Payment** – The Total Penalty Amount listed above is due within fifteen (15) days of your receipt of this Notification of Final Penalty, unless (a) a request for an informal conference is forwarded to the Bureau Chief of the Elevator and Amusement Device Bureau or (b) a written petition for a contested case hearing is filed with the OAH under Chapter 150B, Article 3 of the North Carolina General Statutes, and served upon the NCDOL General Counsel, process agent for the North Carolina Department of Labor, at the address listed above. Make your check or money order payable to the **NCDOL – Elevator and Amusement Device Bureau**, and remit to **N.C. Department of Labor, Attn: Budget – Amusement Device Penalty Collections, 1101 Mail Service Center, Raleigh, North Carolina 27699-1101**, for the total amount of the penalties summarized above. You may also make payment by credit card. A form is provided for your convenience. Please indicate the Invoice Number (indicated above) on the remittance.

If you fail to notify the Bureau Chief of your intention within fifteen (15) days of your receipt of this Notification of Final Penalty (if you do not request an informal conference), or fifteen (15) days after you receive the results of the informal conference, and refuse to pay the penalty amount, the Commissioner may take additional action, including refusing to issue/reissue a Certificate of Operation pursuant to 13 N.C.A.C. 15.0503.

The Elevator and Amusement Device Bureau does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

**N.C. Department of Labor**

Elevator & Amusement Device Bureau  
 1101 Mail Service Center  
 Raleigh, North Carolina 27699-1101  
 Telephone: (919) 807-2770  
 Facsimile: (919) 807-2777



Amusement Device ID Number:	Name/Type of Amusement Device:	Inspection Date:	Inspection Invoice Number:
9699	Vortex	10/16/13-10/17/13	327-101713
Owner/Agent/Company Name: Family Attractions Amusement	Address: 1709 A Gorto Rd. #379	City: Valdosta	State: GA Zip Code: 31601
Location of Amusement Device: NC State Fairgrounds	County: Wake	City: Raleigh	

During the investigation of the above-referenced amusement device, which is subject to the provisions of Chapter 95, Article 14B of the N.C. General Statutes (the Amusement Device Safety Act of North Carolina), EAD discovered certain violations of the Act. These violations are noted below, and are alleged to have occurred during the length of the State Fair. As a result, pursuant to N.C. Gen. Stat. § 95-111.13, you are hereby assessed the following penalties:

	Statutory Violation	Penalty Amount	# of Days	# of Devices	Total Amount of Penalty
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.7(a) or (b) – Operation Without Certificate; Operation Not In Accordance With Article or Rules and Regulations.	\$250.00 (each day/each device)	X 8	X 1	\$ 2000.00
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.7(c) – Operation After Refusal to Issue or After Revocation of Certificate.	\$500.00 (each day/each device)	X	X	\$
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.8 – Failure to File a Location Notice.	\$500.00 (each day/any device)	X		\$
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.9 – Operation of Unsafe Device.	\$1,000.00 (maximum penalty)			\$1000.00
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.10(c) – Operation After Occurrence Without Approval of Commissioner.	\$500.00 (each day/each device)	X	X	\$
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.10(d) – Removal or Repair of Device Prior to Investigation of Occurrence.	\$500.00 (maximum penalty)			\$
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.11(a) – Operator Requirements.	\$500.00 (maximum penalty)			\$
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.11(b) – Operation While Impaired	\$1,000.00 (maximum penalty)			\$
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.12 – Operation Without Liability Insurance.	\$500.00 (each day/each device)	X	X	\$
<b>Total Proposed Penalty Amount</b>					<b>\$3000.00</b>

**Penalty Adjustment Calculation**

<b>1. Size Adjustment</b>	1-25 Employees	<input checked="" type="checkbox"/>	60%
	26-60 Employees	<input type="checkbox"/>	50%
	61-100 Employees	<input type="checkbox"/>	40%
	101-175 Employees	<input type="checkbox"/>	30%
	176-250 Employees	<input type="checkbox"/>	20%
	251 or More Employees	<input type="checkbox"/>	0%
<b>2. Gravity Adjustment</b>	Serious	<input checked="" type="checkbox"/>	0%
	Moderate	<input type="checkbox"/>	10%
	Non-Serious	<input type="checkbox"/>	20%
<b>3. Good Faith Adjustment</b>	Employer was cooperative with the amusement device inspector.	<input type="checkbox"/>	10%
	Employer maintained training records and/or safety programs on site.	<input type="checkbox"/>	10%
<b>4. Prior History Adjustment</b>	Employer has received penalties within the last 12 months.	<input type="checkbox"/>	0%
	Employer has not received penalties within the last 12 months.	<input checked="" type="checkbox"/>	10%
<b>Total Penalty Adjustment</b>			70%
<b>Total Adjusted Penalty Amount</b>			\$ 900.00

**Bureau Chief Signature**

Page 3 of 6

**Date**

**N.C. Department of Labor**

Elevator &amp; Amusement Device Bureau

1101 Mail Service Center

Raleigh, North Carolina 27699-1101

Telephone: (919) 807-2770

Facsimile: (919) 807-2777

**AMUSEMENT DEVICE PENALTY–  
INVOICE / DEBT COLLECTION NOTICE****Owner/Agent/Company Name:** Family Attractions Amusement, LLC**Location of Amusement Device:** NC State Fair**Violation/Penalty Issuance Date:** 4/21/2014

<b>Summary of Violations/Penalties for Invoice Number:</b>		327-101713		
<input checked="" type="checkbox"/>	N.C. Gen. Stat. § 95-111.7(a) or (b)	=	\$2000.00	
<input type="checkbox"/>	N.C. Gen. Stat. § 95-111.7(c)	=	\$	
<input type="checkbox"/>	N.C. Gen. Stat. § 95-111.8	=	\$	
<input checked="" type="checkbox"/>	N.C. Gen. Stat. § 95-111.9	=	\$1000.00	
<input type="checkbox"/>	N.C. Gen. Stat. § 95-111.10(c)	=	\$	
<input type="checkbox"/>	N.C. Gen. Stat. § 95-111.10(d)	=	\$	
<input type="checkbox"/>	N.C. Gen. Stat. § 95-111.11(a)	=	\$	
<input type="checkbox"/>	N.C. Gen. Stat. § 95-111.11(b)	=	\$	
<input type="checkbox"/>	N.C. Gen. Stat. § 95-111.12	=	\$	
<b>Total Penalty Amount</b>		=	\$3000.00	
<b>Minus(-) Calculated Penalty Adjustment*</b>		=	\$2100.00	
<b>FINAL PENALTY AMOUNT</b>		=	<b>\$900.00</b>	*includes any adjustments made pursuant to N.C. Gen. Stat. § 95-111.13(f).

Please remit payment promptly to **N.C. Department of Labor, Attn: Budget – Amusement Device Penalty Collections, 1101 Mail Service Center, Raleigh, North Carolina 27699-1101**, for the total amount of the violations/penalties summarized above. Make your check or money order payable to: **NCDOL – Elevator and Amusement Device Bureau**. For payment by credit card, complete the form provided. Please indicate the Invoice Number (indicated above) on the remittance.

The Elevator and Amusement Device Bureau does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

**N.C. Department of Labor**  
Elevator & Amusement Device Bureau  
1101 Mail Service Center  
Raleigh, North Carolina 27699-1101  
Telephone: (919) 807-2770  
Facsimile: (919) 807-2777



## CREDIT CARD PAYMENT

**Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_  
Street Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

**Phone Number:** (\_\_\_\_\_) - \_\_\_\_\_

**Amount of Payment:** \$ \_\_\_\_\_  **MasterCard**  **Visa**

**Credit Card Number:** \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ **Exp. Date:** \_\_\_\_\_  
Mo./Yr.

**Payment for Invoice Number(s):** \_\_\_\_\_

**Cardholder Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

----- *Cut Along Dotted Line and Remit With Payment* -----

**N.C. Department of Labor**

Elevator & Amusement Device Bureau  
1101 Mail Service Center  
Raleigh, North Carolina 27699-1101  
Telephone: (919) 807-2770  
Facsimile: (919) 807-2777

**AMUSEMENT DEVICE –  
RESPONSE TO NOTIFICATION OF FINAL PENALTY**

Family Attractions Amusement, LLC

Owner/Agent/Company Name  
1709 A Gornto Road, #379

Address  
Valdosta GA 31601  
City State Zip Code

327-101713

Invoice Number  
10/16/13-10/17/13  
Inspection Date(s)  
4/21/2014  
Penalty Issuance Date

This form is for your convenience in either (a) paying the Total Penalty Amount listed in the Notification of Final Penalty, (b) requesting an Informal Conference to discuss a possible revision to the Notification of Penalty or an Informal Settlement Agreement, or (c) notifying the Bureau Chief of the Elevator and Amusement Device Bureau of your intention to contest all or part of the enclosed violations and penalty amounts.

Please mark only one of the following boxes – forms returned with more than one box marked will be treated as a request for an informal conference. This form must be returned to the address indicated below within fifteen (15) days from your receipt of the Notification of Final Penalty. Failure to return this form within fifteen (15) days of receipt (if you do not request an informal conference), or fifteen (15) days after you receive the results of the informal conference, may result in the Commissioner taking additional action, including refusing to issue/reissue a Certificate of Operation pursuant to 13 N.C.A.C. 15.0503. This form should be returned to the following address:

N.C. Department of Labor  
Elevator & Amusement Device Bureau  
1101 Mail Service Center  
Raleigh, North Carolina 27699-1101

PENALTY PAYMENT ENCLOSED IN THE AMOUNT OF: \$ \_\_\_\_\_  
Remit Payment To: N.C. Department of Labor  
Attn: Budget – Amusement Device Penalty Collections  
1101 Mail Service Center  
Raleigh, North Carolina 27699-1101

**Please note that the Elevator and Amusement Device Bureau does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.**

REQUEST AN INFORMAL CONFERENCE  
**Please note that if you decide to request an Informal Conference, you must submit the enclosed form and then contact the Bureau Chief of the Elevator and Amusement Device Bureau at (919) 807-2770 in order to obtain the date, time and location of the informal conference.**

NOTICE OF INTENT TO CONTEST:  
 All of the Violations and Penalty Amounts  
 The Following Violations: \_\_\_\_\_  
 The Following Penalty Amounts: \_\_\_\_\_

**Please note that, pursuant to 13 N.C.A.C. 15.0502, if you intend to contest all or part of the enclosed violations and penalty amounts, in addition to completing this form and submitting it to the address below you must also file a written petition for a contested case hearing with the Office of Administrative Hearings (“OAH”) under Chapter 150B, Article 3 of the North Carolina General Statutes, and serve a copy of your petition on the NCDOL General Counsel, process agent for the North Carolina Department of Labor, at 1101 Mail Service Center, Raleigh, North Carolina 27699-1101. The address for the OAH is 6714 Mail Service Center, Raleigh, North Carolina 27699-6714.**

Signature

Date

Name (Print or Type)

Telephone Number

Title

**AMUSEMENT DEVICE –  
 PROPOSED PENALTY CALCULATION WORKSHEET**

Amusement Device ID Number:  9699	Name/Type of Amusement Device:  Vortex	Inspection Date:  10/16/13-10/17/13	Inspection Invoice Number: 327-101713
Owner/Agent/Company Name: Joshua Macaroni	Address: 1709 A Gornto Rd. #379	City: Valdosta	State: GA Zip Code: 31601
Location of Amusement Device: NC State Fairgrounds	County: Wake	City: Raleigh	

During the investigation of the above-referenced amusement device or equipment, which is subject to the provisions of Chapter 95, Article 14B of the N.C. General Statutes (the Amusement Device Safety Act of North Carolina), the EAD discovered certain violations of the Act. These violations are noted below. As a result, pursuant to N.C. Gen. Stat. § 95-111.13, you are hereby assessed the following penalties:

	Statutory Violation	Penalty Amount	# of Days	# of Devices	Total Amount of Penalty
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.7(a) or (b) – Operation Without Certificate; Operation Not In Accordance With Article or Rules and Regulations.	\$250.00 (each day/each device)	X 8	X 1	\$ 2000.00
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.7(c) – Operation After Refusal to Issue or After Revocation of Certificate.	\$500.00 (each day/each device)	X	X	\$
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.8 – Failure to File a Location Notice.	\$500.00 (each day/any device)	X		\$
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.9 – Operation of Unsafe Device.	\$1,000.00 (maximum penalty)			\$1000.00
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.10(c) – Operation After Occurrence Without Approval of Commissioner.	\$500.00 (each day/each device)	X	X	\$
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.10(d) – Removal or Repair of Device Prior to Investigation of Occurrence.	\$500.00 (maximum penalty)			\$
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.11(a) – Operator Requirements.	\$500.00 (maximum penalty)			\$
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.11(b) – Operation While Impaired	\$1,000.00 (maximum penalty)			\$
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.12 – Operation Without Liability Insurance.	\$500.00 (each day/each device)	X	X	\$
<b>Total Proposed Penalty Amount</b>					<b>\$3000.00</b>

**THIS IS NOT A FINAL PENALTY CALCULATION –  
 YOU ARE NOT REQUIRED TO REMIT PAYMENT AT THIS TIME.**

In the near future, you will be receiving a Notification of Final Penalty which will contain the Total Penalty Amount which you will be required to pay, pursuant to N.C. Gen. Stat. § 95-111.13. The Final Penalty Amount will be based upon the Total Proposed Penalty Amount listed above, as well as certain factors regarding the appropriateness of the penalty which are required by N.C. Gen. Stat. § 95-111.13(f) (such as the size of the business, the gravity of the violation, the good faith exhibited by the business, and the record of previous violations of the business). After your receipt of the Notification of Final Penalty, you will be required to take certain steps which will be outlined in that document.

Your signature on this Proposed Penalty Calculation Worksheet indicates that the above has been explained to you and that you understand the penalties involved in operating any amusement device or equipment after the certificate of operation has been revoked/suspended/amended/not renewed.

\_\_\_\_\_  
**Inspector Signature**

\_\_\_\_\_  
**Owner/Operator Signature**

\_\_\_\_\_  
**Date**

**§ 95-111.7. Operation without certificate; operation not in accordance with Article or rules and regulations; operation after refusal to issue or after revocation of certificate.**

- (a) No person shall operate or permit to be operated or use any device subject to the provisions of this Article without a valid certificate of operation.
- (b) No person shall operate or permit to be operated or use any device subject to the provisions of this Article otherwise than in accordance with this Article and the rules and regulations promulgated thereunder.
- (c) No person shall operate or permit to be operated or use any device subject to the provisions of this Article after the Commissioner has refused to issue or has revoked the certificate of operation for such device.

**§ 95-111.8. Location notice.**

No person shall operate for the public or permit the operation for the public any device subject to the provisions of this Article after initial assembly or after reassembly at any location within this State without first notifying the Commissioner of the intention to operate for the public. Written notice of a planned schedule of operation or use shall be received at least 10 days prior to the first planned date of operation or use.

**§ 95-111.9. Operation of unsafe device.**

No person shall operate, permit to be operated or use any device subject to the provisions of this Article if such person knows or reasonably should know that such operation or use will expose the public to an unsafe condition which is likely to result in personal injury or property damage.

**§ 95-111.10. Reports required.**

- (a) The owner of any device regulated under the provisions of this Article, or his authorized agent, shall within 24 hours, notify the Commissioner of each and every occurrence involving such device when:
  - (1) The occurrence results in death or injury requiring medical treatment, other than first aid, by a physician. First aid means the one time treatment or observation of scratches, cuts not requiring stitches, burns, splinters and contusions or a diagnostic procedure, including examination and x-rays, which does not ordinarily require medical treatment even though provided by a physician or other licensed personnel; or
  - (2) The occurrence results in damage to the device indicating a substantial defect in design, mechanics, structure or equipment, affecting the future safe operation of the device. No reporting is required in the case of normal wear and tear.
- (b) The Commissioner, without delay, after notification and determination that an occurrence involving injury or damage as specified in subsection (a) has occurred, shall make a complete and thorough investigation of the occurrence. The report of the investigation shall be placed on file in the office of the division and shall give in detail all facts and information available. The owner may submit for inclusion in the file results of investigations independent of the department's investigation.
- (c) No person, following an occurrence as specified in subsection (a), shall operate, attempt to operate, use or move or attempt to move such device or part thereof, without the approval of the Commissioner, unless so as to prevent injury to any person or persons.
- (d) No person, following an occurrence as specified in subsection (a), shall remove or attempt to remove from the premises any damaged or undamaged part of such device or repair or attempt to repair any damaged part necessary to a complete and thorough investigation. The department must initiate its investigation within 24 hours of being notified.

**§ 95-111.11 Operators.**

- (a) Any operator of a device subject to the provisions of this Article shall be at least 18 years of age. An operator shall operate no more than one device at any given time. An operator shall be in attendance at all times the device is in operation.
- (b) No person shall operate any amusement device equipment while under the influence of alcohol or any other impairing substance as defined by G.S. 20-4.01(14a). It shall be a violation of this subsection to knowingly permit the operation of any amusement device while the operator is under the influence of an impairing substance.

**§ 95-111.12. Liability insurance.**

- (a) No owner shall operate a device subject to the provisions of this Article, unless at the time, there is in existence a contract of insurance providing coverage of not less than one million dollars (\$1,000,000) per occurrence against liability for injury to persons or property arising out of the operation or use of such device or there is in existence a contract of insurance providing coverage of not less than five hundred thousand dollars (\$500,000) per occurrence against liability for injury to persons or property arising out of the operation or use of the amusement devices if the annual gross volume of the devices does not exceed two hundred seventy-five thousand dollars (\$275,000); provided waterslides shall not be required to be insured as herein provided for an amount in excess of one hundred thousand dollars (\$100,000) per occurrence. The insurance contract to be provided must be by any insurer or surety that is acceptable to the North Carolina Insurance Commissioner and authorized to transact business in this State; provided, however, that insurance for waterslides may be purchased under Article 21 of Chapter 58 of the General Statutes or under G.S. 58-28-5(b).
- (b) No certificate of operation shall be issued by the Commissioner until such time as the owner or his authorized agent provides proof of the required contract of insurance.
- (c) The Commissioner shall have the right to request from the owner of a device regulated by this Article, or his authorized agent, proof of the required contract of insurance, and upon failure of the owner or his authorized agent to provide such proof, the Commissioner shall have the right to prevent the commencement of or to stop the operation of the device until such time as proof is provided.
- (d) Operators of waterslides, as defined in G.S. 95-111.3(h), shall notify the Commissioner of all incidences of personal injury involving the waterslides, as required by G.S. 95-111.10(a).

**§ 95-111.13. Violations; civil penalties; appeal; criminal penalties.**

- (a) Any person who violates G.S. 95-111.7(a) or (b) (Operation without certificate; operation not in accordance with Article or rules and regulations) shall be subject to a civil penalty not to exceed two hundred fifty dollars (\$250.00) for each day each device is so operated or used.
- (b) Any person who violates G.S. 95-111.7(c) (Operation after refusal to issue or after revocation of certificate) or G.S. 95-111.10(c) (Reports required) or G.S. 95-111.12 (Liability insurance) shall be subject to a civil penalty not to exceed five hundred dollars (\$500.00) for each day each device is so operated or used.
- (c) Any person who violates G.S. 95-111.8 (Location notice) shall be subject to a civil penalty not to exceed five hundred dollars (\$500.00) for each day any device is operated or used without the location notice having been provided.
- (d) Any person who violates the provisions of G.S. 95-111.10(d) (Reports required) or knowingly permits the operation of an amusement device in violation of G.S. 95-111.11(a) (Operator requirements) shall be subject to a civil penalty not to exceed five hundred dollars (\$500.00).
- (e) Any person who violates G.S. 95-111.9 (Operation of unsafe device) or G.S. 95-111.11(b) (Operation of an amusement device while impaired) shall be subject to a civil penalty not to exceed one thousand dollars (\$1,000).
- (f) In determining the amount of any penalty ordered under authority of this section, the Commissioner shall give due consideration to the appropriateness of the penalty with respect to the size of the business of the person being charged, the gravity of the violation, the good faith of the person and the record of previous violations.
- (g) The determination of the amount of the penalty by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, the person charged with the violation takes exception to the determination, in which event final determination of the penalty shall be made in an administrative proceeding and in a judicial proceeding pursuant to Chapter 150B of the General Statutes, the Administrative Procedure Act.
- (h) The Commissioner may file in the office of the clerk of the superior court of the county wherein the person, against whom a civil penalty has been ordered, resides, or if a corporation is involved, in the county wherein the corporation maintains its principal place of business, or in the county wherein the violation occurred, a certified copy of a final order of the Commissioner unappealed from, or of a final order of the Commissioner affirmed upon appeal. Whereupon, the clerk of said court shall enter judgment in accordance therewith and notify the parties. Such judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though said judgment had been rendered in a suit duly heard and determined by the superior court of the General Court of Justice.
- (i) Any person who willfully violates any provision of this Article, and the violation causes the death of any person, shall be guilty of a Class 2 misdemeanor, which may include a fine of not more than ten thousand dollars (\$10,000); except that if the conviction is for a violation committed after a first conviction of such person, the person shall be guilty of a Class 1 misdemeanor, which may include a fine of not more than twenty thousand dollars (\$20,000). This subsection shall not prevent any prosecuting officer of the State of North Carolina from proceeding against such person on a prosecution charging any degree of willful or culpable homicide.

## AMUSEMENT DEVICE – NOTIFICATION OF FINAL PENALTY

Joshua Macaroni  
Owner/Agent/Company Name  
1709 A Gortno Road, #379  
Address  
Valdosta GA 31601  
City State Zip Code

327-101713  
Invoice Number  
10/16/13-10/17/13  
Inspection Date(s)  
4/21/2014  
Penalty Issuance Date

9699  
Amusement Device Identification Number(s)  
North Carolina State Fairgrounds  
Location of Amusement Device  
Raleigh Wake  
City County

*The violation(s) described in this Notification of Final Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.*

This Notification of Final Penalty describes violation(s) of Chapter 95, Article 14B of the N.C. General Statutes (the Amusement Device Safety Act of North Carolina). The penalty(ies) listed herein is (are) based on these violations, and are also listed on the Amusement Device Proposed Penalty Calculation Worksheet issued by the EAD. You must correct the violation(s) referred to in this Notification of Final Penalty by the date(s) listed and pay the total penalty amount, unless within fifteen (15) days from receipt of this Notification of Final Penalty you either (a) mail a request for an informal conference to the N.C. Department of Labor – Elevator and Amusement Device Bureau office at the address shown above, or (b) file a written petition for a contested case hearing with the Office of Administrative Hearings (OAH) under Chapter 150B, Article 3 of the North Carolina General Statutes and serve a copy of such petition on the NCDOL General Counsel, process agent for the North Carolina Department of Labor, at 1101 Mail Service Center, Raleigh, North Carolina 27699-1101.

**Informal Conference** – You may request an informal conference. To request an informal conference, you must return the enclosed form marking the block requesting an informal conference or provide other written notice to the Bureau Chief of the Elevator and Amusement Device Bureau within fifteen (15) days of your receipt of this Notification of Final Penalty (**do not mark more than one block on the enclosed form if you want an informal conference**). The informal conference must be held no longer than twenty (20) days from the date you receive the Notification of Final Penalty, so your immediate response is necessary if you choose this option.

If you make a timely request for an informal conference to discuss any issued related to this Notification of Final Penalty, you preserve your right to contest the penalty(ies). The time for contestation does not begin until after the informal conference is held and you have been notified of the result(s). At that time, you have an additional fifteen (15) days during which you may file a written petition for a contested case hearing with the OAH under Chapter 150B, Article 3 of the North Carolina General Statutes.

If you decide to request an informal conference, you must submit the enclosed form and then contact the Bureau Chief of the Elevator and Amusement Device Bureau at (919) 807-2770 in order to obtain the date, time and location of the informal conference. Please bring to the informal conference all supporting documentation

of existing conditions and any corrections made thus far. The results of the informal conference will be a revised Notification of Final Penalty, a Notice of No Change, or an Informal Settlement Agreement. An Informal Settlement Agreement will resolve the matter without litigation or contestment.

**Right to Contest** – You have the right to contest the violations and penalty amounts contained in this Notice of Final Penalty now or after the Informal Conference. You may contest all the violations and all the penalty amounts, or you may contest only individual violations or individual penalty amounts. You may also contest proposed penalty amounts without contesting the underlying violations.

**Fifteen (15) days after your receipt of this Notice of Final Penalty (if you do not request an informal conference), or fifteen (15) days after you receive the results of the informal conference, the Notification of Final Penalty will become final unless, pursuant to 13 N.C.A.C. 15.0502, you file a written petition for a contested case hearing with the OAH under Chapter 150B, Article 3 of the N.C. General Statutes and pay the requisite filing fee. The address for the OAH is 6714 Mail Service Center, Raleigh, North Carolina 27699-6714. Notice of your petition also must be served on the NCDOL General Counsel, process agent for the N.C. Department of Labor, at 1101 Mail Service Center, Raleigh, North Carolina 27699-1101. The requirements for a legally effective hearing request are established by N.C. General Statutes § 150B-23, a copy of which is included herein.**

**Penalty Payment** – The Total Penalty Amount listed above is due within fifteen (15) days of your receipt of this Notification of Final Penalty, unless (a) a request for an informal conference is forwarded to the Bureau Chief of the Elevator and Amusement Device Bureau or (b) a written petition for a contested case hearing is filed with the OAH under Chapter 150B, Article 3 of the North Carolina General Statutes, and served upon the NCDOL General Counsel, process agent for the North Carolina Department of Labor, at the address listed above. Make your check or money order payable to the **NCDOL – Elevator and Amusement Device Bureau**, and remit to **N.C. Department of Labor, Attn: Budget – Amusement Device Penalty Collections, 1101 Mail Service Center, Raleigh, North Carolina 27699-1101**, for the total amount of the penalties summarized above. You may also make payment by credit card. A form is provided for your convenience. Please indicate the Invoice Number (indicated above) on the remittance.

If you fail to notify the Bureau Chief of your intention within fifteen (15) days of your receipt of this Notification of Final Penalty (if you do not request an informal conference), or fifteen (15) days after you receive the results of the informal conference, and refuse to pay the penalty amount, the Commissioner may take additional action, including refusing to issue/reissue a Certificate of Operation pursuant to 13 N.C.A.C. 15.0503.

The Elevator and Amusement Device Bureau does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

**N.C. Department of Labor**

Elevator & Amusement Device Bureau  
 1101 Mail Service Center  
 Raleigh, North Carolina 27699-1101  
 Telephone: (919) 807-2770  
 Facsimile: (919) 807-2777



Amusement Device ID Number:	Name/Type of Amusement Device:	Inspection Date:	Inspection Invoice Number:
9699	Vortex	10/16/13-10/17/13	327-101713
Owner/Agent/Company Name: Joshua Macaroni	Address: 1709 A Gorto Rd. #379	City: Valdosta	State: GA Zip Code: 31601
Location of Amusement Device: NC State Fairgrounds	County: Wake	City: Raleigh	

During the investigation of the above-referenced amusement device, which is subject to the provisions of Chapter 95, Article 14B of the N.C. General Statutes (the Amusement Device Safety Act of North Carolina), EAD discovered certain violations of the Act. These violations are noted below, and are alleged to have occurred during the length of the State Fair. As a result, pursuant to N.C. Gen. Stat. § 95-111.13, you are hereby assessed the following penalties:

	Statutory Violation	Penalty Amount	# of Days	# of Devices	Total Amount of Penalty
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.7(a) or (b) – Operation Without Certificate; Operation Not In Accordance With Article or Rules and Regulations.	\$250.00 (each day/each device)	X 8	X 1	\$ 2000.00
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.7(c) – Operation After Refusal to Issue or After Revocation of Certificate.	\$500.00 (each day/each device)	X	X	\$
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.8 – Failure to File a Location Notice.	\$500.00 (each day/any device)	X		\$
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.9 – Operation of Unsafe Device.	\$1,000.00 (maximum penalty)			\$1000.00
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.10(c) – Operation After Occurrence Without Approval of Commissioner.	\$500.00 (each day/each device)	X	X	\$
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.10(d) – Removal or Repair of Device Prior to Investigation of Occurrence.	\$500.00 (maximum penalty)			\$
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.11(a) – Operator Requirements.	\$500.00 (maximum penalty)			\$
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.11(b) – Operation While Impaired	\$1,000.00 (maximum penalty)			\$
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.12 – Operation Without Liability Insurance.	\$500.00 (each day/each device)	X	X	\$
<b>Total Proposed Penalty Amount</b>					<b>\$3000.00</b>

**Penalty Adjustment Calculation**

<b>1. Size Adjustment</b>	1-25 Employees	<input checked="" type="checkbox"/>	60%
	26-60 Employees	<input type="checkbox"/>	50%
	61-100 Employees	<input type="checkbox"/>	40%
	101-175 Employees	<input type="checkbox"/>	30%
	176-250 Employees	<input type="checkbox"/>	20%
	251 or More Employees	<input type="checkbox"/>	0%
<b>2. Gravity Adjustment</b>	Serious	<input checked="" type="checkbox"/>	0%
	Moderate	<input type="checkbox"/>	10%
	Non-Serious	<input type="checkbox"/>	20%
<b>3. Good Faith Adjustment</b>	Employer was cooperative with the amusement device inspector.	<input checked="" type="checkbox"/>	10%
	Employer maintained training records and/or safety programs on site.	<input type="checkbox"/>	10%
<b>4. Prior History Adjustment</b>	Employer has received penalties within the last 12 months.	<input type="checkbox"/>	0%
	Employer has not received penalties within the last 12 months.	<input checked="" type="checkbox"/>	10%
<b>Total Penalty Adjustment</b>			80%
<b>Total Adjusted Penalty Amount</b>			\$ 600.00

**Bureau Chief Signature**

Page 3 of 6

**Date**

**N.C. Department of Labor**

Elevator &amp; Amusement Device Bureau

1101 Mail Service Center

Raleigh, North Carolina 27699-1101

Telephone: (919) 807-2770

Facsimile: (919) 807-2777

**AMUSEMENT DEVICE PENALTY–  
INVOICE / DEBT COLLECTION NOTICE****Owner/Agent/Company Name:** Joshua Macaroni**Location of Amusement Device:** NC State Fair**Violation/Penalty Issuance Date:** 4/21/2014

<b>Summary of Violations/Penalties for Invoice Number:</b>		327-101713		
<input checked="" type="checkbox"/>	N.C. Gen. Stat. § 95-111.7(a) or (b)	=	\$2000.00	
<input type="checkbox"/>	N.C. Gen. Stat. § 95-111.7(c)	=	\$	
<input type="checkbox"/>	N.C. Gen. Stat. § 95-111.8	=	\$	
<input checked="" type="checkbox"/>	N.C. Gen. Stat. § 95-111.9	=	\$1000.00	
<input type="checkbox"/>	N.C. Gen. Stat. § 95-111.10(c)	=	\$	
<input type="checkbox"/>	N.C. Gen. Stat. § 95-111.10(d)	=	\$	
<input type="checkbox"/>	N.C. Gen. Stat. § 95-111.11(a)	=	\$	
<input type="checkbox"/>	N.C. Gen. Stat. § 95-111.11(b)	=	\$	
<input type="checkbox"/>	N.C. Gen. Stat. § 95-111.12	=	\$	
<b>Total Penalty Amount</b>		=	\$3000.00	
<b>Minus(-) Calculated Penalty Adjustment*</b>		=	\$2400.00	
<b>FINAL PENALTY AMOUNT</b>		=	<b>\$600.00</b>	*includes any adjustments made pursuant to N.C. Gen. Stat. § 95-111.13(f).

Please remit payment promptly to **N.C. Department of Labor, Attn: Budget – Amusement Device Penalty Collections, 1101 Mail Service Center, Raleigh, North Carolina 27699-1101**, for the total amount of the violations/penalties summarized above. Make your check or money order payable to: **NCDOL – Elevator and Amusement Device Bureau**. For payment by credit card, complete the form provided. Please indicate the Invoice Number (indicated above) on the remittance.

The Elevator and Amusement Device Bureau does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

**N.C. Department of Labor**  
Elevator & Amusement Device Bureau  
1101 Mail Service Center  
Raleigh, North Carolina 27699-1101  
Telephone: (919) 807-2770  
Facsimile: (919) 807-2777



## CREDIT CARD PAYMENT

**Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_  
Street Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

**Phone Number:** (\_\_\_\_\_) - \_\_\_\_\_

**Amount of Payment:** \$ \_\_\_\_\_  **MasterCard**  **Visa**

**Credit Card Number:** \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ **Exp. Date:** \_\_\_\_\_  
Mo./Yr.

**Payment for Invoice Number(s):** \_\_\_\_\_

**Cardholder Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

----- *Cut Along Dotted Line and Remit With Payment* -----

**N.C. Department of Labor**

Elevator & Amusement Device Bureau  
 1101 Mail Service Center  
 Raleigh, North Carolina 27699-1101  
 Telephone: (919) 807-2770  
 Facsimile: (919) 807-2777



## **AMUSEMENT DEVICE – RESPONSE TO NOTIFICATION OF FINAL PENALTY**

Joshua Macaroni

Owner/Agent/Company Name

1709 A Gornto Road, #379

Address

Valdosta

GA

31601

City

State

Zip Code

327-101713

Invoice Number

10/16/13-10/17/13

Inspection Date(s)

4/21/2014

Penalty Issuance Date

This form is for your convenience in either (a) paying the Total Penalty Amount listed in the Notification of Final Penalty, (b) requesting an Informal Conference to discuss a possible revision to the Notification of Penalty or an Informal Settlement Agreement, or (c) notifying the Bureau Chief of the Elevator and Amusement Device Bureau of your intention to contest all or part of the enclosed violations and penalty amounts.

Please mark only one of the following boxes – forms returned with more than one box marked will be treated as a request for an informal conference. This form must be returned to the address indicated below within fifteen (15) days from your receipt of the Notification of Final Penalty. Failure to return this form within fifteen (15) days of receipt (if you do not request an informal conference), or fifteen (15) days after you receive the results of the informal conference, may result in the Commissioner taking additional action, including refusing to issue/reissue a Certificate of Operation pursuant to 13 N.C.A.C. 15.0503. This form should be returned to the following address:

N.C. Department of Labor  
 Elevator & Amusement Device Bureau  
 1101 Mail Service Center  
 Raleigh, North Carolina 27699-1101

PENALTY PAYMENT ENCLOSED IN THE AMOUNT OF: \$ \_\_\_\_\_

Remit Payment To: N.C. Department of Labor  
 Attn: Budget – Amusement Device Penalty Collections  
 1101 Mail Service Center  
 Raleigh, North Carolina 27699-1101

**Please note that the Elevator and Amusement Device Bureau does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.**

REQUEST AN INFORMAL CONFERENCE  
**Please note that if you decide to request an Informal Conference, you must submit the enclosed form and then contact the Bureau Chief of the Elevator and Amusement Device Bureau at (919) 807-2770 in order to obtain the date, time and location of the informal conference.**

NOTICE OF INTENT TO CONTEST:  
 All of the Violations and Penalty Amounts  
 The Following Violations: \_\_\_\_\_  
 The Following Penalty Amounts: \_\_\_\_\_

**Please note that, pursuant to 13 N.C.A.C. 15.0502, if you intend to contest all or part of the enclosed violations and penalty amounts, in addition to completing this form and submitting it to the address below you must also file a written petition for a contested case hearing with the Office of Administrative Hearings (“OAH”) under Chapter 150B, Article 3 of the North Carolina General Statutes, and serve a copy of your petition on the NCDOL General Counsel, process agent for the North Carolina Department of Labor, at 1101 Mail Service Center, Raleigh, North Carolina 27699-1101. The address for the OAH is 6714 Mail Service Center, Raleigh, North Carolina 27699-6714.**

Signature

Date

Name (Print or Type)

Telephone Number

Title

**AMUSEMENT DEVICE –  
 PROPOSED PENALTY CALCULATION WORKSHEET**

Amusement Device ID Number:  9699	Name/Type of Amusement Device:  Vortex	Inspection Date:  10/16/13-10/17/13	Inspection Invoice Number: 327-101713
Owner/Agent/Company Name:  Timothy Tutterrow	Address:  2808 Hamlin Road	City:  Quitman	State: GA
Location of Amusement Device:  NC State Fairgrounds	County:  Wake	City:  Raleigh	Zip Code: 31601

During the investigation of the above-referenced amusement device or equipment, which is subject to the provisions of Chapter 95, Article 14B of the N.C. General Statutes (the Amusement Device Safety Act of North Carolina), the EAD discovered certain violations of the Act. These violations are noted below. As a result, pursuant to N.C. Gen. Stat. § 95-111.13, you are hereby assessed the following penalties:

	Statutory Violation	Penalty Amount	# of Days	# of Devices	Total Amount of Penalty
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.7(a) or (b) – Operation Without Certificate; Operation Not In Accordance With Article or Rules and Regulations.	\$250.00 <i>(each day/each device)</i>	X 3	X 1	\$ 750.00
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.7(c) – Operation After Refusal to Issue or After Revocation of Certificate.	\$500.00 <i>(each day/each device)</i>	X	X	\$
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.8 – Failure to File a Location Notice.	\$500.00 <i>(each day/any device)</i>	X		\$
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.9 – Operation of Unsafe Device.	\$1,000.00 <i>(maximum penalty)</i>			\$1000.00
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.10(c) – Operation After Occurrence Without Approval of Commissioner.	\$500.00 <i>(each day/each device)</i>	X	X	\$
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.10(d) – Removal or Repair of Device Prior to Investigation of Occurrence.	\$500.00 <i>(maximum penalty)</i>			\$
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.11(a) – Operator Requirements.	\$500.00 <i>(maximum penalty)</i>			\$
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.11(b) – Operation While Impaired	\$1,000.00 <i>(maximum penalty)</i>			\$
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.12 – Operation Without Liability Insurance.	\$500.00 <i>(each day/each device)</i>	X	X	\$
<b>Total Proposed Penalty Amount</b>					<b>\$1750.00</b>

**THIS IS NOT A FINAL PENALTY CALCULATION –  
 YOU ARE NOT REQUIRED TO REMIT PAYMENT AT THIS TIME.**

In the near future, you will be receiving a Notification of Final Penalty which will contain the Total Penalty Amount which you will be required to pay, pursuant to N.C. Gen. Stat. § 95-111.13. The Final Penalty Amount will be based upon the Total Proposed Penalty Amount listed above, as well as certain factors regarding the appropriateness of the penalty which are required by N.C. Gen. Stat. § 95-111.13(f) (such as the size of the business, the gravity of the violation, the good faith exhibited by the business, and the record of previous violations of the business). After your receipt of the Notification of Final Penalty, you will be required to take certain steps which will be outlined in that document.

Your signature on this Proposed Penalty Calculation Worksheet indicates that the above has been explained to you and that you understand the penalties involved in operating any amusement device or equipment after the certificate of operation has been revoked/suspended/amended/not renewed.

\_\_\_\_\_  
**Inspector Signature**

\_\_\_\_\_  
**Owner/Operator Signature**

\_\_\_\_\_  
**Date**

**§ 95-111.7. Operation without certificate; operation not in accordance with Article or rules and regulations; operation after refusal to issue or after revocation of certificate.**

- (a) No person shall operate or permit to be operated or use any device subject to the provisions of this Article without a valid certificate of operation.
- (b) No person shall operate or permit to be operated or use any device subject to the provisions of this Article otherwise than in accordance with this Article and the rules and regulations promulgated thereunder.
- (c) No person shall operate or permit to be operated or use any device subject to the provisions of this Article after the Commissioner has refused to issue or has revoked the certificate of operation for such device.

**§ 95-111.8. Location notice.**

No person shall operate for the public or permit the operation for the public any device subject to the provisions of this Article after initial assembly or after reassembly at any location within this State without first notifying the Commissioner of the intention to operate for the public. Written notice of a planned schedule of operation or use shall be received at least 10 days prior to the first planned date of operation or use.

**§ 95-111.9. Operation of unsafe device.**

No person shall operate, permit to be operated or use any device subject to the provisions of this Article if such person knows or reasonably should know that such operation or use will expose the public to an unsafe condition which is likely to result in personal injury or property damage.

**§ 95-111.10. Reports required.**

- (a) The owner of any device regulated under the provisions of this Article, or his authorized agent, shall within 24 hours, notify the Commissioner of each and every occurrence involving such device when:
  - (1) The occurrence results in death or injury requiring medical treatment, other than first aid, by a physician. First aid means the one time treatment or observation of scratches, cuts not requiring stitches, burns, splinters and contusions or a diagnostic procedure, including examination and x-rays, which does not ordinarily require medical treatment even though provided by a physician or other licensed personnel; or
  - (2) The occurrence results in damage to the device indicating a substantial defect in design, mechanics, structure or equipment, affecting the future safe operation of the device. No reporting is required in the case of normal wear and tear.
- (b) The Commissioner, without delay, after notification and determination that an occurrence involving injury or damage as specified in subsection (a) has occurred, shall make a complete and thorough investigation of the occurrence. The report of the investigation shall be placed on file in the office of the division and shall give in detail all facts and information available. The owner may submit for inclusion in the file results of investigations independent of the department's investigation.
- (c) No person, following an occurrence as specified in subsection (a), shall operate, attempt to operate, use or move or attempt to move such device or part thereof, without the approval of the Commissioner, unless so as to prevent injury to any person or persons.
- (d) No person, following an occurrence as specified in subsection (a), shall remove or attempt to remove from the premises any damaged or undamaged part of such device or repair or attempt to repair any damaged part necessary to a complete and thorough investigation. The department must initiate its investigation within 24 hours of being notified.

**§ 95-111.11 Operators.**

- (a) Any operator of a device subject to the provisions of this Article shall be at least 18 years of age. An operator shall operate no more than one device at any given time. An operator shall be in attendance at all times the device is in operation.
- (b) No person shall operate any amusement device equipment while under the influence of alcohol or any other impairing substance as defined by G.S. 20-4.01(14a). It shall be a violation of this subsection to knowingly permit the operation of any amusement device while the operator is under the influence of an impairing substance.

**§ 95-111.12. Liability insurance.**

- (a) No owner shall operate a device subject to the provisions of this Article, unless at the time, there is in existence a contract of insurance providing coverage of not less than one million dollars (\$1,000,000) per occurrence against liability for injury to persons or property arising out of the operation or use of such device or there is in existence a contract of insurance providing coverage of not less than five hundred thousand dollars (\$500,000) per occurrence against liability for injury to persons or property arising out of the operation or use of the amusement devices if the annual gross volume of the devices does not exceed two hundred seventy-five thousand dollars (\$275,000); provided waterslides shall not be required to be insured as herein provided for an amount in excess of one hundred thousand dollars (\$100,000) per occurrence. The insurance contract to be provided must be by any insurer or surety that is acceptable to the North Carolina Insurance Commissioner and authorized to transact business in this State; provided, however, that insurance for waterslides may be purchased under Article 21 of Chapter 58 of the General Statutes or under G.S. 58-28-5(b).
- (b) No certificate of operation shall be issued by the Commissioner until such time as the owner or his authorized agent provides proof of the required contract of insurance.
- (c) The Commissioner shall have the right to request from the owner of a device regulated by this Article, or his authorized agent, proof of the required contract of insurance, and upon failure of the owner or his authorized agent to provide such proof, the Commissioner shall have the right to prevent the commencement of or to stop the operation of the device until such time as proof is provided.
- (d) Operators of waterslides, as defined in G.S. 95-111.3(h), shall notify the Commissioner of all incidences of personal injury involving the waterslides, as required by G.S. 95-111.10(a).

**§ 95-111.13. Violations; civil penalties; appeal; criminal penalties.**

- (a) Any person who violates G.S. 95-111.7(a) or (b) (Operation without certificate; operation not in accordance with Article or rules and regulations) shall be subject to a civil penalty not to exceed two hundred fifty dollars (\$250.00) for each day each device is so operated or used.
- (b) Any person who violates G.S. 95-111.7(c) (Operation after refusal to issue or after revocation of certificate) or G.S. 95-111.10(c) (Reports required) or G.S. 95-111.12 (Liability insurance) shall be subject to a civil penalty not to exceed five hundred dollars (\$500.00) for each day each device is so operated or used.
- (c) Any person who violates G.S. 95-111.8 (Location notice) shall be subject to a civil penalty not to exceed five hundred dollars (\$500.00) for each day any device is operated or used without the location notice having been provided.
- (d) Any person who violates the provisions of G.S. 95-111.10(d) (Reports required) or knowingly permits the operation of an amusement device in violation of G.S. 95-111.11(a) (Operator requirements) shall be subject to a civil penalty not to exceed five hundred dollars (\$500.00).
- (e) Any person who violates G.S. 95-111.9 (Operation of unsafe device) or G.S. 95-111.11(b) (Operation of an amusement device while impaired) shall be subject to a civil penalty not to exceed one thousand dollars (\$1,000).
- (f) In determining the amount of any penalty ordered under authority of this section, the Commissioner shall give due consideration to the appropriateness of the penalty with respect to the size of the business of the person being charged, the gravity of the violation, the good faith of the person and the record of previous violations.
- (g) The determination of the amount of the penalty by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, the person charged with the violation takes exception to the determination, in which event final determination of the penalty shall be made in an administrative proceeding and in a judicial proceeding pursuant to Chapter 150B of the General Statutes, the Administrative Procedure Act.
- (h) The Commissioner may file in the office of the clerk of the superior court of the county wherein the person, against whom a civil penalty has been ordered, resides, or if a corporation is involved, in the county wherein the corporation maintains its principal place of business, or in the county wherein the violation occurred, a certified copy of a final order of the Commissioner unappealed from, or of a final order of the Commissioner affirmed upon appeal. Whereupon, the clerk of said court shall enter judgment in accordance therewith and notify the parties. Such judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though said judgment had been rendered in a suit duly heard and determined by the superior court of the General Court of Justice.
- (i) Any person who willfully violates any provision of this Article, and the violation causes the death of any person, shall be guilty of a Class 2 misdemeanor, which may include a fine of not more than ten thousand dollars (\$10,000); except that if the conviction is for a violation committed after a first conviction of such person, the person shall be guilty of a Class 1 misdemeanor, which may include a fine of not more than twenty thousand dollars (\$20,000). This subsection shall not prevent any prosecuting officer of the State of North Carolina from proceeding against such person on a prosecution charging any degree of willful or culpable homicide.

## AMUSEMENT DEVICE – NOTIFICATION OF FINAL PENALTY

Timothy Tutterrow  
Owner/Agent/Company Name  
2808 Hamlin Road  
Address  
Quitman GA 31643  
City State Zip Code

327-101713  
Invoice Number  
10/16/13-10/17/13  
Inspection Date(s)  
4/21/2014  
Penalty Issuance Date

9699  
Amusement Device Identification Number(s)  
North Carolina State Fairgrounds  
Location of Amusement Device  
Raleigh Wake  
City County

*The violation(s) described in this Notification of Final Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.*

This Notification of Final Penalty describes violation(s) of Chapter 95, Article 14B of the N.C. General Statutes (the Amusement Device Safety Act of North Carolina). The penalty(ies) listed herein is (are) based on these violations, and are also listed on the Amusement Device Proposed Penalty Calculation Worksheet issued by the EAD. You must correct the violation(s) referred to in this Notification of Final Penalty by the date(s) listed and pay the total penalty amount, unless within fifteen (15) days from receipt of this Notification of Final Penalty you either (a) mail a request for an informal conference to the N.C. Department of Labor – Elevator and Amusement Device Bureau office at the address shown above, or (b) file a written petition for a contested case hearing with the Office of Administrative Hearings (OAH) under Chapter 150B, Article 3 of the North Carolina General Statutes and serve a copy of such petition on the NCDOL General Counsel, process agent for the North Carolina Department of Labor, at 1101 Mail Service Center, Raleigh, North Carolina 27699-1101.

**Informal Conference** – You may request an informal conference. To request an informal conference, you must return the enclosed form marking the block requesting an informal conference or provide other written notice to the Bureau Chief of the Elevator and Amusement Device Bureau within fifteen (15) days of your receipt of this Notification of Final Penalty (**do not mark more than one block on the enclosed form if you want an informal conference**). The informal conference must be held no longer than twenty (20) days from the date you receive the Notification of Final Penalty, so your immediate response is necessary if you choose this option.

If you make a timely request for an informal conference to discuss any issued related to this Notification of Final Penalty, you preserve your right to contest the penalty(ies). The time for contestation does not begin until after the informal conference is held and you have been notified of the result(s). At that time, you have an additional fifteen (15) days during which you may file a written petition for a contested case hearing with the OAH under Chapter 150B, Article 3 of the North Carolina General Statutes.

If you decide to request an informal conference, you must submit the enclosed form and then contact the Bureau Chief of the Elevator and Amusement Device Bureau at (919) 807-2770 in order to obtain the date, time and location of the informal conference. Please bring to the informal conference all supporting documentation

of existing conditions and any corrections made thus far. The results of the informal conference will be a revised Notification of Final Penalty, a Notice of No Change, or an Informal Settlement Agreement. An Informal Settlement Agreement will resolve the matter without litigation or contestment.

**Right to Contest** – You have the right to contest the violations and penalty amounts contained in this Notice of Final Penalty now or after the Informal Conference. You may contest all the violations and all the penalty amounts, or you may contest only individual violations or individual penalty amounts. You may also contest proposed penalty amounts without contesting the underlying violations.

**Fifteen (15) days after your receipt of this Notice of Final Penalty (if you do not request an informal conference), or fifteen (15) days after you receive the results of the informal conference, the Notification of Final Penalty will become final unless, pursuant to 13 N.C.A.C. 15.0502, you file a written petition for a contested case hearing with the OAH under Chapter 150B, Article 3 of the N.C. General Statutes and pay the requisite filing fee. The address for the OAH is 6714 Mail Service Center, Raleigh, North Carolina 27699-6714. Notice of your petition also must be served on the NCDOL General Counsel, process agent for the N.C. Department of Labor, at 1101 Mail Service Center, Raleigh, North Carolina 27699-1101. The requirements for a legally effective hearing request are established by N.C. General Statutes § 150B-23, a copy of which is included herein.**

**Penalty Payment** – The Total Penalty Amount listed above is due within fifteen (15) days of your receipt of this Notification of Final Penalty, unless (a) a request for an informal conference is forwarded to the Bureau Chief of the Elevator and Amusement Device Bureau or (b) a written petition for a contested case hearing is filed with the OAH under Chapter 150B, Article 3 of the North Carolina General Statutes, and served upon the NCDOL General Counsel, process agent for the North Carolina Department of Labor, at the address listed above. Make your check or money order payable to the **NCDOL – Elevator and Amusement Device Bureau**, and remit to **N.C. Department of Labor, Attn: Budget – Amusement Device Penalty Collections, 1101 Mail Service Center, Raleigh, North Carolina 27699-1101**, for the total amount of the penalties summarized above. You may also make payment by credit card. A form is provided for your convenience. Please indicate the Invoice Number (indicated above) on the remittance.

If you fail to notify the Bureau Chief of your intention within fifteen (15) days of your receipt of this Notification of Final Penalty (if you do not request an informal conference), or fifteen (15) days after you receive the results of the informal conference, and refuse to pay the penalty amount, the Commissioner may take additional action, including refusing to issue/reissue a Certificate of Operation pursuant to 13 N.C.A.C. 15.0503.

The Elevator and Amusement Device Bureau does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

**N.C. Department of Labor**

Elevator & Amusement Device Bureau  
 1101 Mail Service Center  
 Raleigh, North Carolina 27699-1101  
 Telephone: (919) 807-2770  
 Facsimile: (919) 807-2777



Amusement Device ID Number:	Name/Type of Amusement Device:	Inspection Date:	Inspection Invoice Number:
9699	Vortex	10/16/13-10/17/13	327-101713
Owner/Agent/Company Name: Timothy Tutterrow	Address: 2808 Hamlin Road	City: Quitman	State: GA Zip Code: 31643
Location of Amusement Device: NC State Fairgrounds	County: Wake	City: Raleigh	

During the investigation of the above-referenced amusement device, which is subject to the provisions of Chapter 95, Article 14B of the N.C. General Statutes (the Amusement Device Safety Act of North Carolina), EAD discovered certain violations of the Act. These violations are noted below, and are alleged to have occurred during the length of the State Fair. As a result, pursuant to N.C. Gen. Stat. § 95-111.13, you are hereby assessed the following penalties:

	Statutory Violation	Penalty Amount	# of Days	# of Devices	Total Amount of Penalty
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.7(a) or (b) – Operation Without Certificate; Operation Not In Accordance With Article or Rules and Regulations.	\$250.00 (each day/each device)	X 3	X 1	\$ 750.00
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.7(c) – Operation After Refusal to Issue or After Revocation of Certificate.	\$500.00 (each day/each device)	X	X	\$
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.8 – Failure to File a Location Notice.	\$500.00 (each day/any device)	X		\$
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.9 – Operation of Unsafe Device.	\$1,000.00 (maximum penalty)			\$1000.00
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.10(c) – Operation After Occurrence Without Approval of Commissioner.	\$500.00 (each day/each device)	X	X	\$
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.10(d) – Removal or Repair of Device Prior to Investigation of Occurrence.	\$500.00 (maximum penalty)			\$
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.11(a) – Operator Requirements.	\$500.00 (maximum penalty)			\$
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.11(b) – Operation While Impaired	\$1,000.00 (maximum penalty)			\$
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.12 – Operation Without Liability Insurance.	\$500.00 (each day/each device)	X	X	\$
<b>Total Proposed Penalty Amount</b>					<b>\$1750.00</b>

**Penalty Adjustment Calculation**

<b>1. Size Adjustment</b>	1-25 Employees	<input checked="" type="checkbox"/>	60%
	26-60 Employees	<input type="checkbox"/>	50%
	61-100 Employees	<input type="checkbox"/>	40%
	101-175 Employees	<input type="checkbox"/>	30%
	176-250 Employees	<input type="checkbox"/>	20%
	251 or More Employees	<input type="checkbox"/>	0%
<b>2. Gravity Adjustment</b>	Serious	<input checked="" type="checkbox"/>	0%
	Moderate	<input type="checkbox"/>	10%
	Non-Serious	<input type="checkbox"/>	20%
<b>3. Good Faith Adjustment</b>	Employer was cooperative with the amusement device inspector.	<input checked="" type="checkbox"/>	10%
	Employer maintained training records and/or safety programs on site.	<input type="checkbox"/>	10%
<b>4. Prior History Adjustment</b>	Employer has received penalties within the last 12 months.	<input type="checkbox"/>	0%
	Employer has not received penalties within the last 12 months.	<input checked="" type="checkbox"/>	10%
<b>Total Penalty Adjustment</b>			80%
<b>Total Adjusted Penalty Amount</b>			\$ 350.00

**Bureau Chief Signature**

Page 3 of 6

**Date**

**N.C. Department of Labor**

Elevator &amp; Amusement Device Bureau

1101 Mail Service Center

Raleigh, North Carolina 27699-1101

Telephone: (919) 807-2770

Facsimile: (919) 807-2777

**AMUSEMENT DEVICE PENALTY–  
INVOICE / DEBT COLLECTION NOTICE****Owner/Agent/Company Name:** Timothy Tutterrow**Location of Amusement Device:** NC State Fair**Violation/Penalty Issuance Date:** April 21, 2014

<b>Summary of Violations/Penalties for Invoice Number:</b>		327-101713		
<input checked="" type="checkbox"/>	N.C. Gen. Stat. § 95-111.7(a) or (b)	=	\$750.00	
<input type="checkbox"/>	N.C. Gen. Stat. § 95-111.7(c)	=	\$	
<input type="checkbox"/>	N.C. Gen. Stat. § 95-111.8	=	\$	
<input checked="" type="checkbox"/>	N.C. Gen. Stat. § 95-111.9	=	\$1000.00	
<input type="checkbox"/>	N.C. Gen. Stat. § 95-111.10(c)	=	\$	
<input type="checkbox"/>	N.C. Gen. Stat. § 95-111.10(d)	=	\$	
<input type="checkbox"/>	N.C. Gen. Stat. § 95-111.11(a)	=	\$	
<input type="checkbox"/>	N.C. Gen. Stat. § 95-111.11(b)	=	\$	
<input type="checkbox"/>	N.C. Gen. Stat. § 95-111.12	=	\$	
<b>Total Penalty Amount</b>		=	\$1750.00	
<b>Minus(-) Calculated Penalty Adjustment*</b>		=	\$1400.00	
<b>FINAL PENALTY AMOUNT</b>		=	<b>\$350.00</b>	*includes any adjustments made pursuant to N.C. Gen. Stat. § 95-111.13(f).

Please remit payment promptly to **N.C. Department of Labor, Attn: Budget – Amusement Device Penalty Collections, 1101 Mail Service Center, Raleigh, North Carolina 27699-1101**, for the total amount of the violations/penalties summarized above. Make your check or money order payable to: **NCDOL – Elevator and Amusement Device Bureau**. For payment by credit card, complete the form provided. Please indicate the Invoice Number (indicated above) on the remittance.

The Elevator and Amusement Device Bureau does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

**N.C. Department of Labor**  
Elevator & Amusement Device Bureau  
1101 Mail Service Center  
Raleigh, North Carolina 27699-1101  
Telephone: (919) 807-2770  
Facsimile: (919) 807-2777



## CREDIT CARD PAYMENT

**Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_  
Street Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

**Phone Number:** (\_\_\_\_\_) - \_\_\_\_\_

**Amount of Payment:** \$ \_\_\_\_\_  **MasterCard**  **Visa**

**Credit Card Number:** \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ **Exp. Date:** \_\_\_\_\_  
Mo./Yr.

**Payment for Invoice Number(s):** \_\_\_\_\_

**Cardholder Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

----- *Cut Along Dotted Line and Remit With Payment* -----

**AMUSEMENT DEVICE –  
RESPONSE TO NOTIFICATION OF FINAL PENALTY**

327-101713  
**Invoice Number**  
10/16/13-10/17/13  
**Inspection Date(s)**  
4/21/2014  
**Penalty Issuance Date**

This form is for your convenience in either (a) paying the Total Penalty Amount listed in the Notification of Final Penalty, (b) requesting an Informal Conference to discuss a possible revision to the Notification of Penalty or an Informal Settlement Agreement, or (c) notifying the Bureau Chief of the Elevator and Amusement Device Bureau of your intention to contest all or part of the enclosed violations and penalty amounts.

Please mark only one of the following boxes – forms returned with more than one box marked will be treated as a request for an informal conference. This form must be returned to the address indicated below within fifteen (15) days from your receipt of the Notification of Final Penalty. Failure to return this form within fifteen (15) days of receipt (if you do not request an informal conference), or fifteen (15) days after you receive the results of the informal conference, may result in the Commissioner taking additional action, including refusing to issue/reissue a Certificate of Operation pursuant to 13 N.C.A.C. 15.0503. This form should be returned to the following address:

N.C. Department of Labor  
Elevator & Amusement Device Bureau  
1101 Mail Service Center  
Raleigh, North Carolina 27699-1101

PENALTY PAYMENT ENCLOSED IN THE AMOUNT OF: \$ \_\_\_\_\_  
Remit Payment To: N.C. Department of Labor  
Attn: Budget – Amusement Device Penalty Collections  
1101 Mail Service Center  
Raleigh, North Carolina 27699-1101

Raleigh, North Carolina 27699-1101  
**Please note that the Elevator and Amusement Device Bureau does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.**

REQUEST AN INFORMAL CONFERENCE  
Please note that if you decide to request an Informal Conference, you must submit the enclosed form and then contact the Bureau Chief of the Elevator and Amusement Device Bureau at (919) 807-2770 in order to obtain the date, time and location of the informal conference.

NOTICE OF INTENT TO CONTEST:  
 All of the Violations and Penalty Amounts  
 The Following Violations: \_\_\_\_\_  
 The Following Penalty Amounts: \_\_\_\_\_

Please note that, pursuant to 13 N.C.A.C. 15.0502, if you intend to contest all or part of the enclosed violations and penalty amounts, in addition to completing this form and submitting it to the address below you must also file a written petition for a contested case hearing with the Office of Administrative Hearings (“OAH”) under Chapter 150B, Article 3 of the North Carolina General Statutes, and serve a copy of your petition on the NCDOL General Counsel, process agent for the North Carolina Department of Labor, at 1101 Mail Service Center, Raleigh, North Carolina 27699-1101. The address for the OAH is 6714 Mail Service Center, Raleigh, North Carolina 27699-6714.

---

**Signature**

---

Date

**Name (Print or Type)**

**Telephone Number**

## Title

**AMUSEMENT DEVICE –  
 PROPOSED PENALTY CALCULATION WORKSHEET**

Amusement Device ID Number:  9699	Name/Type of Amusement Device:  Vortex	Inspection Date:  10/16/13-10/17/13	Inspection Invoice Number: 327-101713
Owner/Agent/Company Name: Omar Toranzo	Address: 140 NW 59 St.	City: Miami	State: FL Zip Code: 33127
Location of Amusement Device: NC State Fairgrounds	County: Wake	City: Raleigh	

During the investigation of the above-referenced amusement device or equipment, which is subject to the provisions of Chapter 95, Article 14B of the N.C. General Statutes (the Amusement Device Safety Act of North Carolina), the EAD discovered certain violations of the Act. These violations are noted below. As a result, pursuant to N.C. Gen. Stat. § 95-111.13, you are hereby assessed the following penalties:

	Statutory Violation	Penalty Amount	# of Days	# of Devices	Total Amount of Penalty
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.7(a) or (b) – Operation Without Certificate; Operation Not In Accordance With Article or Rules and Regulations.	\$250.00 (each day/each device)	X 3	X 1	\$ 750.00
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.7(c) – Operation After Refusal to Issue or After Revocation of Certificate.	\$500.00 (each day/each device)	X	X	\$
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.8 – Failure to File a Location Notice.	\$500.00 (each day/any device)	X		\$
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.9 – Operation of Unsafe Device.	\$1,000.00 (maximum penalty)			\$1000.00
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.10(c) – Operation After Occurrence Without Approval of Commissioner.	\$500.00 (each day/each device)	X	X	\$
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.10(d) – Removal or Repair of Device Prior to Investigation of Occurrence.	\$500.00 (maximum penalty)			\$
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.11(a) – Operator Requirements.	\$500.00 (maximum penalty)			\$
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.11(b) – Operation While Impaired	\$1,000.00 (maximum penalty)			\$
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.12 – Operation Without Liability Insurance.	\$500.00 (each day/each device)	X	X	\$
<b>Total Proposed Penalty Amount</b>					<b>\$1750.00</b>

**THIS IS NOT A FINAL PENALTY CALCULATION –  
 YOU ARE NOT REQUIRED TO REMIT PAYMENT AT THIS TIME.**

In the near future, you will be receiving a Notification of Final Penalty which will contain the Total Penalty Amount which you will be required to pay, pursuant to N.C. Gen. Stat. § 95-111.13. The Final Penalty Amount will be based upon the Total Proposed Penalty Amount listed above, as well as certain factors regarding the appropriateness of the penalty which are required by N.C. Gen. Stat. § 95-111.13(f) (such as the size of the business, the gravity of the violation, the good faith exhibited by the business, and the record of previous violations of the business). After your receipt of the Notification of Final Penalty, you will be required to take certain steps which will be outlined in that document.

Your signature on this Proposed Penalty Calculation Worksheet indicates that the above has been explained to you and that you understand the penalties involved in operating any amusement device or equipment after the certificate of operation has been revoked/suspended/amended/not renewed.

\_\_\_\_\_  
**Inspector Signature**

\_\_\_\_\_  
**Owner/Operator Signature**

\_\_\_\_\_  
**Date**

**§ 95-111.7. Operation without certificate; operation not in accordance with Article or rules and regulations; operation after refusal to issue or after revocation of certificate.**

- (a) No person shall operate or permit to be operated or use any device subject to the provisions of this Article without a valid certificate of operation.
- (b) No person shall operate or permit to be operated or use any device subject to the provisions of this Article otherwise than in accordance with this Article and the rules and regulations promulgated thereunder.
- (c) No person shall operate or permit to be operated or use any device subject to the provisions of this Article after the Commissioner has refused to issue or has revoked the certificate of operation for such device.

**§ 95-111.8. Location notice.**

No person shall operate for the public or permit the operation for the public any device subject to the provisions of this Article after initial assembly or after reassembly at any location within this State without first notifying the Commissioner of the intention to operate for the public. Written notice of a planned schedule of operation or use shall be received at least 10 days prior to the first planned date of operation or use.

**§ 95-111.9. Operation of unsafe device.**

No person shall operate, permit to be operated or use any device subject to the provisions of this Article if such person knows or reasonably should know that such operation or use will expose the public to an unsafe condition which is likely to result in personal injury or property damage.

**§ 95-111.10. Reports required.**

- (a) The owner of any device regulated under the provisions of this Article, or his authorized agent, shall within 24 hours, notify the Commissioner of each and every occurrence involving such device when:
  - (1) The occurrence results in death or injury requiring medical treatment, other than first aid, by a physician. First aid means the one time treatment or observation of scratches, cuts not requiring stitches, burns, splinters and contusions or a diagnostic procedure, including examination and x-rays, which does not ordinarily require medical treatment even though provided by a physician or other licensed personnel; or
  - (2) The occurrence results in damage to the device indicating a substantial defect in design, mechanics, structure or equipment, affecting the future safe operation of the device. No reporting is required in the case of normal wear and tear.
- (b) The Commissioner, without delay, after notification and determination that an occurrence involving injury or damage as specified in subsection (a) has occurred, shall make a complete and thorough investigation of the occurrence. The report of the investigation shall be placed on file in the office of the division and shall give in detail all facts and information available. The owner may submit for inclusion in the file results of investigations independent of the department's investigation.
- (c) No person, following an occurrence as specified in subsection (a), shall operate, attempt to operate, use or move or attempt to move such device or part thereof, without the approval of the Commissioner, unless so as to prevent injury to any person or persons.
- (d) No person, following an occurrence as specified in subsection (a), shall remove or attempt to remove from the premises any damaged or undamaged part of such device or repair or attempt to repair any damaged part necessary to a complete and thorough investigation. The department must initiate its investigation within 24 hours of being notified.

**§ 95-111.11 Operators.**

- (a) Any operator of a device subject to the provisions of this Article shall be at least 18 years of age. An operator shall operate no more than one device at any given time. An operator shall be in attendance at all times the device is in operation.
- (b) No person shall operate any amusement device equipment while under the influence of alcohol or any other impairing substance as defined by G.S. 20-4.01(14a). It shall be a violation of this subsection to knowingly permit the operation of any amusement device while the operator is under the influence of an impairing substance.

**§ 95-111.12. Liability insurance.**

- (a) No owner shall operate a device subject to the provisions of this Article, unless at the time, there is in existence a contract of insurance providing coverage of not less than one million dollars (\$1,000,000) per occurrence against liability for injury to persons or property arising out of the operation or use of such device or there is in existence a contract of insurance providing coverage of not less than five hundred thousand dollars (\$500,000) per occurrence against liability for injury to persons or property arising out of the operation or use of the amusement devices if the annual gross volume of the devices does not exceed two hundred seventy-five thousand dollars (\$275,000); provided waterslides shall not be required to be insured as herein provided for an amount in excess of one hundred thousand dollars (\$100,000) per occurrence. The insurance contract to be provided must be by any insurer or surety that is acceptable to the North Carolina Insurance Commissioner and authorized to transact business in this State; provided, however, that insurance for waterslides may be purchased under Article 21 of Chapter 58 of the General Statutes or under G.S. 58-28-5(b).
- (b) No certificate of operation shall be issued by the Commissioner until such time as the owner or his authorized agent provides proof of the required contract of insurance.
- (c) The Commissioner shall have the right to request from the owner of a device regulated by this Article, or his authorized agent, proof of the required contract of insurance, and upon failure of the owner or his authorized agent to provide such proof, the Commissioner shall have the right to prevent the commencement of or to stop the operation of the device until such time as proof is provided.
- (d) Operators of waterslides, as defined in G.S. 95-111.3(h), shall notify the Commissioner of all incidences of personal injury involving the waterslides, as required by G.S. 95-111.10(a).

**§ 95-111.13. Violations; civil penalties; appeal; criminal penalties.**

- (a) Any person who violates G.S. 95-111.7(a) or (b) (Operation without certificate; operation not in accordance with Article or rules and regulations) shall be subject to a civil penalty not to exceed two hundred fifty dollars (\$250.00) for each day each device is so operated or used.
- (b) Any person who violates G.S. 95-111.7(c) (Operation after refusal to issue or after revocation of certificate) or G.S. 95-111.10(c) (Reports required) or G.S. 95-111.12 (Liability insurance) shall be subject to a civil penalty not to exceed five hundred dollars (\$500.00) for each day each device is so operated or used.
- (c) Any person who violates G.S. 95-111.8 (Location notice) shall be subject to a civil penalty not to exceed five hundred dollars (\$500.00) for each day any device is operated or used without the location notice having been provided.
- (d) Any person who violates the provisions of G.S. 95-111.10(d) (Reports required) or knowingly permits the operation of an amusement device in violation of G.S. 95-111.11(a) (Operator requirements) shall be subject to a civil penalty not to exceed five hundred dollars (\$500.00).
- (e) Any person who violates G.S. 95-111.9 (Operation of unsafe device) or G.S. 95-111.11(b) (Operation of an amusement device while impaired) shall be subject to a civil penalty not to exceed one thousand dollars (\$1,000).
- (f) In determining the amount of any penalty ordered under authority of this section, the Commissioner shall give due consideration to the appropriateness of the penalty with respect to the size of the business of the person being charged, the gravity of the violation, the good faith of the person and the record of previous violations.
- (g) The determination of the amount of the penalty by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, the person charged with the violation takes exception to the determination, in which event final determination of the penalty shall be made in an administrative proceeding and in a judicial proceeding pursuant to Chapter 150B of the General Statutes, the Administrative Procedure Act.
- (h) The Commissioner may file in the office of the clerk of the superior court of the county wherein the person, against whom a civil penalty has been ordered, resides, or if a corporation is involved, in the county wherein the corporation maintains its principal place of business, or in the county wherein the violation occurred, a certified copy of a final order of the Commissioner unappealed from, or of a final order of the Commissioner affirmed upon appeal. Whereupon, the clerk of said court shall enter judgment in accordance therewith and notify the parties. Such judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though said judgment had been rendered in a suit duly heard and determined by the superior court of the General Court of Justice.
- (i) Any person who willfully violates any provision of this Article, and the violation causes the death of any person, shall be guilty of a Class 2 misdemeanor, which may include a fine of not more than ten thousand dollars (\$10,000); except that if the conviction is for a violation committed after a first conviction of such person, the person shall be guilty of a Class 1 misdemeanor, which may include a fine of not more than twenty thousand dollars (\$20,000). This subsection shall not prevent any prosecuting officer of the State of North Carolina from proceeding against such person on a prosecution charging any degree of willful or culpable homicide.

## AMUSEMENT DEVICE – NOTIFICATION OF FINAL PENALTY

Omar Toranzo  
Owner/Agent/Company Name  
140 NW 59 Street  
Address  
Miami FL 33127  
City State Zip Code

327-101713  
Invoice Number  
10/16/13-10/17/13  
Inspection Date(s)  
4/21/2014  
Penalty Issuance Date

9699  
Amusement Device Identification Number(s)  
North Carolina State Fairgrounds  
Location of Amusement Device  
Raleigh Wake  
City County

*The violation(s) described in this Notification of Final Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.*

This Notification of Final Penalty describes violation(s) of Chapter 95, Article 14B of the N.C. General Statutes (the Amusement Device Safety Act of North Carolina). The penalty(ies) listed herein is (are) based on these violations, and are also listed on the Amusement Device Proposed Penalty Calculation Worksheet issued by the EAD. You must correct the violation(s) referred to in this Notification of Final Penalty by the date(s) listed and pay the total penalty amount, unless within fifteen (15) days from receipt of this Notification of Final Penalty you either (a) mail a request for an informal conference to the N.C. Department of Labor – Elevator and Amusement Device Bureau office at the address shown above, or (b) file a written petition for a contested case hearing with the Office of Administrative Hearings (OAH) under Chapter 150B, Article 3 of the North Carolina General Statutes and serve a copy of such petition on the NCDOL General Counsel, process agent for the North Carolina Department of Labor, at 1101 Mail Service Center, Raleigh, North Carolina 27699-1101.

**Informal Conference** – You may request an informal conference. To request an informal conference, you must return the enclosed form marking the block requesting an informal conference or provide other written notice to the Bureau Chief of the Elevator and Amusement Device Bureau within fifteen (15) days of your receipt of this Notification of Final Penalty (**do not mark more than one block on the enclosed form if you want an informal conference**). The informal conference must be held no longer than twenty (20) days from the date you receive the Notification of Final Penalty, so your immediate response is necessary if you choose this option.

If you make a timely request for an informal conference to discuss any issued related to this Notification of Final Penalty, you preserve your right to contest the penalty(ies). The time for contestation does not begin until after the informal conference is held and you have been notified of the result(s). At that time, you have an additional fifteen (15) days during which you may file a written petition for a contested case hearing with the OAH under Chapter 150B, Article 3 of the North Carolina General Statutes.

If you decide to request an informal conference, you must submit the enclosed form and then contact the Bureau Chief of the Elevator and Amusement Device Bureau at (919) 807-2770 in order to obtain the date, time and location of the informal conference. Please bring to the informal conference all supporting documentation

of existing conditions and any corrections made thus far. The results of the informal conference will be a revised Notification of Final Penalty, a Notice of No Change, or an Informal Settlement Agreement. An Informal Settlement Agreement will resolve the matter without litigation or contestment.

**Right to Contest** – You have the right to contest the violations and penalty amounts contained in this Notice of Final Penalty now or after the Informal Conference. You may contest all the violations and all the penalty amounts, or you may contest only individual violations or individual penalty amounts. You may also contest proposed penalty amounts without contesting the underlying violations.

**Fifteen (15) days after your receipt of this Notice of Final Penalty (if you do not request an informal conference), or fifteen (15) days after you receive the results of the informal conference, the Notification of Final Penalty will become final unless, pursuant to 13 N.C.A.C. 15.0502, you file a written petition for a contested case hearing with the OAH under Chapter 150B, Article 3 of the N.C. General Statutes and pay the requisite filing fee. The address for the OAH is 6714 Mail Service Center, Raleigh, North Carolina 27699-6714. Notice of your petition also must be served on the NCDOL General Counsel, process agent for the N.C. Department of Labor, at 1101 Mail Service Center, Raleigh, North Carolina 27699-1101. The requirements for a legally effective hearing request are established by N.C. General Statutes § 150B-23, a copy of which is included herein.**

**Penalty Payment** – The Total Penalty Amount listed above is due within fifteen (15) days of your receipt of this Notification of Final Penalty, unless (a) a request for an informal conference is forwarded to the Bureau Chief of the Elevator and Amusement Device Bureau or (b) a written petition for a contested case hearing is filed with the OAH under Chapter 150B, Article 3 of the North Carolina General Statutes, and served upon the NCDOL General Counsel, process agent for the North Carolina Department of Labor, at the address listed above. Make your check or money order payable to the **NCDOL – Elevator and Amusement Device Bureau**, and remit to **N.C. Department of Labor, Attn: Budget – Amusement Device Penalty Collections, 1101 Mail Service Center, Raleigh, North Carolina 27699-1101**, for the total amount of the penalties summarized above. You may also make payment by credit card. A form is provided for your convenience. Please indicate the Invoice Number (indicated above) on the remittance.

If you fail to notify the Bureau Chief of your intention within fifteen (15) days of your receipt of this Notification of Final Penalty (if you do not request an informal conference), or fifteen (15) days after you receive the results of the informal conference, and refuse to pay the penalty amount, the Commissioner may take additional action, including refusing to issue/reissue a Certificate of Operation pursuant to 13 N.C.A.C. 15.0503.

The Elevator and Amusement Device Bureau does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

**N.C. Department of Labor**

Elevator & Amusement Device Bureau  
 1101 Mail Service Center  
 Raleigh, North Carolina 27699-1101  
 Telephone: (919) 807-2770  
 Facsimile: (919) 807-2777



Amusement Device ID Number:	Name/Type of Amusement Device:	Inspection Date:	Inspection Invoice Number:
9699	Vortex	10/16/13-10/17/13	327-101713
Owner/Agent/Company Name: Omar Toranzo	Address: 140 NW 59 Street	City: Miami	State: FL Zip Code: 33127
Location of Amusement Device: NC State Fairgrounds	County: Wake	City: Raleigh	

During the investigation of the above-referenced amusement device, which is subject to the provisions of Chapter 95, Article 14B of the N.C. General Statutes (the Amusement Device Safety Act of North Carolina), EAD discovered certain violations of the Act. These violations are noted below, and are alleged to have occurred during the length of the State Fair. As a result, pursuant to N.C. Gen. Stat. § 95-111.13, you are hereby assessed the following penalties:

	Statutory Violation	Penalty Amount	# of Days	# of Devices	Total Amount of Penalty
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.7(a) or (b) – Operation Without Certificate; Operation Not In Accordance With Article or Rules and Regulations.	\$250.00 (each day/each device)	X 3	X 1	\$ 750.00
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.7(c) – Operation After Refusal to Issue or After Revocation of Certificate.	\$500.00 (each day/each device)	X	X	\$
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.8 – Failure to File a Location Notice.	\$500.00 (each day/any device)	X		\$
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.9 – Operation of Unsafe Device.	\$1,000.00 (maximum penalty)			\$1000.00
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.10(c) – Operation After Occurrence Without Approval of Commissioner.	\$500.00 (each day/each device)	X	X	\$
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.10(d) – Removal or Repair of Device Prior to Investigation of Occurrence.	\$500.00 (maximum penalty)			\$
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.11(a) – Operator Requirements.	\$500.00 (maximum penalty)			\$
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.11(b) – Operation While Impaired	\$1,000.00 (maximum penalty)			\$
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	N.C. Gen. Stat. § 95-111.12 – Operation Without Liability Insurance.	\$500.00 (each day/each device)	X	X	\$
<b>Total Proposed Penalty Amount</b>					<b>\$1750.00</b>

**Penalty Adjustment Calculation**

<b>1. Size Adjustment</b>	1-25 Employees	<input checked="" type="checkbox"/>	60%
	26-60 Employees	<input type="checkbox"/>	50%
	61-100 Employees	<input type="checkbox"/>	40%
	101-175 Employees	<input type="checkbox"/>	30%
	176-250 Employees	<input type="checkbox"/>	20%
	251 or More Employees	<input type="checkbox"/>	0%
<b>2. Gravity Adjustment</b>	Serious	<input checked="" type="checkbox"/>	0%
	Moderate	<input type="checkbox"/>	10%
	Non-Serious	<input type="checkbox"/>	20%
<b>3. Good Faith Adjustment</b>	Employer was cooperative with the amusement device inspector.	<input checked="" type="checkbox"/>	10%
	Employer maintained training records and/or safety programs on site.	<input type="checkbox"/>	10%
<b>4. Prior History Adjustment</b>	Employer has received penalties within the last 12 months.	<input type="checkbox"/>	0%
	Employer has not received penalties within the last 12 months.	<input checked="" type="checkbox"/>	10%
<b>Total Penalty Adjustment</b>			80%
<b>Total Adjusted Penalty Amount</b>			\$ 350.00

**Bureau Chief Signature**

Page 3 of 6

**Date**

**N.C. Department of Labor**

Elevator &amp; Amusement Device Bureau

1101 Mail Service Center

Raleigh, North Carolina 27699-1101

Telephone: (919) 807-2770

Facsimile: (919) 807-2777

**AMUSEMENT DEVICE PENALTY–  
INVOICE / DEBT COLLECTION NOTICE****Owner/Agent/Company Name:** Omar Torenzo**Location of Amusement Device:** NC State Fair**Violation/Penalty Issuance Date:** 4/21/2014

<b>Summary of Violations/Penalties for Invoice Number:</b>		327-101713		
<input checked="" type="checkbox"/>	N.C. Gen. Stat. § 95-111.7(a) or (b)	=	\$750.00	
<input type="checkbox"/>	N.C. Gen. Stat. § 95-111.7(c)	=	\$	
<input type="checkbox"/>	N.C. Gen. Stat. § 95-111.8	=	\$	
<input checked="" type="checkbox"/>	N.C. Gen. Stat. § 95-111.9	=	\$1000.00	
<input type="checkbox"/>	N.C. Gen. Stat. § 95-111.10(c)	=	\$	
<input type="checkbox"/>	N.C. Gen. Stat. § 95-111.10(d)	=	\$	
<input type="checkbox"/>	N.C. Gen. Stat. § 95-111.11(a)	=	\$	
<input type="checkbox"/>	N.C. Gen. Stat. § 95-111.11(b)	=	\$	
<input type="checkbox"/>	N.C. Gen. Stat. § 95-111.12	=	\$	
<b>Total Penalty Amount</b>		=	\$1750.00	
<b>Minus(-) Calculated Penalty Adjustment*</b>		=	\$1400.00	
<b>FINAL PENALTY AMOUNT</b>		=	<b>\$350.00</b>	*includes any adjustments made pursuant to N.C. Gen. Stat. § 95-111.13(f).

Please remit payment promptly to **N.C. Department of Labor, Attn: Budget – Amusement Device Penalty Collections, 1101 Mail Service Center, Raleigh, North Carolina 27699-1101**, for the total amount of the violations/penalties summarized above. Make your check or money order payable to: **NCDOL – Elevator and Amusement Device Bureau**. For payment by credit card, complete the form provided. Please indicate the Invoice Number (indicated above) on the remittance.

The Elevator and Amusement Device Bureau does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

**N.C. Department of Labor**  
Elevator & Amusement Device Bureau  
1101 Mail Service Center  
Raleigh, North Carolina 27699-1101  
Telephone: (919) 807-2770  
Facsimile: (919) 807-2777



## CREDIT CARD PAYMENT

**Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_  
Street Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

**Phone Number:** (\_\_\_\_\_) - \_\_\_\_\_

**Amount of Payment:** \$ \_\_\_\_\_  **MasterCard**  **Visa**

**Credit Card Number:** \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ **Exp. Date:** \_\_\_\_\_  
Mo./Yr.

**Payment for Invoice Number(s):** \_\_\_\_\_

**Cardholder Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

----- *Cut Along Dotted Line and Remit With Payment* -----

**N.C. Department of Labor**

Elevator & Amusement Device Bureau  
 1101 Mail Service Center  
 Raleigh, North Carolina 27699-1101  
 Telephone: (919) 807-2770  
 Facsimile: (919) 807-2777



## **AMUSEMENT DEVICE – RESPONSE TO NOTIFICATION OF FINAL PENALTY**

Omar Toranzo  
**Owner/Agent/Company Name**  
 140 NW 59 Street  
**Address**  
 Miami FL 33127  
**City** State Zip Code

327-101713  
**Invoice Number**  
 10/16/13-10/17/13  
**Inspection Date(s)**  
 4/21/2014  
**Penalty Issuance Date**

This form is for your convenience in either (a) paying the Total Penalty Amount listed in the Notification of Final Penalty, (b) requesting an Informal Conference to discuss a possible revision to the Notification of Penalty or an Informal Settlement Agreement, or (c) notifying the Bureau Chief of the Elevator and Amusement Device Bureau of your intention to contest all or part of the enclosed violations and penalty amounts.

Please mark only one of the following boxes – forms returned with more than one box marked will be treated as a request for an informal conference. This form must be returned to the address indicated below within fifteen (15) days from your receipt of the Notification of Final Penalty. Failure to return this form within fifteen (15) days of receipt (if you do not request an informal conference), or fifteen (15) days after you receive the results of the informal conference, may result in the Commissioner taking additional action, including refusing to issue/reissue a Certificate of Operation pursuant to 13 N.C.A.C. 15.0503. This form should be returned to the following address:

N.C. Department of Labor  
 Elevator & Amusement Device Bureau  
 1101 Mail Service Center  
 Raleigh, North Carolina 27699-1101

**PENALTY PAYMENT ENCLOSED IN THE AMOUNT OF: \$ \_\_\_\_\_**  
**Remit Payment To:** N.C. Department of Labor  
 Attn: Budget – Amusement Device Penalty Collections  
 1101 Mail Service Center  
 Raleigh, North Carolina 27699-1101

**Please note that the Elevator and Amusement Device Bureau does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.**

**REQUEST AN INFORMAL CONFERENCE**  
**Please note that if you decide to request an Informal Conference, you must submit the enclosed form and then contact the Bureau Chief of the Elevator and Amusement Device Bureau at (919) 807-2770 in order to obtain the date, time and location of the informal conference.**

**NOTICE OF INTENT TO CONTEST:**  
 All of the Violations and Penalty Amounts  
 The Following Violations: \_\_\_\_\_  
 The Following Penalty Amounts: \_\_\_\_\_

**Please note that, pursuant to 13 N.C.A.C. 15.0502, if you intend to contest all or part of the enclosed violations and penalty amounts, in addition to completing this form and submitting it to the address below you must also file a written petition for a contested case hearing with the Office of Administrative Hearings (“OAH”) under Chapter 150B, Article 3 of the North Carolina General Statutes, and serve a copy of your petition on the NCDOL General Counsel, process agent for the North Carolina Department of Labor, at 1101 Mail Service Center, Raleigh, North Carolina 27699-1101. The address for the OAH is 6714 Mail Service Center, Raleigh, North Carolina 27699-6714.**

Signature \_\_\_\_\_

Date \_\_\_\_\_

Name (Print or Type) \_\_\_\_\_

Telephone Number \_\_\_\_\_

Title \_\_\_\_\_

## **Investigation of the Mel Park Vortex Incident**

### **North Carolina State Fair 2013**

**Date of accident:** 10/24/13 9:21pm

**Date device certified:** 10/16/2013

**Device state number:** 9699

**Device Registrant:** Family Attractions Amusement, LLC: 1709 A Gornto Rd #379, Valdosta GA.31601

**Device Owner:** Joshua Macaroni

**Device Operators:** Timothy Tutterrow and Omar Toranzo

**Amusement device inspection report:** #327-101713

**Injured persons:** Ride attendant—Brian Shelters; Ride patrons—Shykema Dempsey, Anthony Gorham, Kisha Gorham, and Justen Hunter

#### **Accident Summary and Device Description:**

On October 24, 2013 at approximately 9:21 p.m., several ride patrons and a ride attendant were injured during the unloading process of the Vortex amusement device. Witnesses stated that the device had completed a ride cycle and ride attendants were helping unload passengers. While the remaining passengers were unloading, the device started unexpectedly. All of the seat restraints were in the open position when the device started. Passengers unloading from the passenger carriers were not secured by the seat restraint system and the force created by the rotation and inversion of the device ejected patrons onto the decking.

Mel Park, a ride manufacturer in Melara, Italy, manufactured the Vortex amusement device in 1997. The device has two passenger carriers, each of which contains four groups of four seats [see photo #1]. The total number of seats is 32. Each passenger carrier is connected to a vertical arm attached to a horizontal arm, which in turn is attached to a central base. The configuration of the ride without the passenger carriers resembles a "T". With the carriers attached it resembles a scale with the two passenger carriers hanging from each side. When the device is in operation, the "T" portion rotates, and the two passenger carriers at the end of the arms rotate. The vertical arms attached to the passenger carriers rotate as well, causing the passenger carriers to invert.

Passengers are secured in their seats by two forms of safety restraints: first, an over the shoulder harness; and, second, a long metal lap bar that locks across each row of four seats [See photo #6]. When all of the seat restraints are closed and locked, a light indicator on the control panel in the operator's room illuminates (HL41) [See photos #13-17]. This light confirms that all restraints are locked and secure and that the ride is safe to operate.

Under normal operating conditions, after all passengers have been secured in the passenger carriers, the operator in the operator's control room (also referred to as a "dog box" or "doghouse") starts the ride cycle by turning the drive switches to the "on" position. The operator then turns potentiometers on the control panel. There are three potentiometers that are used when operating the device: #1 controls

the center rotation, #2 controls the passenger carrier rotation, and #3 controls the arm rotation. These potentiometers increase and decrease the speeds during the ride cycle to provide different levels of thrills. The ride cycle is ended when the operator slowly brings the potentiometers back to the zero position and turns the drive switch to the "off" position. When the device has returned to its parked position, the operator releases the seat restraints by pressing a button on the control panel in the control room. Once the operator releases the restraints, the ride can no longer operate until the restraints are all returned to the closed position. The button to engage the ride is lit green when the restraints are secured, and the light is not illuminated when any of the restraints are not properly secured. When the light is not illuminated, the ride will not run.

**Accident location:**

The "Old Midway" of the N.C. State Fairgrounds located at 1025 Blue Ridge Road, Raleigh, N.C. 27607 [See State Fair Map].

**Initial Inspection and Pre-Incident Report:**

**Inspection Process of the Vortex:**

The Vortex arrived by truck during the evening of October 15, 2013, but remained outside the gates of the fairgrounds. Upon notification that the ride was at the site, two Elevator and Amusement Device ("EAD") supervisors Wesley Tart and Tommy Petty separately went out and looked at it while it remained on the trailers. However, as the ride had not been brought to its location for set-up, no inspection of the ride occurred at this time.

At approximately 8:00 am on 10/16/2013, EAD inspectors Jeff Cole and Bart Evans were assigned to inspect the Vortex. They picked up and reviewed a copy of the manual at EAD's office in Dorton Arena and proceeded to the ride's assigned location on the Old Midway. By this time, the ride had been moved to its assigned location, but remained on its trailers.

The ride was transported on three trailers: one held the scenery; one held the main sweeps of the ride; and one held the passenger carriers. The inspectors began their inspection while the ride was still on the trailers and identified a crack in the footwell of one of the passenger carriers [See photo #6B]. The footwell is used to step into the passenger carrier. It was not a hazard that would be likely to cause a problem but the North Carolina rule is that a ride must pass 100% of the manufacturer's recommendations for setup, maintenance and operation or else it cannot be certified for use at an event. The inspectors informed Joshua Macaroni that the crack would need to be repaired prior to certification. (Mr. Macaroni was later determined to be the owner of the Vortex device.)

The inspectors stayed at the ride for much of the rest of the day, watching as it was erected according to the manual's instructions. The inspectors viewed the ride's blocking being put in place followed by the jack stands for the platform and finally the unfolding of the accordion-style diamond decking. As the ride was erected, the inspectors looked at each part of it for any potential hazards. For example, they looked at the main gear of the ride; they viewed the covered commentator underneath the decking; they looked at the drive shaft and electric motors that went on top of the main tower before they were

installed; and then they viewed the drive shaft once it was put in place. The inspectors also watched the connection of the scenery to the ride which involved interlocking panels being secured on the edge of the ride. The inspectors viewed the hydraulic attachment of the arms to the ride and the attachment of the passenger carriers on the arms.

The next step required the inspectors to observe the torqueing of the ride. The first things to be torqued were the horizontal arms. The inspectors noted that the manual required the torqueing to be applied to the nut and not to the bolt. The inspectors informed Joshua Macaroni that he needed to torque the nut and not the bolt. Mr. Macaroni told the inspectors he would need to get a different wrench.

Mr. Macaroni got the necessary wrench from another amusement company and started to direct the torqueing. The inspectors watched the torqueing while listening for a click that occurs when the correct pressure is put on the nut. More torqueing of nuts on the ride remained, but it was already approaching 6 pm. The inspectors left for the day; however, observation of the torqueing of most of the remaining nuts was performed by EAD Deputy Bureau Chief Tommy Petty, along with supervisors Frank Clements and Wesley Tart.

There were a few nuts that were unable to be torqued that night because Mr. Macaroni did not have the correct socket attachment. Mr. Macaroni informed the supervisors that he would have it there in the morning so that they could complete their observation of the torqueing process. Further assembly was postponed at around 9pm until the next morning.

On the morning of 10/17/13, Mr. Macaroni had the appropriate wrench attachment, and properly finished torqueing the nuts under supervision of Inspectors Cole and Evans. During the morning the decking and jacking were finished and the assemblers constructed the operator's control room ("dog box"). The inspectors also noted that during the night the electric lines had been run from a generator to the ride and the lines were properly connected. The inspectors also checked the fencing and decking of the ride for tripping hazards and proper connections. They looked at the operator's control panel for proper labeling. At this time, the assembly and inspection process was put on hold because the inspectors needed to attend the joint press conference of the Commissioner of Labor and the Commissioner of Agriculture. During the press conference, a certified welder fixed the crack in the footwell of the ride and a thread on a bolt in the passenger carrier was shortened to remove the chance someone could trip on it. These two fixes were the only required fixes for the structure of the device.

Following the press conference, the next step was to check the safety restraint system. During this testing, Jeff Cole and Wesley Tart watched as Josh Macaroni disengaged each harness individually while the ride operator, Tim Tutterrow, and EAD inspector Bart Evans remained in the operator's station to ensure the safety light went off when any restraint was in the open position. The safety light turning off meant that the ride's safety restraint systems were not engaged, and that the ride could no longer run. Inspector Evans watched as the light went off when each individual harness was placed in an open position indicating that the ride detected the safety was not in place. Inspector Evans then watched as the light also turned off for each of the lap bars that went across the lap of four patrons as a secondary

safety restraint system. After all the safety restraint systems were proven functional, the inspectors asked to see the emergency procedures for the ride because it was a new ride. Tim Tutterrow and Josh Macaroni demonstrated these procedures.

Joshua Macaroni and Inspector Evans were on the deck of the ride while Tim Tutterrow and Inspector Cole were in the operator's control room. Tutterrow and Macaroni showed the inspectors the emergency stop, the regular stop, and the emergency evacuation procedures. The first demonstration was the standard stop, which slowly stops the ride and puts it back into its standard load/unload position. The next process was the emergency stop procedure which, when engaged, shuts off power to all systems on the ride. The inspectors then viewed how the ride could be put back into the load/unload position without power. Finally, for the emergency evacuation procedure, the inspectors saw how the restraint systems could be disengaged after the emergency stop had cut the power. Each seatback could be removed and the air stopped to release the over-the-shoulder harnesses. Each lap bar could be released with a screwdriver, at which point the patrons would be able to exit the device.

The inspectors next looked at the electrical control cabinets that were located on the ride's decking and did not find anything out of the ordinary. The inspectors did find a relay had come loose, which can happen when the rides are transported by road [See photo #33 for an example of the cabinets]. Inspector Cole pointed the relay out to Joshua Macaroni who then went to secure it. The loose relay was in an electrical control cabinet located center left of the center column as viewed from the front of the ride [See photo #2 for the position of the cabinet].

After the relay was secured, Macaroni or Tutterrow ran the ride in a test run. This run was not for certification purposes, but to ensure everything was connected correctly. When the ride was run, Mr. Macaroni noticed that one of the two passenger carriers was not properly spinning. He told the inspector, "it was working until you made me fix it [the relay]," or words to that effect. Because the ride had just been running, the inspectors were not on the deck. While Mr. Macaroni went back to fix the relay, the inspectors remained off the deck as they believed it was going to be a quick reconnection and the ride would be run again. Mr. Macaroni walked over to the electrical control cabinet where the loose relay had been found, took a screwdriver out, and performed work in that panel for approximately 10 minutes. The ride inspector did not assist in determining why the passenger carrier was not spinning as diagnosing operational issues is outside the inspector's scope of duties.

The inspectors at the Vortex were then able to complete the certification by doing the final inspection. As this was a new ride, and was the last to be certified due to its late arrival on site, additional inspectors and supervisors were present to observe the device's test run. Inspectors Cole and Evans verified the blocking was appropriately constructed, the integrity of the jacks, and the proper construction of the ride. The inspectors informed Josh Macaroni and Tim Tutterrow that they could proceed with a certification cycle.

During the first cycle of the certification run, the inspectors stood back and watched the ride run through its normal process, and listened for anything that might sound like a problem. After the ride ran

without any issues, two EAD inspectors took a test ride of the device. The test ride was not required but it provided inspectors the chance to view the ride from another vantage point and hear things that they might have otherwise missed. As the ride went through its second cycle, none of the inspectors, supervisors, or workers from other nearby rides noted anything wrong or out of the ordinary. Therefore, the inspectors gave the device its certification and placed its sticker on the device. In total, ride inspectors spent two days inspecting the ride prior to certification.

Once a ride is certified, only maintenance and repair in accordance with the manufacturer's specifications and recommendations can be performed. Whenever the owner or operator of an amusement device desires to install or use a substitute part or device which is not consistent with the manufacturer's specifications, the owner or operator is responsible for proving, to the satisfaction of the EAD Director, that the use of the substitute part or device is as safe as the use of the manufacturer's specified part or device. 13 NCAC 15 .0428 In addition, an amusement device must be inspected and tested each day by the owner or properly trained operator of the device prior to being put into normal operation. A record of each inspection and test must be made upon completion of the test. 13 NCAC 15 .0410. All electrical wiring, equipment and apparatus used for amusement devices or for lighting must comply with the National Electrical Code, NFPA 70 and must be properly and legally installed, operated and maintained. 13 NCAC 15 .0424.

Inspector Duties During Fair Operation:

During the 10-day run of the State Fair, ride inspectors and supervisors are assigned shifts so that at least three inspectors and one supervisor are on site while rides are in operation. Prior to the daily opening of the rides, inspectors conduct a visual inspection from the midways in an effort to identify any hazards. During the hours of operation of the rides, inspectors walk the midways to observe ride operators and attendants as well as the operation of the ride. If the ride inspector observes an unsafe condition, he has the ability to shut down the ride and require the unsafe condition to be corrected prior to allowing the ride to resume operation. Each day ride inspectors review daily inspection reports generated by the ride operator of each device. The inspection reports document the required daily check that has to be conducted for each device prior to beginning operation. Ride inspectors also respond when contacted by the Red Cross regarding patron complaints or injuries related to amusement devices. Ride inspectors also document incidents as necessary. Ride inspectors do not assist in troubleshooting issues with amusement devices and they do not provide technical assistance for repairs.

Monday Report:

On 10/21/2013, NCDOL EAD Inspectors Cary Creech and Barry Wilson were alerted by the Red Cross to an issue reported by Wake County Sheriff's Office about the Vortex on the Old Midway. Upon arrival, the inspectors saw a group of officers in front of the ride. Inspectors Wilson and Creech spoke with the officers who told them that the ride had stopped mid-cycle and the crew had emptied it of patrons before working on it. The officers did not know what was wrong and had not spoken with the operator about the problem. Inspector Wilson went up to the ride where the operator was running a test cycle. Inspector Wilson asked the attendant what had happened and was told the ride stopped mid-cycle but

he did not know why. After the test cycle finished the operator, who then identified himself as Tim Tutterrow, came down and spoke to Inspector Wilson.

Tutterrow stated that the ride had lost signal from one of the lap bars because of a problem with the plunger in the lap bar [See photo #12 for an example of the plunger]. When the ride lost the signal, it shut down because the safety circuit was broken, causing the ride to begin a safety stop. Tutterrow explained that he had used WD-40 on the plunger to allow it to go in and out. This allowed the plunger to activate the microswitch that completed the circuit. Inspector Wilson asked if there was any sort of display that showed the cause of the fault but Tutterrow told him that the ride did not have such a display.

Following that problem, the inspector viewed the testing of the device to ensure it was not malfunctioning. Although the lap bar had not engaged the microswitch, the ride's shutdown actually demonstrated that the safety system was properly functioning. The inspector understood that the ride's safety system detected a malfunction and the ride disabled itself to prevent any harm. The inspector asked Tutterrow to run through another test cycle before reopening to ensure the problem did not reoccur. Inspector Wilson also told Tutterrow to make a note of this issue in his daily maintenance report. Finally, Tutterrow was told that if problems continued to occur he should shut down the ride and notify EAD inspectors immediately.

Tutterrow then ran the second test cycle. Inspectors Creech and Wilson viewed this test cycle and the ride operated normally. Inspector Wilson made note of the problem and filed it as part of his daily report [See Incident Report generated 10/21/2013]. EAD inspectors received no further reports of problems with the ride from operators, patrons, Red Cross, or the Sheriff's Office until the night of the incident, 10/24/2013. The inspection and maintenance reports prepared by the operators of the ride (Tim Tutterrow and Omar Toranzo) and submitted to the EAD inspectors each day did not indicate any issues prior to the night of the accident.

#### **Accident Investigation Details:**

At 9:21 pm on October 24, 2013, a worker with Wade Shows reported an accident to Supervising Inspector Wesley Tart. Supervisor Tart was working with a team of inspectors at the fairgrounds when he received the call from the Wade Shows employee, who was in the area where the accident occurred.

After the phone call about the accident, Supervisor Tart gathered his team and rushed to the scene to assess the situation. When he realized the magnitude of the accident, he notified Bureau Chief Tom Chambers and requested assistance from local law enforcement on the scene to secure the area and preserve evidence. Mr. Tart also requested assistance in identifying potential witnesses and obtaining their statements. Local law enforcement complied with these requests. During these early moments, the injured were treated and transported to local healthcare facilities. Mr. Tart was in the process of beginning his investigation when the Wake County Sheriff's Office assumed control of the scene. Mr. Tart assisted officers to ensure their safety as well as to preserve evidence during their investigative process.

After the Wake County Sheriff's Office ("WCSO") and representatives from the City County Bureau of Investigation ("CCBI") processed the ride, the inspectors regained limited access to the device and were able to resume their inspection. Inspectors began photographing the device to capture the condition and position of all electrical controls and mechanical components in order to document the condition of the device [See photos #1-86].

Photos taken the night of the accident show all but one of the lap bars were in the open position. One lap bar was not completely open [See photos #5-8].

The lap bar indicator light (HL 41) [See photo #14] found at the operator control panel was illuminated. This indicator light should not be illuminated if any of the lap bars are in the open position [See photos #2-12].

Photos also show the emergency stop button located in the operator's control room, on the control panel, was not activated. If the emergency stop had been activated the button would have been in the closed or down position. The power to the device would have been shunted, disconnecting all electrical connections and leaving the ride without any lights illuminated. This was not the condition in which the device was found. The device was energized and the emergency stop was not activated [See photos #5-10, 13].

During the inspection of the device after the accident, wire jumpers were found in a junction box located at the center of the device, above the deck level [See photos #24-26]. The jumpers, one black and one orange, were connected to terminal connections: orange jumper 3-43 to 10-4; black jumper 3-43 to 10-8 [See photos #27-32]. During this same investigation, a wire jumper was found in the electrical control cabinet where the loose relay had been found during the initial inspection. This wire jumper was not attached to any relays or terminals. The wire was stripped at both ends and was approximately 18" in length.

Items in the operator's control room of the Vortex were taken into evidence by EAD inspectors, including ride manuals in English, French, and Italian, electrical schematics, and daily inspection sheets for the ride [See Manuals, Schematics, and Daily Inspection Sheets].

While being interviewed by the WCSO, Mr. Tutterrow admitted that he had placed one of the jumpers found by the EAD inspectors in the junction box.

Mr. Tutterrow stated that during the inspection of the ride on 10/17/2013, there was a problem with the right passenger carrier. After telling the inspector that the problem likely occurred when he was securing a loose relay, Mr. Joshua Macaroni entered the electrical control cabinet where the relay was located. Tutterrow stated that he was on the deck next to Josh and was told not to allow anyone to see what was occurring. Tutterrow stated that a jumper was added to allow the ride to spin. After less than

10 minutes of work in the cabinet where the loose relay had been found, the ride was reengaged and worked correctly.

After the ride was certified, Macaroni told Tutterrow and the other crewmembers to take a break. When they returned, Macaroni told Tutterrow that he had jumped out the right passenger carrier. [This would be consistent with the inspectors finding an unattached jumper in the electrical control panel and one of the two jumpers found in the junction box.]

Mr. Tutterrow stated that there were no problems with the ride until Monday, 10/21/2013. After the inspectors examined the ride on 10/21/13, Tutterrow experienced additional problems with the ride. The button in the operator's control room that was supposed to release the lap bars stopped working. Mr. Tutterrow addressed the problem by having the attendants use a relay in one of the electrical control cabinets to release the restraints [See photo #39]. Mr. Tutterrow opened the junction box to troubleshoot the ride on Monday after closing. At that time, he observed a jumper for the right side of the ride. Mr. Tutterrow inserted a similar jumper for the left side of the ride. With the jumper in place, the ride operated.

Mr. Tutterrow stated that on Tuesday, 10/22/2013, he spoke with Joshua Macaroni by phone. During that conversation, Macaroni confirmed to Tutterrow that he had placed the first jumper in the junction box after the ride was certified. He instructed Mr. Tutterrow to leave both the jumpers in place and continue to operate the ride until he (Joshua Macaroni) arrived to look at it. While Tutterrow expressed concerns about operating the ride in this fashion, he did as instructed.

According to Tim Tutterrow, Joshua Macaroni arrived on site on Wednesday, 10/23/2013, and checked the ride. At that time, he told Tutterrow that they would fix the ride at its next location. In the meantime, Tutterrow was to continue operating the ride with the jumpers in place.

In the early morning hours of 10/25/2013. EAD inspectors asked Mr. Tutterrow questions to confirm what they thought they had found. They asked him if the lap bars had been bypassed, and he said yes. Mr. Tutterrow was asked if he was the person that bypassed the lap bars, and he said yes. Mr. Tutterrow was asked if he used wire jumpers to accomplish the bypass, and he said yes. The inspectors on scene asked if the jumpers were located in the junction box located in the center of the device [see photos #24-26], and he said yes. Mr. Tutterrow was asked if there was one black and one orange jumper, and he said yes. Mr. Tutterrow was asked if he installed the jumpers on his own, and he said that he was told to do it by Joshua Macaroni.

EAD inspectors then asked Mr. Tutterrow what he recalled about the accident. He stated that he was in the doghouse (operator's control room) when he noticed the attendant waving his arms at him. He said he looked out the control room window and saw the tubs (passenger carriers) turning. He said he panicked and started turning all of the controls. Mr. Tutterrow was asked if he activated the emergency stop, and he said no. At that time, the EAD inspectors completed their initial investigation of the device and removed the power source from the device.

On October 26, 2013, Dr. Leonard White, Associate Professor of electrical engineering at N.C State University, was contacted to assist with the EAD investigation. Dr. White was asked to review the electrical schematics confiscated the night of the accident, and possibly visit the fairgrounds at a later date to assist with testing.

According to the ride specifications, Mel Park in Melara, Italy manufactured the Vortex in 1997. Mel Park went out of business sometime between 1997 and 2000. In 2000, Technical Park in Melara, Italy was established. Several employees of Mel Park were hired by Technical Park, and a number of them currently remain at the company. Technical Park manufactures rides, including rides that are similar to the Vortex. On November 19, 2013, Technical Park was contacted for assistance in evaluating the Vortex. Christian Martini is an electrical engineer with Technical Park and was a former employee of Mel Park and had participated in the manufacture and construction of the Vortex.

Mr. Martini reviewed the electrical schematics for the Vortex confiscated the day of the accident. Mr. Martini noted additional/modified wiring not consistent with the ride's original design, had been added to the schematics. Mr. Martini also confirmed that the data tag with the name Technical Park (a metal plate affixed to the device listing the devices specifications) was not a Technical Park data tag [See photo #1]. Mr. Martini stated that Mel Park Rides, not Technical Park, made the Vortex and that the Technical Park number #87 affixed to the Vortex, was assigned to a device currently operating in Europe. He also stated that the Technical Park plate affixed to the Vortex showed a date of 1997. This could not be accurate as Technical Park was not created until 2000.

After discussing the location of the jumpers found by NCDOL EAD inspectors, both Dr. White and Mr. Martini determined that the orange and black jumpers found in the junction box located at the center of the device bypassed all safety restraint systems. In effect, the ride would start with one or all of the safety restraints open. These conclusions were based upon the physical evidence presented, the electrical schematics, and the location of the wire jumpers discovered after the accident [See reports by Dr. White and Mr. Martini].

On December 3, 2013, Dr. White, Detective Chamblee, and EAD Bureau Chief Tom Chambers traveled to the State Fairgrounds to allow Dr. White an opportunity to see the device for the first time. Dr. White wanted to confirm that the wiring was consistent with the electrical schematics, and familiarize himself with the device.

On December 12th 2013, Dr. White, EAD Assistant Bureau Chief Tommy Petty, WCSO Det. Blackwell, Tom Chambers, Christian Martini, and Cristian Pasolini (also with Technical Park), met at the State Fairgrounds to review and conduct testing of the Vortex ride. CCBI recorded the testing. The electrical structure was compared to schematics taken from the device the day of the accident. Mr. Martini noted that additional electrical wiring was added to the device not consistent with its original design [See reports by Dr. White and Mr. Martini].

Mr. Martini was shown the jumpers found the day of the accident, and later removed by the WCSO and placed into evidence. Mr. Martini was asked if the jumpers were suitable and of sufficient size to be used to electrically bypass the safety circuits they were found attached to, and his answer was "yes." The jumpers were then placed back into the evidence packet and secured by Det. Blackwell.

New jumpers were made from the same size and type of wire as the jumpers in evidence. The wire used was found below the control room of the Vortex. These new jumpers were used for the testing. Mr. Martini also noted that seat restraint indicator lights on the passenger carriers were not present [See Fig. 12, p. 16 of Dr. White's report where fiberglass has been added to seal over the area where the lights previously would have been located]. The indicator lights were located on the outside of each passenger carrier and were designed to light up if all restraints for that section of seats were closed and locked. Mr. Martini also noted that the seat-restraint release button, located in the operator's control room on the control panel, was not operable. Mr. Martini was able to release the restraints by depressing two relays, located in an electrical control cabinet on the deck of the ride center left side [See photo #39], labeled Lap bar release. [The discovery of this condition supports statements made by ride attendants and eyewitnesses present at the time of the accident that the ride attendants were opening a cabinet to release the restraints from a box located at the center of the ride.]

Test dummies were placed into the passenger seats on one passenger carrier and all safety restraints were placed into a closed and locked position (primary and secondary).

With the jumpers removed, the device was energized and Mr. Martini attempted to operate the device. The device would not leave the parked position.

The newly made jumpers were added by Mr. Martini to the same connection points where the original jumpers were discovered the night of the accident. Mr. Martini energized the device again and the device started and went through an entire ride cycle.

The device was returned to the loading/unloading position, and all of the primary and secondary restraints were opened. The device was again started and operated one ride cycle. With the all restraints open, the test dummies were ejected from the device as the device rotated and inverted.

#### **Additional Information:**

Prior to the State Fair, Wade Shows submitted an electronic version of the Vortex manual in to EAD.

Amusement Device Collection Form: EAD requires ride operators to submit an Amusement Device Collection Form. This form provides EAD specific information for rides such as: ride trade name; manufacturer name; ride type (e.g. adult, kiddie); year manufactured; state ID number; compliance with bulletins; whether NDT is required; and, the serial number of the ride.

On October 6, 2013, EAD received electronically an Amusement Device Data Collection Form completed by Sharon Parks, Wade Office Manager. This form indicated the following: Company Name—Family

Attractions, LLC; Company Address—1709 A Gornto Rd 379; Company City/State/Zip—Valdosta, GA, 31601; Contact—Joshua Macaroni; Ride Trade Name—Vortex; Manufacturer Name—Technical Park; Ride Type—A (Adult); Year Manufactured—1997; State ID #--Not Provided (note: this ride had not yet had a State ID issued as it was new to North Carolina); Complied with Bulletins—Yes; NDT (Non-destructive Testing)—No; Serial #—87. Joshua Macaroni was listed above the signature of owner or manager. There is an additional area on the right side of the form that allows a book-in operator to indicate if the owner of the device is different from the operator of the device. This area on the form submitted for the Vortex was left blank.

Location Notice: EAD requires ride operators to submit an Advance Location Notice 10 days prior to the date of the requested inspection. This form provides NCDOL the actual location of the ride to be inspected as well as other relevant information about the ride.

On October 8, 2013, EAD received electronically a completed Advance Location Notice from Family Attractions Amusements, LLC, 1709 A Gronto Road #379, Valdosta, Georgia 31601. The company contact was Dominic Macaroni. The Advance Location Notice requested an inspection of the device, Vortex, on October 17, 2013 at the NC State Fair, 1025 Blue Ridge Road, Raleigh.

Inspection Payment: EAD requires payment prior to inspecting a ride for compliance with the laws and rules adopted by NCDOL. On October 16, 2014, a credit card payment was made to the Budget Division of NCDOL for inspection fees associated with the inspection the Vortex for Family Attractions. Ruby Macaroni provided her credit card details and approved processing of the payment.

Certificate of Liability Insurance: N.C. Gen. Stat. § 95-111.12(b) requires that the owner provide proof of insurance. Family Attractions Amusements LLC has several rides that it plays at venues in North Carolina. On March 6, 2013, prior to any ride inspections for 2013, Family Attractions Amusements LLC submitted a Certificate of Liability Insurance indicating insurance coverage in the amount of one million dollars (\$1,000,000) per occurrence against liability for injury to persons or property arising out of the operation or use of its devices. Subsequent contact with the company that provided the certificate indicated that the Vortex was added to the policy after its arrival in the United States and purchase by Joshua Macaroni. Certificates issued to other states and interested parties specifically listed the Vortex as being covered under the Family Attractions Amusement insurance policy.

Amusement Device Inspection Report: This is the report generated by NCDOL after an inspection has been completed. It indicates any deficiencies or non-compliant issues with the device inspected. On October 16-17, 2013, NCDOL ride inspectors inspected the Vortex. The inspection report indicated two pre-inspection violations: a weld crack at footwell bracing #5 tub; and the need to properly secure loose relay in electrical controller.

Daily inspection reports completed by the ride operator were submitted to the State Fair Contractors' Office. Ride inspectors for NCDOL went to the office on a daily basis to review the daily reports to

ensure daily inspections conducted by the ride operators are documented in accordance with the requirements of 13 NCAC 15 .0410.

According to information from the Florida Department of Agriculture and Consumer Services, Bureau of Fair Rides Inspection, the nameplate on the ride was created in anticipation of the Miami-Dade County Fair and purchased on behalf of Family Attractions Amusement by North American Midways Entertainment (NAME). The plate's USAID number is connected to a corresponding data entry in the Florida system for a Vortex ride manufactured by Technical Park .The owner is listed as being Family Attractions Amusement.

Following the accident, questions arose regarding who owned and operated the Vortex which resulted in the collection of the following additional documents:

- May 24, 2011: Josh Macaroni is listed on the Amusement Device Inspection Report as the representative of Family Attractions Amusement, LLC at a fair in Franklin, NC to whom inspectors pointed out violations during the inspection process.
- January 22, 2013: A financing statement (Form UCC-1) filed in Coweta County Georgia on behalf of the secured party Firestone Financial Corp., against the Debtor listed as Joshua Macaroni with an additional debtor of JJ Concessions. No additional information was found relating to the additional debtor in any other filings. The subject of the UCC-1 was to secure the secured party with regard to "(1) 1997 TECHNICAL PARK VORTEX AMUSEMENT RIDE MOUNTED ON (2) TRAILERS".
- March 1, 2013: A lease agreement between Joshua Macaroni and Family Attractions Amusement, LLC for the Vortex, Alpine Bobs, and Badlands ride was signed. The lease is signed by Dominic Macaroni on behalf of FAA, LLC as "insured" and Joshua Macaroni as the owner of the equipment as "additional insured."
- March 14-26, 2013: Vortex plays the Miami Dade County Fair in Miami. Maintenance logs for the ride are on Family Attractions forms that include Vortex already printed in the spot for the ride name. The information about the maintenance is found on a form called Daily Inspection and Maintenance, Twelve Day Report. Each form has 12 sets of boxes to check off when each individual inspection is performed, as well as boxes at the bottom of the second page of each report for the operator to sign his initials. In the case of almost each and every single form, the forms are signed with the initials "TT", indicating Tim Tutterrow.
- July 4-13, 2013: Vortex plays a Fair in Columbus, Indiana. The Indiana Department of Homeland Security Division of Elevator/Amusement Safety produced a form called the "Amusement Device Correction Order" that lists Tim Tutterrow (Tutterrow) as the designated owner representative during inspection at the Fair, includes reference to insurance documentation, and lists the Owner name for the device "Vortex" as Family Attractions Amusements. The same style Family Attractions form called a twelve day report was again used for this fair, with boxes to sign off when each inspection is performed.
- July 24-August 4, 2013: Vortex plays Ohio State Fair (July 26, 2013—Vortex does not run, Tim Tutterrow signs off on maintenance work). There are multiple forms produced for the time in Ohio. There is an insurance certificate produced by Haas & Wilkerson Insurance on behalf of

Family Attractions Amusement dated 7/19/2013, that specifically lists the Vortex as a ride under the coverage and lists for a certificate holder the Ohio Department of Agriculture. There is also an Ohio Ride Permit Application that lists Family Attractions Amusement as the amusement company who will be operating the Vortex at the Ohio Fair. The Form recording maintenance work is a Family Attractions "Work Order" form. The form lists the work done, the date it was performed, and the fact that it was done by Tim Tutterrow on the Vortex. The same style Family Attractions form called a twelve day report was again used for this fair with boxes to sign off when each inspection is performed.

- August 16-24, 2013: Vortex plays in Lebanon, Tennessee. There is a document called the "Amusement Device Money Receipt" which is created by the Department of Labor and Workforce Development of Tennessee that lists as a contact Family Attractions and the amount received as \$1125.00. There is also a document created by the same entity called the "Amusement Device Ride Operating Permit" that lists as owner Ruby Macaroni, and lists Family Attractions as the company for the ride. Further, the contact point for the ride is listed as Ruby Macaroni and her phone number is listed. A form shows that the motor was rebuilt on 8/16, and seat 5-8 air hoses were fixed on 8/23. The form recording maintenance on the Vortex is on a Family Attractions Amusements form that is called "Work Order." The form is signed by Tim Tutterrow and references the work performed and the date the work was done. The same style Family Attractions form called a twelve day report was again used for this fair with boxes to sign off when each inspection is performed.
- October 14, 2013: Wade Shows releases a payment of \$16,657.75 in cash to Tim Tutterrow for the Vortex playing in Montgomery, Alabama. The payment receipt form by Wade shows lists that it is in regard to the use of the Vortex. The payment was listed on a receipt called an "Independent Settlement" and was paid in cash on behalf of Wade Shows and signed for by Tim Tutterrow on behalf of Marconi Rides. Wade shows is also listed on a Certificate of Liability Coverage issued on 10/4 and also states "Certificate Holder (Wade Shows) is listed as Additional Insured with respects (sic) to the Vortex Ride."
- Trucks on site at the North Carolina State Fair were marked with the FAA logo, and were marked with the Federal Department of Transportation identifier that is registered to Family Attractions Amusement.

Additional Information was obtained through the statements provided by witnesses to the accident and those involved in the ride's ownership and operation.

- Through counsel, Joshua Macaroni stated that he is the owner of the ride and the employer of the individuals working on the ride. He further stated that he is also a unit manager for Family Attractions Amusements and that the individuals working on the ride were also employees of Family Attractions Amusements. He stated that the individuals working on the ride were paid in cash but that the payroll was run through Family Attractions Amusements. Mr. Macaroni stated that Tim Tutterrow was in charge of the ride in his absence. Mr. Macaroni denies that he ever put any jumper in the ride and further denies that he instructed Tim Tutterrow to place jumpers in the ride.

- Through counsel, Family Attractions Amusement, LLC and its owners Dominic Macaroni and Ruby Macaroni (Joshua Macaroni's parents) have stated that the "do not own, operate, manage, maintain, or control the 'Vortex' amusement device that is the subject of the incident in question." "Family Attractions Amusement, LLC is an out-of-state corporation that does not own the Vortex, had no contract to provide the ride to the North Carolina State Fair, and was not operating the ride during the Fair. Moreover, the individuals operating the ride were not doing so on Family Attractions' behalf." An attorney for Family Attractions Amusement had previously acknowledged that the employment situation of the individuals working on the Vortex was a "fluid" one.
- All of the individuals working on the ride identified themselves as employees of Family Attractions Amusement, although some referred to Joshua Macaroni as their "boss" or supervisor.
- Three ride employees stated that Joshua Macaroni was present at the ride on Wednesday, October 23, 2013. Operator Tim Tutterrow stated that during this time Joshua Macaroni examined the jumpers and told him to operate the ride with the jumpers in place and that they would fix the ride when they got it to Charleston (the next location where the ride was scheduled to appear).
- Relief operator, Omar Toranzo, stated that he was aware that the green light on the control panel stayed on when the safety restraints were open. He said he asked Joshua Macaroni and Tim Tutterrow about it and they both said that they were aware of the problem and not to worry about it. He also stated that he heard Joshua Macaroni and Tim Tutterrow talking about jumpers but didn't know what they were talking about.
- Ride worker Carl Weidenhammer stated that they were notified the 2<sup>nd</sup> or 3<sup>rd</sup> day of the fair there was a problem with the ride and they would have to run it differently.

**Cause of accident:**

Witness statements and statements given by one of the ride operators (Tim Tutterrow) indicate that the device started while patrons were being unloaded from the device. Tutterrow stated that he was in the operator's control room when he noticed a ride attendant waving his arms at him. He stated that he panicked and tried to stop the ride, however it was unclear what he had done in his attempt to stop the device. Evidence discovered during the investigation confirmed that safety devices designed to prevent the ride from operating while the seat restraints are in the open position were bypassed electrically. It was determined that this bypass was accomplished using wire jumpers at an electrical terminal connection strip located in a junction box, located at the device's center above deck level [See photos #24-26]. Because the safety restraint systems were bypassed, the device could be operated with one or all of the restraints in the open position.

**Conclusion:**

Based on the information collected, testing conducted during the investigation, and witness statements, the safety restraint system on the Vortex was bypassed. This modification allowed the device to operate with the safety restraints unsecured placing the public and the employees of the device in danger anytime they were near the device. Ride operator, Tim Tutterrow, admits that he jumped out

the safety system for the left passenger carrier. Ride operators Tim Tutterrow and Omar Toranzo both admit to operating the ride while the safety-restraint release button on the control panel was inoperable and to operating with ride when the green light remained on when the safety restraints were not in place. While Joshua Macaroni denies having placed the other jumper in the junction box or having instructed Tim Tutterrow to place a jumper in the junction box, Joshua Macaroni appears to have had actual knowledge that the safety system had been by-passed. Alternatively, as owner of the ride, Joshua Macaroni had knowledge of the problems with the ride through the ride foreman, Tim Tutterrow. Similarly, while Family Attractions Amusement denies any ownership or control of the ride it leased the ride from Joshua Macaroni and exercised control over the ride and individuals working on the ride and had knowledge of the problems with the ride through its representatives Joshua Macaroni and Tim Tutterrow.

**Violations:**

**Violation 1:**

Citations Issued Against: Family Attractions Amusement, LLC; Joshua Macaroni; Tim Tutterrow; and Omar Toranzo

§ 95-111.9. Operation of unsafe device.

No person shall operate, permit to be operated or use any device subject to the provisions of this Article if such person knows or reasonably should know that such operation or use will expose the public to an unsafe condition which is likely to result in personal injury or property damage.

On or about October 17, 2013, the Vortex was inspected and ridden by NCDOL inspectors during the certification process. During this time Tim Tutterrow alleged that a jumper was connected to allow the ride to pass inspection. An unattached jumper was found during the accident investigation. The wire found was in the proper location and was the proper length to corroborate the allegations of Tutterrow. After looking into what the jumper would have done if it had been connected, it was discovered that the jumper would bypass every safety system on the ride and allow the ride to run even if other systems failed to function properly.

On or about October 22-24, 2013, the Vortex was operated with the addition of two jumpers. The placement of the jumpers allowed the ride to operate with the seat safety restraint systems open. This modification was not consistent with the original design. The bypassing of the safety restraint systems placed the public in danger in that the ride could be operated with the seat restraint systems open and unlocked.

**Violation 2:**

Citations Issued Against: Family Attractions Amusement, LLC and Joshua Macaroni

§ 95-111.7(b). Operation not in accordance with Article or rules and regulations.

No person shall operate or permit to be operated or use any device subject to the provisions of this Article otherwise than in accordance with this Article and the rules and regulations promulgated thereunder.

#### 13 NCAC 15 .0407 IDENTIFICATION AND RATING PLATES

Every amusement device shall be identified by a trade or descriptive name and an identification number and there shall be firmly attached to the device in a readily visible location a metal plate upon which there is legibly impressed the name and number of the device, its model number if any, and the name and address of its manufacturer. Upon the same or another metal plate so attached there shall be legibly impressed the maximum safe number of passengers, and the maximum safe speed.

The data plate affixed to the Vortex did not contain all information required by 13 NCAC 15 .0407. In addition, information contained on the data plate was inaccurate.

When the Vortex arrived at the NC State Fair on October 16, 2013, a data plate was affixed to it at the center of the device where the two arms come together forming the "V" shape. The following information was contained on the data plate affixed to the Vortex:

Name of the device—Technical Park Vortex

Number of the device—87

Model number—33.000.00

Name of manufacturer—Technical Park

Address of manufacturer—not provided

Maximum safe number of passengers—32 seats

Maximum safe speed—revolutions—center 7 rpm, arms 3.7 rpm, cars 20 rpm

Additional information on the data plate—year of manufacture 1997; height 14 meters; width 19 meters; depth 20 meters; capacity per hour 1000 per hour; fixed installation weight 35 tons; minimum height requirement 54 inches.

Joshua Macaroni purchased the Vortex in March 2013. It was first played in the United States in Miami, Florida at the Dade County Youth Fair. (See Florida Department of Agriculture and Consumer Services Amusement Ride Inspection Report).

The English and Italian/French manuals for the Vortex that were located in the doghouse during the accident investigation contain a "Certificate of Origin". The Italian Certificate indicates the manufacturer of the Vortex is Mel Park s.n.c. and the serial number is 87. Christian Martini is an electrical engineer currently employed by Technical Park. Mel Park employed Mr. Martini when it manufactured the Vortex, serial number 87. Mr. Martini examined the Vortex at the NC State Fair grounds and confirmed Mel Park manufactured the device. In addition, Mr. Martini stated that when the Vortex was manufactured in 1997, Technical Park was not even in existence. Currently, Technical Park does manufacture a ride similar to the Vortex that was at the NC State Fair. Mr. Martini also verified that the

Technical Park ride with serial number 87 is not the Vortex that played at the NC State Fair. The Technical Park ride with serial number 87 is a device that is currently operating in Europe.

**Violation 3:**

Citations Issued Against: Family Attractions Amusement, LLC; Joshua Macaroni; Tim Tutterrow; and Omar Toranzo

§ 95-111.7(b). Operation not in accordance with Article or rules and regulations.

No person shall operate or permit to be operated or use any device subject to the provisions of this Article otherwise than in accordance with this Article and the rules and regulations promulgated thereunder.

**13 NCAC 15 .0410 DAILY INSPECTION AND TEST**

An amusement device shall be inspected and tested each day when it is intended to be used. The inspection and test shall be made by a person experienced and instructed in the proper assembly and operation of the device and shall be performed before the device is put into normal operation. The inspection and test shall include the operation of control devices, speed-limiting devices, brakes and other equipment provided for safety. A record of each inspection and test shall be made at once upon completion of the test on a form provided by the Director and shall be kept with the device and available to the Director for at least the previous 12 months.

- 1) The inspection and test shall be made by a person experienced and instructed in the proper assembly and operation of the device and shall be performed before the device is put into normal operation.

Tim Tutterrow admitted that he was aware that jumpers were placed in the ride, which bypassed the safety restraint system. At least one jumper was put in place on Monday night October 21, 2013. After the accident on October 24, 2013, two jumpers were discovered in a junction box located at the center of the device. It was determined that the two jumpers bypassed the safety restraint systems. This allowed the ride to operate with the safety restraints in the open position. Tutterrow stated that one of the jumpers was installed by Joshua Macaroni and that he installed the other one. He stated that he was told by Joshua Macaroni to operate the ride with the jumpers in place. When Tutterrow expressed concern to Macaroni about operating the ride with the jumpers in place, Macaroni told Tutterrow there was no time to identify the problem and they would figure it out at the next spot. With the jumpers in place, the equipment provided for safety, namely the primary and secondary restraints, could not be properly tested.

In addition, following the accident, witnesses reported that ride attendants released the safety restraints from an electrical control cabinet located at platform level on the left side of the ride

as viewed from the front of the ride. Under normal operating conditions, the safety restraints would be released from inside the operator control room.

On Tuesday and Wednesday, October 22 and 23, 2013, the daily inspection report was initialed by T.T., Tim Tutterrow. He indicated in the daily inspection report that the ride passed inspection when it in fact could not have passed inspection with the jumpers in place. The green light on the control panel staying on when the restraints were open was a visual reminder that the safety system was not operating properly. In addition, the safety restraint system should have been released from inside the operator's control room rather than an electrical control cabinet.

- 2) On Thursday, October 24, 2013, the daily inspection report was initialed by O.T., Omar Toranzo. No documentation was provided indicating that Toranzo was experienced or instructed in the proper assembly and operation of the Vortex. Toranzo indicated in the daily inspection report that the ride passed inspection when it in fact could not have passed inspection with the jumpers in place. The green light on the control panel staying on when the restraints were open was a visual reminder that the safety system was not operating properly. In addition, the safety restraint system should have been released from inside the operator's control room.

**Violation 4:**

Citations Issued Against: Family Attractions Amusement, LLC; Joshua Macaroni; and Tim Tutterrow

§ 95-111.7(b). Operation not in accordance with Article or rules and regulations.

No person shall operate or permit to be operated or use any device subject to the provisions of this Article otherwise than in accordance with this Article and the rules and regulations promulgated thereunder.

**13 NCAC 15 .0411 CONTROL OF OPERATION**

Every operator shall have knowledge of the use and function of all normal emergency operation controls and of the proper use of the device. An operator shall be in the immediate vicinity of the operating controls during operation and no other person shall be permitted to handle such controls during normal operation.

On October 24, 2013, the Vortex unexpectedly began cycling during the unloading of passengers. The ride operator failed to engage the emergency operation controls which would have immediately stopped the cycling of the device. An operator possessing knowledge of the use and function of all normal emergency operation controls would have activated the emergency stop to immediately stop the ride cycle.

Tim Tutterrow had knowledge that the safety restraint system had been compromised and continued to operate the Vortex while patrons were on the device. No operator with knowledge of the proper use of the device would have allowed the ride to operate or failed to use the emergency stop in case of malfunction.

**Violation 5:**

Citations Issued Against: Family Attractions Amusement, LLC; Joshua Macaroni; and Tim Tutterrow

§ 95-111.7(b). Operation not in accordance with Article or rules and regulations.

No person shall operate or permit to be operated or use any device subject to the provisions of this Article otherwise than in accordance with this Article and the rules and regulations promulgated thereunder.

**13 NCAC 15 .0424 ELECTRICAL SAFETY REQUIREMENTS**

**General Requirements.** All electrical wiring, equipment and apparatus used for amusement devices or for lighting shall comply with the National Electrical Code, NFPA 70 and shall be properly and legally installed, operated and maintained.

1. Tim Tutterrow admitted knowing that jumpers had been placed in the ride, which bypassed the safety restraint system. At least one jumper was put in place on Monday night October 21, 2013. After the accident on October 24, 2013, two jumpers were discovered in a junction box located at the center of the device. It was determined that the two jumpers bypassed the safety restraint systems, namely the primary and secondary lap bars. This allowed the ride to operate with the safety restraints in the open position. Tutterrow stated that he was told by Joshua Macaroni to operate the ride with the jumpers in place. When Tutterrow expressed concern to Macaroni about operating the ride with the jumpers in place, Macaroni told Tutterrow there was no time to identify the problem and they would figure it out at the next spot. With the jumpers in place, the equipment provided for safety, namely the primary and secondary safety restraint systems, could not be properly tested. The jumpers were not properly or legally installed.
2. Tim Tutterrow alleged that during the set-up of the ride and the inspection process, that a jumper was connected to allow the ride to pass inspection. An unattached jumper was found during the accident investigation. The wire found was in the proper location and was the proper length to corroborate the allegations of Tutterrow. After looking into what the jumper would have done if it had been connected, it was discovered that the jumper would bypass every safety system on the ride, and allow the ride to run even if other systems failed to function properly.

**Violation 6:**

Citations Issued Against: Family Attractions Amusement, LLC; Joshua Macaroni; and Tim Tutterrow

§ 95-111.7(b). Operation not in accordance with Article or rules and regulations.

No person shall operate or permit to be operated or use any device subject to the provisions of this Article otherwise than in accordance with this Article and the rules and regulations promulgated thereunder.

**13 NCAC 15 .0428 SUBSTITUTE DEVICES AND PARTS**

Whenever the owner or operator of an amusement device desires to install or use a substitute part or device which is not consistent with the manufacturer's specifications, the owner or operator shall be responsible for proving, to the satisfaction of the Director, that the use of the substitute part or device is as safe as the use of the manufacturer's specified part or device.

- 1) According to Mr. Tutterrow, the previous owner of the ride did not provide Joshua Macaroni with a control panel that allowed the ride to be lifted or dropped hydraulically while not on the decking. This control panel is used in assembling and disassembling the ride, before the passenger carriers are attached. As this part was not provided, they instead used a substitute device which did largely the same thing but which was not the manufacturer's device or part. The substitution was not shown to the inspectors, and therefore it was impossible for the owner or operator to prove the substitute part to be as safe as the manufacturer's device or part.
- 2) Following the accident, witnesses reported that ride attendants released the safety restraints by pressing a relay in an electrical control cabinet located at platform level on the left side of the ride as viewed from the front of the ride. Under normal operating conditions, the safety restraints would be released from inside the operator control room. Thus, the use of the relay in the cabinet acted as a substitute device for releasing the safety restraint systems instead of the original system in the operator's control room.
- 3) Tim Tutterrow admitted placing a jumper in the ride which bypassed the safety restraint system. At least one jumper was put in place on Monday night October 21, 2013. After the accident on October 24, 2013, two jumpers were discovered in a junction box located at the center of the device. It was determined that the two jumpers bypassed the safety restraint systems. This allowed the ride to operate with the safety restraints in the open position. Tutterrow stated that he was told by Joshua Macaroni to operate the ride with the jumpers in place. When Tutterrow expressed concern to Macaroni about operating the ride with the jumpers in place, Macaroni told Tutterrow there was no time to identify the problem and they would figure it out at the next spot. With the jumpers in place, the equipment provided for safety, namely the primary and secondary lap bars, could not be properly tested. The jumpers were installed inconsistent with the manufacturer's specifications. In addition, the owner or operator did not prove that the use of the jumpers was as safe as the use of the manufacturer's specified safety restraint system.
- 4) Tim Tutterrow alleged that during the set-up of the ride and the inspection process, a jumper was connected to allow the ride to pass inspection. An unattached jumper was found after the accident investigation. The wire found was in the proper location and was the proper length to corroborate the allegations of Tutterrow. After looking into what the jumper would have done if it had been connected, it was discovered that the jumper would bypass every safety system on the ride, and allow the ride to run even if other systems failed to function properly.

**Violation 7:**

Citations Issued Against: Family Attractions Amusement, LLC; Joshua Macaroni; Tim Tutterrow; and Omar Toranzo

§ 95-111.7(b). Operation not in accordance with Article or rules and regulations.

No person shall operate or permit to be operated or use any device subject to the provisions of this Article otherwise than in accordance with this Article and the rules and regulations promulgated thereunder.

#### 13 NCAC 15 .0420 PUBLIC PROTECTION

An amusement device shall not be used or operated while any person is so located as to be endangered by it.

The Vortex was operated with jumpers in place that bypassed its safety restraint systems. The bypass of these systems also allowed the ride to operate when the ride normally would not operate, such as when the safety restraints had been released. Further, the safety restraint release switch that is usually operated from within the operator's control room was instead being accessed from outside on the decking of the ride in an electrical control cabinet. Both Tim Tutterrow and Omar Toranzo operated the ride in this manner and instructed other employees to release the safety restraints from within the zone of operation of the device.

The use and operation of the ride in this manner endangered both patrons and staff who approached the ride during the loading and unloading process because there was the potential for the ride to begin operation.

#### Corrective Action:

Prior to submitting a request for inspection of the Vortex device in North Carolina, the owner or the person permitting the operation of the device must provide written certification from a Professional Engineer licensed in North Carolina that they have examined the device. The certification must conclude that the ride complies with the original design of the manufacturer and that the design complies with NFPA 70. If any changes to the design have been made, or substitute parts have been installed, the certification must make note of those changes. Further, the document must certify that the substitute design or parts are at least as safe as the original design or parts of the device.

The owner or person permitting the Vortex device to be operated must also provide EAD with documentation establishing who will operate the device while it is in North Carolina. These persons shall be trained in the proper operation, emergency procedures, and safety features of the device. Further, the owner shall train the operator in the proper method to inspect the device each day, and the correct steps to take in the instance any issue is discovered during this inspection. The owner or person permitting the operation of the device shall provide documentation to EAD with a certification of the described training, as well as the names of all persons who received the training.

The owner or person permitting the ride to operate must also provide the device with a new nameplate that meets the requirements of the rules. The nameplate must include complete and accurate information about the device, and must be attached for the duration of its use in North Carolina.

Following the satisfactory provision of the above described documentation and certifications, EAD will provide notice that the device may be scheduled for an inspection in the usual course of business. During that inspection, the device will be inspected in the same manner as any other device presented for inspection, and must still comply with all laws, rules, and regulations generally applicable to amusement devices.

## Vortex Ride Photo Index

1. Data Tag found on Vortex
2. Vortex ride day of accident
3. Vortex ride day of accident
4. Vortex ride Gondola
5. Vortex ride lap bar
6. Vortex ride passenger device on set of 4 only lap bar in down position(unlatched)
7. Vortex ride lap bar close up (refer to pic#6)
8. Vortex ride lap bar close up (refer to#6&7)
9. Vortex ride gondola one lap bar down unlatched 3 others in the upright position
10. Vortex ride gondola lap bars open
11. Vortex ride gondola lap bar tub latch
12. Vortex ride lap bar end plunger
13. Vortex ride control room ride controls
14. Vortex ride control panel lap bar light indicator illuminated, all lap bars open or unlatched
15. Vortex ride control panel, control position and indicators
16. Vortex ride control panel, lap bar indicator illuminated lap bars open.
17. Vortex ride control panel
18. Vortex ride control panel (start drives indicator illuminated.
19. Vortex ride control panel (start drive switch illuminated)
20. Vortex ride control panel
21. Vortex ride control panel emergency stop switch
22. Vortex ride state fair safety check sheet.
23. Vortex ride safety fair check sheet
24. Vortex ride junction box Center ride.
25. Vortex ride junction box Center ride
26. Vortex ride junction box center ride
27. Vortex ride junction box terminal strip showing jumpers(orange and black)
28. Vortex ride junction box terminal strip showing jumpers(orange and black)
29. Vortex ride junction box terminal strip showing jumpers(orange and black)
30. Vortex ride junction box terminal strip showing jumpers(orange and black)
31. Vortex ride junction box terminal strip showing jumpers(orange and black)
32. Vortex ride junction box terminal strip showing jumpers(orange and black)
33. Vortex ride controllers center ride platform
34. Vortex ride controller center ride platform interior section
35. Vortex ride controller center ride platform interior section
36. Vortex ride controller center ride platform interior section
37. Vortex ride controller center ride platform interior section
38. Vortex ride controller center ride platform interior showing breaker section
39. Vortex ride controller center ride platform interior section
40. Vortex ride controllers center platform
41. Vortex ride controller center ride platform
42. Vortex ride controller center ride platform interior section
43. Vortex ride controller center ride platform interior section
44. Vortex ride controller center ride platform interior section

## Vortex Ride Photo Index

45. Vortex ride controller center ride platform interior section showing red jumper located in wiring trough
46. Vortex ride controller center ride platform breaker panel
47. Vortex ride controller center ride platform breaker panel
48. Vortex ride controller center ride platform interior section
  
49. Vortex ride controller center ride platform interior section
50. Vortex ride controller center ride platform breaker panel
51. Vortex ride controller center ride platform breaker panel
52. Vortex ride controller center ride platform interior section
53. Vortex ride controller center ride platform interior controller
54. Vortex ride controller center ride platform interior section
55. Vortex ride controller center ride platform controller showing drive units
56. Vortex ride controller center ride platform controller showing drive units
57. Vortex ride controller center ride platform interior section
58. Vortex ride controller center ride platform interior section
59. Vortex ride controller center ride platform interior section
60. Vortex ride controller center ride platform right side interior section
61. Vortex ride controller center ride platform right side disconnect breakers
62. Vortex ride controller center ride platform left side drive unit display 310- u2 orig ARM
63. Vortex ride controller center ride platform left side drive unit display showing fault (DC5500 armature overvoltage)
64. Vortex ride controller center ride platform (same as photo #63)
  
65. Vortex ride controller center ride junction box rear center
66. Vortex ride controller center ride platform side connectors
67. Vortex ride controller center ride platform side connection receiver damaged
68. Vortex ride controller center ride platform junction box rear center interior fuse altered
69. Vortex ride controller center ride platform (same as Photo#68)
70. Vortex ride controller center ride platform (same as Photo#68 &69)
71. Vortex ride trailer center ride trailer set up jack(under repair)
72. Vortex ride controller center ride trailer jack
73. Vortex ride ground next to trailer tool case
74. Vortex ride trailer center ride below platform
75. Vortex ride trailer junction box center trailer below platform
76. Vortex ride gondola wiring harness broken
77. Vortex ride junction box rear center fuse altered
78. Vortex ride controller right side disconnects
79. Vortex ride commentator center ride below platform
80. Vortex ride controller center ride platform (same as photo#79)
81. Vortex ride platform (blood medical )
82. Vortex ride platform (blood medical)
83. Vortex ride platform (blood and medical)
84. Vortex ride platform (blood and medical)
85. Vortex ride controller center ride platform (interior section)
86. Vortex ride controller center ride platform (interior section )

A

TECHNICAL PARK VORTEX

MODEL: 33.000.00

YEAR OF MANUFACTURE: 1997

SERIAL NO. 87

HEIGHT: 14 METERS

WIDTH: 19 METERS

DEPTH: 20 METERS

REVOLUTIONS: CENTER 7 RPM, ARMS 3.7 RPM, CARS 20 RPM

CAR LOADING: SIMULTANEOUS

CARS: 2 CARS, 32 SEATS

CAPACITY PER HOUR: 1,000 PER HOUR

FIXED INSTALLATION WEIGHT: 35 TONS

MINIMUM HEIGHT REQUIREMENT: 54"

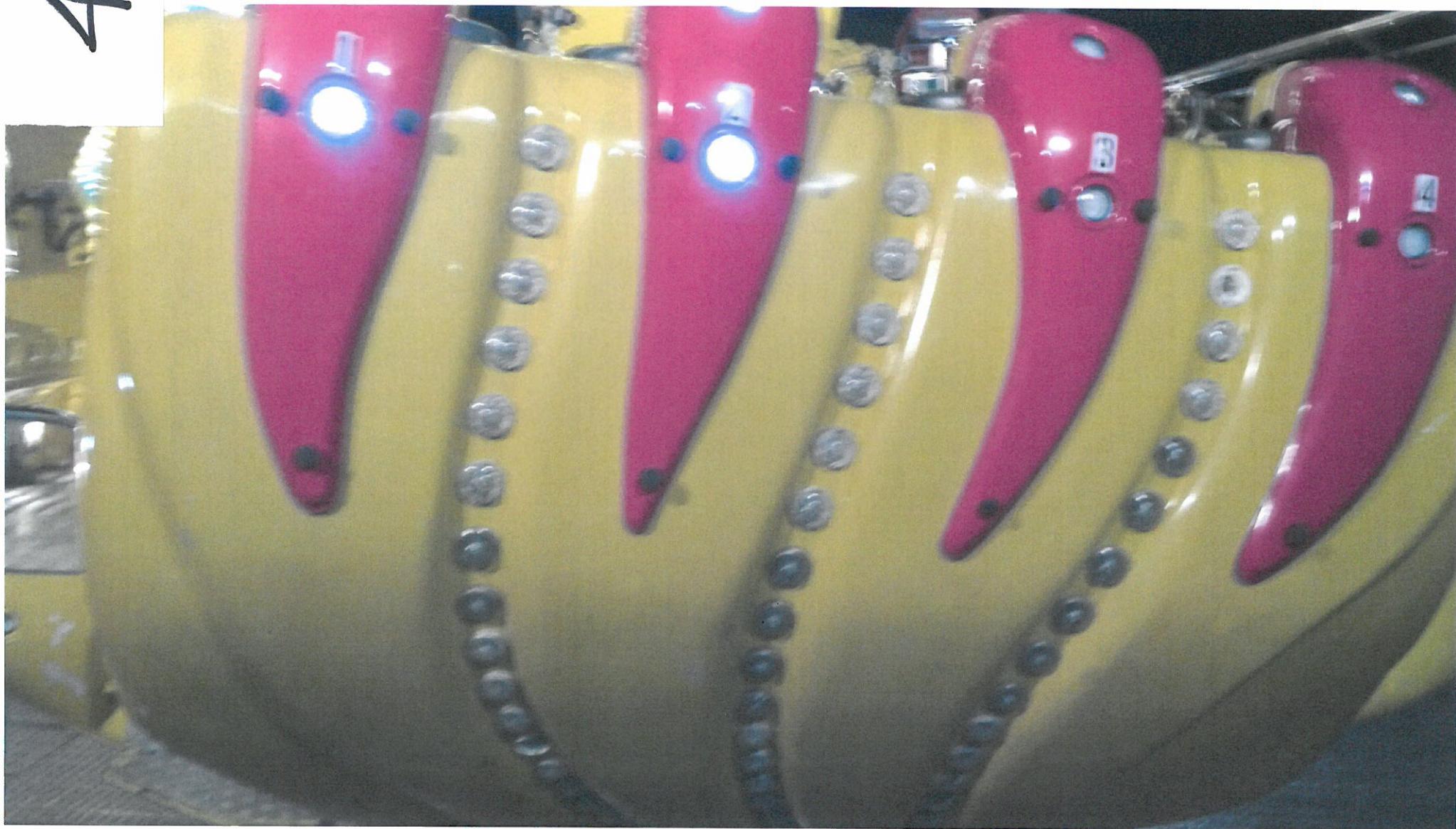
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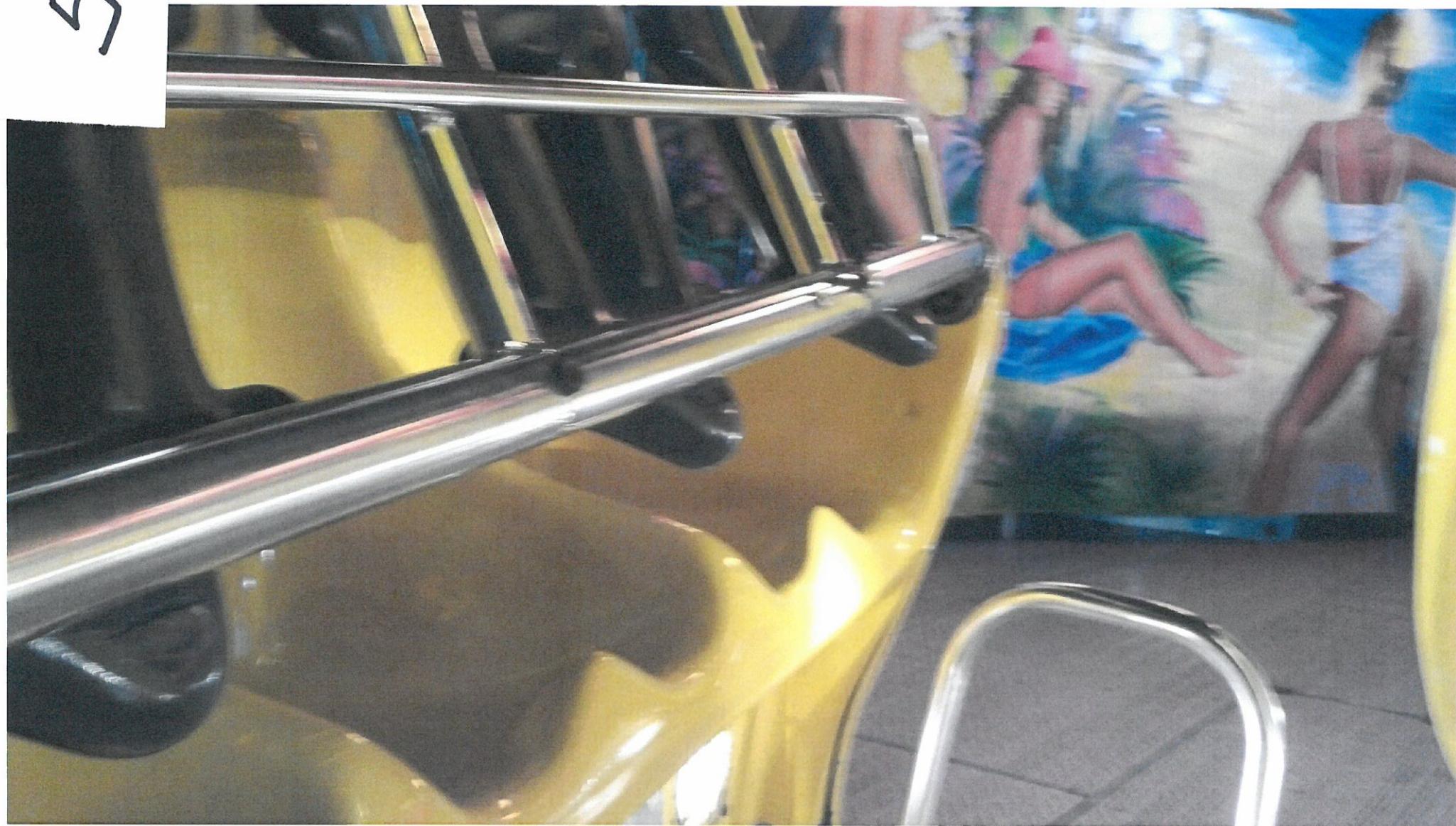
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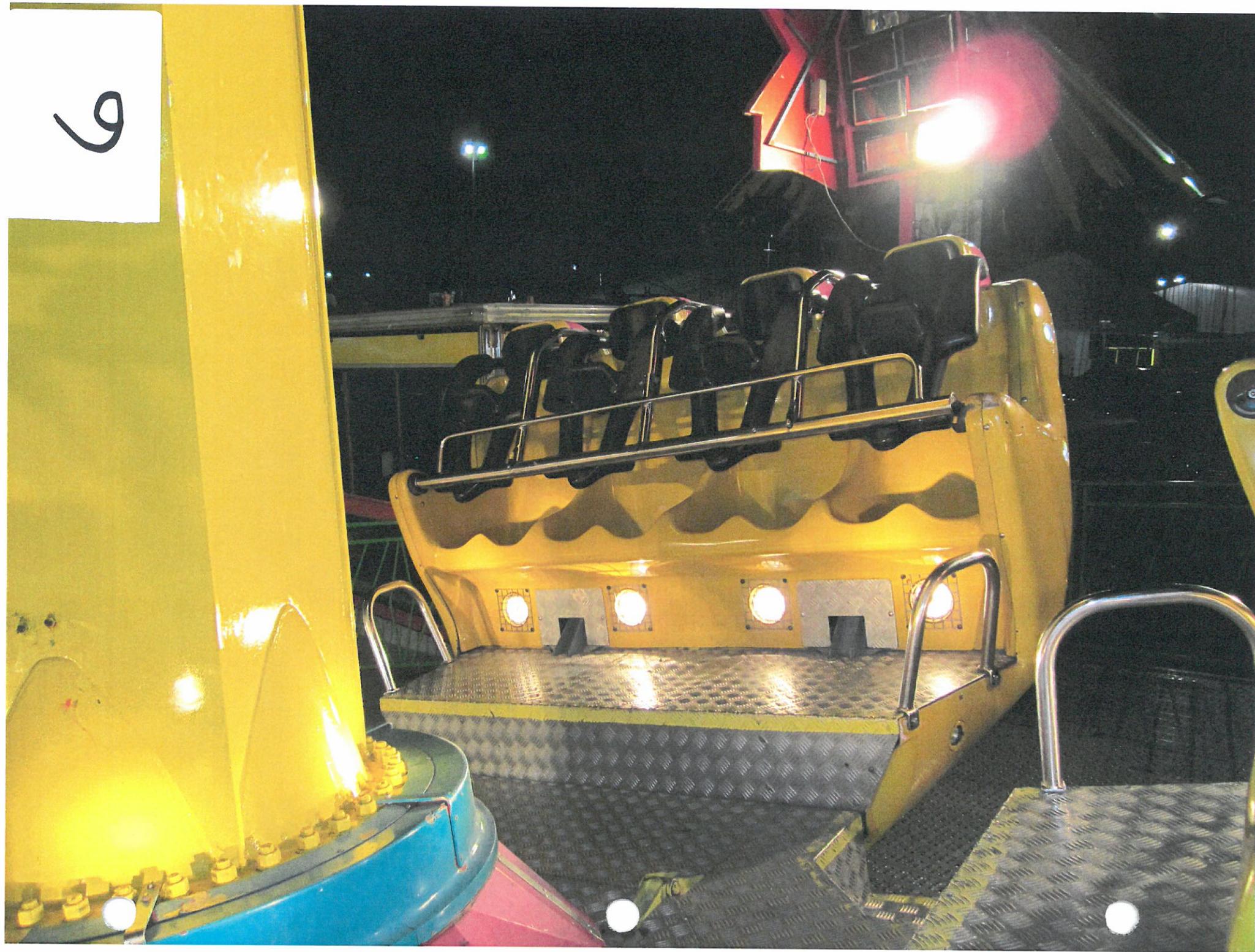


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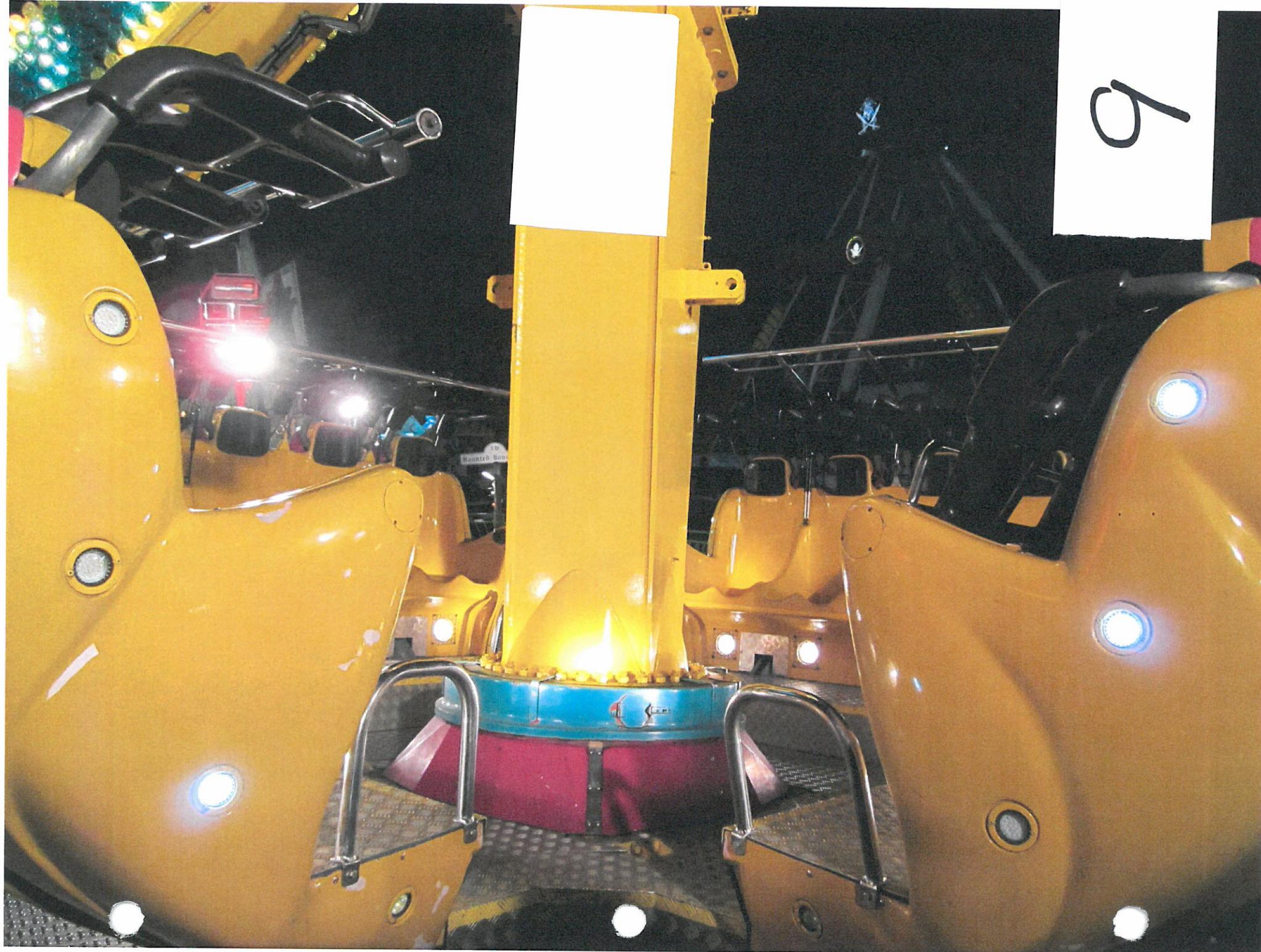
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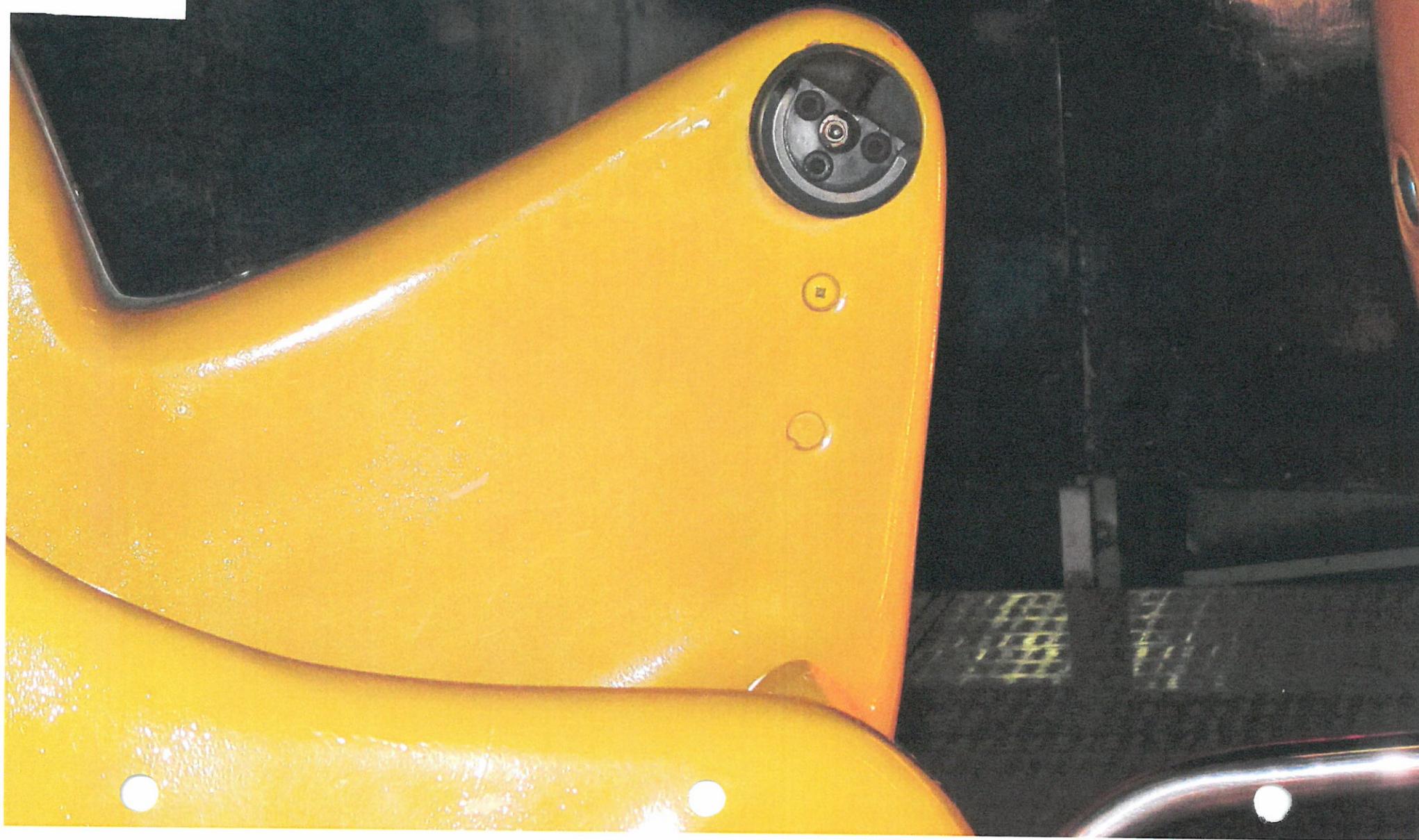




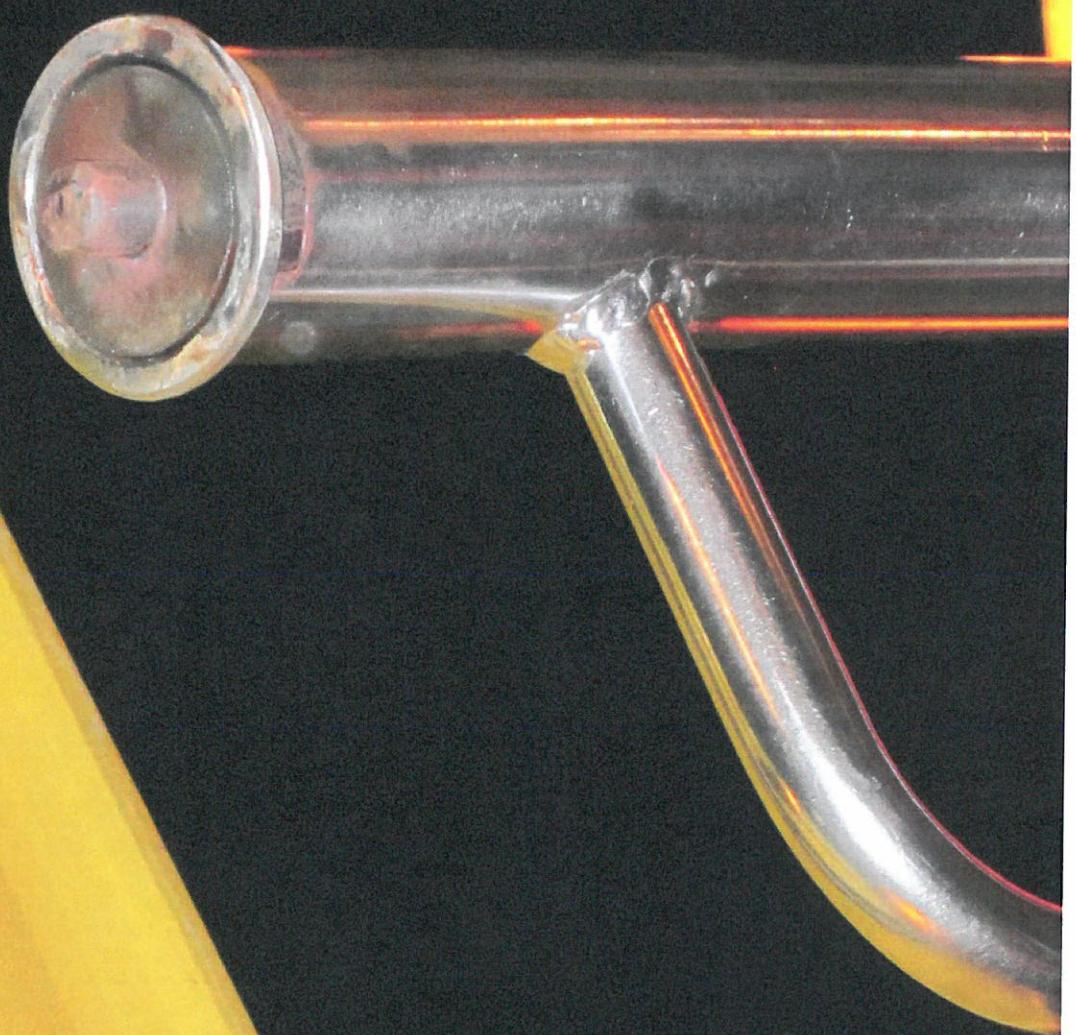
70



77



12



73



14



15



024

16

State Fair

2013 NC STATE FAIR

SUBWAY

ARM BARS CLOSED SIGNAL

ARMS CENTER POSITION

START

START

DIRECT

QUARTZ

SPEED

STOP

SPEED

START

ARM DRIVE

RED

CENTER DRIVE

77

1



BOOM DOWN SLOWLY



HYDRAULIC PUMP

STOP

START DRIVES

BOOM

UP N DOWN

DIRECTION

START

78

79

START DRIVES

BOOM

STOP

UP



HYDRAULIC PUMP



20

**CENTER DRIVE**

#### DRIVE AXLE

200 200 200 200

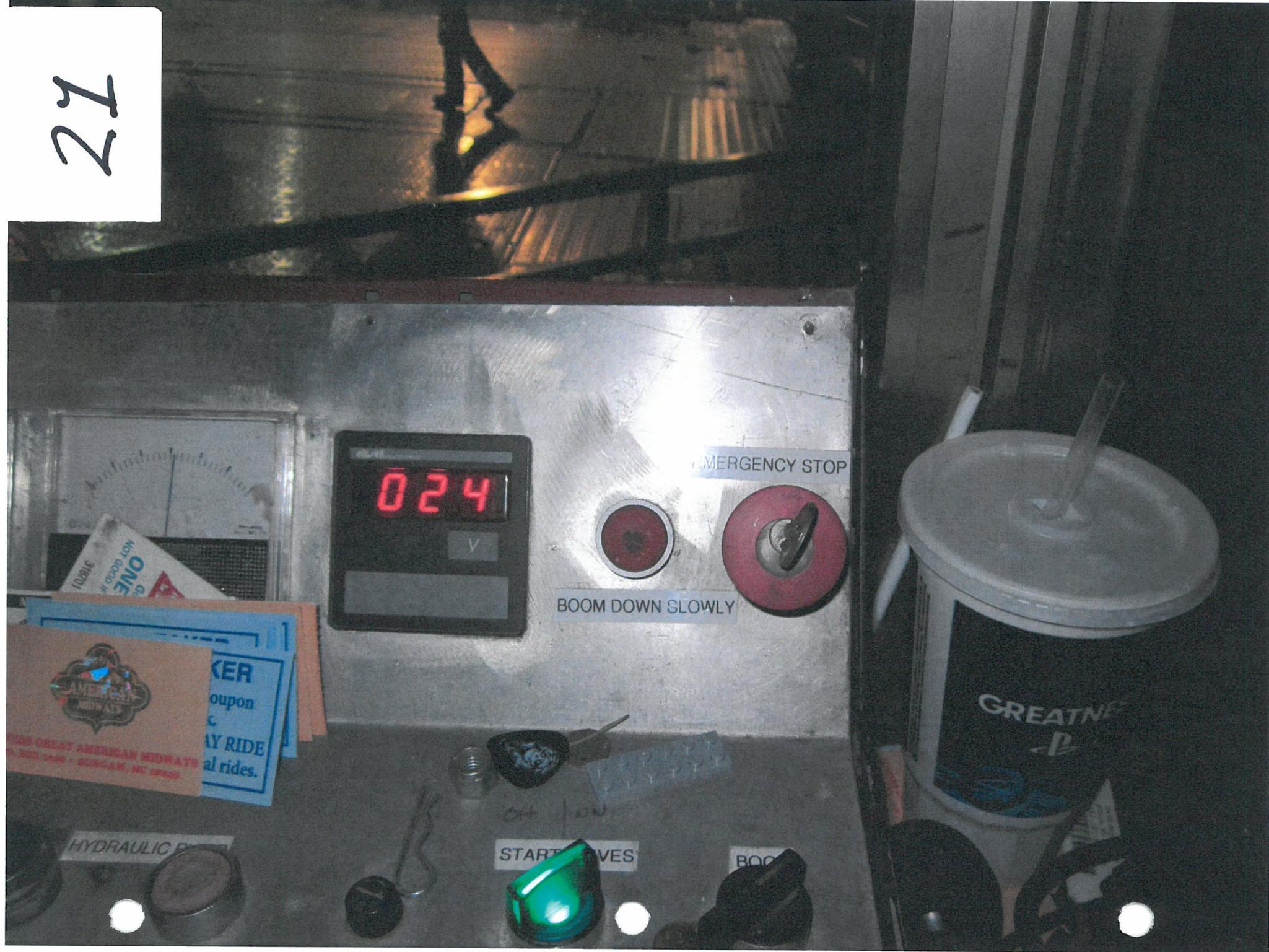
1024

### BOOM DOWN SLOWLY



A close-up view of a control panel with various buttons, knobs, and a central illuminated button labeled "ARMS CENTER POSITION". The panel is made of metal and has several labels in white boxes. The labels include: "SUBWAY" (with a logo), "POWERS GREAT AMERICAN MIDWAYS", "P.O. BOX 1300 • BURGAW, NC 28023", "LAP BARS", "LAP BARS LED SIGNAL", "CLOCK", "OPEN", "DIRECTION", "FRONT SIGN", "PRESENT LIGHTS", "DIRECTION", "DIRECTION", "START", "STOP", "SPEED", "QUARTZ", "QUARTZ", "QUARTZ", "DIRECTION", "START", "STOP", "SPEED", "GREEN", "RED", "CENTER DRIVE", "ARM DRIVE", "CAR DRIVE", "START", "STOP", "UP", "DOWN", "DIRECTION", "START", "STOP", "SPEED", "DIRECTION", "START", "STOP", "SPEED", "DIRECTION", "START", "STOP", "SPEED", "DIRECTION", "START", "STOP", "SPEED". There are also several unlabeled black knobs and buttons. A central button is illuminated with a bright yellow light. The panel is mounted on a dark wooden structure.

21



22

2013  
NC STATE FAIR  
AMUSEMENT RIDE OPERATION CHECK

1. Run ride empty one (1) cycle.  
2. Check restraints.  
3. Inspect overall mechanical condition/operation of device.  
4. Check ride fencing.  
5. Check area inside of fence to insure free of obstacles (trip hazards).  
6. Check all stop switches.

Operation Checks completed at these times each day:

DATE:	Supervisor Initials:	10:00 AM	3:00 PM	8:00 PM
10/17/13:	11. 7:50			
10/18/13:	11. 7:50			
10/19/13:	11. 7:50			
10/20/13:	11. 7:50			
10/21/13:	11. 7:50			
10/22/13:	11. 7:50			
10/23/13:	11. 7:50			
10/24/13:	11. 7:50			
10/25/13:	10. CT			
10/26/13:				
10/27/13:				

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23

CHAMBERS  
BUREAU CHIEF  
ELEVATOR AND AMUSEMENT DEVICE BUREAU

2013  
NC STATE FAIR  
AMUSEMENT RIDE OPERATION CHECK

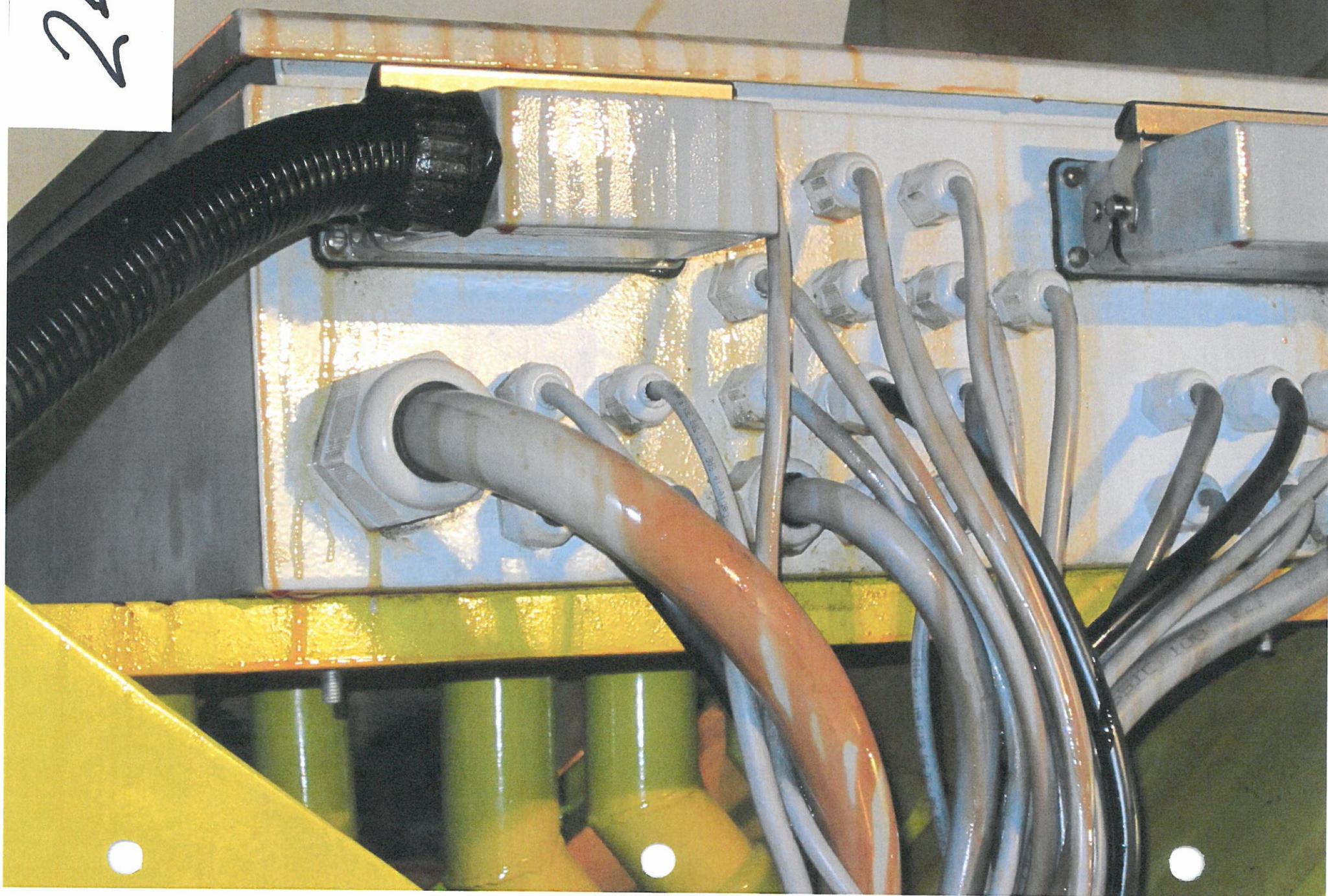
1. Run ride empty one (1) cycle.
2. Check restraints.
3. Inspect overall mechanical condition/operation of device.
4. Check ride fencing.
5. Check area inside of fence to insure free of obstacles, (trip hazards).
6. Check all stop switches.

Operation Checks completed at these times each day:

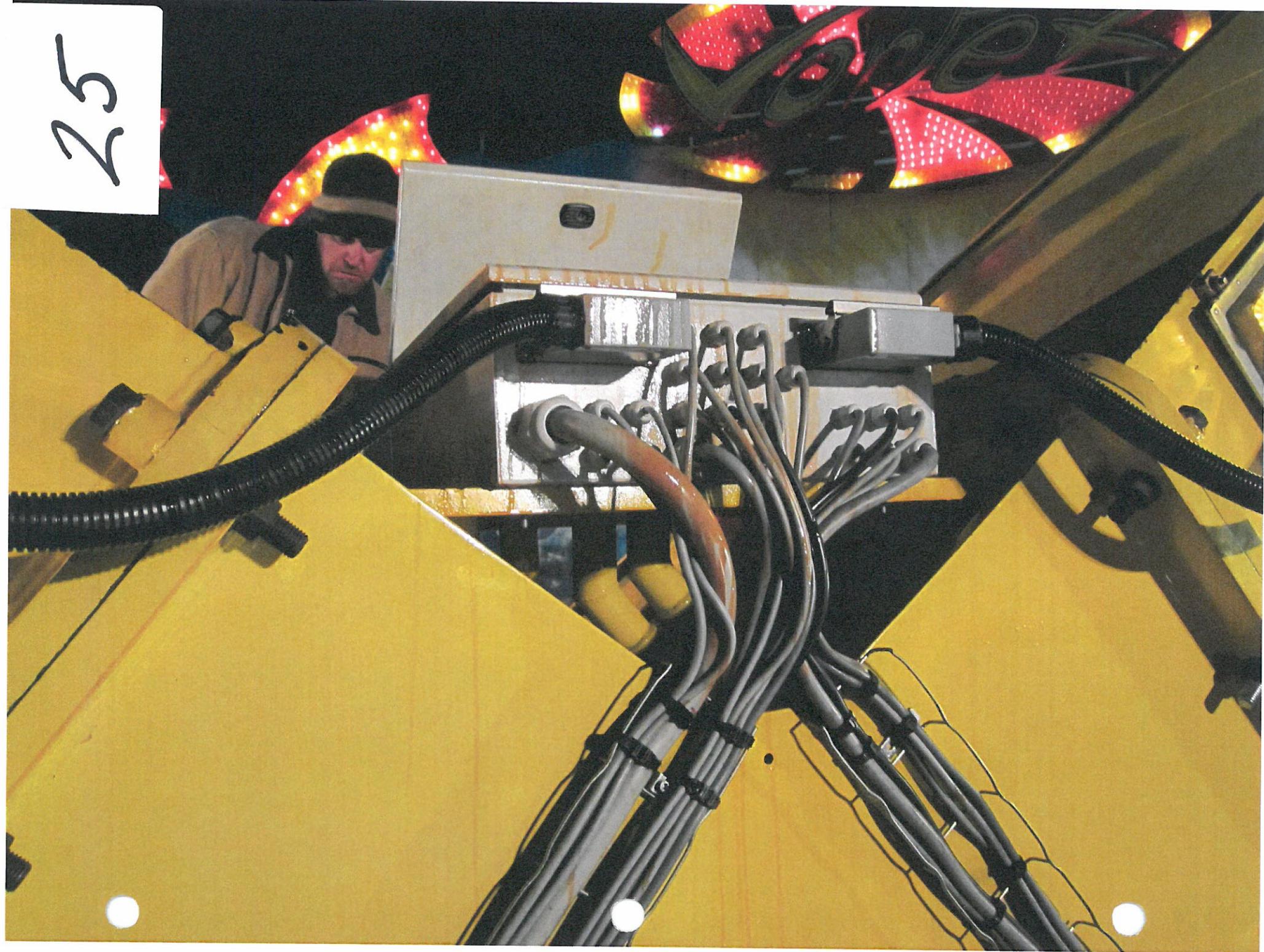
DATE:	Supervisor Initial:	10:00 AM	3:00 PM	8:00 PM
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10/17/13:	T.T. 7:50			
10/18/13:	7:10 AM 7:45 3:30			
10/19/13:	7:10 AM 7:30 3:20			
10/20/13:	7:10 AM 7:30 3:20 7:30 PM			
10/21/13:	7:10 AM 7:30 3:20	7:50		
10/22/13:	7:10 AM 7:30 3:20	8:15 PM		
10/23/13:	7:10 AM 7:30 3:20	7:30 PM		
10/24/13:	7:10 AM 7:30 3:20	7:30 PM		
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10/26/13:				
10/27/13:				

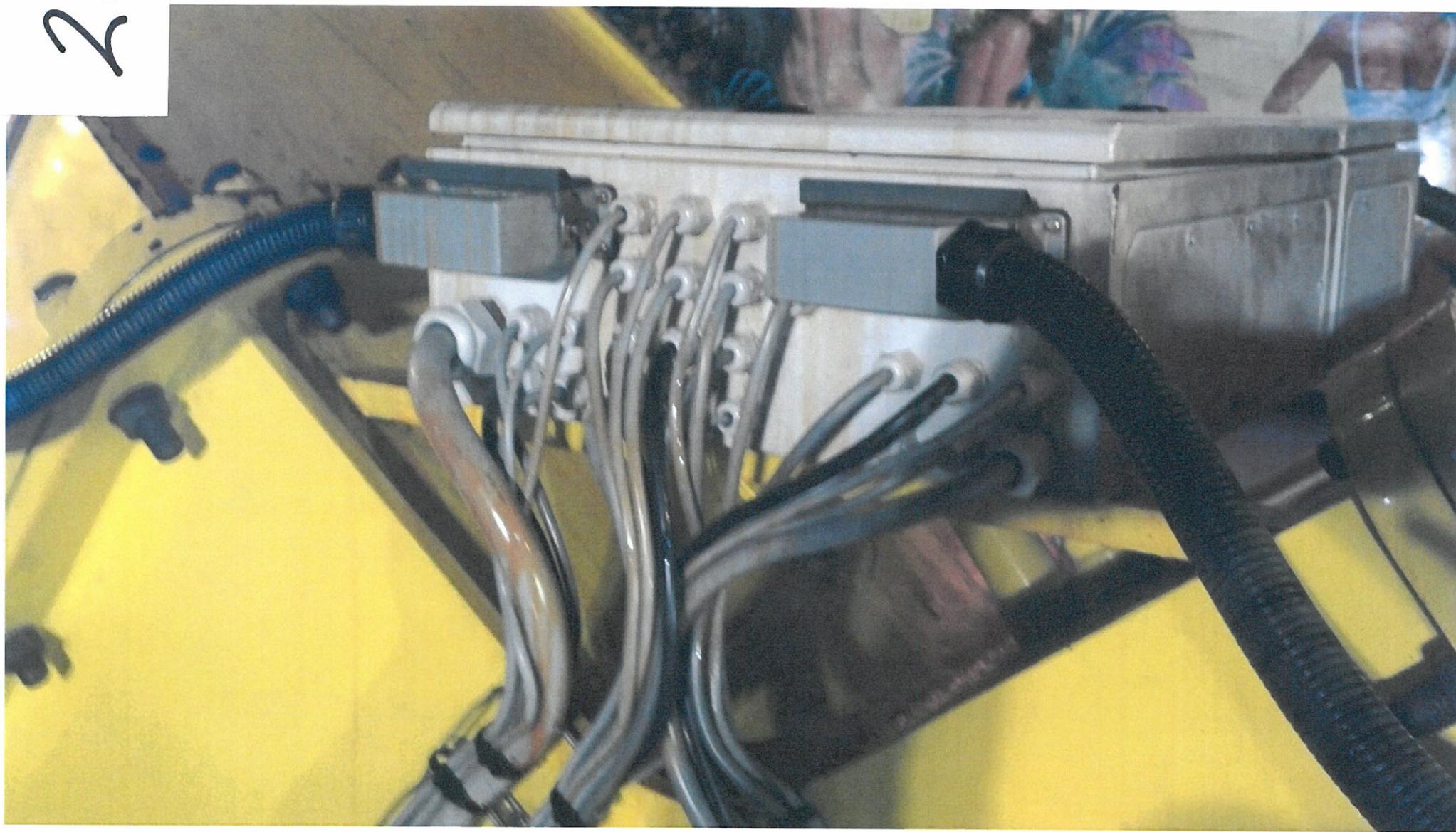
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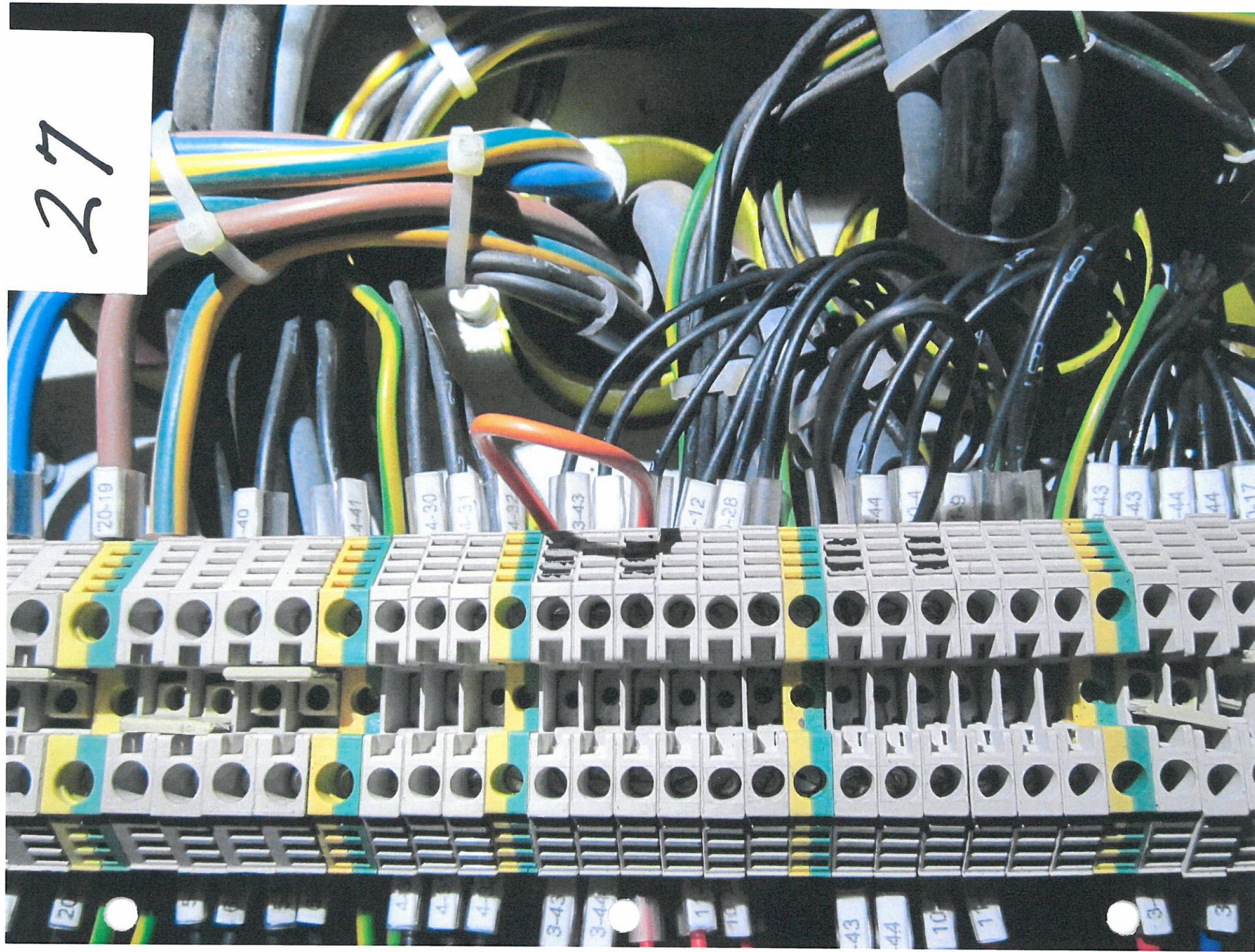
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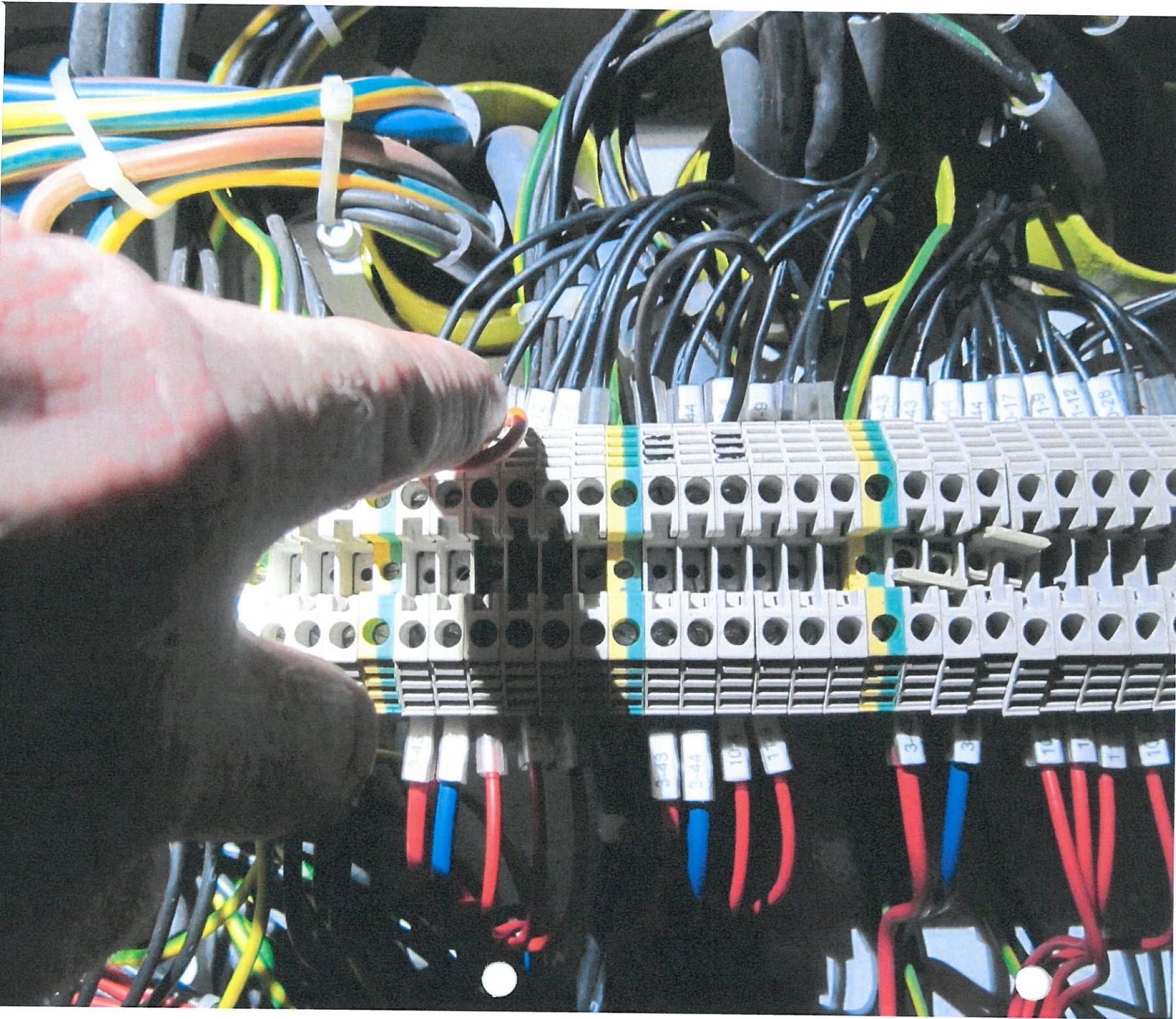
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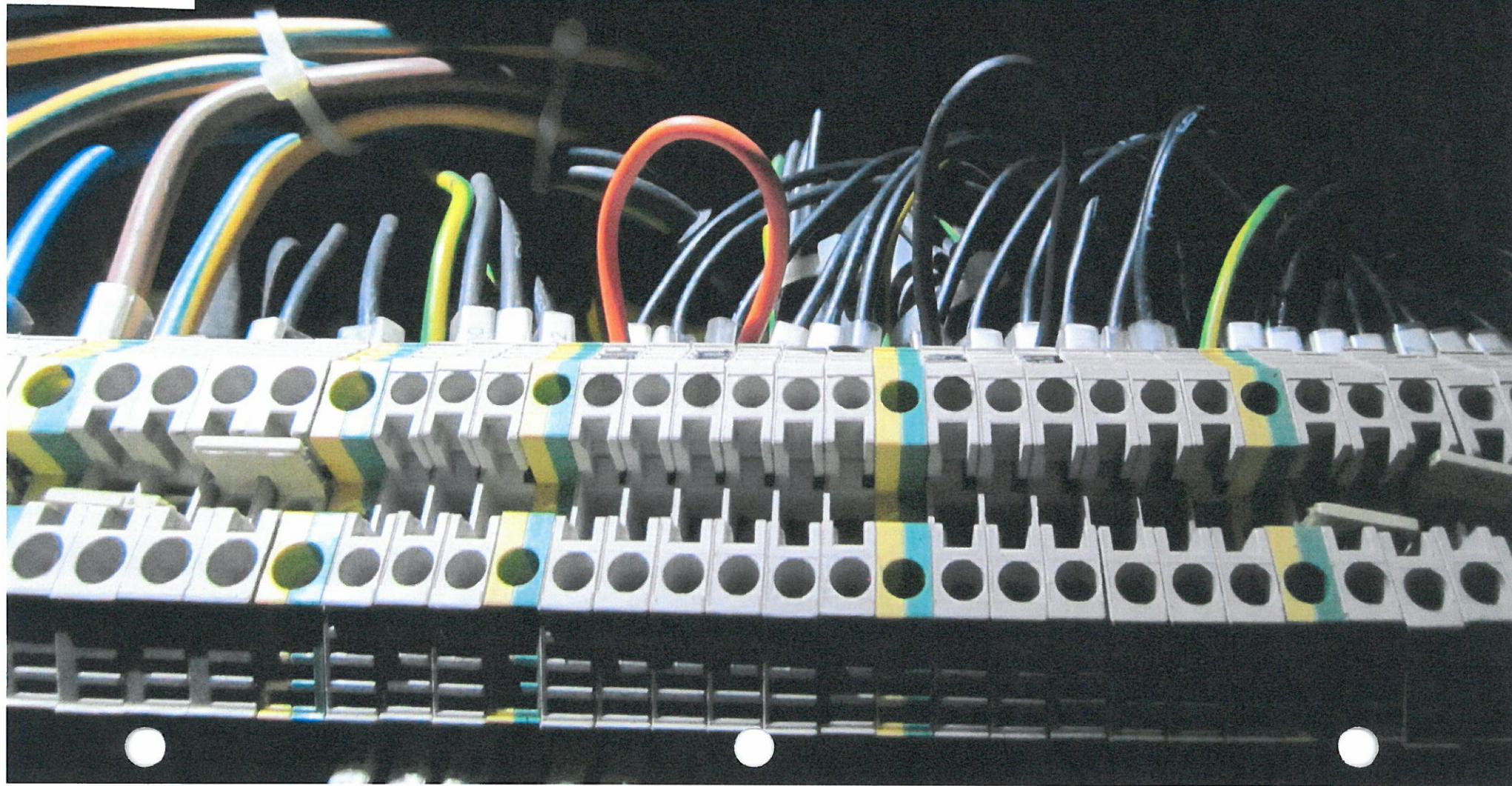
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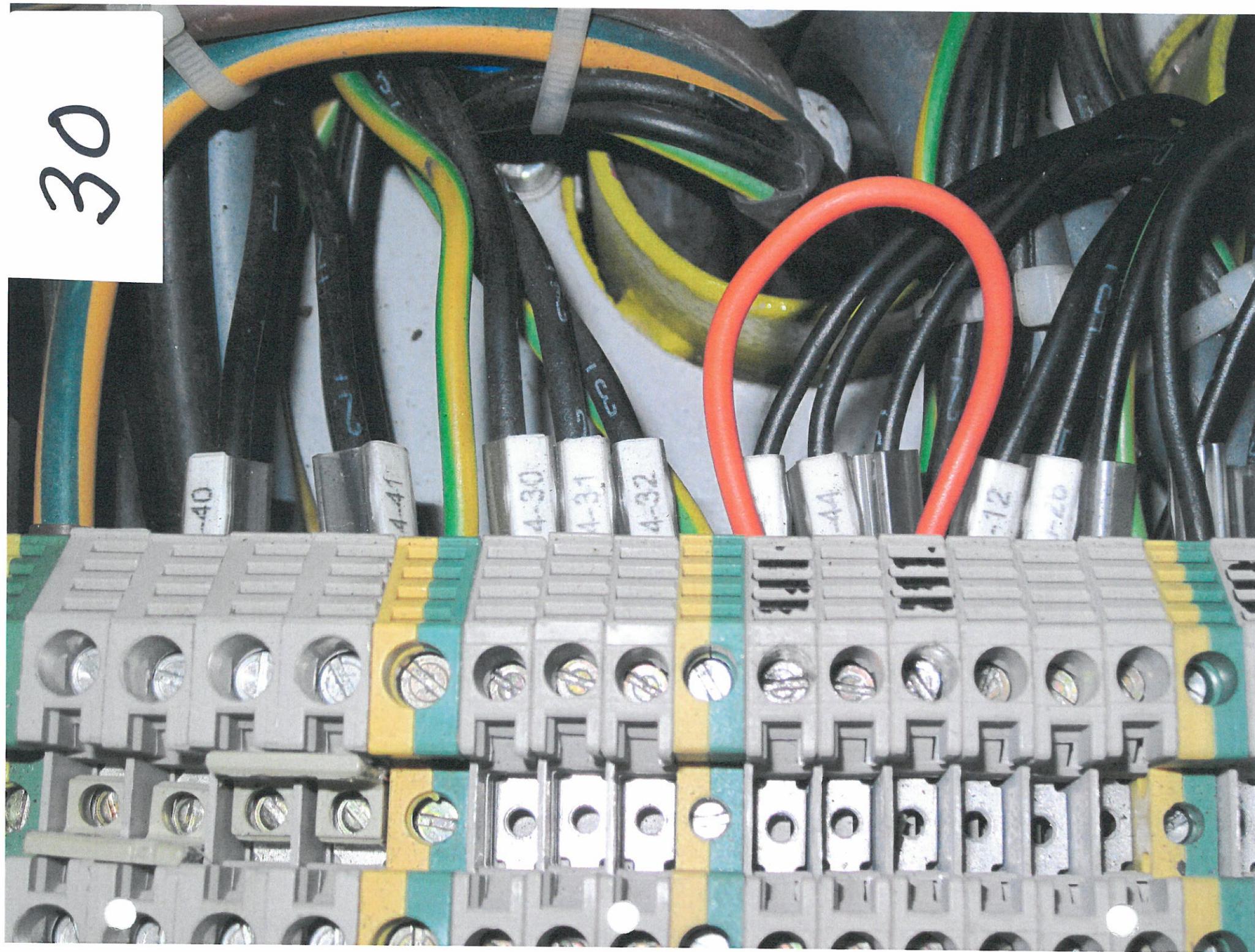
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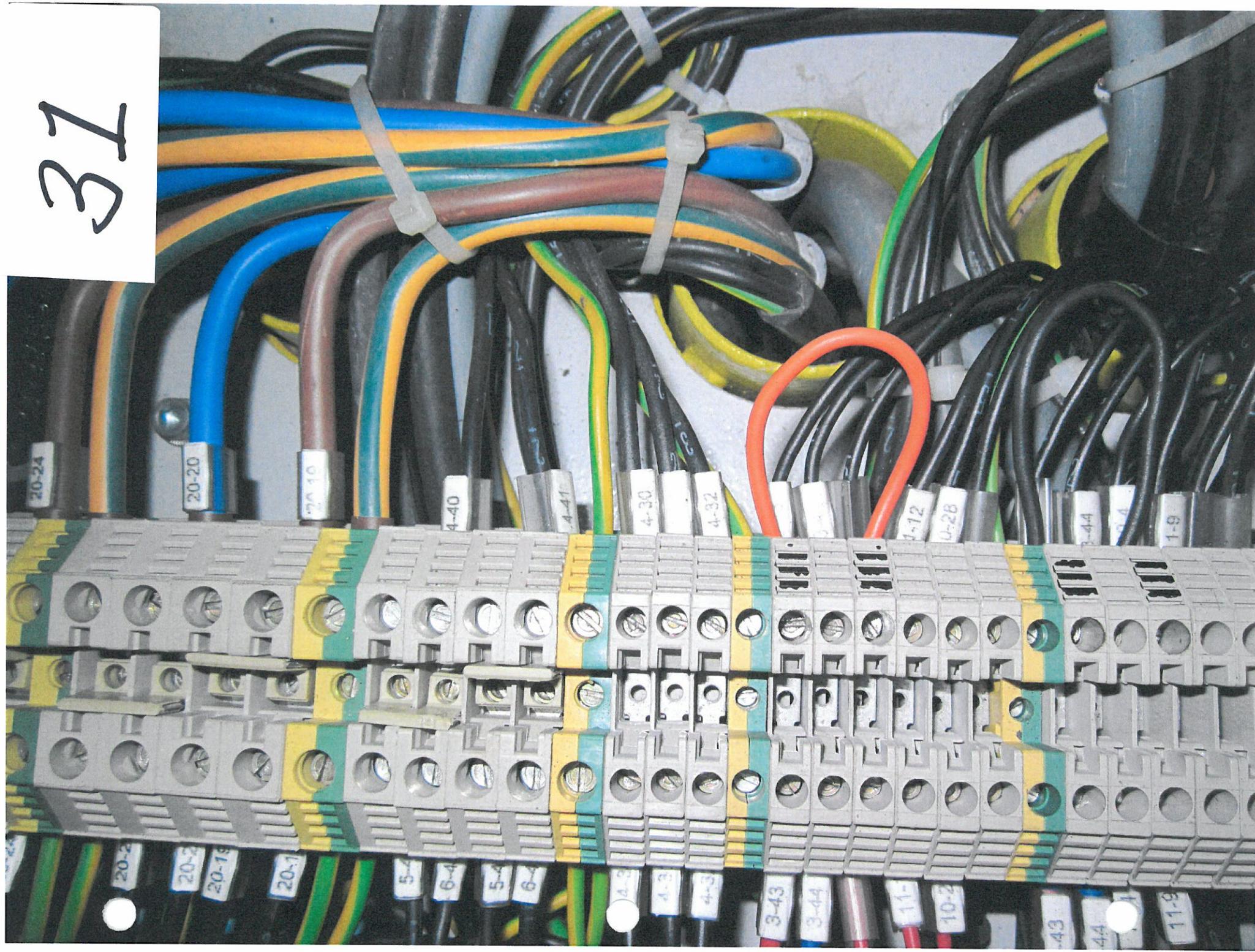
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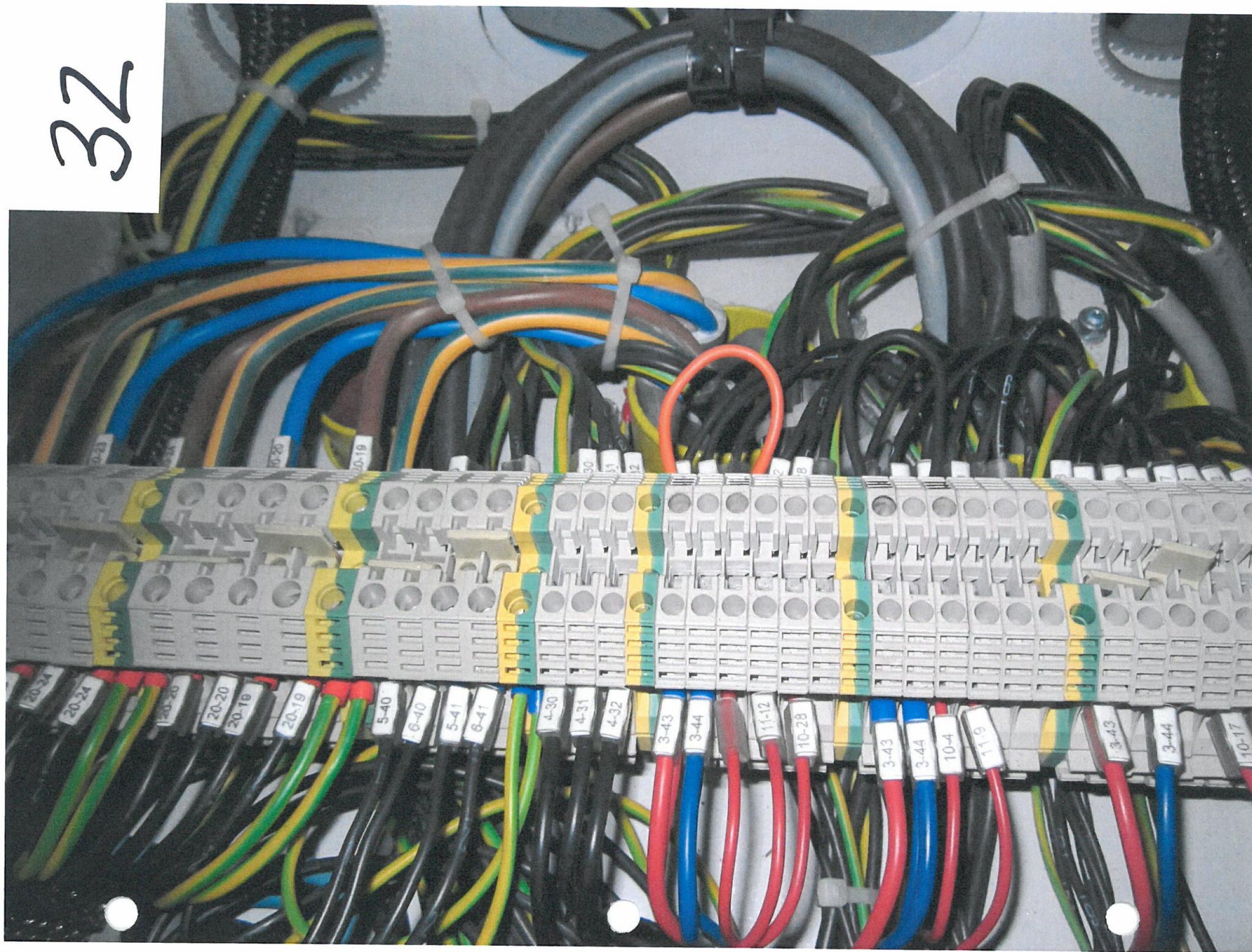
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31



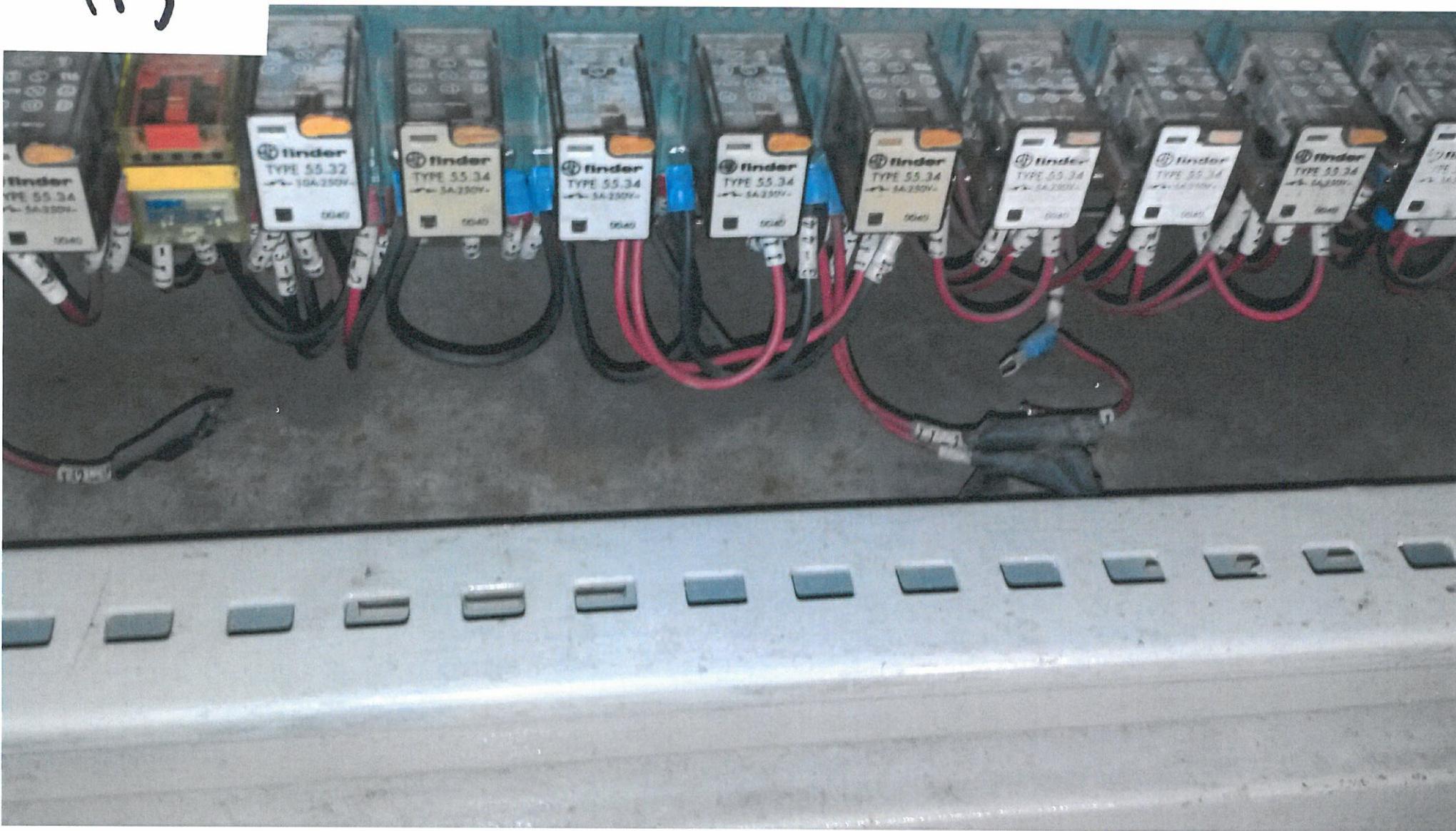
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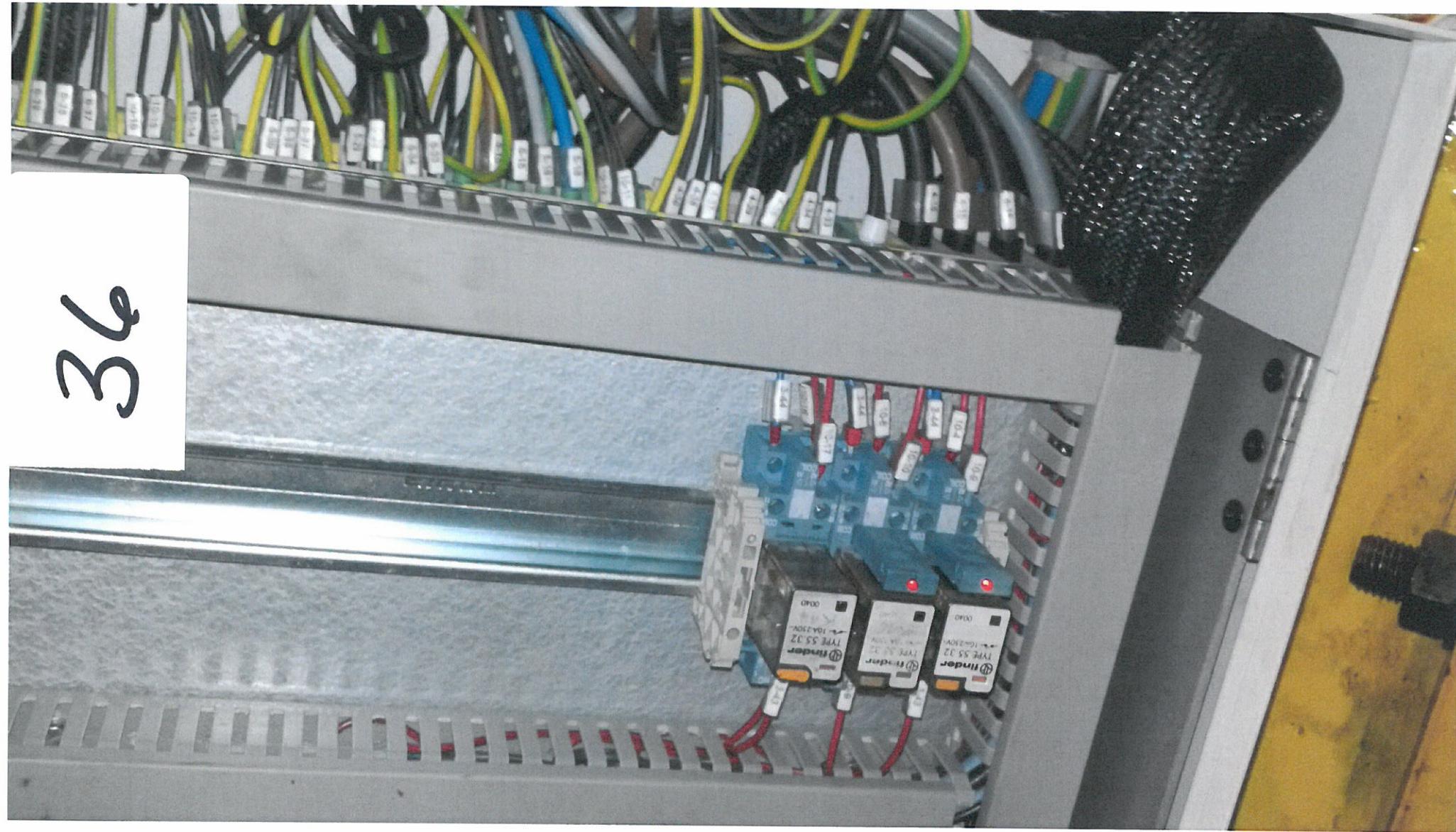
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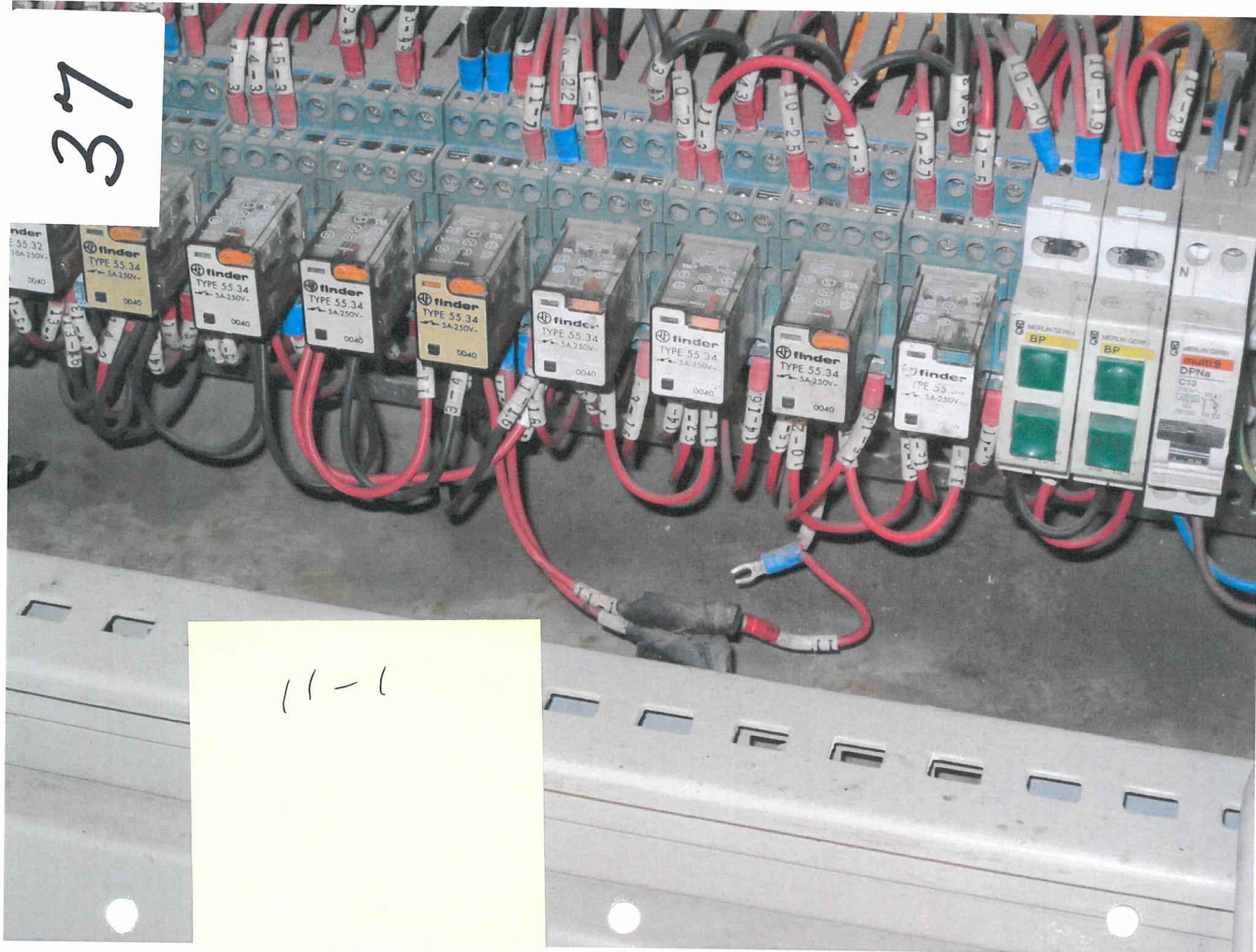


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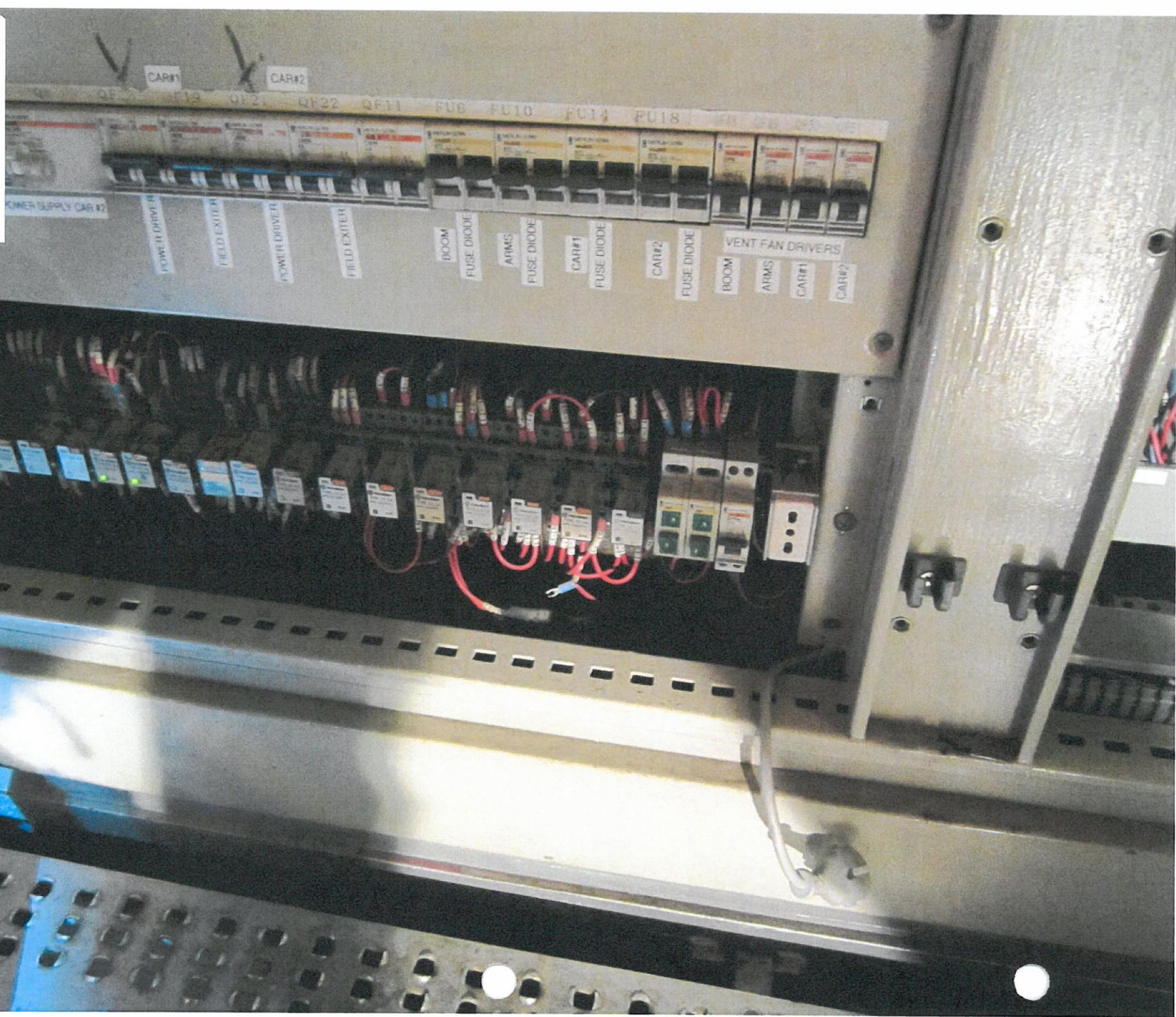
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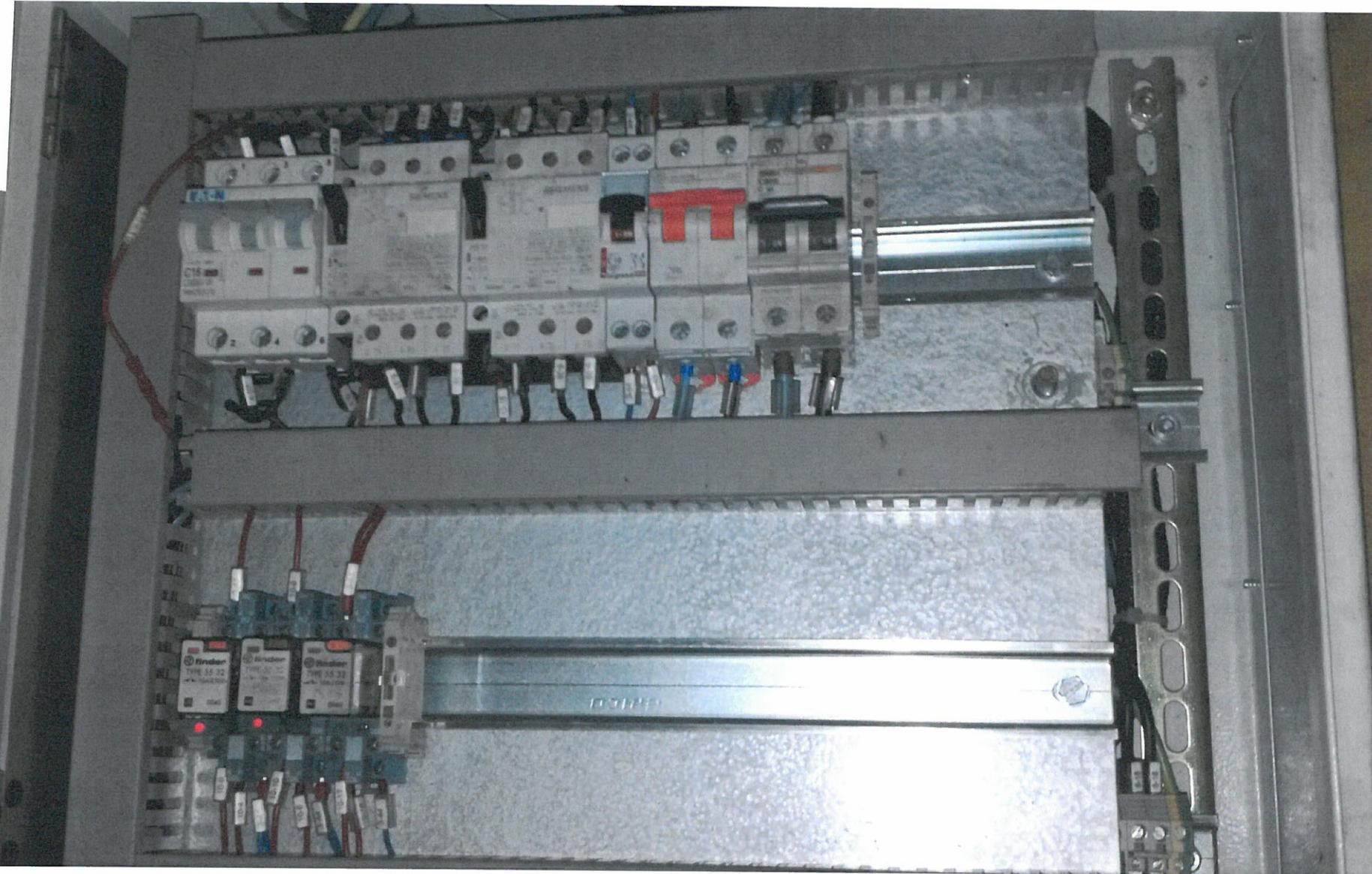
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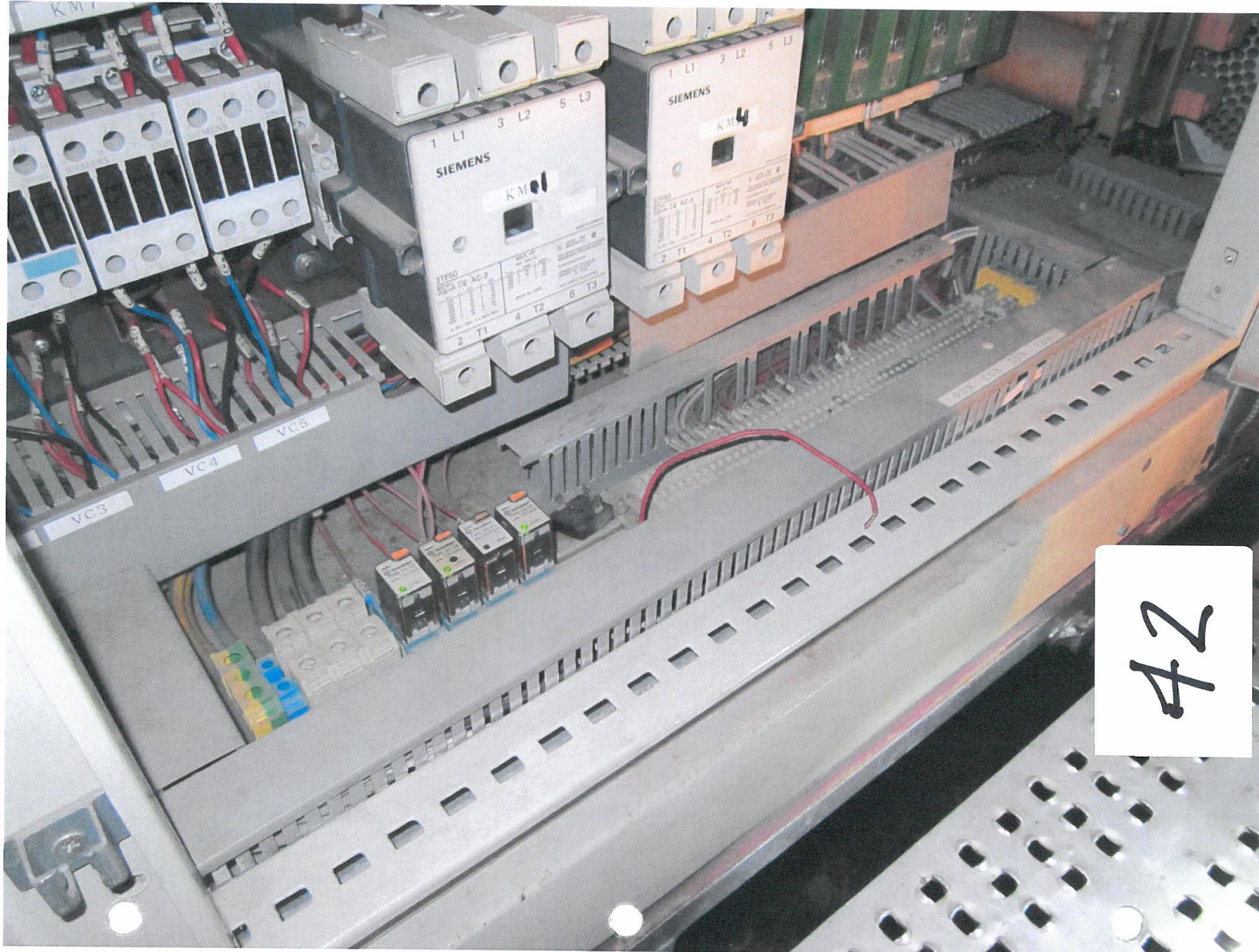
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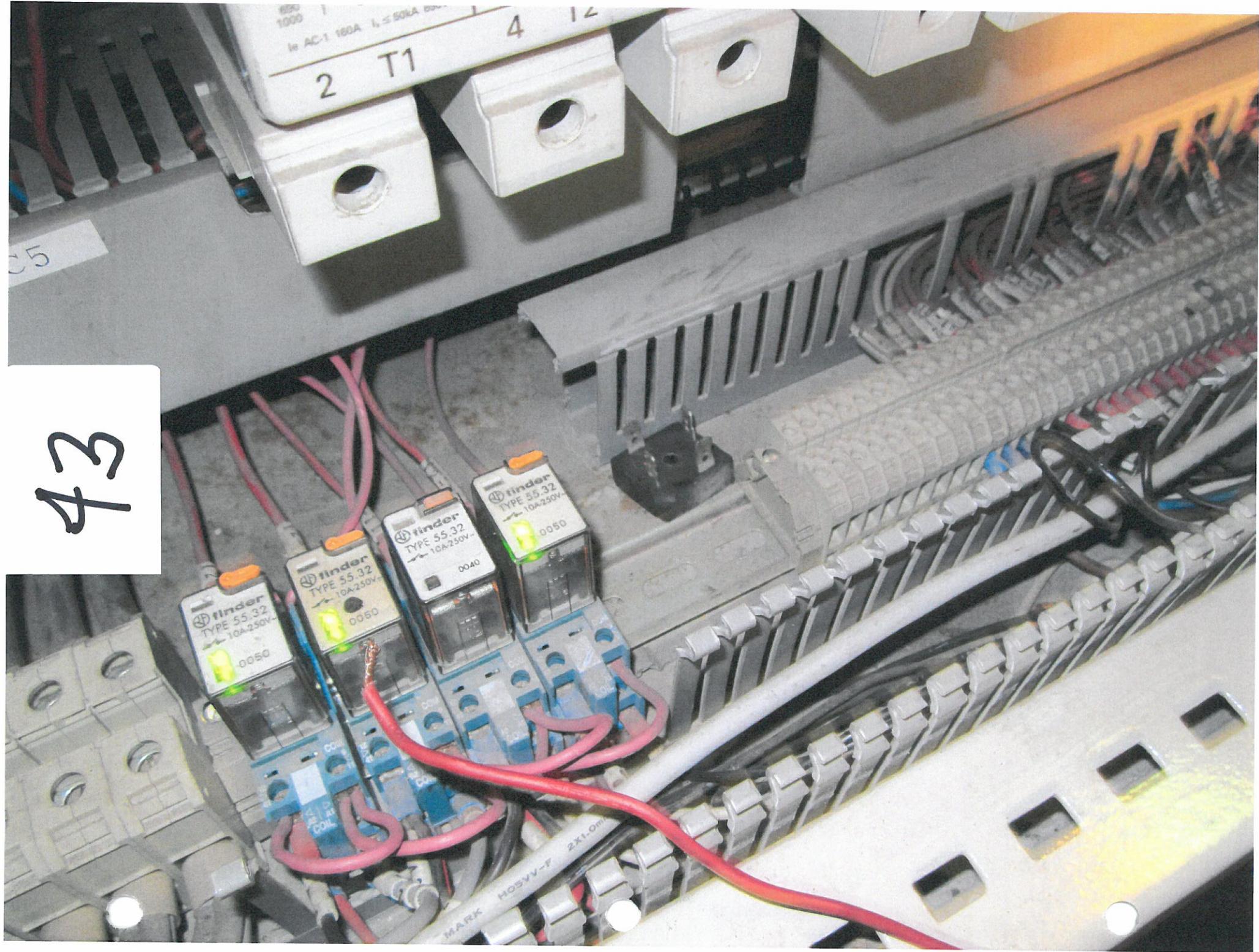
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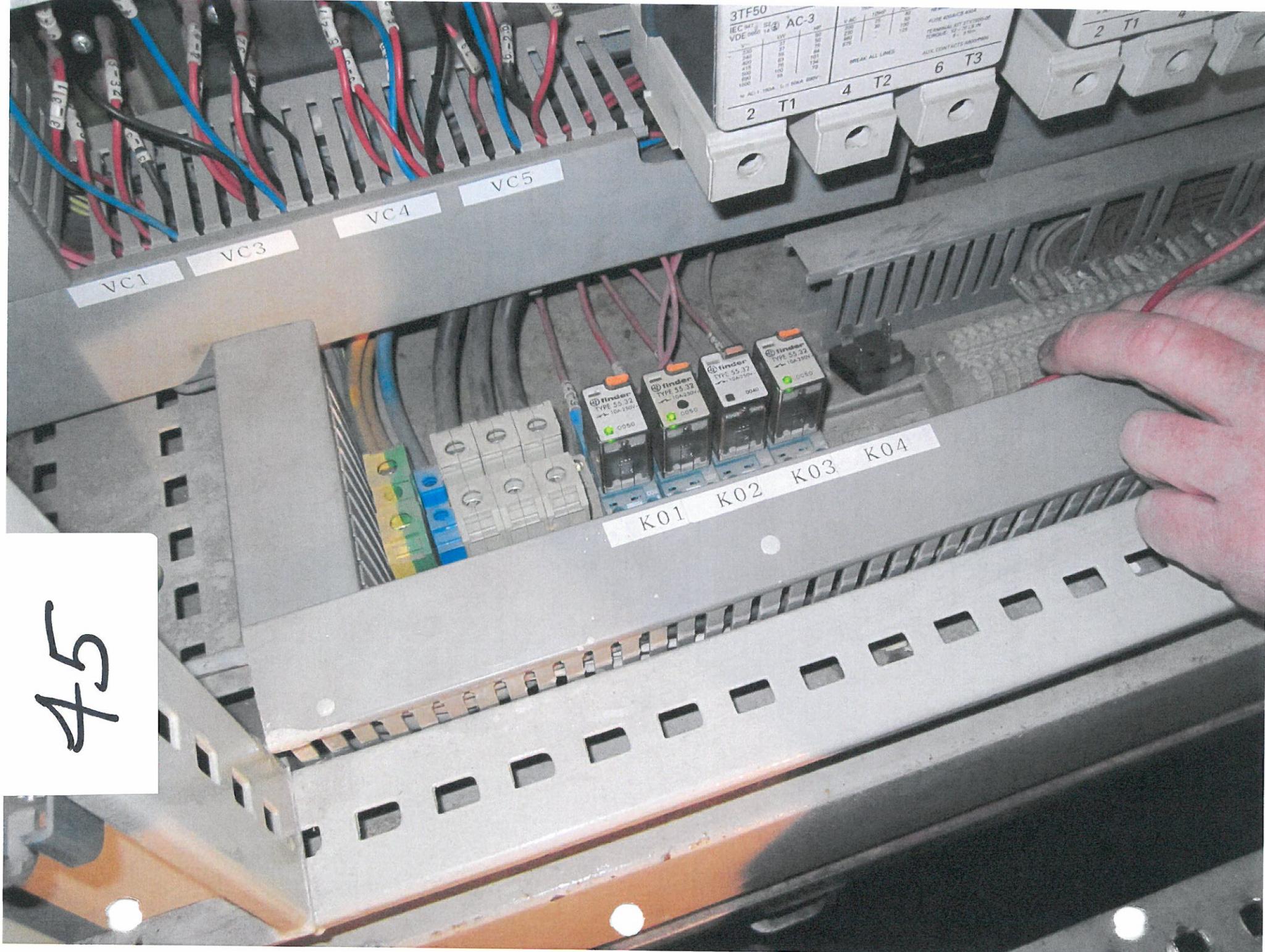


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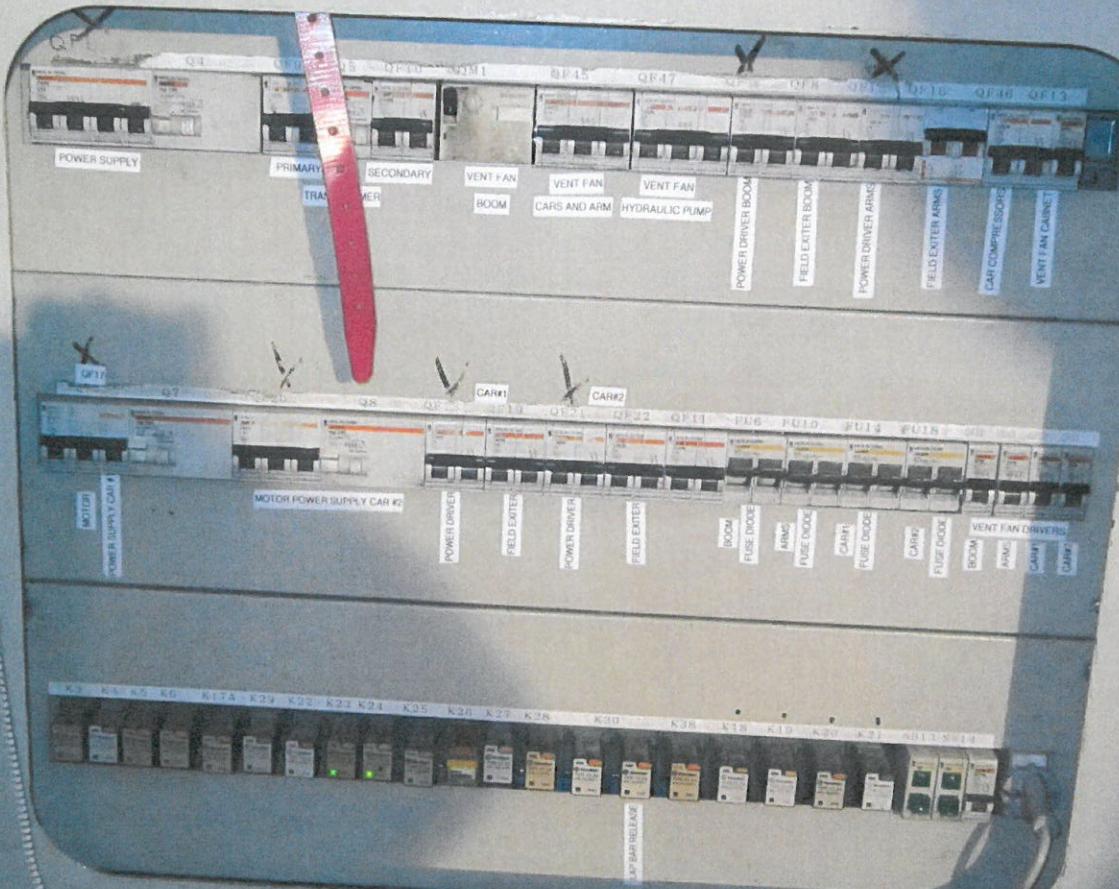


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46



QF17

Q7

Q120

Q8

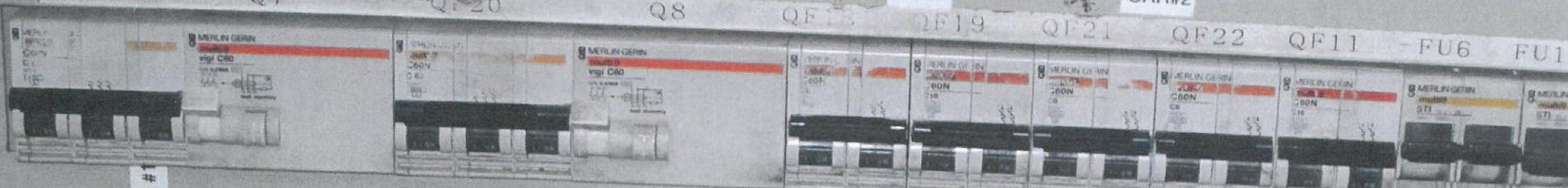
CAR#1

CAR#2

QF11

FU6

FU1



MOTOR

POWER SUPPLY CAR #1

MOTOR POWER SUPPLY CAR #2

POWER DRIVER

FIELD EXITER

POWER DRIVER

FIELD EXITER

BOOM

FUSE DIODE

ARMS

FUSE DIODE

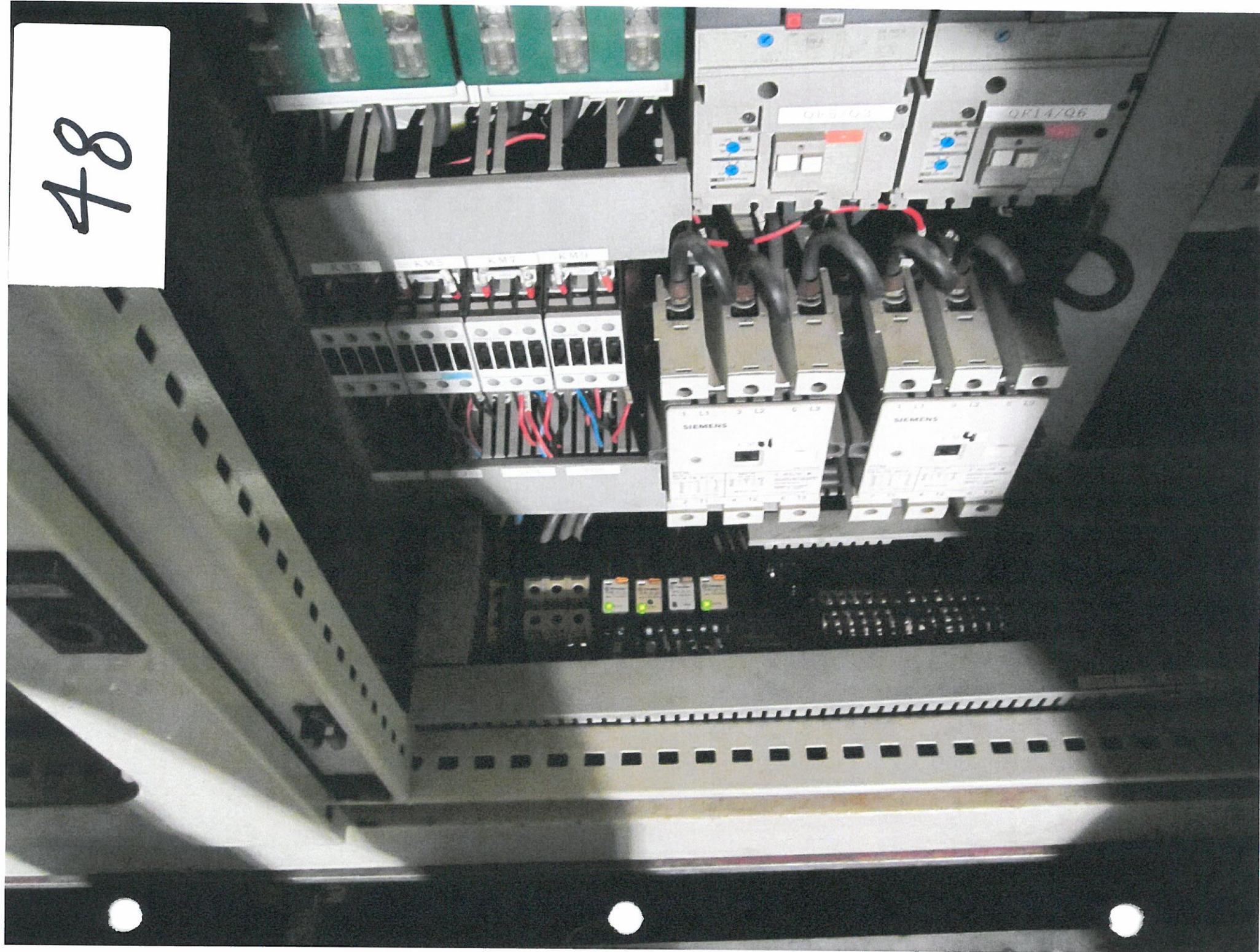
K3 K4 K5 K6 K17A K29 K22 K23 K24 K25 K26 K27 K28 K30 K38 K18 K19



LAP BAR RELEASE

47

48



MADE IN GERMANY  
LISTED ULIC  
WHD CONT. 40  
THIS DEVICE MEETS OR EXCEEDS  
NEEMA/EIAC REQUIREMENTS  
FUSE ASSAICS 400A  
TERMINAL KIT STC700-06  
TORQUE: 57 - 70 LB-IN  
0 - 9 NM  
AUX. CONTACTS ADSP00

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MOTOR POWER SUPPLY CAR #2

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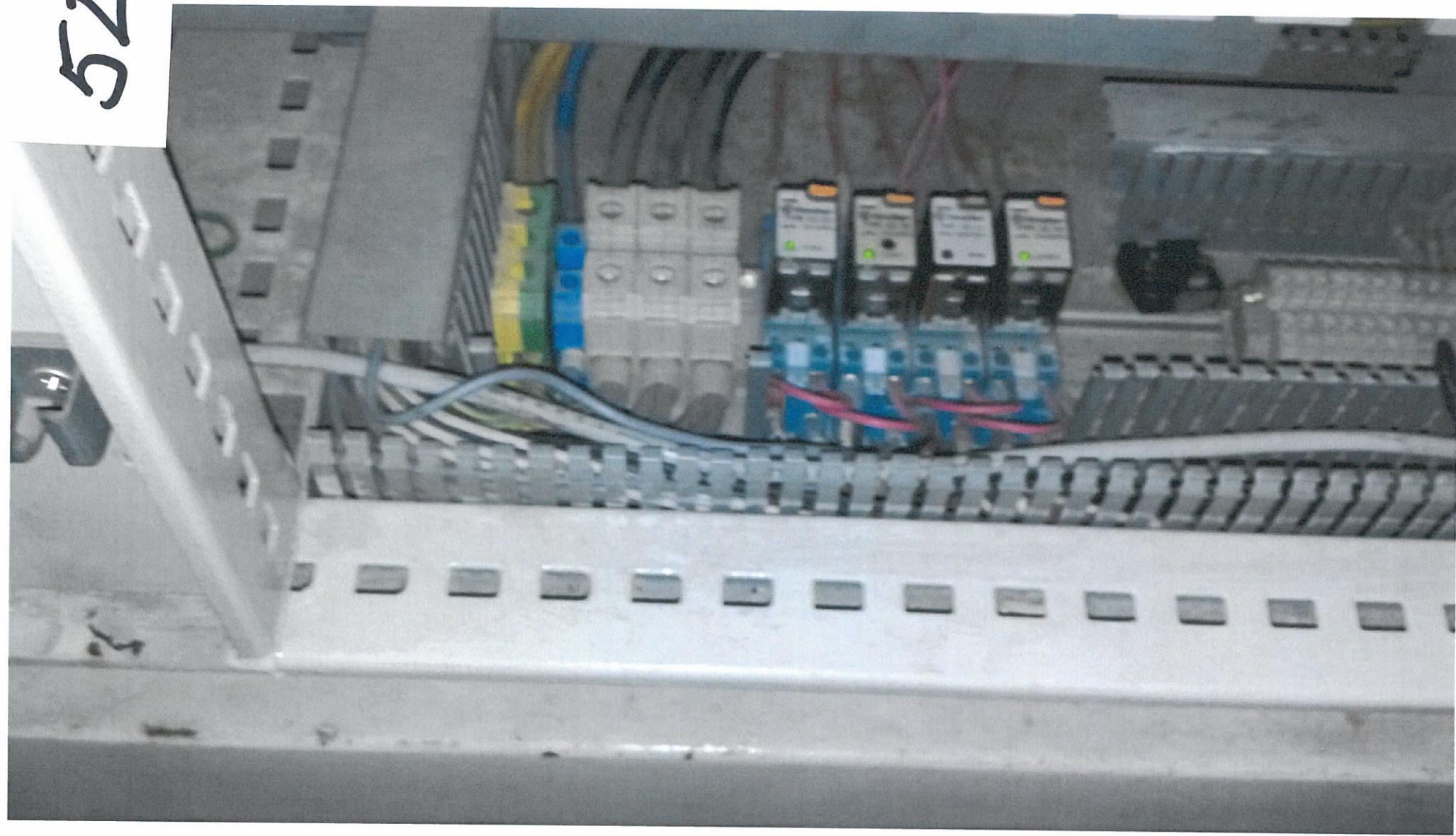
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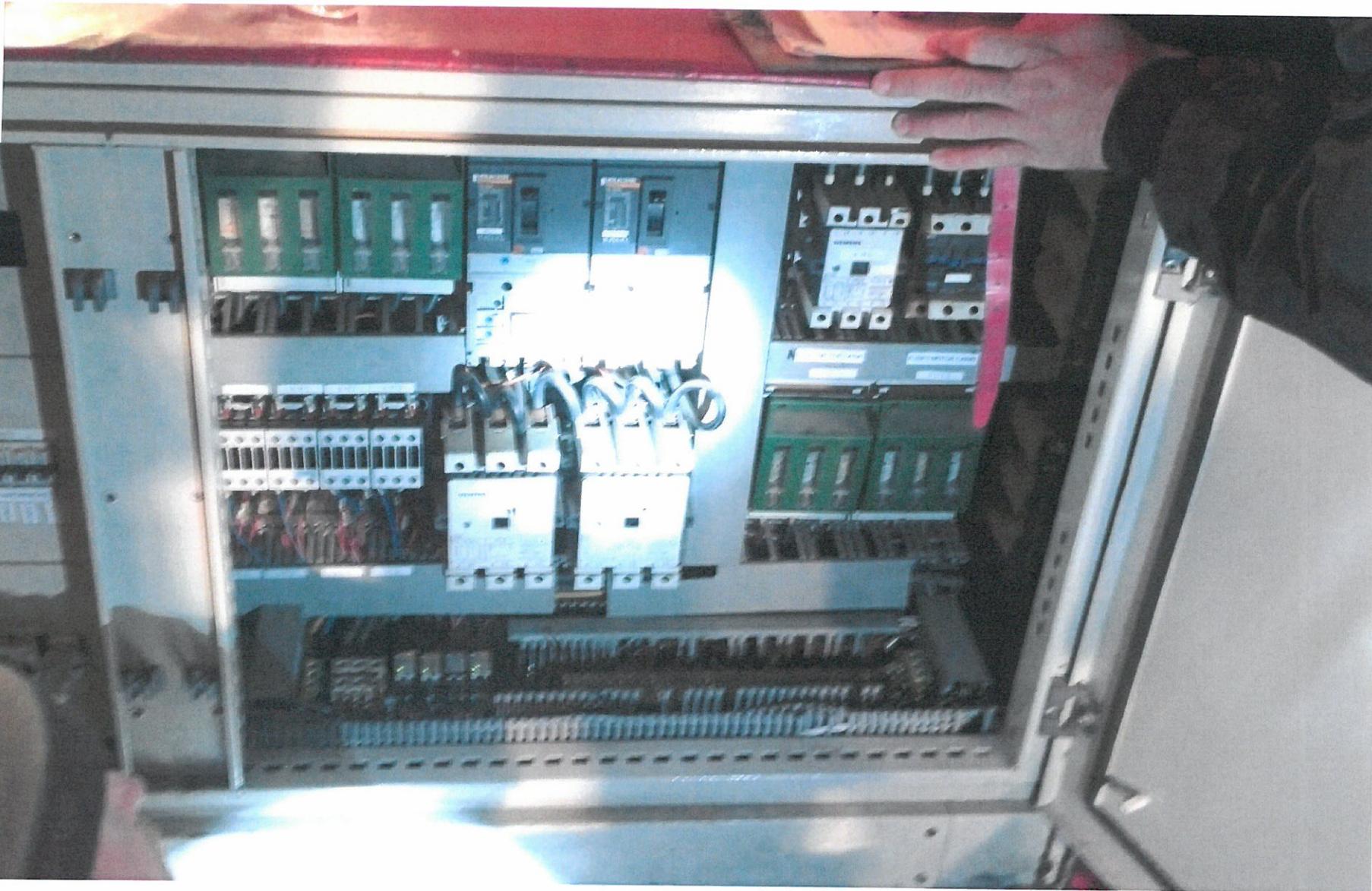
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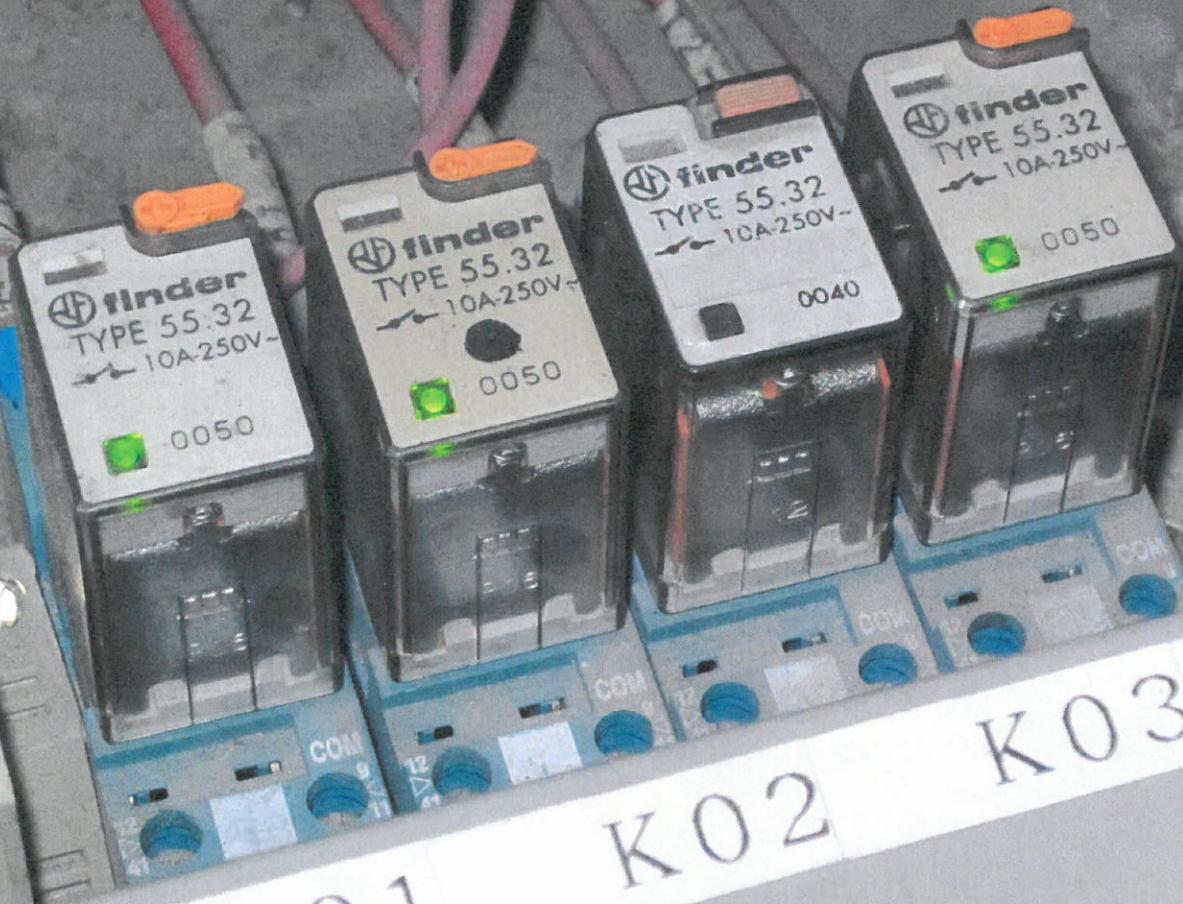
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DCS 500

ONE-BUTTON COMMENCEMENT  
BY JEFFREY L. BROWN, JR.

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ABB

DCS 500

BOOM

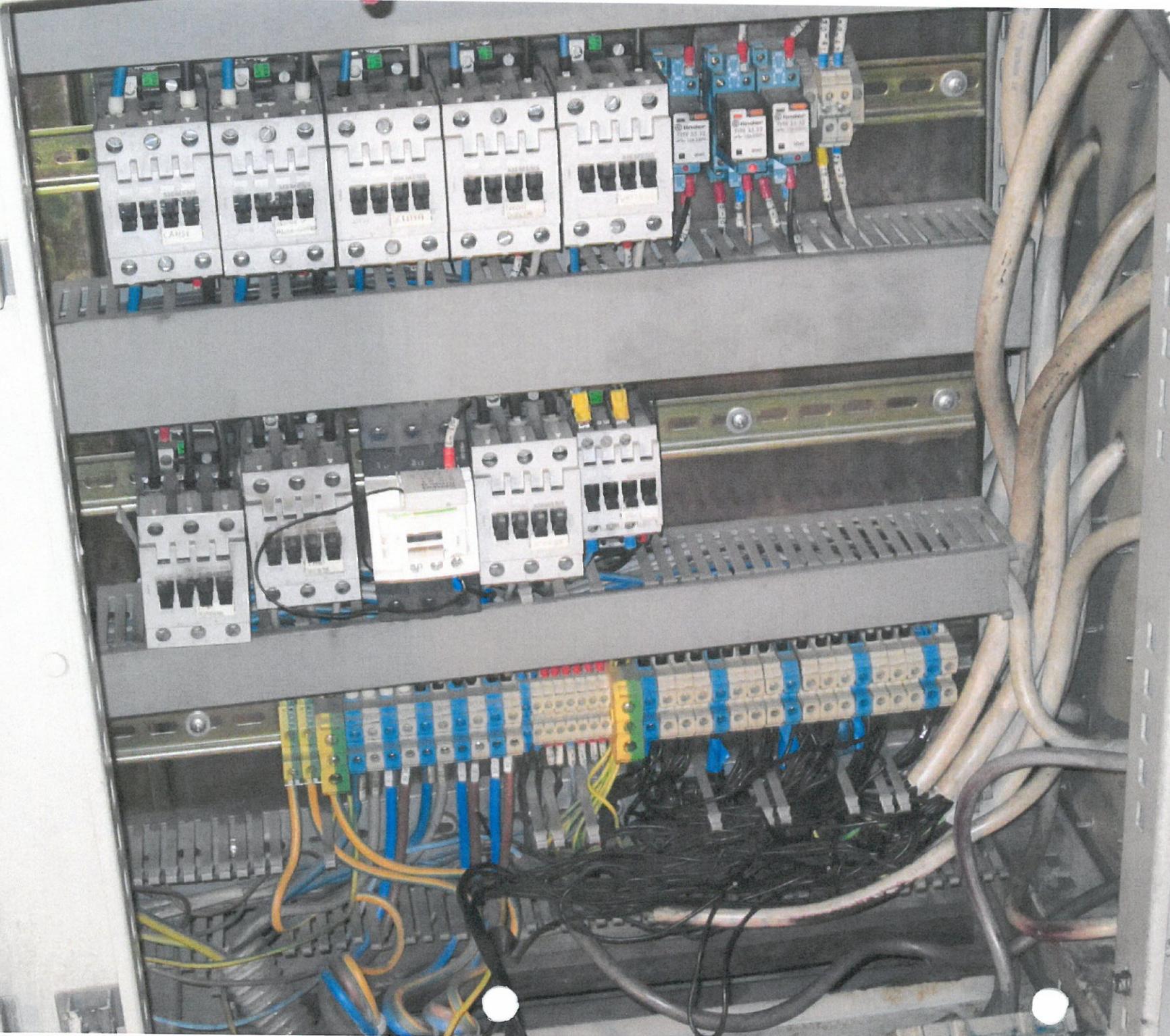
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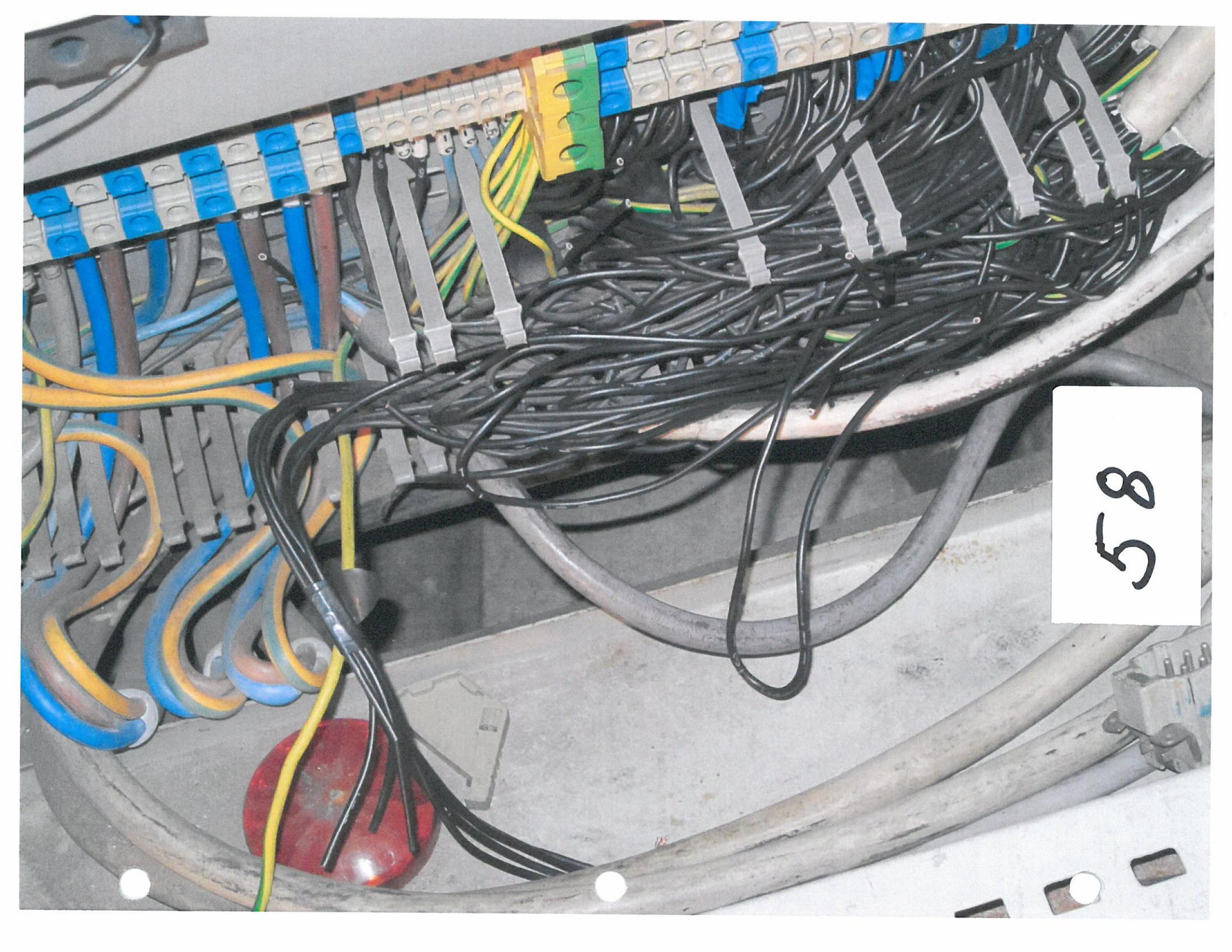
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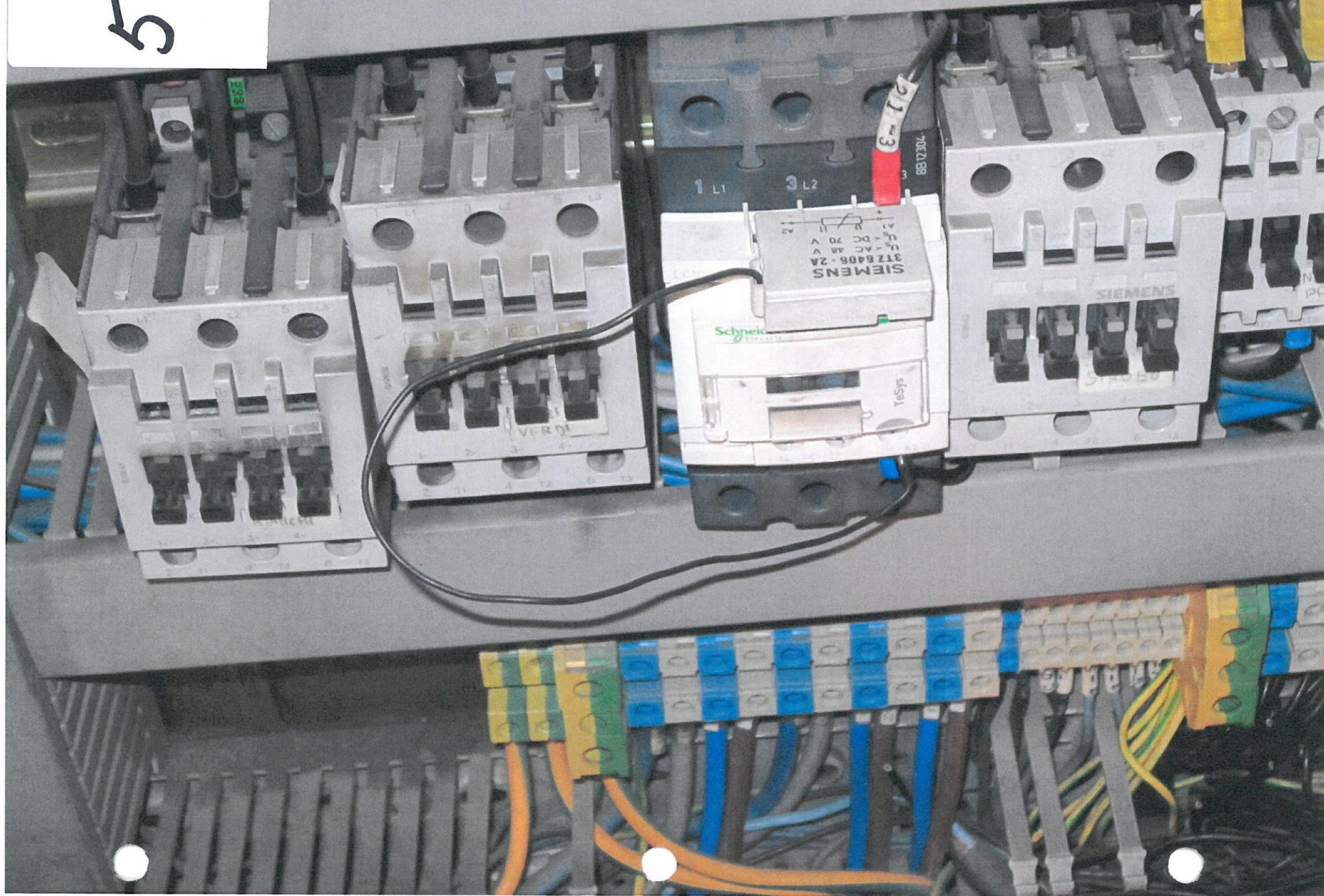
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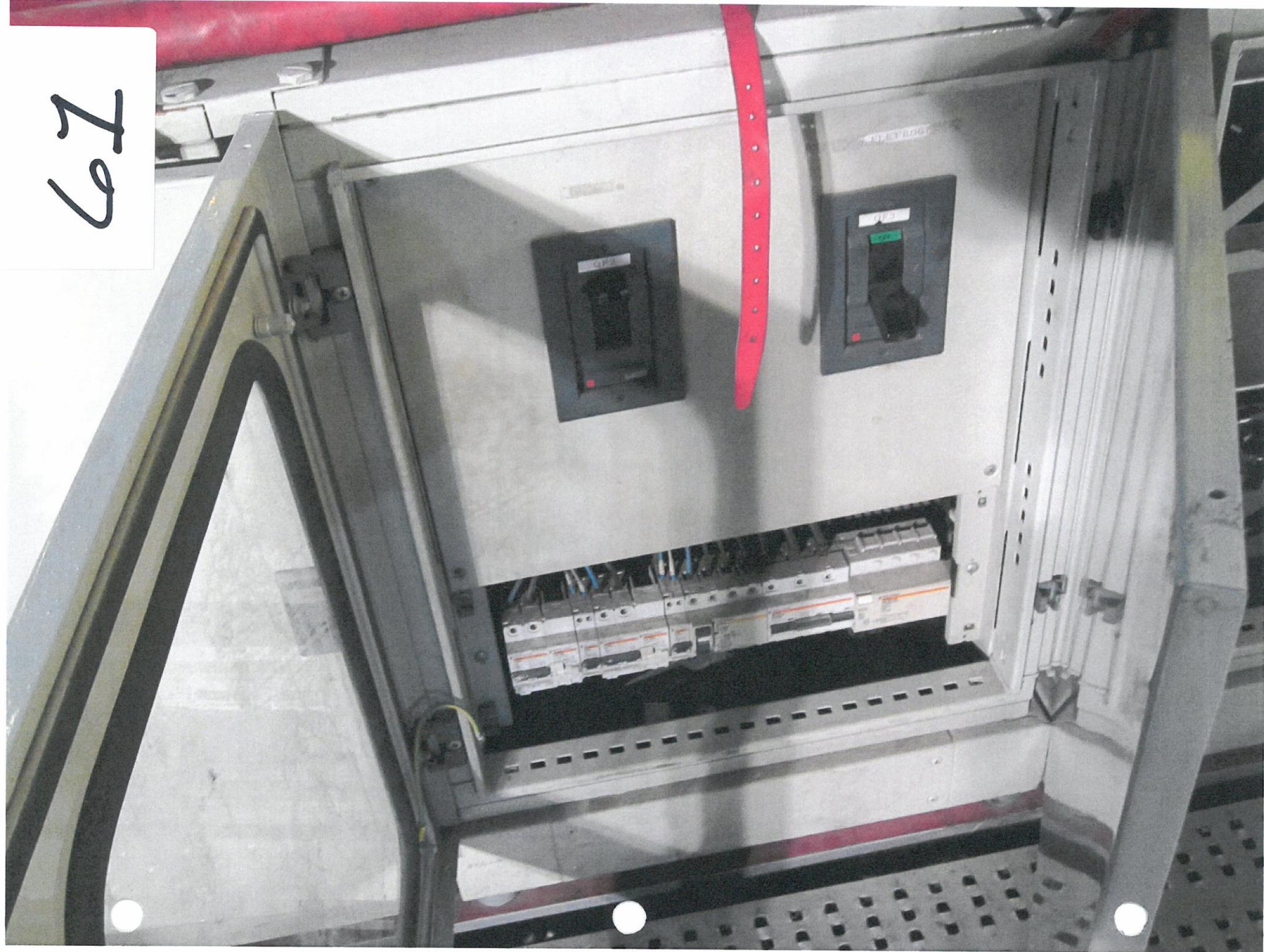
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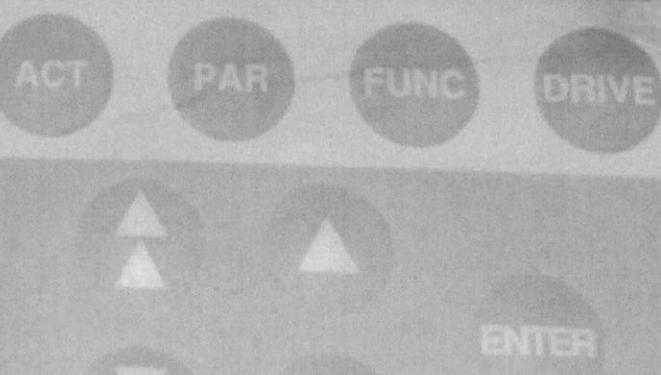


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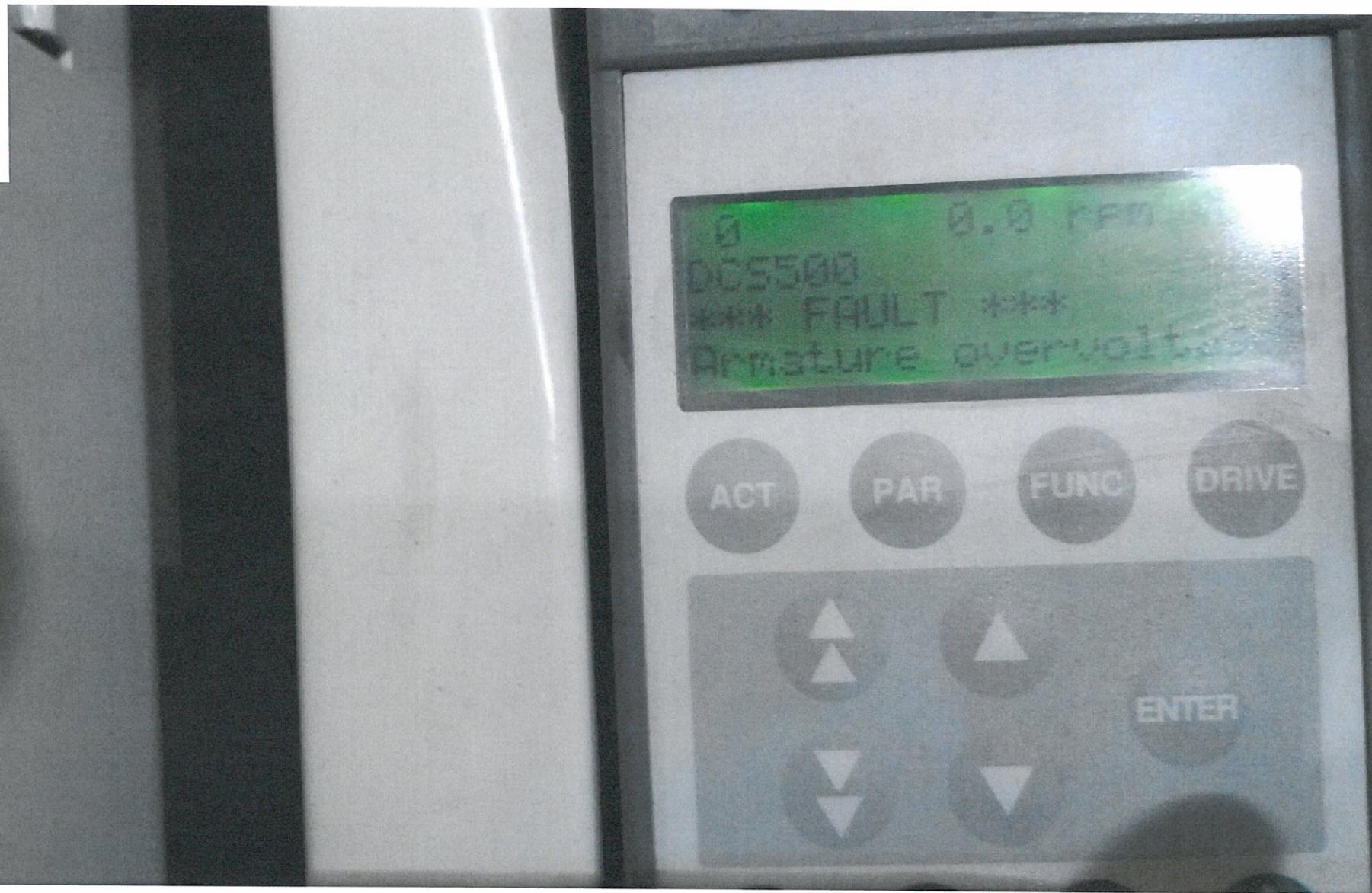


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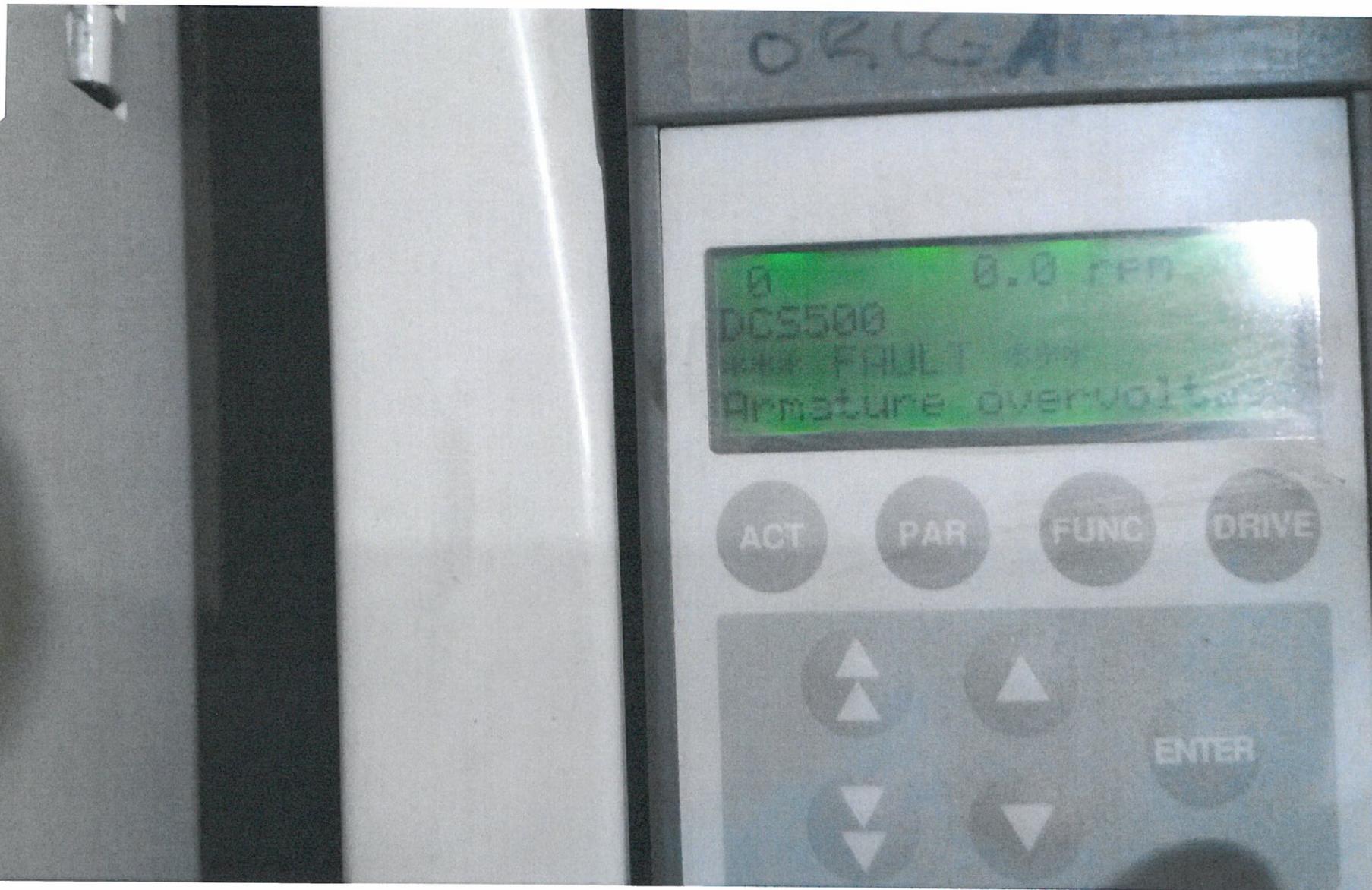
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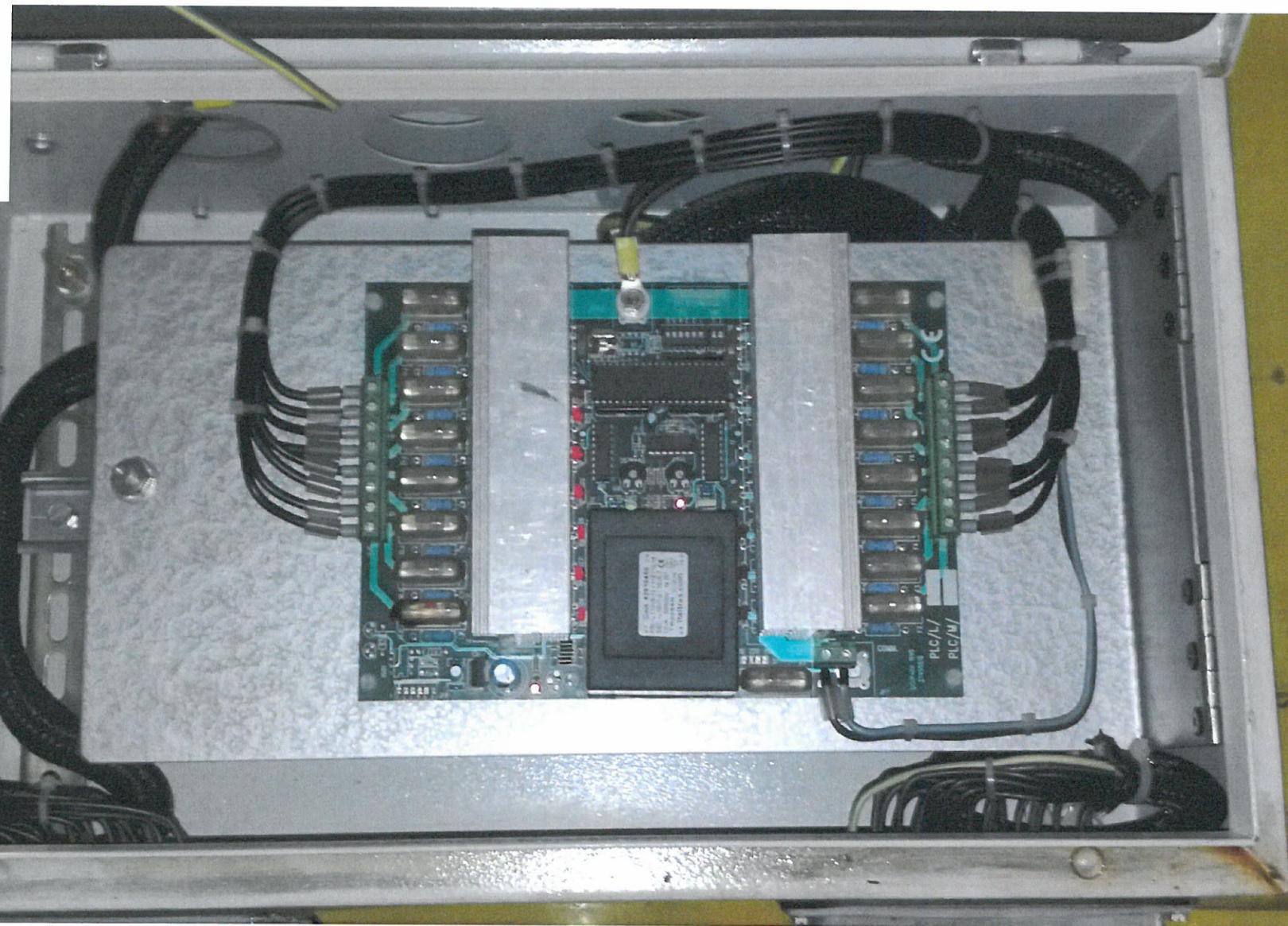
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SHERIFF  
WAKE COUNTY

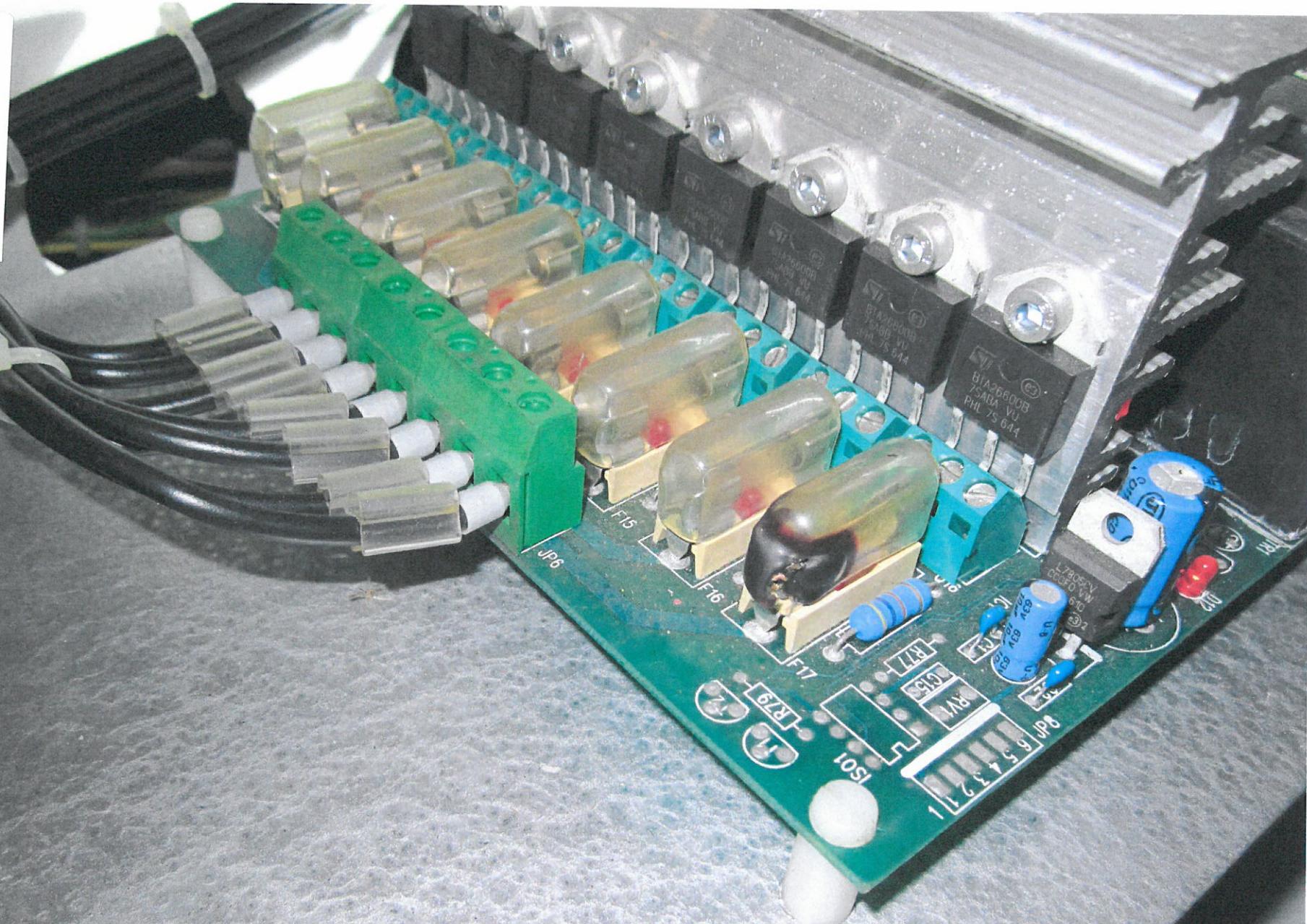
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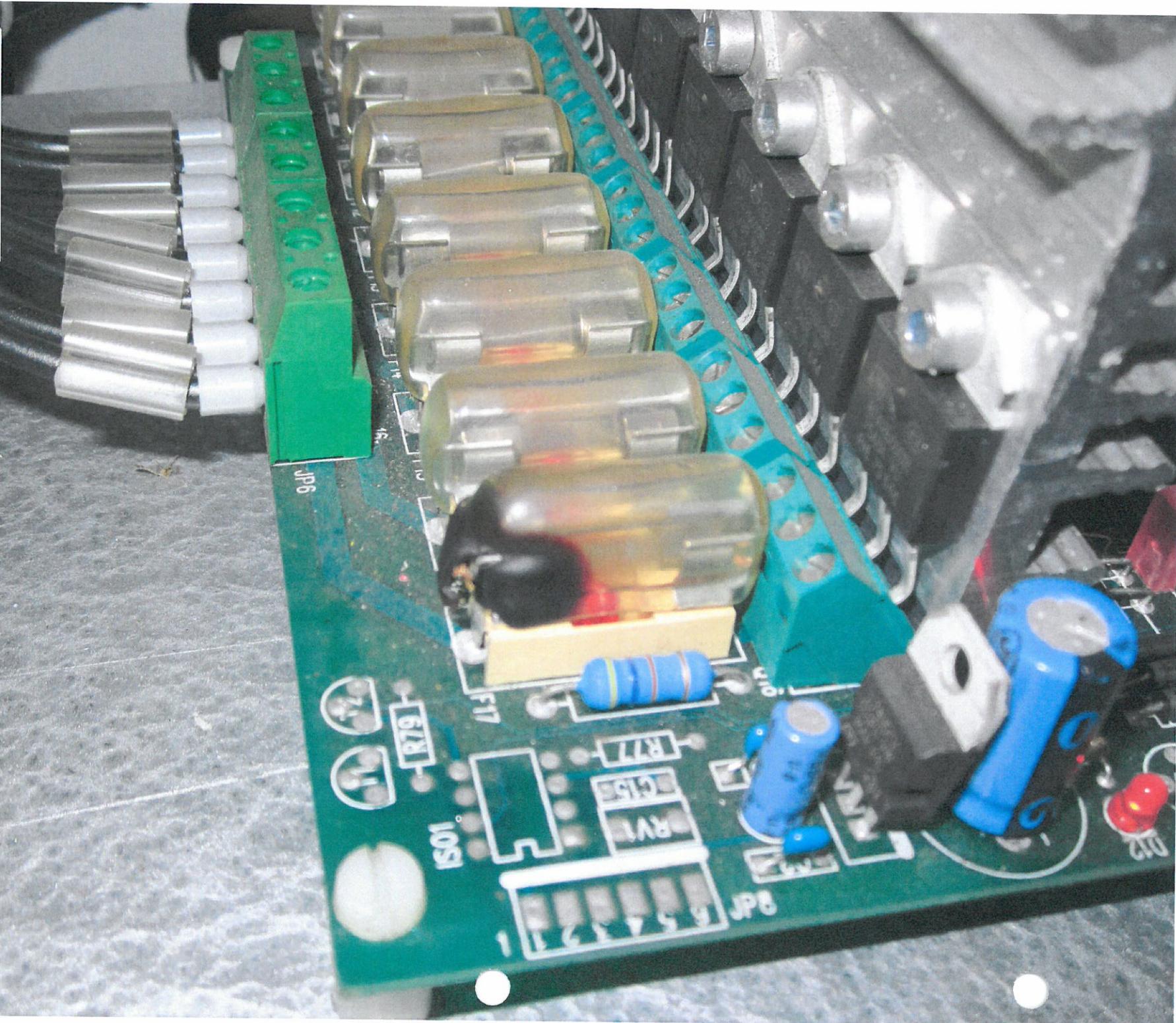
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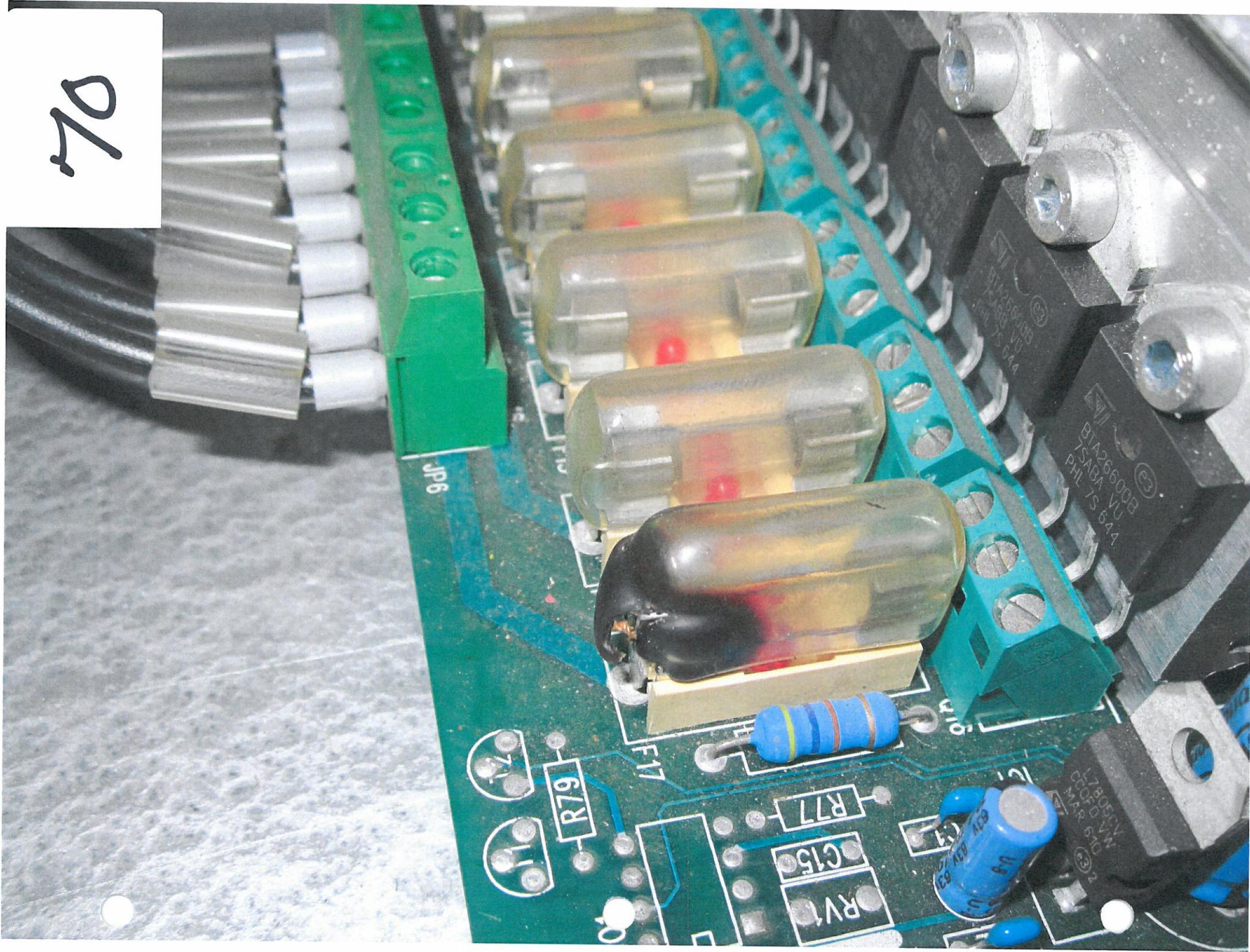
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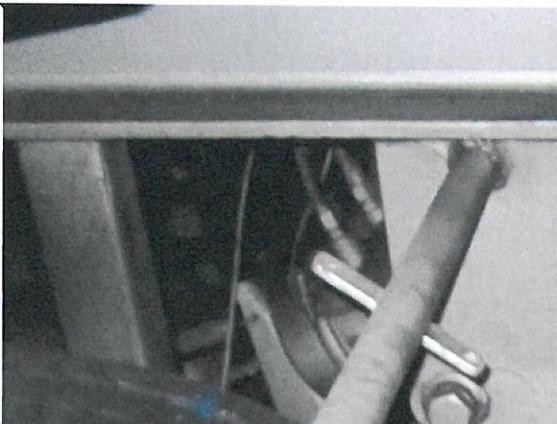


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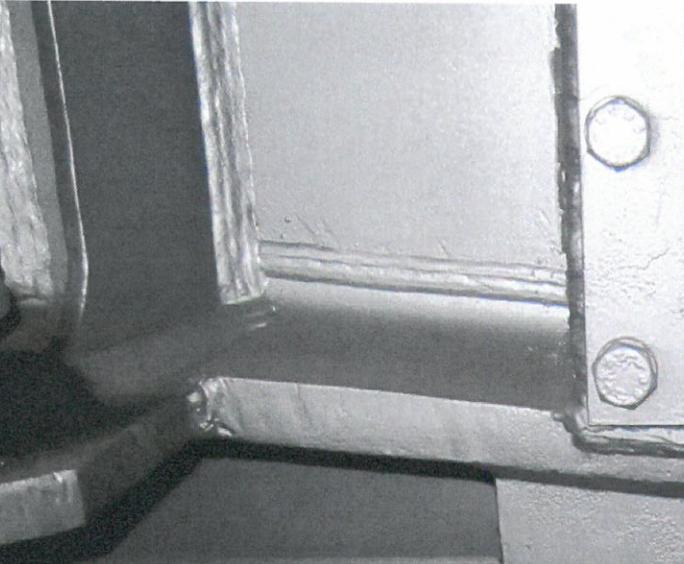


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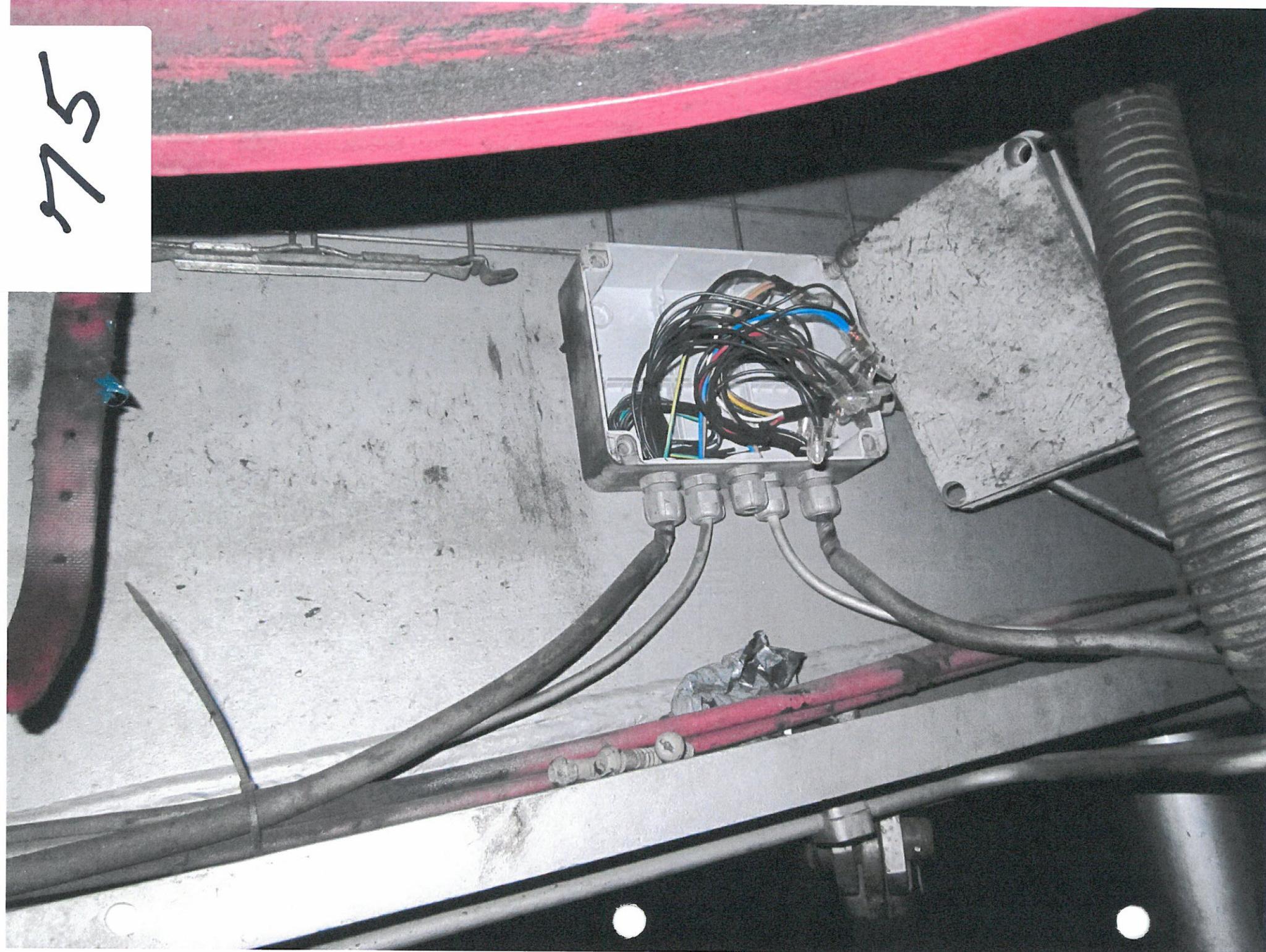
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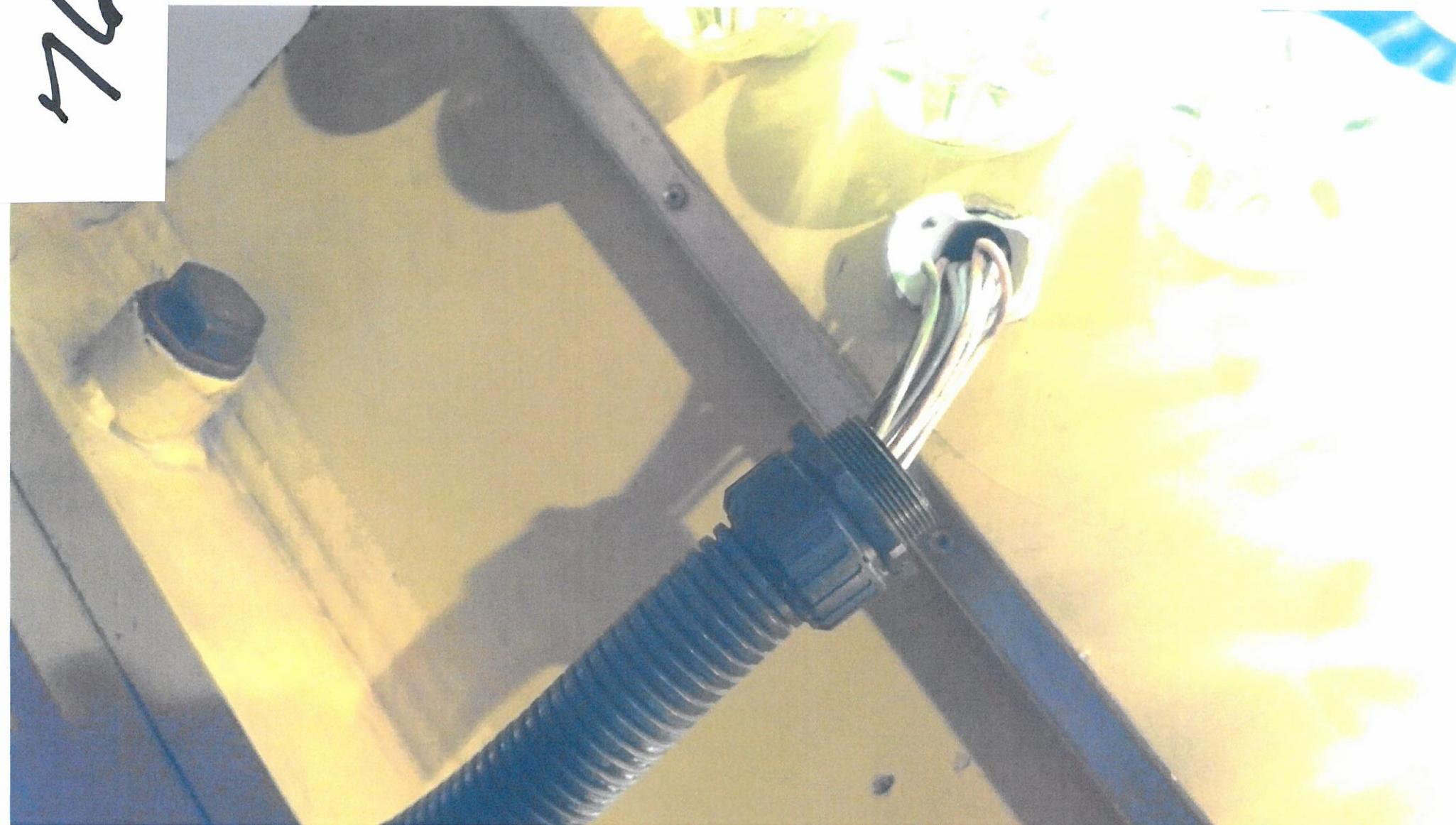
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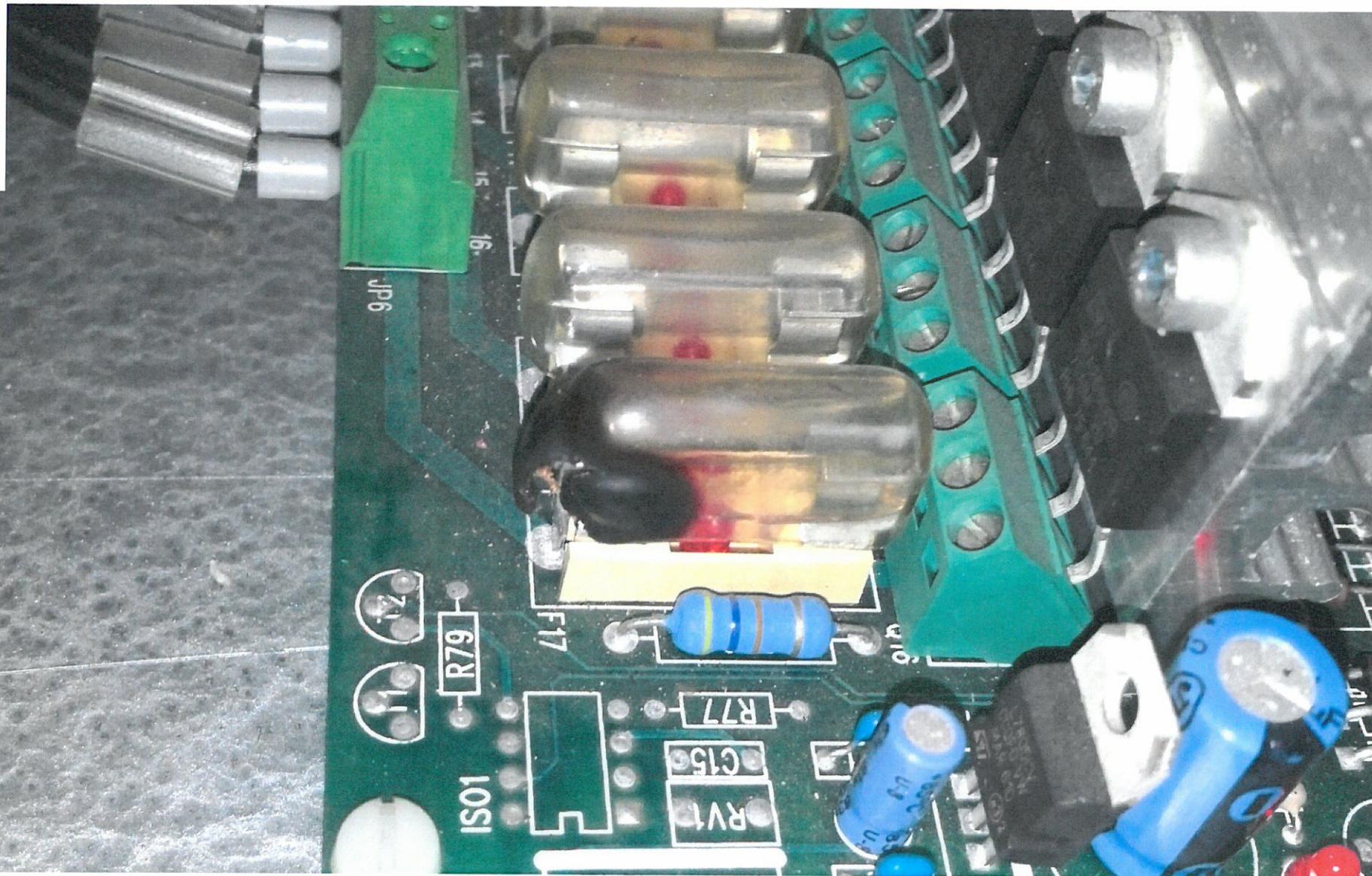


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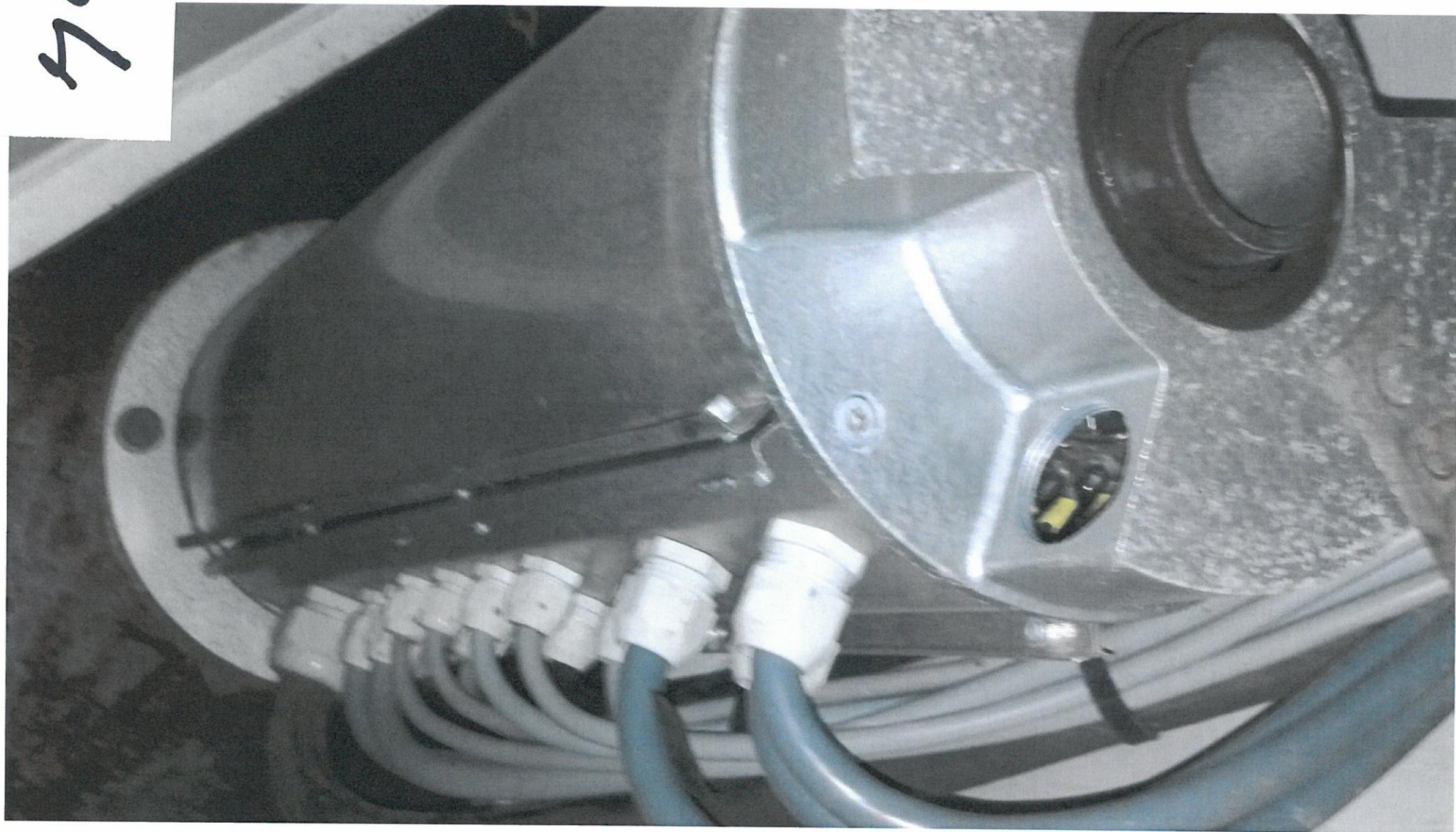




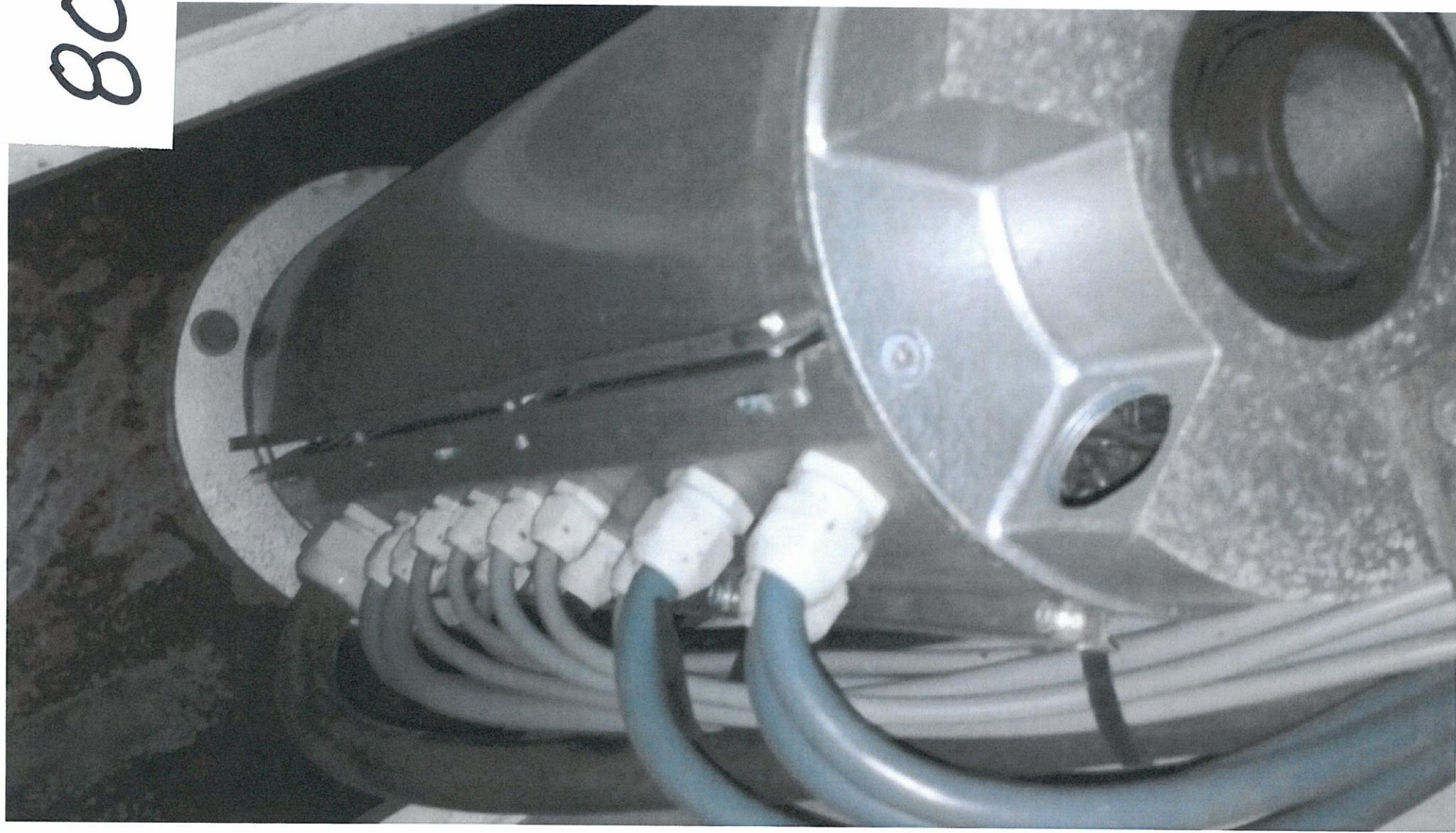
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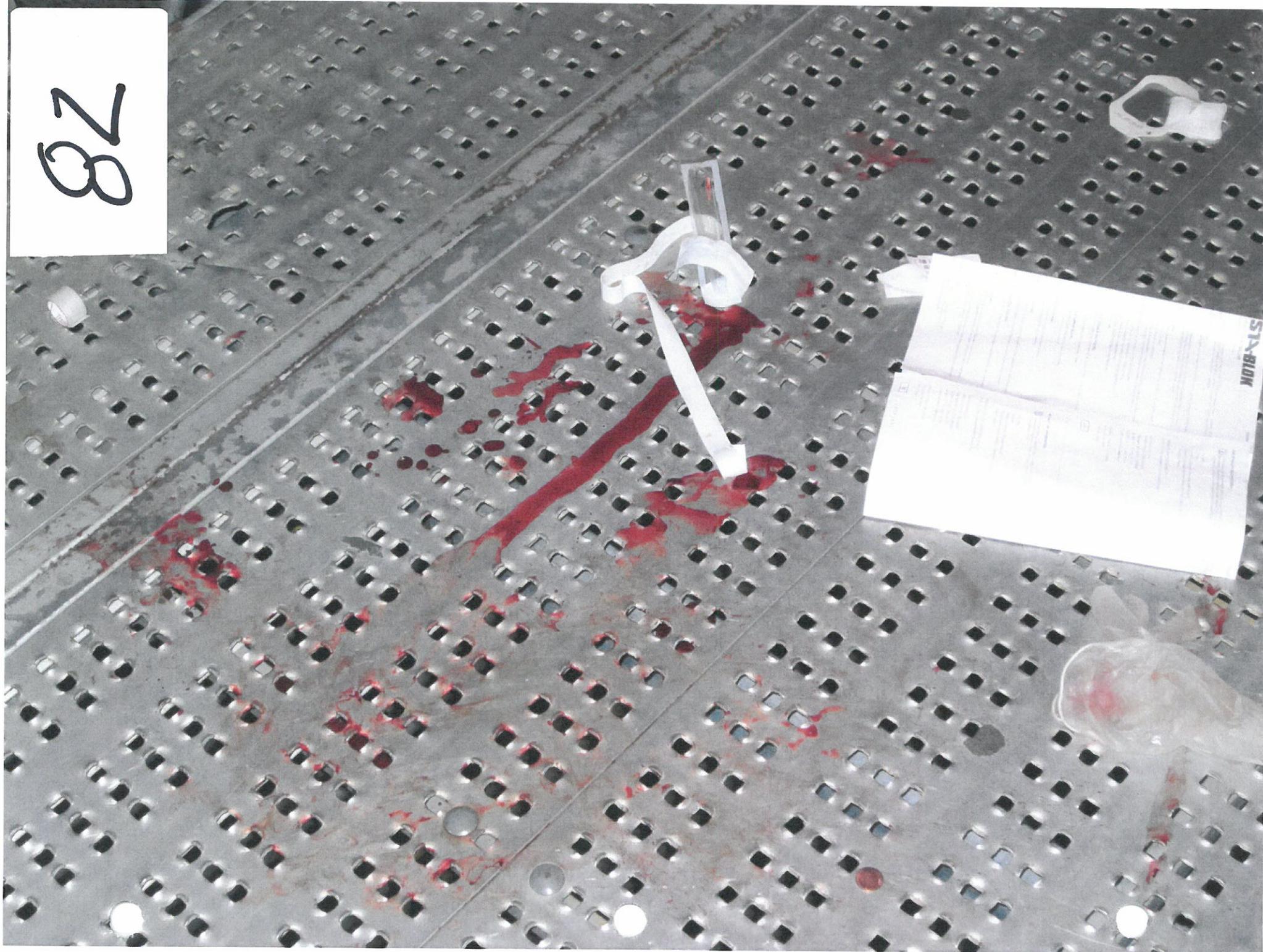
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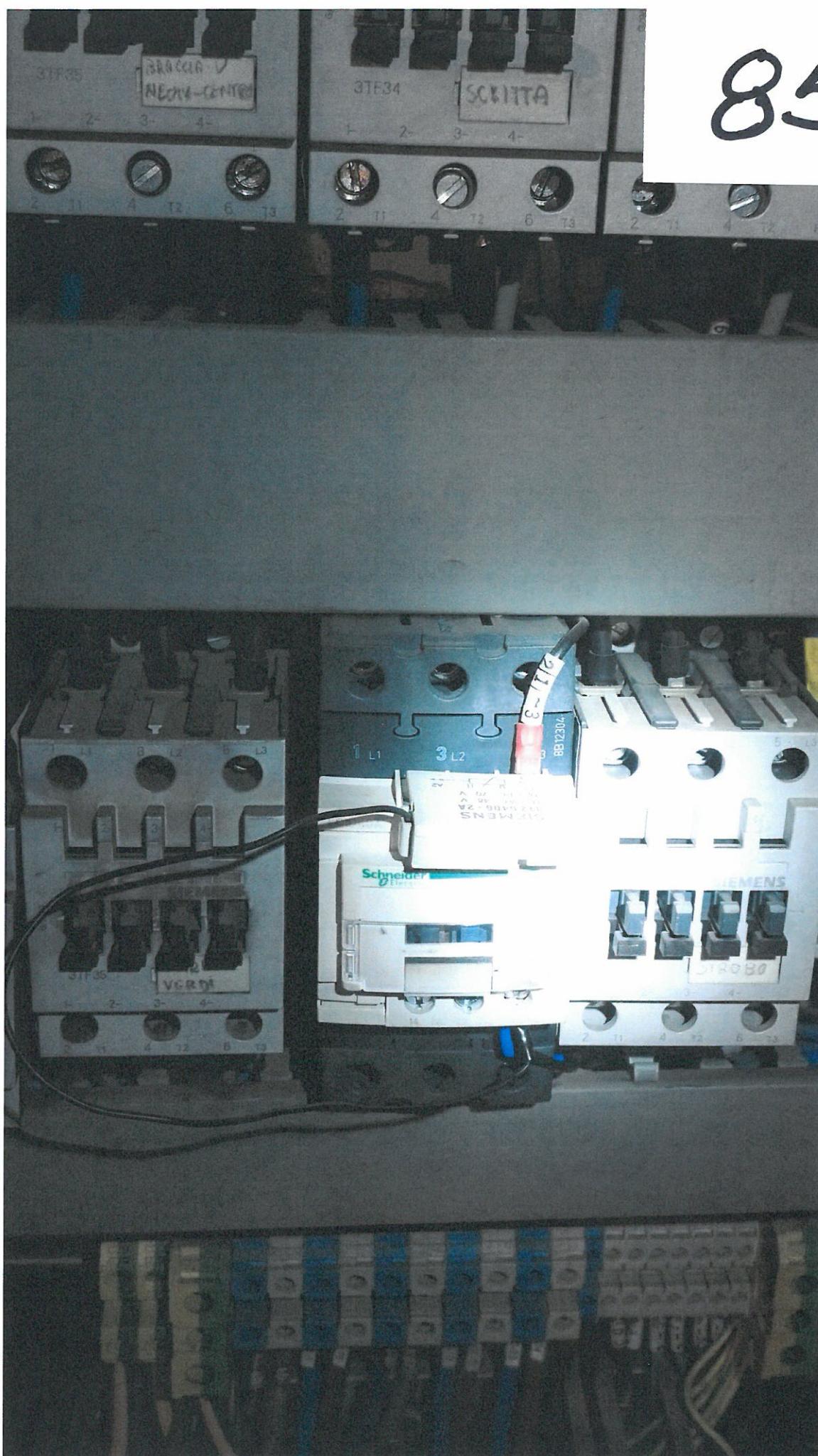
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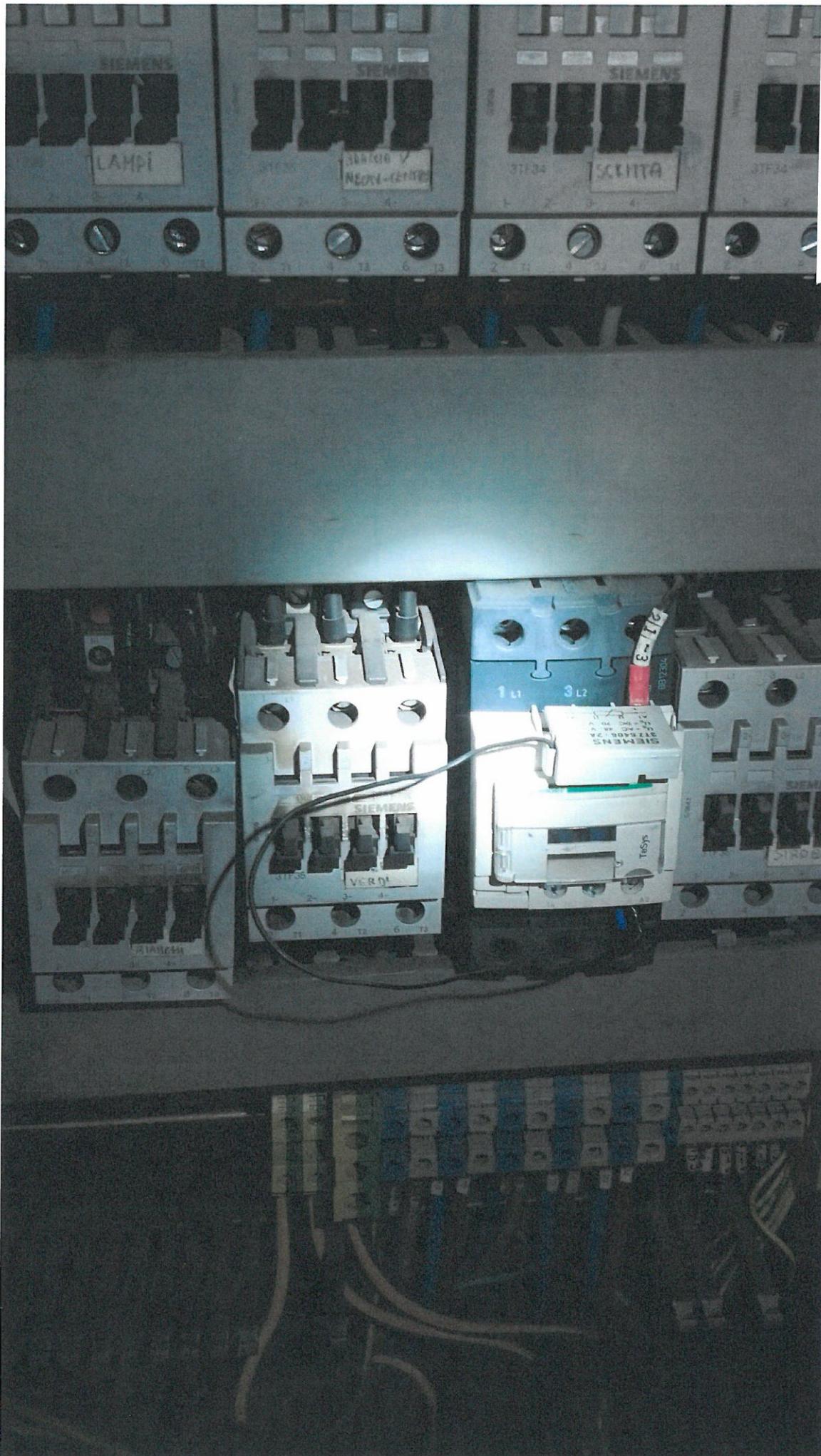


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Article 16.

Occupational Safety and Health Act of North Carolina.

**§ 95-126. Short title and legislative purpose.**

(a) This Article shall be known as the "Occupational Safety and Health Act of North Carolina" and also may be referred to by abbreviations as "OSHANC."

(b) Legislative findings and purpose:

- (1) The General Assembly finds that the burden of employers and employees of this State resulting from personal injuries and illnesses arising out of work situations is substantial; that the prevention of these injuries and illnesses is an important objective of the government of this State; that the greatest hope of attaining this objective lies in programs of research, education and enforcement, and in the earnest cooperation of the federal and State governments, employers and employees.
- (2) The General Assembly of North Carolina declares it to be its purpose and policy through the exercise of its powers to ensure so far as possible every working man and woman in the State of North Carolina safe and healthful working conditions and to preserve our human resources:
  - a. By encouraging employers and employees in their effort to reduce the number of occupational safety and health hazards at the place of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions;
  - b. By providing that employers and employees have separate but dependent responsibilities and rights with respect to achieving safe and healthful working conditions;
  - c. By authorizing the Commissioner to develop occupational safety and health standards applicable to business giving consideration to the needs of employers and employees and to adopt standards promulgated from time to time by the Secretary of Labor under the Occupational Safety and Health Act of 1970, and by creating a safety and health review commission for carrying out adjudicatory functions under this Article;
  - d. By building upon advances already made through employer and employee initiative for providing safe and healthful working conditions;
  - e. By providing occupational health criteria which will assure insofar as practicable that no employee will suffer diminished health, functional capacity, or life expectancy as a result of his work experience;
  - f. By providing for training programs to increase the number and competence of personnel engaged in the field of occupational safety and health;
  - g. By providing an effective enforcement program which shall include a prohibition against giving advance notice of an inspection and sanctions for any individual violating this prohibition;
  - h. By providing for appropriate reporting procedures with respect to occupational safety and health which procedures will help achieve the objectives of this Article and accurately describe the nature of the occupational safety and health problem;
  - i. By encouraging joint employer-employee efforts to reduce injuries and diseases arising out of employment;

- j. By providing for research in the field of occupational safety and health, by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems;
- k. By exploring ways to discover latent diseases, establishing causal connections between diseases and work in environmental conditions, and conducting other research relating to health problems, in recognition of the fact that occupational health standards present problems often different from those involved in occupational safety;
- l. By authorizing the Commissioner to enter into contracts with the Department of Health and Human Services, or any other State or local units, to the end the Commissioner and the Department of Health and Human Services and other State or local units may fully cooperate and carry out the ends and purposes of this Article.
- m. The General Assembly of North Carolina appoints and elects the North Carolina Department of Labor as the designated agency to administer the Occupational Safety and Health Act of North Carolina. (1973, c. 295, s. 1; c. 476, s. 128; 1989, c. 727, s. 219(13); 1997-443, s. 11A.33; 2005-133, s. 2.)

### **§ 95-127. Definitions.**

In this Article, unless the context otherwise requires:

- (1) The term "Advisory Council" shall mean the Advisory Council or body established under this Article.
- (2) The term "Commission" means the North Carolina Occupational Safety and Health Review Commission established under this Article.
- (3) The term "classified service" means a position included in the State Merit System of Personnel Administration subject to the laws, rules and regulations of the North Carolina Human Resources Commission as administered by the Director of the Office of State Human Resources and as set forth in Chapter 126 of the General Statutes.
- (4) The term "Commissioner" means the Commissioner of Labor of North Carolina.
- (5) The term "days" shall mean a calendar day unless otherwise noted.
- (6) The term "Department" means the Department of Labor of North Carolina.
- (7) The term "Deputy Commissioner" means the Deputy Commissioner of the North Carolina Department of Labor, who is appointed by the Commissioner to aid and assist the Commissioner in the performance of his duties. The Deputy Commissioner shall exercise such power and authority as delegated to him by the Commissioner.
- (8) The term "Director" means the officer or agent appointed by the Commissioner of Labor for the purpose of assisting in the administration of the Occupational Safety and Health Act of North Carolina.
- (9) The term "employee" means an employee of an employer who is employed in a business or other capacity of his employer, including any and all business units and agencies owned and/or controlled by the employer.
- (10) The term "employer" means a person engaged in a business who has employees, including any state or political subdivision of a state, but does not include the employment of domestic workers employed in the place of residence of his or her employer.
- (11) The term "established federal standard" means any operative occupational safety and health standard established by any agency of the United States

and presently in effect, or contained in any act of Congress in force on the date of enactment of this Article, and adopted by the Secretary of Labor under the Occupational Safety and Health Act of 1970.

- (12) The term "federal act," as referred to in this Article, means the Occupational Safety and Health Act of 1970 (Public Law 91-596, 91st Congress, Act of December 29, 1970, 84 Stat. 1950).
- (13) The term "imminent danger" means any conditions or practices in any place of employment which are such that a danger exists which could reasonably be expected to cause death, or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this Article.
- (14) The term "issue" means an industrial, occupational or hazard grouping.
- (15) The term "occupational safety and health standards" means a standard which requires conditions, or the adoption or use of one or more practices, means, methods, safety devices, operations or processes reasonably necessary and appropriate to provide safe and healthful employment and places of employment, and shall include all occupational safety and health standards adopted and promulgated by the Secretary which also may be and are adopted by the State of North Carolina under the provisions of this Article. This term includes but is not limited to interim federal standards, consensus standards, any proprietary standards or permanent standards, as well as temporary emergency standards which may be adopted by the Secretary, promulgated as provided by the Occupational Safety and Health Act of 1970, and which standards or regulations are published in the Code of Federal Regulations or otherwise properly promulgated under the federal act or any appropriate federal agencies.
- (16) The term "person" means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives.
- (17) The term "Secretary" means the United States Secretary of Labor.
- (18) A "serious violation" shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use at such place of employment, unless the employer did not know, and could not, with the exercise of reasonable diligence, know of the presence of the violation.
- (19) The term "State" means the State of North Carolina. (1973, c. 295, s. 2; 1987, c. 282, s. 14; 2005-133, s. 3; 2013-382, s. 9.1(c).)

#### **§ 95-128. Coverage.**

The provisions of this Article or any standard or regulation promulgated pursuant to this Article shall apply to all employers and employees except:

- (1) The federal government, including its departments, agencies and instrumentalities;
- (2) Employees whose safety and health are subject to protection under the Atomic Energy Act of 1954, as amended;
- (3) Employees whose safety and health are subject to protection under the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. 801) and the Federal Metal and Nonmetallic Mine Safety Act (30 U.S.C. 725), or Subtitle V of Title 49 of the United States Code;

- (4) Railroad employees whose safety and health are subject to protection under Subtitle V of Title 49 of the United States Code;
- (5) Employees engaged in all maritime operations;
- (6) Employees whose employer is within that class and type of employment which does not permit federal funding, on a matching basis, to the State in return of State enforcement of all occupational safety and health issues. (1973, c. 295, s. 3; 1998-217, s. 27.)

### **§ 95-129. Rights and duties of employers.**

Rights and duties of employers shall include but are not limited to the following provisions:

- (1) Each employer shall furnish to each of his employees conditions of employment and a place of employment free from recognized hazards that are causing or are likely to cause death or serious injury or serious physical harm to his employees;
- (2) Each employer shall comply with occupational safety and health standards or regulations promulgated pursuant to this Article;
- (3) Each employer shall refrain from any unreasonable restraint on the right of the Commissioner or Director, or their lawfully appointed agents, to inspect the employer's place of business. Each employer shall assist the Commissioner, the Director or the lawful agents of either or both of them, in the performance of their inspection duties by supplying or by making available information, any necessary personnel or necessary inspection aides;
- (4) Any employer, or association of employers, is entitled to participate in the development of standards by submission of comments on proposed standards, participation in hearings on proposed standards, or by requesting the development of standards on a given issue under G.S. 95-131;
- (5) Any employer is entitled, under G.S. 95-137, to review of any citation issued because of his alleged violation of any standard promulgated under this Article, or the length of the abatement period allowed for the correction of an alleged violation;
- (6) Any employer is entitled, under G.S. 95-137, to a review of any penalty in the form of civil damages assessed against him because of his alleged violation of this Article;
- (7) Any employer is entitled, under G.S. 95-132, to seek an order granting a variance from any occupational safety or health standard;
- (8) Any employer is entitled, under G.S. 95-152, to protection of his trade secrets and other legally privileged communications. (1973, c. 295, s. 4.)

### **§ 95-130. Rights and duties of employees.**

Rights and duties of employees shall include but are not limited to the following provisions:

- (1) Employees shall comply with occupational safety and health standards and all rules, regulations and orders issued pursuant to this Article which are applicable to their own actions and conduct.
- (2) Employees and representatives of employees are entitled to participate in the development of standards by submission of comments on proposed standards, participation in hearings on proposed standards, or by requesting the development of standards on a given issue under G.S. 95-131.
- (3) Employees shall be notified by their employer of any application for a temporary order granting the employer a variance from any provision of this Article or standard or regulation promulgated pursuant to this Article.

- (4) Employees shall be given the opportunity to participate in any hearing which concerns an application by their employer for a variance from a standard promulgated under this Article.
- (5) Any employee who may be adversely affected by a standard or variance issued pursuant to this Article may file a petition for review with the Commissioner who shall review the matters set forth and alleged in the petition.
- (6) Any employee who has been exposed or is being exposed to toxic materials or harmful physical agents in concentrations or at levels in excess of that provided for by any applicable standard shall have a right to file a petition for review with the Commissioner who shall investigate and pass upon same.
- (7) Subject to regulations issued pursuant to this Article any employee or authorized representative of employees shall be given the right to request an inspection and to consult with the Commissioner, Director, or their agents, at the time of the physical inspection of any work place as provided by the inspection provision of this Article.
- (8) to (10) Repealed by Session Laws 1991 (Regular Session, 1992), c. 1021, s. 2.
- (11) Any employee or representative of employees who believes that any period of time fixed in the citation given to his employer for correction of a violation is unreasonable has the right to contest such time for correction by filing a written and signed notice within 15 working days from the date the citation is posted within the establishment.
- (12) Nothing in this or any other provision of this Article shall be deemed to authorize or require medical examination, immunization, or treatment for those who object thereto on religious grounds, except where such is necessary for the protection of the health or safety of others. (1973, c. 295, s. 5; 1991 (Reg. Sess., 1992), c. 1021, s. 2; 2011-366, s. 8.)

**§ 95-131. Development and promulgation of standards; adoption of federal standards and regulations.**

(a) All occupational safety and health standards promulgated under the federal act by the Secretary, and any modifications, revision, amendments or revocations in accordance with the authority conferred by the federal act or any other federal act or agency relating to safety and health and adopted by the Secretary, shall be adopted as the rules of the Commissioner of this State unless the Commissioner decides to adopt an alternative State rule as effective as the federal requirement and providing safe and healthful employment in places of employment as required by the federal act and standards and regulations heretofore referred to and as provided by the Occupational Safety and Health Act of 1970. Chapter 150B of the General Statutes governs the adoption of rules by the Commissioner.

(b), (c) Repealed by Session Laws 1991, c. 418, s. 8.

(d) Rules adopted under this section shall provide insofar as possible the highest degree of safety and health protection for employees; other considerations shall be the latest available scientific data in the field, the feasibility of the standard, and experience gained under this and other health and safety laws. Whenever practical the standards established in a rule shall be expressed in terms of objective criteria and of the performance desired. In establishing standards dealing with toxic materials or harmful physical agents, the Commissioner, after consultation and recommendations of the Department of Health and Human Services, shall set a standard which most adequately assures, to the extent possible, on the basis of the most available evidence that no employee will suffer material impairment of health or functional

capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life.

(e) The Commissioner may not adopt State standards, for products distributed or used in interstate commerce, which are different from federal standards for such products unless the adoption of such State standard, or standards, is required by compelling local conditions and does not unduly burden interstate commerce.

(f) Repealed by Session Laws 1991, c. 418, s. 8.

(g) Any rule, regulation, scope, or standard for agricultural employers adopted or promulgated prior to July 12, 1988, that differs from the federal rule, regulation, scope, or standard is repealed effective September 1, 1989, unless readopted pursuant to Chapter 150B of the General Statutes. (1973, c. 295, s. 6; c. 476, s. 128; 1975, 2nd Sess., c. 983, s. 81; 1987, c. 285, s. 17; 1987 (Reg. Sess., 1988), c. 1111, ss. 7, 8; 1989, c. 727, s. 219(14); 1991, c. 418, s. 8; 1997-443, s. 11A.34.)

## **§ 95-132. Variances.**

### **(a) Temporary Variances. -**

- (1) The Commissioner may upon written application by an employer issue an order granting such employer a temporary variance from standards adopted by this Article or promulgated by the Commissioner under this Article. Any such order shall prescribe the practices, means, methods, operations and processes which the employer must adopt or use while the variance is in effect and state in detail a program for coming into compliance with the standard.
- (2) An application for a temporary variance shall contain all information required as enumerated in 29 C.F.R. 1905.10(b) which is hereby incorporated by reference, as if herein fully set out.
- (3) Upon receipt of an application for an order granting a temporary variance, the Commissioner to whom such application is addressed may issue an interim order granting such a temporary variance, for the purpose of permitting time for an orderly consideration of such application. No such interim order may be effective for longer than 180 days.
- (4) Such a temporary variance may be granted only after notice to employees and interested parties and opportunity for hearing. The temporary variance may be for a period of no longer than required to achieve compliance or one year, whichever is shorter, and may be renewed only once. Application for renewal of a variance must be filed in accordance with provisions in the initial grant of the temporary variance.
- (5) An order granting a temporary variance shall be issued only if the employer establishes
  - a. (i) That he is unable to comply with the standard by the effective date because of unavailability of professional or technical personnel or materials and equipment required or necessary construction or alteration of facilities or technology, (ii) that all available steps have been taken to safeguard his employees against the hazards covered by the standard, and (iii) that he has an effective program for coming into compliance with the standard as quickly as practicable, or
  - b. That he is engaged in an experimental program as described in subsection (c) of this section as hereinafter stated.

### **(b) Permanent Variances. -**

- (1) Any affected employer may apply to the Commissioner for a rule or order for a permanent variance from a standard promulgated under this section.

Affected employees shall be given notice of each such application and an opportunity to participate in a hearing. The Commissioner shall issue such rule or order if he determines on the record, after opportunity for an inspection where appropriate and a hearing, that the proponent of the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by an employer will provide employment and places of employment to his employees which are as safe and healthful as those which would prevail if he complied with the standard.

- (2) The rule or order so issued shall prescribe the conditions the employer must maintain, and the practices, means, methods, operations, and processes which he must adopt and utilize to the extent they differ from the standard in question.
- (3) Such a rule or order may be modified or revoked upon application by an employer, employees, or by the Commissioner on his own motion, in the manner prescribed for its issuance under this subsection at any time after six months from its issuance.

(c) Experimental Variances. - The Commissioner is authorized to grant a variance from any standard or portion thereof whenever he determines that such variance is necessary to permit an employer to participate in an experiment approved by him designed to demonstrate or validate new and improved techniques to safeguard the health or safety of workers. (1973, c. 295, s. 7; 1997-456, s. 27.)

### **§ 95-133. Office of Director of Occupational Safety and Health; powers and duties of the Director.**

(a) There is hereby created and established in the North Carolina Department of Labor a division to be known as the Occupational Safety and Health Division. The Commissioner shall appoint a Director to administer this division who shall be subject to the direction and supervision of the Commissioner. The Director shall carry out the responsibilities of the State of North Carolina as prescribed under the Occupational Safety and Health Act of 1970, and any subsequent federal laws or regulations relating to occupational safety and health, and this Article, as written, revised or amended by legislative enactment and as delegated or authorized by the Commissioner. The Commissioner shall make and promulgate such rules, amendments, or revisions in rules, as he may deem advisable for the administration of the office, he shall also accept and use the services, facilities, and personnel of any agency of the State or of any subdivision of State government, either as a free service or by reimbursement. The Director shall devote full time to his duties of office and shall not hold any other office. The Director, subject to the approval of the Commissioner, shall select a professional staff of qualified and competent employees to assist in the statewide administration of the Article. All of the employees referred to herein shall be under the classified service, as herein defined in G.S. 95-127, subdivision (3).

(b) Subject to the general supervision of the Commissioner and Deputy Commissioner, the Director shall be responsible for the administration and enforcement of all laws, rules and regulations which it is the duty of the Division to administer and enforce. The Director shall have the power, jurisdiction and authority to:

- (1) Uniformly superintend, enforce and administer applicable occupational safety and health laws of the State of North Carolina;
- (2) Make or cause to be made all necessary inspections, analyses and research for the purpose of seeing that all laws and rules and regulations which the office has the duty, power and authority to enforce are promptly and effectively carried out;

- (3) Make all necessary investigations, develop information and reports upon conditions of employee safety and health, and upon all matters relating to the enforcement of this Article and all lawful regulations issued thereunder;
- (4) Report to the Federal Occupational Safety and Health Administration any information which it may require;
- (5) Recommend to the Commissioner such rules, regulations, standards, or changes in rules, regulations and standards which the Director deems advisable for the prevention of accidents, occupational hazards or the prevention of industrial or occupational diseases;
- (6) Recommend to the Commissioner that he institute proceedings to remove from his or her position any employee of the Office who accepts any favor, privilege, money, object of value, or property of any kind whatsoever or who shall give prior notice of a compliance inspection of a work place unless authorized under the provisions of this Article;
- (7) Employ experts, consultants or organizations for work related to the occupational safety and health program of the Division and compensate same with the approval of the Commissioner;
- (8) Institute hearings, investigations, request the issuance of citations and propose such penalties as he may in his judgment consider necessary to carry out the provisions of this Article;
- (9) The Commissioner shall have the power and authority to issue all types of notices, citations, cease and desist orders, or any other pleading, form or notice necessary to enforce compliance with this Article as hereinafter set forth. The Commissioner is also empowered and authorized to apply to the courts of the State having jurisdiction for orders or injunctions restraining unlawful acts and practices prohibited by this Article or not in compliance with this Article and to apply for mandatory injunctions to compel enforcement of the Article, and the Commissioner is authorized, and further authorized by and through his agents, to institute criminal actions or proceedings for such violations of the Article as are subject to criminal penalties. The Director shall recommend to the Commissioner the imposition and amount of civil penalties provided by this Article, and the Commissioner may institute such proceedings as necessary for the enforcement and payment of such civil penalties subject to such review of the Commission as hereinafter set forth.
- (10) The Director may recommend to the Commissioner that any person, firm, corporation or witness be cited for contempt or for punishment as of contempt, and the Commissioner is authorized to enter any order of contempt or as of contempt as he may deem proper and necessary, and any hearing examiner may recommend to the Commissioner that such order or citation for contempt be made.
- (11) The Commissioner or the Director, or their authorized agents, shall have the power and authority to issue subpoenas for witnesses and for the production of any and all papers and documents necessary for any hearing or other proceeding and to require the same to be served by the process officers of the State. The Commissioner and the Director may administer any and all oaths that are necessary in the enforcement of this Article and may certify as to the authenticity of all records, papers, documents and transcripts under the seal of the Department of Labor.
- (12) All orders, citations, cease and desist orders, stop orders, sanctions and contempt orders, civil penalties and the proceedings thereon shall be subject

to review by the Commission as hereinafter provided, including all assessments for civil penalties. (1973, c. 295, s. 8; 2005-133, s. 4.)

**§ 95-134. Advisory Council.**

(a) There is hereby established a State Advisory Council on Occupational Safety and Health consisting of 11 members, appointed by the Commissioner, composed of three representatives from management, three representatives from labor, four representatives of the public sector with knowledge of occupational safety and occupational health professions and one representative of the public sector with knowledge of migrant labor. The Commissioner shall designate one of the members from the public sector as chairman and all members of the State Advisory Council shall be selected insofar as possible upon the basis of their experience and competence in the field of occupational safety and health.

(b) The Council shall advise, consult with, and make recommendations to the Commissioner on matters relating to the administration of this Article. The Council shall hold no fewer than two meetings during each calendar year. All meetings of the Advisory Council shall be open to the public and a transcript shall be kept and made available for public inspection.

(c) The Director shall furnish to the Advisory Council such secretarial, clerical and other services as he deems necessary to conduct the business of the Advisory Council. The members of the Advisory Council shall be compensated for reasonable expenses incurred, including necessary time spent in traveling to and from their place of residence within the State to the place of meeting, and mileage and subsistence as allowed to State officials. The members of the Advisory Council shall be compensated in accordance with Chapter 138 of the General Statutes.

(d) In addition to its other duties, the Advisory Council shall assist the Commissioner in formulating and setting standards under the provisions of this Article. For this purpose the Commissioner may appoint persons qualified by experience and affiliation to present the viewpoint of the employers involved, persons similarly qualified to present the viewpoint of the workers involved, and some persons to represent the health and safety agencies of the State. The Commissioner for this purpose may include representatives or professional organizations of technicians or professionals specializing in occupational safety or health. Such persons appointed for temporary purposes may be paid such per diem and expenses of attending meetings as provided in Chapter 138 of the General Statutes. (1973, c. 295, s. 9; 1977, c. 806; 1983, c. 717, ss. 17, 18.)

**§ 95-135. North Carolina Occupational Safety and Health Review Commission.**

(a) The North Carolina Occupational Safety and Health Review Commission is hereby established. The Commission shall be composed of three members from among persons who, by reason of training, education or experience, are qualified to carry out the functions of the Commission under this Article. The Governor shall appoint the members of the Commission and name one of the members as chairman of the Commission. The terms of the members of the Commission shall be six years except that the members of the Commission first taking office shall serve, as designated by the Governor at the time of appointment, one for a term of two years, one for a term of four years, and the member of the Commission designated as chairman shall serve for a term of six years. Any vacancy caused by the death, resignation, or removal of a member prior to the expiration of the term for which he was appointed shall be filled by the Governor for the remainder of the unexpired term. The Governor shall fill all vacancies occurring by reason of the expiration of the term of any members of the Commission.

(b) The Commission shall hear and issue decisions on appeals entered from citations and abatement periods and from all types of penalties. Appeals from orders of the Director dealing with conditions or practices that constitute imminent danger shall not be stayed by the

Commission until after full and adequate hearing. The Commission in the discharge of its duties under this Article is authorized and empowered to administer oaths and affirmations and institute motions, cause the taking of depositions, interrogatories, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with any appeal or proceeding for review before the Commission.

(c) The Commission shall meet at least once each calendar quarter but it may hold call meetings or hearings upon at least three days' notice to each member by the chairman and at such time and place as the chairman may fix. The chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission and shall appoint such hearing examiners and other employees as he deems necessary to assist in the performance of the Commission's functions and fix the compensation of such employees with the approval of the Governor. The assignment and removal of hearing examiners shall be made by the Commission, and any hearing examiner may be removed for misfeasance, malfeasance, misconduct, immoral conduct, incompetency, the commission of any crime, or for any other good and adequate reason as found by the Commission. The Commission shall give notice to such hearing examiner, along with written allegations as to the charges against him, and the same shall be heard by the Commission, and its decision shall be final. The compensation of the members of the Commission shall be on a per diem basis and shall be fixed by the Governor. The chairman of the Commission may be paid a higher rate of compensation than the other two members of the Commission. For the purpose of carrying out its duties and functions under this Article, two members of the Commission shall constitute a quorum and official action can be taken only on the affirmative vote of at least two members of the Commission. On matters properly before the Commission the chairman may issue temporary orders, subpoenas, and other temporary types of orders subject to the subsequent review of the Commission. The issuance of subpoenas, orders to take depositions, orders requiring interrogatories and other procedural matters of evidence issued by the chairman shall not be subject to review.

(d) Every official act of the Commission shall be entered of record and its hearings and records shall be open to the public. The Commission is authorized and empowered to make such procedural rules as are necessary for the orderly transaction of its proceedings. Unless the Commission adopts a different rule, the proceedings, as nearly as possible, shall be in accordance with the Rules of Civil Procedure, G.S. 1A-1. The Commission may order testimony to be taken by deposition in any proceeding pending before it at any stage of such proceeding. Any person, firm or corporation, and its agents or officials, may be compelled to appear and testify and produce like documentary evidence before the Commission. Witnesses whose depositions are taken under this section, and the persons taking such depositions, shall be entitled to the same fees as are paid for like services in the courts of the State.

(e) The rules of procedure prescribed or adopted by the Commission shall provide affected employees or representatives of affected employees an opportunity to participate as parties to hearings under this section.

(f) Any member of the Commission may be removed by the Governor for inefficiency, neglect of duty, or any misfeasance or malfeasance in office. Before such removal the Governor shall give notice of hearing and state the allegations against the member of the Commission, and the same shall be heard by the Governor, and his decision shall be final. The principal office of the Commission shall be in Raleigh, North Carolina, but whenever it deems that the convenience of the public or of the parties may be promoted, or delay or expense may be minimized, the Commission may hold hearings or conduct other proceedings at any place in the State.

(g) In case of a contumacy, failure or refusal of any person to testify before the Commission, give any type of evidence, or to produce any books, records, papers,

correspondence, memoranda or other records, such person upon such failure to obey the orders of the Commission may be punished for contempt or any other matter involving contempt as set forth and described by the general laws of the State. The Commission shall issue no order for contempt without first finding the facts involved in the proceeding. Witnesses appearing before the Commission shall be entitled to the same fees as those paid for the services of said witnesses in the courts of the State, and all such fees shall be taxed against the interested parties according to the judgment and discretion of the Commission.

(h) The Director shall consult with the chairman of the Commission with respect to the preparation and presentation to the Commission for adoption of all necessary forms or citations, notices of all kinds, forms of stop orders, all forms and orders imposing penalties and all forms of notices or applications for review by the Commission, and any and all other procedural papers and documents necessary for the administration of the Article as applied to employers and employees and for all procedures and proceedings brought before the Commission for review.

(i) A hearing examiner appointed by the chairman of the Commission shall hear, and make a determination upon, any proceeding instituted before the Commission and may hear any motion in connection therewith, assigned to the hearing examiner, and shall make a report of the determination which constitutes the hearing examiner's final disposition of the proceedings. A copy of the report of the hearing examiner shall be furnished to the Director and all interested parties involved in any appeal or any proceeding before the hearing examiner for the hearing examiner's determination. The report of the hearing examiner shall become the final order of the Commission 30 days from the date of the report as determined by the hearing examiner, unless within the 30-day period any member of the Commission had directed that the report shall be reviewed by the entire Commission as a whole. Upon application for review of any report or determination of a hearing examiner, before the 30-day period expires, the Commission shall schedule the matter for hearing, on the record, except the Commission may allow the introduction of newly discovered evidence, or in its discretion the taking of further evidence upon any question or issue. All interested parties to the original hearing shall be notified of the date, time and place of the hearing and shall be allowed to appear in person or by attorney at the hearing. Upon review of the report and determination by the hearing examiner the Commission may adopt, modify or vacate the report of the hearing examiner and notify the interested parties. The report of the hearing examiner, and the report, decision, or determination of the Commission upon review shall be in writing and shall include findings of fact, conclusions of law, and the reasons or bases for them, on all the material issues of fact, law, or discretion presented on the record. The report, decision or determination of the Commission upon review shall be final unless further appeal is made to the courts under the provisions of Chapter 150B of the General Statutes, as amended, entitled: "Judicial Review of Decisions of Certain Administrative Agencies."

(j) Repealed by Session Laws 1993, c. 300, s. 1. (1973, c. 295, s. 10; c. 1331, s. 3; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 955, ss. 6, 7; 1987, c. 827, s. 1; 1987 (Reg. Sess., 1988), c. 1111, s. 10; 1993, c. 300, s. 1; c. 474, s. 1; 2005-133, ss. 1, 5; 2006-203, s. 21.)

### **§ 95-136. Inspections.**

(a) In order to carry out the purposes of this Article, the Commissioner or Director, or their duly authorized agents, upon presenting appropriate credentials to the owner, operator, or agent in charge, are authorized:

- (1) To enter without delay, and at any reasonable time, any factory, plant, establishment, construction site, or other area, work place or environment where work is being performed by an employee of an employer; and
- (2) To inspect and investigate during regular working hours, and at other reasonable times, and within reasonable limits, and in a reasonable manner,

any such place of employment and all pertinent conditions, processes, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any such employer, owner, operator, agent or employee.

(3) The Commissioner or Director, or their duly authorized agents, shall reinspect any place of employment where a willful serious violation was found to exist during the previous inspection and a final Order has been entered.

(b) In making his inspections and investigations under this Article, the Commissioner may issue subpoenas to require the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be reimbursed for all travel and other necessary expenses which shall be claimed and paid in accordance with the prevailing travel regulations of the State. In case of a failure or refusal of any person to obey a subpoena under this section, the district judge or superior court judge of the county in which the inspection or investigation is conducted shall have jurisdiction upon the application of the Commissioner to issue an order requiring such person to appear and testify or produce evidence as the case may require, and any failure to obey such order of the court may be punished by such court as contempt thereof.

(c) Subject to regulations issued by the Commissioner a representative of the employer and an employee authorized by the employees shall be given an opportunity to consult with or to accompany the Commissioner, Director, or their authorized agents, during the physical inspection of any work place described under subsection (a) for the purpose of aiding such inspection. Where there is no authorized employee representative, the Commissioner, Director, or their authorized agents, shall consult with a reasonable number of employees concerning matters of health and safety in the work place.

(d) (1) Any employees or an employee representative of the employees who believe that a violation of a safety or health standard exists that threatens physical harm, or that an imminent danger exists, may request an inspection by giving notice of such violation or danger to the Commissioner or Director. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by employees or the employee representatives of the employees, and a copy shall be provided the employer or his agent no later than at the time of inspection. Upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy of any record published, released or made available pursuant to subsection (e) of this section. If upon receipt of such notification the Commissioner or Director determines there are reasonable grounds to believe that such violation or danger exists, the Commissioner or Director or their authorized agents shall promptly make a special investigation in accordance with the provisions of this section as soon as practicable to determine if such violation or danger exists. If the Commissioner or Director determines there are not reasonable grounds to believe that a violation or danger exists he shall notify the employees or representatives of the employees, in writing, of such determination.

(2) Prior to, during and after any inspection of a work place, any employees or representative of employees employed in such work place may notify the inspecting Commissioner, Director, or their agents, in writing, of any violation of this Article which they have reason to believe exists in such work place. The Commissioner shall, by regulation, establish procedures for informal review of any refusal by a representative of the Commissioner or Director to issue a citation with respect to any such alleged violation and

shall furnish the employees or representatives of employees requesting such review a written statement of the reason for the Commissioner's or Director's final disposition of the case.

(e) The Commissioner is authorized to compile, analyze, and publish, in summary or detailed form, all reports or information obtained under this section. Files and other records relating to investigations and enforcement proceedings pursuant to this Article shall not be subject to inspection and examination as authorized by G.S. 132-6 while such investigations and proceedings are pending, except that, subject to the provisions of subsection (e1) of this section, an employer cited under the provisions of this Article is entitled to receive a copy of the official inspection report which is the basis for citations received by the employer following the issuance of citations.

(e1) Upon the written request of and at the expense of the requesting party, official inspection reports of inspections conducted pursuant to this Article shall be available for release in accordance with the provisions contained in this subsection and subsection (e) of this section. The names of witnesses or complainants, and any information within statements taken from witnesses or complainants during the course of inspections or investigations conducted pursuant to this Article that would name or otherwise identify the witnesses or complainants, shall not be released to any employer or third party and shall be redacted from any copy of the official inspection report provided to the employer or third party. Witness statements that are in the handwriting of the witness or complainant shall, upon the request of and at the expense of the requesting party, be transcribed so that information that would not name or otherwise identify the witness may be released. A witness or complainant may, however, sign a written release permitting the Commissioner to provide information specified in the release to any persons or entities designated in the release. Nothing in this section shall be construed to prohibit the use of the name or statement of a witness or complainant by the Commissioner in enforcement proceedings or hearings held pursuant to this Article. The Commissioner shall make available to the employer 10 days prior to a scheduled enforcement hearing unredacted copies of: (i) the witness statements the Commissioner intends to use at the enforcement hearing, (ii) the statements of witnesses the Commissioner intends to call to testify, or (iii) the statements of witnesses whom the Commissioner does not intend to use that might support an employer's affirmative defense or otherwise exonerate the employer; provided a written request for the statement or statements is received by the Commissioner no later than 12 days prior to the enforcement hearing. If the request for an unredacted copy of the witness statement or statements is received less than 12 days before a hearing, the statement or statements shall be made available as soon as practicable. The Commissioner may permit the use of names and statements of witnesses and complainants and information obtained during the course of inspections or investigations conducted pursuant to this Article by public officials in the performance of their public duties.

(f) (1) Inspections conducted under this section shall be accomplished without advance notice, subject to the exception in subdivision (2) below this subsection.  
(2) The Commissioner or Director may authorize the giving to any employer or employee advance notice of an inspection only when the giving of such notice is essential to the effectiveness of such inspection, and in keeping with regulations issued by the Commissioner.

(g) The Commissioner shall prescribe such rules and regulations as he may deem necessary to carry out his responsibilities under this Article, including rules and regulations dealing with the inspection of an employer's establishment. (1973, c. 295, s. 11; 1993, c. 317, ss. 1, 2; 1999-364, ss. 1, 2; 2003-174, s. 1.)

### **§ 95-136.1. Special emphasis inspection program.**

(a) As used in this section, a "special emphasis inspection" is an inspection by the Department's occupational safety and health division that is scheduled because of an employer's high frequency of violations of safety and health laws or because of an employer's high risk or high rate of work-related fatalities or work-related serious injuries or illnesses.

(b) The Department shall develop and implement a special emphasis inspection program that targets for special emphasis inspection employers who:

- (1) Have a high rate of serious or willful violations of any standard, rule, order, or other requirement under this Article, or of regulations prescribed pursuant to the Federal Occupational Safety and Health Act of 1970, in a one-year period;
- (2) Have a high rate of work-related deaths, or a high rate of work-related serious injuries or illnesses, in a one-year period; or
- (3) Are engaged in a type of industry determined by the Department to be at high risk for serious or fatal work-related injuries or illnesses.
- (4) Repealed by Session Laws 1997-443, s. 17(b).

To identify an employer for a special emphasis inspection, the Department shall use the most current data available from its own database and from other sources, including State departments, divisions, boards, commissions, and other State entities. The Department shall ensure that every employer targeted for a special emphasis inspection is inspected at least one time within the two-year period following targeting of the employer by the Department. The Department shall update its special emphasis inspection records at least annually.

(c) The Director shall make information about the special emphasis inspection program available prior to the date of implementation of the program.

(d) The Department shall by March 1, 1995, and annually thereafter, report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division of the General Assembly on the impact of the special emphasis inspection program on safety and health compliance and enforcement. (1991 (Reg. Sess., 1992), c. 924, s. 1; 1997-443, s. 17(b).)

### **§ 95-137. Issuance of citations.**

(a) If, upon inspection or investigation, the Director or his authorized representative has reasonable grounds to believe that an employer has not fulfilled his duties as prescribed in this Article, or has violated any standard, regulation, rule or order promulgated under this Article, he shall with reasonable promptness issue a citation to the employer. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provisions of the act, standards, rules and regulations, or orders alleged to have been violated. In addition, the citation shall fix a reasonable time for the abatement of the violation. The Director may prescribe procedures for the issuance of a notice in lieu of a citation with respect to de minimis violations which have no direct or immediate relationship to safety or health. Each citation or notice in lieu of citation issued under this section, or a copy or copies thereof, shall be prominently posted, as prescribed in regulations issued by the Director, at or near such place a violation referred to in the citation occurred.

(b) Procedure for Enforcement. -

- (1) If, after an inspection or investigation, the Director issues a citation under any provisions of this Article, the Director shall, within a reasonable time after the termination of such inspection or investigation, notify the employer by certified mail with return receipt, by signature confirmation as provided by the U.S. Postal [Service], by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand delivery of any penalty, if any, the Director has recommended to the Commissioner to be proposed under the provisions of this Article and that the employer has

15 working days within which to notify the Director that the employer wishes to:

- a. Contest the citation or proposed assessment of penalty; or
- b. Request an informal conference.

Following an informal conference, unless the employer and Department have entered into a settlement agreement, the Director shall send the employer an amended citation or notice of no change. The employer has 15 working days from the receipt of the amended citation or notice of no change to notify the Director that the employer wishes to contest the citation or proposed assessment of penalty, whether or not amended. If, within 15 working days from the receipt of the notice issued by the Director, the employer fails to notify the Director that the employer requires an informal conference to be held or intends to contest the citation or proposed assessment of penalty, and no notice is filed by any employee or representative of employees under the provisions of this Article within such time, the citation and the assessment as proposed to the Commissioner shall be deemed final and not subject to review by any court.

- (2) If the Director has reason to believe that an employer has failed to correct a violation for which a citation has been issued within the period permitted for its correction (which period shall not begin to run until the entry of a final order by the Commission in case of any review proceedings under this Article initiated by the employer in good faith and not solely for a delay or avoidance of penalties), the Director shall notify the employer by certified mail with return receipt, by signature confirmation as provided by the U.S. Postal Service, by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand delivery of such failure and of the penalty proposed to be assessed under this Article by reason of such failure and that the employer has 15 working days within which to notify the Director that the employer wishes to contest the Director's notification of the proposed assessment of penalty. If, within 15 working days from the receipt of notification issued by the Director, an employer fails to notify the Director that the employer intends to contest the notification or proposed recommendation of penalty, the notification and the proposed assessment made by the Director shall be final and not subject to review by any court.
- (3) No citation may be issued under this section after the expiration of six months following the occurrence of any violation.
- (4) If an employer notifies the Director that the employer intends to contest a citation issued under the provisions of this Article or notification issued under the provisions of this Article, or if, within 15 working days of the receipt of a citation under this Article, any employee or representative thereof files a notice with the Director alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the Director shall immediately advise the Commission of such notification, and the Commission shall afford an opportunity for a hearing. The Commission shall thereafter issue an order, based on findings of fact, affirming, modifying, or vacating the Director's citation or the proposed penalty fixed by the Commissioner, or directing other appropriate relief, and such order shall become final 30 days after its issuance. Upon showing by an employer of a good faith effort to comply with the abatement requirements of a citation, and that an abatement has not been completed because of factors beyond the

employer's reasonable control, the Director, after an opportunity for a hearing as provided in this Article, shall issue an order affirming or modifying the abatement requirements in such citation. The rules of procedure prescribed by the chairman of the Commission shall provide affected employees or representatives of affected employees an opportunity to participate as parties to hearings under this section.

- (5) Repealed by Session Laws 1993, c. 300, s. 2.
- (6) Each local unit of government shall report each violation for which it is issued a citation to its local governing board at its next public meeting and to its workers compensation insurance carrier or to the risk pool of which it is a member pursuant to Article 23 of Chapter 58 of the General Statutes. (1973, c. 295, s. 12; 1987 (Reg. Sess., 1988), c. 1111, s. 11; 1991 (Reg. Sess., 1992), c. 1020, ss. 2, 3; 1993, c. 300, s. 2; 2003-308, s. 6; 2005-133, ss. 6, 7; 2007-231, s. 10.)

### **§ 95-138. Civil penalties.**

(a) The Commissioner, upon recommendation of the Director, or the North Carolina Occupational Safety and Health Review Commission in the case of an appeal, shall have the authority to assess penalties against any employer who violates the requirements of this Article, or any standard, rule, or order adopted under this Article, as follows:

- (1) A minimum penalty of five thousand dollars (\$5,000) to a maximum penalty of seventy thousand dollars (\$70,000) may be assessed for each willful or repeat violation.
- (2) A penalty of up to seven thousand dollars (\$7,000) shall be assessed for each serious violation, except that a penalty of up to fourteen thousand dollars (\$14,000) shall be assessed for each serious violation that involves injury to an employee under 18 years of age.
- (2a) A penalty of up to seven thousand dollars (\$7,000) may be assessed for each violation that is adjudged not to be of a serious nature.
- (3) A penalty of up to seven thousand dollars (\$7,000) may be assessed against an employer who fails to correct and abate a violation, within the period allowed for its correction and abatement, which period shall not begin to run until the date of the final Order of the Commission in the case of any appeal proceedings in this Article initiated by the employer in good faith and not solely for the delay of avoidance of penalties. The assessment shall be made to apply to each day during which the failure or violation continues.
- (4) A penalty of up to seven thousand dollars (\$7,000) shall be assessed for violating the posting requirements, as required under the provisions of this Article.

(b) The Commissioner shall adopt uniform standards that the Commissioner, the Commission, and the hearing examiner shall apply when determining appropriateness of the penalty. The following factors shall be used in determining whether a penalty is appropriate:

- (1) Size of the business of the employer being charged.
- (2) The gravity of the violation.
- (3) The good faith of the employer.
- (4) The record of previous violations; provided that for purposes of determining repeat violations, only the record within the previous three years is applicable.
- (5) Whether the violation involves injury to an employee under 18 years of age.

The report of the hearing examiner and the report, decision, or determination of the Commission on appeal shall specify the standards applied in determining the reduction or affirmation of the penalty assessed by the Commissioner.

(c) The clear proceeds of all civil penalties and interest recovered by the Commissioner, together with the costs thereof, shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1973, c. 295, s. 13; 1987 (Reg. Sess., 1988), c. 1111, s. 12; 1989 (Reg. Sess., 1990), c. 844; 1991, c. 329, s. 1; c. 761, s. 17; 1993, c. 474, s. 2; 1998-215, s. 111; 2004-203, s. 39(a); 2005-133, s. 8; 2006-39, s. 3; 2009-351, s. 4.)

#### **§ 95-139. Criminal penalties.**

(a) Any employer who willfully violates any standard, rule, regulation or order promulgated pursuant to the authority of this Article, and the violation causes the death of any employee 18 years of age or older, shall be guilty of a Class 2 misdemeanor, which may include a fine of not more than ten thousand dollars (\$10,000).

(b) Any employer who willfully violates any standard, rule, regulation, or order promulgated pursuant to the authority of this Article, and the violation causes the death of any employee under 18 years of age, shall be guilty of a Class 2 misdemeanor, which may include a fine of not more than twenty thousand dollars (\$20,000).

(c) If an employer is convicted of more than one violation of subsection (a) or (b) of this section, the subsequent violation shall be penalized as follows:

(1) The employer shall be guilty of a Class 1 misdemeanor which may include a fine of not more than twenty thousand dollars (\$20,000) if the subsequent violation results in the death of an employee 18 years of age or older.

(2) The employer shall be guilty of a Class 1 misdemeanor which may include a fine of not more than forty thousand dollars (\$40,000) if the subsequent violation results in the death of an employee under 18 years of age.

(d) This section shall not prevent any prosecuting officer of the State of North Carolina from proceeding against such employer on a prosecution charging any degree of willful or culpable homicide. Any person who gives advance notice of any inspection to be conducted under this Article, without authority from the Commissioner, Director, or any of their agents to whom such authority has been delegated, shall be guilty of a Class 2 misdemeanor.

(e) Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or any other document filed or required to be maintained pursuant to this Article, shall be guilty of a Class 2 misdemeanor, which may include a fine of (i) not more than ten thousand dollars (\$10,000) for falsifications pertaining to employees 18 years of age or older or (ii) not more than twenty thousand dollars (\$20,000) for falsifications pertaining to employees under 18 years of age.

(f) Whoever shall commit any kind of assault upon or whoever kills a person engaged in or on account of the performance of investigative, inspection, or law-enforcement functions shall be subject to prosecution under the general criminal laws of the State and upon such charges as the proper prosecuting officer shall charge or allege. (1973, c. 295, s. 14; 1993, c. 539, s. 671; 1994, Ex. Sess., c. 24, s. 14(c); 2009-351, s. 5.)

#### **§ 95-140. Procedures to counteract imminent dangers.**

(a) The superior courts of this State shall have jurisdiction, upon petition of the Commissioner, to restrain any conditions or practices in any place of employment which are such that a danger exists, which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this Article. Any order issued under this section may require such steps to be taken as may be necessary to avoid, correct, or remove such imminent danger and prohibit the employment or presence of any individual in locations

or under conditions where such imminent danger exists, except those individuals whose presence is necessary to avoid, correct or remove such imminent danger or to maintain the capacity of a continuous process operation to assume normal operations without a complete cessation of operations, or where a cessation of operations is necessary to permit such to be accomplished in a safe and orderly manner.

(b) Upon the filing of any such petition the superior court shall, without the necessity of showing an adequate remedy at law, have jurisdiction to grant injunctive relief or temporary restraining order pending the outcome of an enforcement proceeding pursuant to this Article. The proceeding shall be as provided under the statutes and Rules of Civil Procedure of this State except that no temporary restraining order issued without notice shall be effective for a period longer than five days.

(c) Whenever and as soon as an inspector concludes that conditions or practices described in this section exist in any place of employment, he shall inform the affected employees and employers of the danger and that he is recommending to the Commissioner that relief be sought. If the Commissioner arbitrarily or capriciously fails to seek relief under this section, any employee who may be injured by reason of such failure, or the representative of such employee, may bring an action against the Commissioner in the superior court of the district in which the imminent danger is alleged to exist or the employer has its principal office or place of business, for a writ of mandamus to compel the Commissioner to seek such an order for such relief as may be appropriate. (1973, c. 295, s. 15.)

#### **§ 95-141. Judicial review.**

Any person or party in interest who has exhausted all administrative remedies available under this Article and who is aggrieved by a final decision in a contested case is entitled to judicial review in accordance with Article 4 of Chapter 150B of the General Statutes. The Commissioner may file in the office of the clerk of the superior court of the county wherein the person, firm or corporation under order resides, or, if a corporation is involved, in the county wherein the corporation maintains its principal place of business, or in the county wherein the violation occurred, a certified copy of a final order of the Commissioner unappealed from, or of a final order of the Commissioner affirmed upon appeal. Whereupon, the clerk of said court shall enter judgment in accordance therewith and notify the parties. Such judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though said judgment had been rendered in a suit duly heard and determined by the superior court of the General Court of Justice. (1973, c. 295, s. 16; c. 1331, s. 3; 1987, c. 827, s. 265.)

#### **§ 95-142. Legal representation of the Department of Labor.**

It shall be the duty of the Attorney General to represent the Department of Labor or designate some member of his staff to represent them in all actions or proceedings in connection with this Article. (1973, c. 295, s. 17.)

#### **§ 95-143. Record keeping and reporting.**

(a) Each employer shall make available to the Commissioner, or his agents, in such manner as the Commissioner shall require, copies of the same records and reports regarding his activities relating to this Article as are required to be made, kept, or preserved by section 8(c) of the Federal Occupational Safety and Health Act of 1970 (P.L. 91-596) and regulations made pursuant thereto.

(b) Each employer shall make, keep and preserve and make available to the Commissioner such records regarding his activities relating to this Article as the Commissioner may prescribe by regulation as necessary and appropriate for the enforcement of this Article or for developing information regarding the causes and prevention of occupational accidents and illnesses. In order to carry out the provisions of this section such regulations may include

provisions requiring employers to conduct periodic inspections. The Commissioner shall also issue regulations requiring that employers, through posting of notices or other appropriate means, keep the employees informed of their protections and obligations under this Article, including the provisions of applicable standards. The Commissioner shall prescribe regulations requiring employers to maintain accurate records of, and to make reports at least annually on, work-related deaths, injuries and illnesses other than minor injuries requiring only first-aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

(c) The Commissioner shall issue regulations requiring employers to maintain accurate records of employee exposure to potentially toxic materials of [or] harmful physical agents which are required to be monitored or measured under this Article. Such regulations shall provide employees or their representatives with an opportunity to observe such monitoring or measuring, and to have access to the records thereof. Such regulations shall also make appropriate provisions for each employee or former employee to have access to such records as will indicate his own exposure to toxic materials or harmful physical agents. Each employer shall promptly notify any employee who has been or is being exposed to toxic materials or harmful physical agents in concentrations or at levels which exceed those prescribed by an applicable safety and health standard promulgated under this Article and shall inform any employee who is being thus exposed of the corrective action being taken.

(d) Any information obtained by the Commissioner or his duly authorized agents under this Article shall be obtained with a minimum burden upon employers, especially those operating small businesses. Unnecessary duplication of efforts in obtaining information shall be reduced to the maximum extent feasible. (1973, c. 295, s. 18; 1991 (Reg. Sess., 1992), c. 894, s. 1.)

#### **§ 95-144. Statistics.**

(a) In order to further the purposes of this Article, the Commissioner shall develop and maintain an effective program of collection, compilation, and analysis of occupational safety and health statistics. The Commissioner shall compile accurate statistics on work injuries and illnesses which shall include all disabling, serious or significant injuries or illnesses, whether or not involving loss of time from work, other than minor injuries requiring only first-aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job. On the basis of records made and kept pursuant to the provisions of this Article, employers shall file such reports with the Commissioner as he shall prescribe by regulations and as may be necessary to carry out his functions.

(b) A listing of employment by area and industry of employers who have an assigned account number by the Division of Employment Security (DES) of the Department of Commerce of this State shall be supplied annually to the Commissioner by the DES. The listing of employment by area and industry shall contain at least the following: employer name; DES account number; indication of whether multiple or a single report unit; number of reporting units; average employment; establishment size code; geographical area; any four-digit code; and any other information deemed necessary by the Commissioner to meet federal reporting requirements. (1973, c. 295, s. 19; 2011-401, s. 5.1.)

#### **§ 95-145. Reports to the Secretary.**

(a) The Commissioner shall require employers in the State to make reports to the Secretary in the same manner and to the same extent as if the plan in force under this Article were not in effect, and

(b) The Commissioner shall make such reports to the Secretary in such form and containing such information as the Secretary from time to time shall require. (1973, c. 295, s. 20.)

**§ 95-146. Continuation and effectiveness of this Article.**

The Commissioner shall from time to time furnish to the Secretary information and assurances that this Article is being administered by adequate methods and by standards and enforcement procedures which are and will continue to be as effective as federal standards. (1973, c. 295, s. 21.)

**§ 95-147. Training and employee education.**

(a) The Commissioner, after consultation with appropriate departments and agencies of the State and subdivisions of government, shall conduct, directly or by grants or contracts, (i) education programs to provide an adequate supply of qualified personnel to carry out the purposes of this Article, and (ii) informational, educational and training programs on the importance of and proper use of adequate safety and health equipment to encourage voluntary compliance.

(b) The Commissioner is also authorized to conduct, directly or by grants or contracts, short-term training of personnel engaged in work related to the Commissioner's responsibilities under this Article.

(c) The Commissioner shall provide employers and employees programs covering recognition, avoidance and prevention of unsafe and unhealthful working conditions in places of employment and shall advise employers and employees, or their representatives, [of] effective means to prevent occupational injuries and illnesses. (1973, c. 295, s. 22.)

**§ 95-148. Safety and health programs of State agencies and local governments.**

It shall be the responsibility of each administrative department, commission, board, division or other agency of the State and of counties, cities, towns and subdivisions of government to establish and maintain an effective and comprehensive occupational safety and health program which is consistent with the standards and regulations promulgated under this Article. The head of each agency shall:

- (1) Provide safe and healthful places and conditions of employment, consistent with the standards and regulations promulgated by this Article;
- (2) Acquire, maintain, and require the use of safety equipment, personal protective equipment, and devices reasonably necessary to protect employees;
- (3) Consult with and encourage employees to cooperate in achieving safe and healthful working conditions;
- (4) Keep adequate records of all occupational accidents and illnesses for proper evaluation and corrective action;
- (5) Consult with the Commissioner as to the adequacy as to form and content of records kept pursuant to this section;
- (6) Make an annual report to the Commissioner with respect to occupational accidents and injuries and the agency's program under this section.

The Commissioner shall transmit annually to the Governor and the General Assembly a report of the activities of the State agency and instrumentalities under this section. If the Commissioner has reason to believe that any local government program or program of any agency of the State is ineffective, he shall, after unsuccessfully seeking by negotiations to abate such failure, include this in his annual report to the Governor and the General Assembly, together with the reasons therefor, and may recommend legislation intended to correct such condition.

The Commissioner shall have access to the records and reports kept and filed by State agencies and instrumentalities pursuant to this section unless such records and reports are

required to be kept secret in the interest of national defense, in which case the Commissioner shall have access to such information as will not jeopardize national defense.

Employees of any agency or department covered under this section are afforded the same rights and protections as granted employees in the private sector.

This section shall not apply to volunteer fire departments not a part of any municipality.

Any municipality with a population of 10,000 or less may exclude its fire department from the operation of this section by a resolution of the governing body of the municipality, except that the resolution may not exclude those firefighters who are employees of the municipality.

The North Carolina Fire and Rescue Commission shall recommend regulations and standards for fire departments. (1973, c. 295, s. 23; 1983, c. 164; 1985, c. 544; 1989, c. 750, s. 3; 1991 (Reg. Sess., 1992), c. 1020, s. 1.)

**§ 95-149. Authority to enter into contracts with other State agencies and subdivisions of government.**

The Commissioner may enter into contracts with the Department of Health and Human Services or any other State officer or State agency or State instrumentality, or any municipality, county, or other political subdivision of the State, for the enforcement, administration, and any other application of the provisions of this Article. (1973, c. 295, s. 24; 1989, c. 727, s. 24; 1997-443, s. 11A.35.)

**§ 95-150. Assurance of adequate funds to enforce Article.**

The Commissioner shall submit to the General Assembly a budget and request for appropriations to adequately administer this Article which shall be sufficient to give satisfactory assurance that this State will devote adequate funds to the administration and enforcement of the standards herein provided and the proper administration of this Article as required by federal standards. (1973, c. 295, s. 25.)

**§ 95-151. Discrimination.**

No employer, employee, or any other person related to the administration of this Article shall be discriminated against in any work, procedure, or employment by reason of sex, race, ethnic origin, or by reason of religious affiliation. (1973, c. 295, s. 26.)

**§ 95-152. Confidentiality of trade secrets.**

All information reported to or otherwise obtained by the Commissioner or his agents or representatives in connection with any inspection or proceeding under this Article which contains or which might reveal a trade secret shall be considered confidential, as provided by section 1905 of Title 18 of U.S.C., except as to carrying out this Article or when it is relevant in any proceeding under this Article. In any such proceeding the Commissioner, the Commission, or the court shall issue such orders as may be appropriate to protect the confidentiality of trade secrets. (1973, c. 295, s. 27; 2005-133, s. 9.)

**§ 95-153. Reserved for future codification purposes.**

**§ 95-154. Authorization for similar safety and health federal-state programs.**

Consistent with the requirements and conditions provided in this Article the State, upon the recommendation of the Commissioner of Labor and approval of the Governor, may enter into agreements or arrangements with other federal agencies for the purpose of administering occupational safety and health measures for such employees and employers within the State of North Carolina as may be covered by such federal safety and health statutes. (1973, c. 295, s. 29.)

**§ 95-155. Construction of Article and severability.**

This Article shall receive a liberal construction to the end that the safety and health of the employees of the State may be effectuated and protected. If any provision of this Article or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect other provisions or applications of the Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are severable. (1973, c. 295, s. 30.)

**§§ 95-156 through 95-160. Reserved for future codification purposes.**

## Article 14B.

### Amusement Device Safety Act of North Carolina.

#### **§ 95-111.1. Short title and legislative purpose.**

(a) This Article shall be known as the "Amusement Device Safety Act of North Carolina".

(b) The General Assembly finds that although most amusement devices are free from defect and operated in a safe manner, those which are not impose a substantial probability of serious and preventable injury to the public. Protection of the public from exposure to such unsafe conditions and the prevention of injuries is in the best interest and welfare of the people of the State.

(c) It is the intent of this Article that amusement devices shall be designed, constructed, assembled or disassembled, maintained, and operated so as to prevent injuries. (1985 (Reg. Sess., 1986), c. 990, s. 2.)

#### **§ 95-111.2. Scope.**

(a) This Article shall govern the design, construction, installation, plans review, testing, inspection, certification, operation, use, maintenance, alteration, relocation and investigation of accidents involving amusement devices.

(b) This Article shall not apply to any device which does not normally require the supervision or services of an operator. (1985 (Reg. Sess., 1986), c. 990, s. 2; 1991, c. 178, s. 1; 2003-170, s. 1.)

#### **§ 95-111.3. Definitions.**

(a) The term "amusement device" shall mean any mechanical or structural device or attraction that carries or conveys or permits persons to walk along, around or over a fixed or restricted route or course or within a defined area including the entrances and exits thereto, for the purpose of giving such persons amusement, pleasure, thrills or excitement. This term shall not include any of the following:

- (1) Devices operated on a river, lake, or any other natural body of water.
- (2) Wavepools.
- (3) Roller skating rinks.
- (4) Ice skating rinks.
- (5) Skateboard ramps or courses.
- (6) Mechanical bulls.
- (7) Buildings or concourses used in laser games.
- (8) All terrain vehicles.
- (9) Motorcycles.
- (10) Bicycles.
- (11) Mopeds.
- (12) Rock walls that are in a fixed, permanent location.
- (13) Zip-lines.
- (14) Funhouses, haunted houses, and similar walk-through devices that are erected temporarily on a seasonal basis and do not have mechanical components.
- (15) Playground equipment, including but not limited to soft contained play equipment, swings, seesaws, slides, stationary spring-mounted animal features, jungle gyms, rider-propelled merry-go-rounds, and trampolines.

(b) The term "amusement park" shall mean any tract or area used principally as a permanent location for amusement devices.

(b1) The term "carnival area" shall mean any area, track, or structure that is rented, leased, or owned as a temporary location for amusement devices.

(c) The term "Commissioner" shall mean the North Carolina Commissioner of Labor or his authorized representative.

(d) The term "Director" shall mean the Director of the Elevator and Amusement Device Division of the North Carolina Department of Labor.

(e) The term "operator" shall mean any person having direct control of the operation of an amusement device. The term "operator" shall not include any person on the device for the purpose of receiving amusement, pleasure, thrills, or excitement.

(f) The term "owner" shall mean any person or authorized agent of such person who owns an amusement device or in the event such device is leased, the lessee. The term "owner" also shall include the State of North Carolina or any political subdivision thereof or any unit of local government.

(g) The term "person" shall mean any individual, association, partnership, firm, corporation, private organization, or the State of North Carolina or any political subdivision thereof or any unit of local government.

(h) The term "waterslide" shall mean a stationary amusement device that provides a descending ride on a flowing water film through a trough or tube or on an inclined plane into a pool of water. This term does not include devices where the vertical distance between the highest and the lowest points does not exceed 15 feet. (1985 (Reg. Sess., 1986), c. 990, s. 2; 1987, c. 864, s. 90(a); 1991, c. 178, s. 2; 2011-366, s. 5.)

#### **§ 95-111.4. Powers and duties of Commissioner.**

The Commissioner of Labor is hereby empowered:

- (1) To delegate to the Director of the Elevator and Amusement Device Division such powers, duties and responsibilities as the Commissioner determines will best serve the public interest in the safe operation of amusement devices;
- (2) To supervise the Director of the Elevator and Amusement Device Division;
- (3) To adopt, modify, or revoke such rules and regulations as are necessary for the purpose of carrying out the provisions of this Article including, but not limited to, those governing the design, construction, installation, plans review, testing, inspection, certification, operation, use, maintenance, alteration and relocation of devices subject to the provisions of this Article. The rules and regulations promulgated pursuant to this rulemaking authority shall conform with good engineering and safety standards, formulas and practices;
- (4) To enforce rules and regulations adopted under authority of this Article;
- (5) To inspect and have tested for acceptance all new and relocated devices subject to the provisions of this Article. Relocated amusement devices shall be inspected upon reassembly at each new location within this State; provided that the Commissioner may provide for less frequent inspections when he determines that the device is of such a type and its use is of such a nature that inspection less often than upon each reassembly would not expose the public to an unsafe condition likely to result in serious personal injury or property damage;
- (6) To inspect amusement devices which have been substantially rebuilt or substantially modified so as to change the original action, structure or capacity of the device;
- (7) To make maintenance and periodic inspections and tests of all devices subject to the provisions of this Article. Devices located in amusement parks shall be inspected at least once annually;

- (8) To issue certificates of operation which certify for use such devices as are found to be in compliance with this Article and the rules and regulations promulgated thereunder;
- (9) To have reasonable access, with or without notice, to the devices subject to the provisions of this Article during reasonable hours, for purposes of inspection or testing;
- (10) To obtain an Administrative Search and Inspection Warrant in accordance with the provisions of Article 4A of Chapter 15 of the General Statutes;
- (11) To investigate accidents involving devices subject to the provisions of this Article to determine the cause of such accident, and he shall have full subpoena powers in conducting such investigation;
- (12) To institute proceedings in the civil courts of this State, when a provision of this Article or the rules and regulations promulgated thereunder has been violated;
- (13) To adopt, modify or revoke rules and regulations governing the qualifications of inspectors;
- (14) To grant exceptions from the requirements of the rules and regulations promulgated under authority of this Article and to permit the use of other devices when such exceptions and uses will not expose the public to an unsafe condition likely to result in serious personal injury or property damage;
- (15) To require that before any device subject to the provisions of this Article is erected in this State, or before any additions or alterations which substantially change such device are made, or before the physical spacing between such devices is changed, the owner or his authorized agent shall file with the Commissioner a written notice of his intention to do so and the type of device involved. Should circumstances necessitate, the Commissioner may require that such owner or his authorized agent furnish a copy of the plans, diagrams, specifications or stress analyses of such device before the inspection of same. When such plans, diagrams, specifications or stress analyses are requested by the Commissioner, he shall review them within 10 days of receipt, and upon approval, he shall authorize the device for use by the public;
- (16) To prohibit the use of any device subject to the provisions of this Article which is found upon inspection to expose the public to an unsafe condition likely to cause personal injury or property damage. Such device shall be made operational only upon the Commissioner's determination that such device has been made safe;
- (17) To order the payment of all civil penalties provided by this Article. The clear proceeds of funds collected pursuant to a civil penalty order shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2; and
- (18) To coordinate enforcement and inspection activity relative to equipment, devices and operations covered by this Article in order to minimize duplication of liability or regulatory responsibility on the part of the employer or owner.
- (19) To establish fees not to exceed two hundred fifty dollars (\$250.00) for the inspection and issuance of certificates of operation for devices subject to this Article that are in use. (1985 (Reg. Sess., 1986), c. 990, s. 2; 1987, c. 635, s. 2; 1998-215, s. 110; 2001-427, s. 11(f).)

**§ 95-111.5. Pre-opening inspection and test; records; revocation of certificate of operation.**

(a) An owner of a device subject to the provisions of this Article, or his authorized agent, is hereby required to make a pre-opening inspection and test of such device, prior to admitting the public, each day such device is intended to be used.

(b) An owner of a device subject to the provisions of this Article, or his authorized agent, is hereby required to maintain for at least the previous 12 months a signed record of the required pre-opening inspection and test and such other pertinent information as the Commissioner may require by rule or regulation.

(c) The Commissioner is hereby empowered to revoke the certificate of operation for any device regulated by this Article upon failure by the owner or his authorized agent to make the required pre-opening inspection and test or to maintain the required record. (1985 (Reg. Sess., 1986), c. 990, s. 2; 2003-170, s. 2.)

**§ 95-111.6. Noncomplying devices; appeal.**

(a) Whenever the Commissioner determines that a device is subject to the provisions of this Article and the operation of such device is exposing the public to an unsafe condition likely to result in serious personal injury or property damage, he immediately may order in writing that the use of the device be stopped or limited until such time as he determines that the device has been made safe for use by the public.

(b) Whenever the Commissioner determines that the provisions of this Article or the rules and regulations promulgated thereunder have not been complied with, he may refuse to issue or renew or may revoke, suspend or amend a certificate of operation.

(c) Whenever action is taken under this section, the affected party shall be given notice of the availability of an administrative hearing and of judicial review in accordance with Chapter 150B of the General Statutes, the Administrative Procedure Act. (1985 (Reg. Sess., 1986), c. 990, s. 2.)

**§ 95-111.7. Operation without certificate; operation not in accordance with Article or rules and regulations; operation after refusal to issue or after revocation of certificate.**

(a) No person shall operate or permit to be operated or use any device subject to the provisions of this Article without a valid certificate of operation.

(b) No person shall operate or permit to be operated or use any device subject to the provisions of this Article otherwise than in accordance with this Article and the rules and regulations promulgated thereunder.

(c) No person shall operate or permit to be operated or use any device subject to the provisions of this Article after the Commissioner has refused to issue or has revoked the certificate of operation for such device. (1985 (Reg. Sess., 1986), c. 990, s. 2.)

**§ 95-111.8. Location notice.**

No person shall operate for the public or permit the operation for the public any device subject to the provisions of this Article after initial assembly or after reassembly at any location within this State without first notifying the Commissioner of the intention to operate for the public. Written notice of a planned schedule of operation or use shall be received at least 10 working days prior to the first planned date of operation or use. (1985 (Reg. Sess., 1986), c. 990, s. 2; 2003-170, s. 3; 2011-366, s. 6.)

**§ 95-111.9. Operation of unsafe device.**

No person shall operate, permit to be operated or use any device subject to the provisions of this Article if such person knows or reasonably should know that such operation or use will

expose the public to an unsafe condition which is likely to result in personal injury or property damage. (1985 (Reg. Sess., 1986), c. 990, s. 2.)

#### **§ 95-111.10. Reports required.**

(a) The owner of any device regulated under the provisions of this Article, or his authorized agent, shall within 24 hours, notify the Commissioner of each and every occurrence involving such device when:

- (1) The occurrence results in death or injury requiring medical treatment, other than first aid, by a physician. First aid means the one time treatment or observation of scratches, cuts not requiring stitches, burns, splinters and contusions or a diagnostic procedure, including examination and x-rays, which does not ordinarily require medical treatment even though provided by a physician or other licensed personnel; or
- (2) The occurrence results in damage to the device indicating a substantial defect in design, mechanics, structure or equipment, affecting the future safe operation of the device. No reporting is required in the case of normal wear and tear.

(b) The Commissioner, without delay, after notification and determination that an occurrence involving injury or damage as specified in subsection (a) has occurred, shall make a complete and thorough investigation of the occurrence. The report of the investigation shall be placed on file in the office of the division and shall give in detail all facts and information available. The owner may submit for inclusion in the file results of investigations independent of the department's investigation.

(c) No person, following an occurrence as specified in subsection (a), shall operate, attempt to operate, use or move or attempt to move such device or part thereof, without the approval of the Commissioner, unless so as to prevent injury to any person or persons.

(d) No person, following an occurrence as specified in subsection (a), shall remove or attempt to remove from the premises any damaged or undamaged part of such device or repair or attempt to repair any damaged part necessary to a complete and thorough investigation. The department must initiate its investigation within 24 hours of being notified. (1985 (Reg. Sess., 1986), c. 990, s. 2.)

#### **§ 95-111.11. Operators.**

(a) Any operator of a device subject to the provisions of this Article shall be at least 18 years of age. An operator shall operate no more than one device at any given time. An operator shall be in attendance at all times the device is in operation.

(b) No person shall operate any amusement device equipment while under the influence of alcohol or any other impairing substance as defined by G.S. 20-4.01(14a). It shall be a violation of this subsection to knowingly permit the operation of any amusement device while the operator is under the influence of an impairing substance. (1985 (Reg. Sess., 1986), c. 990, s. 2; 2003-170, s. 4.)

#### **§ 95-111.12. Liability insurance.**

(a) No owner shall operate a device subject to the provisions of this Article, unless at the time, there is in existence a contract of insurance providing coverage of not less than one million dollars (\$1,000,000) per occurrence against liability for injury to persons or property arising out of the operation or use of such device or there is in existence a contract of insurance providing coverage of not less than five hundred thousand dollars (\$500,000) per occurrence against liability for injury to persons or property arising out of the operation or use of the amusement devices if the annual gross volume of the devices does not exceed two hundred seventy-five thousand dollars (\$275,000); provided waterslides shall not be required to be

insured as herein provided for an amount in excess of one hundred thousand dollars (\$100,000) per occurrence. The insurance contract to be provided must be by any insurer or surety that is acceptable to the North Carolina Insurance Commissioner and authorized to transact business in this State; provided, however, that insurance for waterslides may be purchased under Article 21 of Chapter 58 of the General Statutes or under G.S. 58-28-5(b).

(b) No certificate of operation shall be issued by the Commissioner until such time as the owner or his authorized agent provides proof of the required contract of insurance.

(c) The Commissioner shall have the right to request from the owner of a device regulated by this Article, or his authorized agent, proof of the required contract of insurance, and upon failure of the owner or his authorized agent to provide such proof, the Commissioner shall have the right to prevent the commencement of or to stop the operation of the device until such time as proof is provided.

(d) Operators of waterslides, as defined in G.S. 95-111.3(h), shall notify the Commissioner of all incidences of personal injury involving the waterslides, as required by G.S. 95-111.10(a). (1985 (Reg. Sess., 1986), c. 990, s. 2; 1987, c. 635, s. 1; c. 864, ss. 90(b), 91(a); 1989, c. 232; 1989 (Reg. Sess., 1990), c. 914; 1995, c. 517, s. 34.)

**§ 95-111.13. Violations; civil penalties; appeal; criminal penalties.**

(a) Any person who violates G.S. 95-111.7(a) or (b) (Operation without certificate; operation not in accordance with Article or rules and regulations) shall be subject to a civil penalty not to exceed two hundred fifty dollars (\$250.00) for each day each device is so operated or used.

(b) Any person who violates G.S. 95-111.7(c) (Operation after refusal to issue or after revocation of certificate) or G.S. 95-111.10(c) (Reports required) or G.S. 95-111.12 (Liability insurance) shall be subject to a civil penalty not to exceed five hundred dollars (\$500.00) for each day each device is so operated or used.

(c) Any person who violates G.S. 95-111.8 (Location notice) shall be subject to a civil penalty not to exceed five hundred dollars (\$500.00) for each day any device is operated or used without the location notice having been provided.

(d) Any person who violates the provisions of G.S. 95-111.10(d) (Reports required) or knowingly permits the operation of an amusement device in violation of G.S. 95-111.11(a) (Operator requirements) shall be subject to a civil penalty not to exceed five hundred dollars (\$500.00).

(e) Any person who violates G.S. 95-111.9 (Operation of unsafe device) or G.S. 95-111.11(b) (Operation of an amusement device while impaired) shall be subject to a civil penalty not to exceed one thousand dollars (\$1,000).

(f) In determining the amount of any penalty ordered under authority of this section, the Commissioner shall give due consideration to the appropriateness of the penalty with respect to the size of the business of the person being charged, the gravity of the violation, the good faith of the person and the record of previous violations.

(g) The determination of the amount of the penalty by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail with return receipt, by signature confirmation as provided by the U.S. Postal Service, by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand delivery, the person charged with the violation takes exception to the determination, in which event final determination of the penalty shall be made in an administrative proceeding and in a judicial proceeding pursuant to Chapter 150B of the General Statutes, the Administrative Procedure Act.

(h) The Commissioner may file in the office of the clerk of the superior court of the county wherein the person, against whom a civil penalty has been ordered, resides, or if a corporation is involved, in the county wherein the corporation maintains its principal place of

business, or in the county wherein the violation occurred, a certified copy of a final order of the Commissioner unappealed from, or of a final order of the Commissioner affirmed upon appeal. Whereupon, the clerk of said court shall enter judgment in accordance therewith and notify the parties. Such judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though said judgment had been rendered in a suit duly heard and determined by the superior court of the General Court of Justice.

(i) Any person who willfully violates any provision of this Article, and the violation causes the death of any person, shall be guilty of a Class 2 misdemeanor, which may include a fine of not more than ten thousand dollars (\$10,000); except that if the conviction is for a violation committed after a first conviction of such person, the person shall be guilty of a Class 1 misdemeanor, which may include a fine of not more than twenty thousand dollars (\$20,000). This subsection shall not prevent any prosecuting officer of the State of North Carolina from proceeding against such person on a prosecution charging any degree of willful or culpable homicide. (1985 (Reg. Sess., 1986), c. 990, s. 2; 2003-170, s. 5; 2003-308, s. 4; 2007-231, s. 8.)

#### **§ 95-111.14. Denial of permission to enter amusement device.**

The owner or amusement device operator may deny any person entrance to an amusement device if he or she believes such entry may jeopardize the safety of the person desiring entry, riders or other persons. (1985 (Reg. Sess., 1986), c. 990, s. 2.)

#### **§ 95-111.15. Legal representation.**

It shall be the duty of the Attorney General of North Carolina, when requested, to represent the Department of Labor in actions or proceedings in connection with this Article or the rules and regulations promulgated thereunder. (1985 (Reg. Sess., 1986), c. 990, s. 2.)

#### **§ 95-111.16. Authorization for similar safety and health federal-State programs.**

Consistent with the requirements and conditions provided in this Article and the rules and regulations promulgated thereunder, the State, upon recommendation of the Commissioner of Labor, may enter into agreements or arrangements with appropriate federal agencies for the purpose of administering the enforcement of federal statutes and rules and regulations governing devices subject to the provisions of this Article. (1985 (Reg. Sess., 1986), c. 990, s. 2.)

#### **§ 95-111.17. Confidentiality of trade secrets.**

All information reported to or otherwise obtained by the Commissioner or his agents or representatives in connection with any inspection or proceeding under this Article or the rules and regulations promulgated thereunder which contains or might reveal a trade secret shall be considered confidential, except as to carrying out this Article and the rules and regulations promulgated thereunder or when it is relevant in any proceeding under the same. In any such proceeding the Commissioner or the Court shall issue such orders as may be appropriate to protect the confidentiality of trade secrets. (1985 (Reg. Sess., 1986), c. 990, s. 2.)

#### **§ 95-111.18. Construction of Article and rules and regulations and severability.**

This Article and the rules and regulations promulgated thereunder shall receive a liberal construction to the end that the welfare of the people may be protected. If any provisions of either or the application thereof to any person or circumstances is held to be invalid, such invalidity shall not affect those provisions or applications which can be given effect without the invalid provision or application, and to that end the provisions of this Article are severable. (1985 (Reg. Sess., 1986), c. 990, s. 2.)

#### **§§ 95-112 through 95-115. Reserved for future codification purposes.**

## **Investigation of the Mel Park Vortex Incident**

### **North Carolina State Fair 2013**

**Date of accident:** 10/24/13 9:21pm

**Date device certified:** 10/16/2013

**Device state number:** 9699

**Device Registrant:** Family Attractions Amusement, LLC: 1709 A Gornto Rd #379, Valdosta GA.31601

**Device Owner:** Joshua Macaroni

**Device Operators:** Timothy Tutterrow and Omar Toranzo

**Amusement device inspection report:** #327-101713

**Injured persons:** Ride attendant—Brian Shelters; Ride patrons—Shykema Dempsey, Anthony Gorham, Kisha Gorham, and Justen Hunter

#### **Accident Summary and Device Description:**

On October 24, 2013 at approximately 9:21 p.m., several ride patrons and a ride attendant were injured during the unloading process of the Vortex amusement device. Witnesses stated that the device had completed a ride cycle and ride attendants were helping unload passengers. While the remaining passengers were unloading, the device started unexpectedly. All of the seat restraints were in the open position when the device started. Passengers unloading from the passenger carriers were not secured by the seat restraint system and the force created by the rotation and inversion of the device ejected patrons onto the decking.

Mel Park, a ride manufacturer in Melara, Italy, manufactured the Vortex amusement device in 1997. The device has two passenger carriers, each of which contains four groups of four seats [see photo #1]. The total number of seats is 32. Each passenger carrier is connected to a vertical arm attached to a horizontal arm, which in turn is attached to a central base. The configuration of the ride without the passenger carriers resembles a "T". With the carriers attached it resembles a scale with the two passenger carriers hanging from each side. When the device is in operation, the "T" portion rotates, and the two passenger carriers at the end of the arms rotate. The vertical arms attached to the passenger carriers rotate as well, causing the passenger carriers to invert.

Passengers are secured in their seats by two forms of safety restraints: first, an over the shoulder harness; and, second, a long metal lap bar that locks across each row of four seats [See photo #6]. When all of the seat restraints are closed and locked, a light indicator on the control panel in the operator's room illuminates (HL41) [See photos #13-17]. This light confirms that all restraints are locked and secure and that the ride is safe to operate.

Under normal operating conditions, after all passengers have been secured in the passenger carriers, the operator in the operator's control room (also referred to as a "dog box" or "doghouse") starts the ride cycle by turning the drive switches to the "on" position. The operator then turns potentiometers on the control panel. There are three potentiometers that are used when operating the device: #1 controls

the center rotation, #2 controls the passenger carrier rotation, and #3 controls the arm rotation. These potentiometers increase and decrease the speeds during the ride cycle to provide different levels of thrills. The ride cycle is ended when the operator slowly brings the potentiometers back to the zero position and turns the drive switch to the "off" position. When the device has returned to its parked position, the operator releases the seat restraints by pressing a button on the control panel in the control room. Once the operator releases the restraints, the ride can no longer operate until the restraints are all returned to the closed position. The button to engage the ride is lit green when the restraints are secured, and the light is not illuminated when any of the restraints are not properly secured. When the light is not illuminated, the ride will not run.

**Accident location:**

The "Old Midway" of the N.C. State Fairgrounds located at 1025 Blue Ridge Road, Raleigh, N.C. 27607 [See State Fair Map].

**Initial Inspection and Pre-Incident Report:**

**Inspection Process of the Vortex:**

The Vortex arrived by truck during the evening of October 15, 2013, but remained outside the gates of the fairgrounds. Upon notification that the ride was at the site, two Elevator and Amusement Device ("EAD") supervisors Wesley Tart and Tommy Petty separately went out and looked at it while it remained on the trailers. However, as the ride had not been brought to its location for set-up, no inspection of the ride occurred at this time.

At approximately 8:00 am on 10/16/2013, EAD inspectors Jeff Cole and Bart Evans were assigned to inspect the Vortex. They picked up and reviewed a copy of the manual at EAD's office in Dorton Arena and proceeded to the ride's assigned location on the Old Midway. By this time, the ride had been moved to its assigned location, but remained on its trailers.

The ride was transported on three trailers: one held the scenery; one held the main sweeps of the ride; and one held the passenger carriers. The inspectors began their inspection while the ride was still on the trailers and identified a crack in the footwell of one of the passenger carriers [See photo #6B]. The footwell is used to step into the passenger carrier. It was not a hazard that would be likely to cause a problem but the North Carolina rule is that a ride must pass 100% of the manufacturer's recommendations for setup, maintenance and operation or else it cannot be certified for use at an event. The inspectors informed Joshua Macaroni that the crack would need to be repaired prior to certification. (Mr. Macaroni was later determined to be the owner of the Vortex device.)

The inspectors stayed at the ride for much of the rest of the day, watching as it was erected according to the manual's instructions. The inspectors viewed the ride's blocking being put in place followed by the jack stands for the platform and finally the unfolding of the accordion-style diamond decking. As the ride was erected, the inspectors looked at each part of it for any potential hazards. For example, they looked at the main gear of the ride; they viewed the covered commentator underneath the decking; they looked at the drive shaft and electric motors that went on top of the main tower before they were

installed; and then they viewed the drive shaft once it was put in place. The inspectors also watched the connection of the scenery to the ride which involved interlocking panels being secured on the edge of the ride. The inspectors viewed the hydraulic attachment of the arms to the ride and the attachment of the passenger carriers on the arms.

The next step required the inspectors to observe the torqueing of the ride. The first things to be torqued were the horizontal arms. The inspectors noted that the manual required the torqueing to be applied to the nut and not to the bolt. The inspectors informed Joshua Macaroni that he needed to torque the nut and not the bolt. Mr. Macaroni told the inspectors he would need to get a different wrench.

Mr. Macaroni got the necessary wrench from another amusement company and started to direct the torqueing. The inspectors watched the torqueing while listening for a click that occurs when the correct pressure is put on the nut. More torqueing of nuts on the ride remained, but it was already approaching 6 pm. The inspectors left for the day; however, observation of the torqueing of most of the remaining nuts was performed by EAD Deputy Bureau Chief Tommy Petty, along with supervisors Frank Clements and Wesley Tart.

There were a few nuts that were unable to be torqued that night because Mr. Macaroni did not have the correct socket attachment. Mr. Macaroni informed the supervisors that he would have it there in the morning so that they could complete their observation of the torqueing process. Further assembly was postponed at around 9pm until the next morning.

On the morning of 10/17/13, Mr. Macaroni had the appropriate wrench attachment, and properly finished torqueing the nuts under supervision of Inspectors Cole and Evans. During the morning the decking and jacking were finished and the assemblers constructed the operator's control room ("dog box"). The inspectors also noted that during the night the electric lines had been run from a generator to the ride and the lines were properly connected. The inspectors also checked the fencing and decking of the ride for tripping hazards and proper connections. They looked at the operator's control panel for proper labeling. At this time, the assembly and inspection process was put on hold because the inspectors needed to attend the joint press conference of the Commissioner of Labor and the Commissioner of Agriculture. During the press conference, a certified welder fixed the crack in the footwell of the ride and a thread on a bolt in the passenger carrier was shortened to remove the chance someone could trip on it. These two fixes were the only required fixes for the structure of the device.

Following the press conference, the next step was to check the safety restraint system. During this testing, Jeff Cole and Wesley Tart watched as Josh Macaroni disengaged each harness individually while the ride operator, Tim Tutterrow, and EAD inspector Bart Evans remained in the operator's station to ensure the safety light went off when any restraint was in the open position. The safety light turning off meant that the ride's safety restraint systems were not engaged, and that the ride could no longer run. Inspector Evans watched as the light went off when each individual harness was placed in an open position indicating that the ride detected the safety was not in place. Inspector Evans then watched as the light also turned off for each of the lap bars that went across the lap of four patrons as a secondary

safety restraint system. After all the safety restraint systems were proven functional, the inspectors asked to see the emergency procedures for the ride because it was a new ride. Tim Tutterrow and Josh Macaroni demonstrated these procedures.

Joshua Macaroni and Inspector Evans were on the deck of the ride while Tim Tutterrow and Inspector Cole were in the operator's control room. Tutterrow and Macaroni showed the inspectors the emergency stop, the regular stop, and the emergency evacuation procedures. The first demonstration was the standard stop, which slowly stops the ride and puts it back into its standard load/unload position. The next process was the emergency stop procedure which, when engaged, shuts off power to all systems on the ride. The inspectors then viewed how the ride could be put back into the load/unload position without power. Finally, for the emergency evacuation procedure, the inspectors saw how the restraint systems could be disengaged after the emergency stop had cut the power. Each seatback could be removed and the air stopped to release the over-the-shoulder harnesses. Each lap bar could be released with a screwdriver, at which point the patrons would be able to exit the device.

The inspectors next looked at the electrical control cabinets that were located on the ride's decking and did not find anything out of the ordinary. The inspectors did find a relay had come loose, which can happen when the rides are transported by road [See photo #33 for an example of the cabinets]. Inspector Cole pointed the relay out to Joshua Macaroni who then went to secure it. The loose relay was in an electrical control cabinet located center left of the center column as viewed from the front of the ride [See photo #2 for the position of the cabinet].

After the relay was secured, Macaroni or Tutterrow ran the ride in a test run. This run was not for certification purposes, but to ensure everything was connected correctly. When the ride was run, Mr. Macaroni noticed that one of the two passenger carriers was not properly spinning. He told the inspector, "it was working until you made me fix it [the relay]," or words to that effect. Because the ride had just been running, the inspectors were not on the deck. While Mr. Macaroni went back to fix the relay, the inspectors remained off the deck as they believed it was going to be a quick reconnection and the ride would be run again. Mr. Macaroni walked over to the electrical control cabinet where the loose relay had been found, took a screwdriver out, and performed work in that panel for approximately 10 minutes. The ride inspector did not assist in determining why the passenger carrier was not spinning as diagnosing operational issues is outside the inspector's scope of duties.

The inspectors at the Vortex were then able to complete the certification by doing the final inspection. As this was a new ride, and was the last to be certified due to its late arrival on site, additional inspectors and supervisors were present to observe the device's test run. Inspectors Cole and Evans verified the blocking was appropriately constructed, the integrity of the jacks, and the proper construction of the ride. The inspectors informed Josh Macaroni and Tim Tutterrow that they could proceed with a certification cycle.

During the first cycle of the certification run, the inspectors stood back and watched the ride run through its normal process, and listened for anything that might sound like a problem. After the ride ran

without any issues, two EAD inspectors took a test ride of the device. The test ride was not required but it provided inspectors the chance to view the ride from another vantage point and hear things that they might have otherwise missed. As the ride went through its second cycle, none of the inspectors, supervisors, or workers from other nearby rides noted anything wrong or out of the ordinary. Therefore, the inspectors gave the device its certification and placed its sticker on the device. In total, ride inspectors spent two days inspecting the ride prior to certification.

Once a ride is certified, only maintenance and repair in accordance with the manufacturer's specifications and recommendations can be performed. Whenever the owner or operator of an amusement device desires to install or use a substitute part or device which is not consistent with the manufacturer's specifications, the owner or operator is responsible for proving, to the satisfaction of the EAD Director, that the use of the substitute part or device is as safe as the use of the manufacturer's specified part or device. 13 NCAC 15 .0428 In addition, an amusement device must be inspected and tested each day by the owner or properly trained operator of the device prior to being put into normal operation. A record of each inspection and test must be made upon completion of the test. 13 NCAC 15 .0410. All electrical wiring, equipment and apparatus used for amusement devices or for lighting must comply with the National Electrical Code, NFPA 70 and must be properly and legally installed, operated and maintained. 13 NCAC 15 .0424.

Inspector Duties During Fair Operation:

During the 10-day run of the State Fair, ride inspectors and supervisors are assigned shifts so that at least three inspectors and one supervisor are on site while rides are in operation. Prior to the daily opening of the rides, inspectors conduct a visual inspection from the midways in an effort to identify any hazards. During the hours of operation of the rides, inspectors walk the midways to observe ride operators and attendants as well as the operation of the ride. If the ride inspector observes an unsafe condition, he has the ability to shut down the ride and require the unsafe condition to be corrected prior to allowing the ride to resume operation. Each day ride inspectors review daily inspection reports generated by the ride operator of each device. The inspection reports document the required daily check that has to be conducted for each device prior to beginning operation. Ride inspectors also respond when contacted by the Red Cross regarding patron complaints or injuries related to amusement devices. Ride inspectors also document incidents as necessary. Ride inspectors do not assist in troubleshooting issues with amusement devices and they do not provide technical assistance for repairs.

Monday Report:

On 10/21/2013, NCDOL EAD Inspectors Cary Creech and Barry Wilson were alerted by the Red Cross to an issue reported by Wake County Sheriff's Office about the Vortex on the Old Midway. Upon arrival, the inspectors saw a group of officers in front of the ride. Inspectors Wilson and Creech spoke with the officers who told them that the ride had stopped mid-cycle and the crew had emptied it of patrons before working on it. The officers did not know what was wrong and had not spoken with the operator about the problem. Inspector Wilson went up to the ride where the operator was running a test cycle. Inspector Wilson asked the attendant what had happened and was told the ride stopped mid-cycle but

he did not know why. After the test cycle finished the operator, who then identified himself as Tim Tutterrow, came down and spoke to Inspector Wilson.

Tutterrow stated that the ride had lost signal from one of the lap bars because of a problem with the plunger in the lap bar [See photo #12 for an example of the plunger]. When the ride lost the signal, it shut down because the safety circuit was broken, causing the ride to begin a safety stop. Tutterrow explained that he had used WD-40 on the plunger to allow it to go in and out. This allowed the plunger to activate the microswitch that completed the circuit. Inspector Wilson asked if there was any sort of display that showed the cause of the fault but Tutterrow told him that the ride did not have such a display.

Following that problem, the inspector viewed the testing of the device to ensure it was not malfunctioning. Although the lap bar had not engaged the microswitch, the ride's shutdown actually demonstrated that the safety system was properly functioning. The inspector understood that the ride's safety system detected a malfunction and the ride disabled itself to prevent any harm. The inspector asked Tutterrow to run through another test cycle before reopening to ensure the problem did not reoccur. Inspector Wilson also told Tutterrow to make a note of this issue in his daily maintenance report. Finally, Tutterrow was told that if problems continued to occur he should shut down the ride and notify EAD inspectors immediately.

Tutterrow then ran the second test cycle. Inspectors Creech and Wilson viewed this test cycle and the ride operated normally. Inspector Wilson made note of the problem and filed it as part of his daily report [See Incident Report generated 10/21/2013]. EAD inspectors received no further reports of problems with the ride from operators, patrons, Red Cross, or the Sheriff's Office until the night of the incident, 10/24/2013. The inspection and maintenance reports prepared by the operators of the ride (Tim Tutterrow and Omar Toranzo) and submitted to the EAD inspectors each day did not indicate any issues prior to the night of the accident.

#### **Accident Investigation Details:**

At 9:21 pm on October 24, 2013, a worker with Wade Shows reported an accident to Supervising Inspector Wesley Tart. Supervisor Tart was working with a team of inspectors at the fairgrounds when he received the call from the Wade Shows employee, who was in the area where the accident occurred.

After the phone call about the accident, Supervisor Tart gathered his team and rushed to the scene to assess the situation. When he realized the magnitude of the accident, he notified Bureau Chief Tom Chambers and requested assistance from local law enforcement on the scene to secure the area and preserve evidence. Mr. Tart also requested assistance in identifying potential witnesses and obtaining their statements. Local law enforcement complied with these requests. During these early moments, the injured were treated and transported to local healthcare facilities. Mr. Tart was in the process of beginning his investigation when the Wake County Sheriff's Office assumed control of the scene. Mr. Tart assisted officers to ensure their safety as well as to preserve evidence during their investigative process.

After the Wake County Sheriff's Office ("WCSO") and representatives from the City County Bureau of Investigation ("CCBI") processed the ride, the inspectors regained limited access to the device and were able to resume their inspection. Inspectors began photographing the device to capture the condition and position of all electrical controls and mechanical components in order to document the condition of the device [See photos #1-86].

Photos taken the night of the accident show all but one of the lap bars were in the open position. One lap bar was not completely open [See photos #5-8].

The lap bar indicator light (HL 41) [See photo #14] found at the operator control panel was illuminated. This indicator light should not be illuminated if any of the lap bars are in the open position [See photos #2-12].

Photos also show the emergency stop button located in the operator's control room, on the control panel, was not activated. If the emergency stop had been activated the button would have been in the closed or down position. The power to the device would have been shunted, disconnecting all electrical connections and leaving the ride without any lights illuminated. This was not the condition in which the device was found. The device was energized and the emergency stop was not activated [See photos #5-10, 13].

During the inspection of the device after the accident, wire jumpers were found in a junction box located at the center of the device, above the deck level [See photos #24-26]. The jumpers, one black and one orange, were connected to terminal connections: orange jumper 3-43 to 10-4; black jumper 3-43 to 10-8 [See photos #27-32]. During this same investigation, a wire jumper was found in the electrical control cabinet where the loose relay had been found during the initial inspection. This wire jumper was not attached to any relays or terminals. The wire was stripped at both ends and was approximately 18" in length.

Items in the operator's control room of the Vortex were taken into evidence by EAD inspectors, including ride manuals in English, French, and Italian, electrical schematics, and daily inspection sheets for the ride [See Manuals, Schematics, and Daily Inspection Sheets].

While being interviewed by the WCSO, Mr. Tutterrow admitted that he had placed one of the jumpers found by the EAD inspectors in the junction box.

Mr. Tutterrow stated that during the inspection of the ride on 10/17/2013, there was a problem with the right passenger carrier. After telling the inspector that the problem likely occurred when he was securing a loose relay, Mr. Joshua Macaroni entered the electrical control cabinet where the relay was located. Tutterrow stated that he was on the deck next to Josh and was told not to allow anyone to see what was occurring. Tutterrow stated that a jumper was added to allow the ride to spin. After less than

10 minutes of work in the cabinet where the loose relay had been found, the ride was reengaged and worked correctly.

After the ride was certified, Macaroni told Tutterrow and the other crewmembers to take a break. When they returned, Macaroni told Tutterrow that he had jumped out the right passenger carrier. [This would be consistent with the inspectors finding an unattached jumper in the electrical control panel and one of the two jumpers found in the junction box.]

Mr. Tutterrow stated that there were no problems with the ride until Monday, 10/21/2013. After the inspectors examined the ride on 10/21/13, Tutterrow experienced additional problems with the ride. The button in the operator's control room that was supposed to release the lap bars stopped working. Mr. Tutterrow addressed the problem by having the attendants use a relay in one of the electrical control cabinets to release the restraints [See photo #39]. Mr. Tutterrow opened the junction box to troubleshoot the ride on Monday after closing. At that time, he observed a jumper for the right side of the ride. Mr. Tutterrow inserted a similar jumper for the left side of the ride. With the jumper in place, the ride operated.

Mr. Tutterrow stated that on Tuesday, 10/22/2013, he spoke with Joshua Macaroni by phone. During that conversation, Macaroni confirmed to Tutterrow that he had placed the first jumper in the junction box after the ride was certified. He instructed Mr. Tutterrow to leave both the jumpers in place and continue to operate the ride until he (Joshua Macaroni) arrived to look at it. While Tutterrow expressed concerns about operating the ride in this fashion, he did as instructed.

According to Tim Tutterrow, Joshua Macaroni arrived on site on Wednesday, 10/23/2013, and checked the ride. At that time, he told Tutterrow that they would fix the ride at its next location. In the meantime, Tutterrow was to continue operating the ride with the jumpers in place.

In the early morning hours of 10/25/2013. EAD inspectors asked Mr. Tutterrow questions to confirm what they thought they had found. They asked him if the lap bars had been bypassed, and he said yes. Mr. Tutterrow was asked if he was the person that bypassed the lap bars, and he said yes. Mr. Tutterrow was asked if he used wire jumpers to accomplish the bypass, and he said yes. The inspectors on scene asked if the jumpers were located in the junction box located in the center of the device [see photos #24-26], and he said yes. Mr. Tutterrow was asked if there was one black and one orange jumper, and he said yes. Mr. Tutterrow was asked if he installed the jumpers on his own, and he said that he was told to do it by Joshua Macaroni.

EAD inspectors then asked Mr. Tutterrow what he recalled about the accident. He stated that he was in the doghouse (operator's control room) when he noticed the attendant waving his arms at him. He said he looked out the control room window and saw the tubs (passenger carriers) turning. He said he panicked and started turning all of the controls. Mr. Tutterrow was asked if he activated the emergency stop, and he said no. At that time, the EAD inspectors completed their initial investigation of the device and removed the power source from the device.

On October 26, 2013, Dr. Leonard White, Associate Professor of electrical engineering at N.C State University, was contacted to assist with the EAD investigation. Dr. White was asked to review the electrical schematics confiscated the night of the accident, and possibly visit the fairgrounds at a later date to assist with testing.

According to the ride specifications, Mel Park in Melara, Italy manufactured the Vortex in 1997. Mel Park went out of business sometime between 1997 and 2000. In 2000, Technical Park in Melara, Italy was established. Several employees of Mel Park were hired by Technical Park, and a number of them currently remain at the company. Technical Park manufactures rides, including rides that are similar to the Vortex. On November 19, 2013, Technical Park was contacted for assistance in evaluating the Vortex. Christian Martini is an electrical engineer with Technical Park and was a former employee of Mel Park and had participated in the manufacture and construction of the Vortex.

Mr. Martini reviewed the electrical schematics for the Vortex confiscated the day of the accident. Mr. Martini noted additional/modified wiring not consistent with the ride's original design, had been added to the schematics. Mr. Martini also confirmed that the data tag with the name Technical Park (a metal plate affixed to the device listing the devices specifications) was not a Technical Park data tag [See photo #1]. Mr. Martini stated that Mel Park Rides, not Technical Park, made the Vortex and that the Technical Park number #87 affixed to the Vortex, was assigned to a device currently operating in Europe. He also stated that the Technical Park plate affixed to the Vortex showed a date of 1997. This could not be accurate as Technical Park was not created until 2000.

After discussing the location of the jumpers found by NCDOL EAD inspectors, both Dr. White and Mr. Martini determined that the orange and black jumpers found in the junction box located at the center of the device bypassed all safety restraint systems. In effect, the ride would start with one or all of the safety restraints open. These conclusions were based upon the physical evidence presented, the electrical schematics, and the location of the wire jumpers discovered after the accident [See reports by Dr. White and Mr. Martini].

On December 3, 2013, Dr. White, Detective Chamblee, and EAD Bureau Chief Tom Chambers traveled to the State Fairgrounds to allow Dr. White an opportunity to see the device for the first time. Dr. White wanted to confirm that the wiring was consistent with the electrical schematics, and familiarize himself with the device.

On December 12th 2013, Dr. White, EAD Assistant Bureau Chief Tommy Petty, WCSO Det. Blackwell, Tom Chambers, Christian Martini, and Cristian Pasolini (also with Technical Park), met at the State Fairgrounds to review and conduct testing of the Vortex ride. CCBI recorded the testing. The electrical structure was compared to schematics taken from the device the day of the accident. Mr. Martini noted that additional electrical wiring was added to the device not consistent with its original design [See reports by Dr. White and Mr. Martini].

Mr. Martini was shown the jumpers found the day of the accident, and later removed by the WCSO and placed into evidence. Mr. Martini was asked if the jumpers were suitable and of sufficient size to be used to electrically bypass the safety circuits they were found attached to, and his answer was "yes." The jumpers were then placed back into the evidence packet and secured by Det. Blackwell.

New jumpers were made from the same size and type of wire as the jumpers in evidence. The wire used was found below the control room of the Vortex. These new jumpers were used for the testing. Mr. Martini also noted that seat restraint indicator lights on the passenger carriers were not present [See Fig. 12, p. 16 of Dr. White's report where fiberglass has been added to seal over the area where the lights previously would have been located]. The indicator lights were located on the outside of each passenger carrier and were designed to light up if all restraints for that section of seats were closed and locked. Mr. Martini also noted that the seat-restraint release button, located in the operator's control room on the control panel, was not operable. Mr. Martini was able to release the restraints by depressing two relays, located in an electrical control cabinet on the deck of the ride center left side [See photo #39], labeled Lap bar release. [The discovery of this condition supports statements made by ride attendants and eyewitnesses present at the time of the accident that the ride attendants were opening a cabinet to release the restraints from a box located at the center of the ride.]

Test dummies were placed into the passenger seats on one passenger carrier and all safety restraints were placed into a closed and locked position (primary and secondary).

With the jumpers removed, the device was energized and Mr. Martini attempted to operate the device. The device would not leave the parked position.

The newly made jumpers were added by Mr. Martini to the same connection points where the original jumpers were discovered the night of the accident. Mr. Martini energized the device again and the device started and went through an entire ride cycle.

The device was returned to the loading/unloading position, and all of the primary and secondary restraints were opened. The device was again started and operated one ride cycle. With the all restraints open, the test dummies were ejected from the device as the device rotated and inverted.

#### **Additional Information:**

Prior to the State Fair, Wade Shows submitted an electronic version of the Vortex manual in to EAD.

Amusement Device Collection Form: EAD requires ride operators to submit an Amusement Device Collection Form. This form provides EAD specific information for rides such as: ride trade name; manufacturer name; ride type (e.g. adult, kiddie); year manufactured; state ID number; compliance with bulletins; whether NDT is required; and, the serial number of the ride.

On October 6, 2013, EAD received electronically an Amusement Device Data Collection Form completed by Sharon Parks, Wade Office Manager. This form indicated the following: Company Name—Family

Attractions, LLC; Company Address—1709 A Gornto Rd 379; Company City/State/Zip—Valdosta, GA, 31601; Contact—Joshua Macaroni; Ride Trade Name—Vortex; Manufacturer Name—Technical Park; Ride Type—A (Adult); Year Manufactured—1997; State ID #--Not Provided (note: this ride had not yet had a State ID issued as it was new to North Carolina); Complied with Bulletins—Yes; NDT (Non-destructive Testing)—No; Serial #—87. Joshua Macaroni was listed above the signature of owner or manager. There is an additional area on the right side of the form that allows a book-in operator to indicate if the owner of the device is different from the operator of the device. This area on the form submitted for the Vortex was left blank.

Location Notice: EAD requires ride operators to submit an Advance Location Notice 10 days prior to the date of the requested inspection. This form provides NCDOL the actual location of the ride to be inspected as well as other relevant information about the ride.

On October 8, 2013, EAD received electronically a completed Advance Location Notice from Family Attractions Amusements, LLC, 1709 A Gronto Road #379, Valdosta, Georgia 31601. The company contact was Dominic Macaroni. The Advance Location Notice requested an inspection of the device, Vortex, on October 17, 2013 at the NC State Fair, 1025 Blue Ridge Road, Raleigh.

Inspection Payment: EAD requires payment prior to inspecting a ride for compliance with the laws and rules adopted by NCDOL. On October 16, 2014, a credit card payment was made to the Budget Division of NCDOL for inspection fees associated with the inspection the Vortex for Family Attractions. Ruby Macaroni provided her credit card details and approved processing of the payment.

Certificate of Liability Insurance: N.C. Gen. Stat. § 95-111.12(b) requires that the owner provide proof of insurance. Family Attractions Amusements LLC has several rides that it plays at venues in North Carolina. On March 6, 2013, prior to any ride inspections for 2013, Family Attractions Amusements LLC submitted a Certificate of Liability Insurance indicating insurance coverage in the amount of one million dollars (\$1,000,000) per occurrence against liability for injury to persons or property arising out of the operation or use of its devices. Subsequent contact with the company that provided the certificate indicated that the Vortex was added to the policy after its arrival in the United States and purchase by Joshua Macaroni. Certificates issued to other states and interested parties specifically listed the Vortex as being covered under the Family Attractions Amusement insurance policy.

Amusement Device Inspection Report: This is the report generated by NCDOL after an inspection has been completed. It indicates any deficiencies or non-compliant issues with the device inspected. On October 16-17, 2013, NCDOL ride inspectors inspected the Vortex. The inspection report indicated two pre-inspection violations: a weld crack at footwell bracing #5 tub; and the need to properly secure loose relay in electrical controller.

Daily inspection reports completed by the ride operator were submitted to the State Fair Contractors' Office. Ride inspectors for NCDOL went to the office on a daily basis to review the daily reports to

ensure daily inspections conducted by the ride operators are documented in accordance with the requirements of 13 NCAC 15 .0410.

According to information from the Florida Department of Agriculture and Consumer Services, Bureau of Fair Rides Inspection, the nameplate on the ride was created in anticipation of the Miami-Dade County Fair and purchased on behalf of Family Attractions Amusement by North American Midways Entertainment (NAME). The plate's USAID number is connected to a corresponding data entry in the Florida system for a Vortex ride manufactured by Technical Park .The owner is listed as being Family Attractions Amusement.

Following the accident, questions arose regarding who owned and operated the Vortex which resulted in the collection of the following additional documents:

- May 24, 2011: Josh Macaroni is listed on the Amusement Device Inspection Report as the representative of Family Attractions Amusement, LLC at a fair in Franklin, NC to whom inspectors pointed out violations during the inspection process.
- January 22, 2013: A financing statement (Form UCC-1) filed in Coweta County Georgia on behalf of the secured party Firestone Financial Corp., against the Debtor listed as Joshua Macaroni with an additional debtor of JJ Concessions. No additional information was found relating to the additional debtor in any other filings. The subject of the UCC-1 was to secure the secured party with regard to "(1) 1997 TECHNICAL PARK VORTEX AMUSEMENT RIDE MOUNTED ON (2) TRAILERS".
- March 1, 2013: A lease agreement between Joshua Macaroni and Family Attractions Amusement, LLC for the Vortex, Alpine Bobs, and Badlands ride was signed. The lease is signed by Dominic Macaroni on behalf of FAA, LLC as "insured" and Joshua Macaroni as the owner of the equipment as "additional insured."
- March 14-26, 2013: Vortex plays the Miami Dade County Fair in Miami. Maintenance logs for the ride are on Family Attractions forms that include Vortex already printed in the spot for the ride name. The information about the maintenance is found on a form called Daily Inspection and Maintenance, Twelve Day Report. Each form has 12 sets of boxes to check off when each individual inspection is performed, as well as boxes at the bottom of the second page of each report for the operator to sign his initials. In the case of almost each and every single form, the forms are signed with the initials "TT", indicating Tim Tutterrow.
- July 4-13, 2013: Vortex plays a Fair in Columbus, Indiana. The Indiana Department of Homeland Security Division of Elevator/Amusement Safety produced a form called the "Amusement Device Correction Order" that lists Tim Tutterrow (Tutterrow) as the designated owner representative during inspection at the Fair, includes reference to insurance documentation, and lists the Owner name for the device "Vortex" as Family Attractions Amusements. The same style Family Attractions form called a twelve day report was again used for this fair, with boxes to sign off when each inspection is performed.
- July 24-August 4, 2013: Vortex plays Ohio State Fair (July 26, 2013—Vortex does not run, Tim Tutterrow signs off on maintenance work). There are multiple forms produced for the time in Ohio. There is an insurance certificate produced by Haas & Wilkerson Insurance on behalf of

Family Attractions Amusement dated 7/19/2013, that specifically lists the Vortex as a ride under the coverage and lists for a certificate holder the Ohio Department of Agriculture. There is also an Ohio Ride Permit Application that lists Family Attractions Amusement as the amusement company who will be operating the Vortex at the Ohio Fair. The Form recording maintenance work is a Family Attractions "Work Order" form. The form lists the work done, the date it was performed, and the fact that it was done by Tim Tutterrow on the Vortex. The same style Family Attractions form called a twelve day report was again used for this fair with boxes to sign off when each inspection is performed.

- August 16-24, 2013: Vortex plays in Lebanon, Tennessee. There is a document called the "Amusement Device Money Receipt" which is created by the Department of Labor and Workforce Development of Tennessee that lists as a contact Family Attractions and the amount received as \$1125.00. There is also a document created by the same entity called the "Amusement Device Ride Operating Permit" that lists as owner Ruby Macaroni, and lists Family Attractions as the company for the ride. Further, the contact point for the ride is listed as Ruby Macaroni and her phone number is listed. A form shows that the motor was rebuilt on 8/16, and seat 5-8 air hoses were fixed on 8/23. The form recording maintenance on the Vortex is on a Family Attractions Amusements form that is called "Work Order." The form is signed by Tim Tutterrow and references the work performed and the date the work was done. The same style Family Attractions form called a twelve day report was again used for this fair with boxes to sign off when each inspection is performed.
- October 14, 2013: Wade Shows releases a payment of \$16,657.75 in cash to Tim Tutterrow for the Vortex playing in Montgomery, Alabama. The payment receipt form by Wade shows lists that it is in regard to the use of the Vortex. The payment was listed on a receipt called an "Independent Settlement" and was paid in cash on behalf of Wade Shows and signed for by Tim Tutterrow on behalf of Marconi Rides. Wade shows is also listed on a Certificate of Liability Coverage issued on 10/4 and also states "Certificate Holder (Wade Shows) is listed as Additional Insured with respects (sic) to the Vortex Ride."
- Trucks on site at the North Carolina State Fair were marked with the FAA logo, and were marked with the Federal Department of Transportation identifier that is registered to Family Attractions Amusement.

Additional Information was obtained through the statements provided by witnesses to the accident and those involved in the ride's ownership and operation.

- Through counsel, Joshua Macaroni stated that he is the owner of the ride and the employer of the individuals working on the ride. He further stated that he is also a unit manager for Family Attractions Amusements and that the individuals working on the ride were also employees of Family Attractions Amusements. He stated that the individuals working on the ride were paid in cash but that the payroll was run through Family Attractions Amusements. Mr. Macaroni stated that Tim Tutterrow was in charge of the ride in his absence. Mr. Macaroni denies that he ever put any jumper in the ride and further denies that he instructed Tim Tutterrow to place jumpers in the ride.

- Through counsel, Family Attractions Amusement, LLC and its owners Dominic Macaroni and Ruby Macaroni (Joshua Macaroni's parents) have stated that the "do not own, operate, manage, maintain, or control the 'Vortex' amusement device that is the subject of the incident in question." "Family Attractions Amusement, LLC is an out-of-state corporation that does not own the Vortex, had no contract to provide the ride to the North Carolina State Fair, and was not operating the ride during the Fair. Moreover, the individuals operating the ride were not doing so on Family Attractions' behalf." An attorney for Family Attractions Amusement had previously acknowledged that the employment situation of the individuals working on the Vortex was a "fluid" one.
- All of the individuals working on the ride identified themselves as employees of Family Attractions Amusement, although some referred to Joshua Macaroni as their "boss" or supervisor.
- Three ride employees stated that Joshua Macaroni was present at the ride on Wednesday, October 23, 2013. Operator Tim Tutterrow stated that during this time Joshua Macaroni examined the jumpers and told him to operate the ride with the jumpers in place and that they would fix the ride when they got it to Charleston (the next location where the ride was scheduled to appear).
- Relief operator, Omar Toranzo, stated that he was aware that the green light on the control panel stayed on when the safety restraints were open. He said he asked Joshua Macaroni and Tim Tutterrow about it and they both said that they were aware of the problem and not to worry about it. He also stated that he heard Joshua Macaroni and Tim Tutterrow talking about jumpers but didn't know what they were talking about.
- Ride worker Carl Weidenhammer stated that they were notified the 2<sup>nd</sup> or 3<sup>rd</sup> day of the fair there was a problem with the ride and they would have to run it differently.

**Cause of accident:**

Witness statements and statements given by one of the ride operators (Tim Tutterrow) indicate that the device started while patrons were being unloaded from the device. Tutterrow stated that he was in the operator's control room when he noticed a ride attendant waving his arms at him. He stated that he panicked and tried to stop the ride, however it was unclear what he had done in his attempt to stop the device. Evidence discovered during the investigation confirmed that safety devices designed to prevent the ride from operating while the seat restraints are in the open position were bypassed electrically. It was determined that this bypass was accomplished using wire jumpers at an electrical terminal connection strip located in a junction box, located at the device's center above deck level [See photos #24-26]. Because the safety restraint systems were bypassed, the device could be operated with one or all of the restraints in the open position.

**Conclusion:**

Based on the information collected, testing conducted during the investigation, and witness statements, the safety restraint system on the Vortex was bypassed. This modification allowed the device to operate with the safety restraints unsecured placing the public and the employees of the device in danger anytime they were near the device. Ride operator, Tim Tutterrow, admits that he jumped out

the safety system for the left passenger carrier. Ride operators Tim Tutterrow and Omar Toranzo both admit to operating the ride while the safety-restraint release button on the control panel was inoperable and to operating with ride when the green light remained on when the safety restraints were not in place. While Joshua Macaroni denies having placed the other jumper in the junction box or having instructed Tim Tutterrow to place a jumper in the junction box, Joshua Macaroni appears to have had actual knowledge that the safety system had been by-passed. Alternatively, as owner of the ride, Joshua Macaroni had knowledge of the problems with the ride through the ride foreman, Tim Tutterrow. Similarly, while Family Attractions Amusement denies any ownership or control of the ride it leased the ride from Joshua Macaroni and exercised control over the ride and individuals working on the ride and had knowledge of the problems with the ride through its representatives Joshua Macaroni and Tim Tutterrow.

**Violations:**

**Violation 1:**

Citations Issued Against: Family Attractions Amusement, LLC; Joshua Macaroni; Tim Tutterrow; and Omar Toranzo

§ 95-111.9. Operation of unsafe device.

No person shall operate, permit to be operated or use any device subject to the provisions of this Article if such person knows or reasonably should know that such operation or use will expose the public to an unsafe condition which is likely to result in personal injury or property damage.

On or about October 17, 2013, the Vortex was inspected and ridden by NCDOL inspectors during the certification process. During this time Tim Tutterrow alleged that a jumper was connected to allow the ride to pass inspection. An unattached jumper was found during the accident investigation. The wire found was in the proper location and was the proper length to corroborate the allegations of Tutterrow. After looking into what the jumper would have done if it had been connected, it was discovered that the jumper would bypass every safety system on the ride and allow the ride to run even if other systems failed to function properly.

On or about October 22-24, 2013, the Vortex was operated with the addition of two jumpers. The placement of the jumpers allowed the ride to operate with the seat safety restraint systems open. This modification was not consistent with the original design. The bypassing of the safety restraint systems placed the public in danger in that the ride could be operated with the seat restraint systems open and unlocked.

**Violation 2:**

Citations Issued Against: Family Attractions Amusement, LLC and Joshua Macaroni

§ 95-111.7(b). Operation not in accordance with Article or rules and regulations.

No person shall operate or permit to be operated or use any device subject to the provisions of this Article otherwise than in accordance with this Article and the rules and regulations promulgated thereunder.

#### 13 NCAC 15 .0407 IDENTIFICATION AND RATING PLATES

Every amusement device shall be identified by a trade or descriptive name and an identification number and there shall be firmly attached to the device in a readily visible location a metal plate upon which there is legibly impressed the name and number of the device, its model number if any, and the name and address of its manufacturer. Upon the same or another metal plate so attached there shall be legibly impressed the maximum safe number of passengers, and the maximum safe speed.

The data plate affixed to the Vortex did not contain all information required by 13 NCAC 15 .0407. In addition, information contained on the data plate was inaccurate.

When the Vortex arrived at the NC State Fair on October 16, 2013, a data plate was affixed to it at the center of the device where the two arms come together forming the "V" shape. The following information was contained on the data plate affixed to the Vortex:

Name of the device—Technical Park Vortex

Number of the device—87

Model number—33.000.00

Name of manufacturer—Technical Park

Address of manufacturer—not provided

Maximum safe number of passengers—32 seats

Maximum safe speed—revolutions—center 7 rpm, arms 3.7 rpm, cars 20 rpm

Additional information on the data plate—year of manufacture 1997; height 14 meters; width 19 meters; depth 20 meters; capacity per hour 1000 per hour; fixed installation weight 35 tons; minimum height requirement 54 inches.

Joshua Macaroni purchased the Vortex in March 2013. It was first played in the United States in Miami, Florida at the Dade County Youth Fair. (See Florida Department of Agriculture and Consumer Services Amusement Ride Inspection Report).

The English and Italian/French manuals for the Vortex that were located in the doghouse during the accident investigation contain a "Certificate of Origin". The Italian Certificate indicates the manufacturer of the Vortex is Mel Park s.n.c. and the serial number is 87. Christian Martini is an electrical engineer currently employed by Technical Park. Mel Park employed Mr. Martini when it manufactured the Vortex, serial number 87. Mr. Martini examined the Vortex at the NC State Fair grounds and confirmed Mel Park manufactured the device. In addition, Mr. Martini stated that when the Vortex was manufactured in 1997, Technical Park was not even in existence. Currently, Technical Park does manufacture a ride similar to the Vortex that was at the NC State Fair. Mr. Martini also verified that the

Technical Park ride with serial number 87 is not the Vortex that played at the NC State Fair. The Technical Park ride with serial number 87 is a device that is currently operating in Europe.

**Violation 3:**

Citations Issued Against: Family Attractions Amusement, LLC; Joshua Macaroni; Tim Tutterrow; and Omar Toranzo

§ 95-111.7(b). Operation not in accordance with Article or rules and regulations.

No person shall operate or permit to be operated or use any device subject to the provisions of this Article otherwise than in accordance with this Article and the rules and regulations promulgated thereunder.

**13 NCAC 15 .0410 DAILY INSPECTION AND TEST**

An amusement device shall be inspected and tested each day when it is intended to be used. The inspection and test shall be made by a person experienced and instructed in the proper assembly and operation of the device and shall be performed before the device is put into normal operation. The inspection and test shall include the operation of control devices, speed-limiting devices, brakes and other equipment provided for safety. A record of each inspection and test shall be made at once upon completion of the test on a form provided by the Director and shall be kept with the device and available to the Director for at least the previous 12 months.

- 1) The inspection and test shall be made by a person experienced and instructed in the proper assembly and operation of the device and shall be performed before the device is put into normal operation.

Tim Tutterrow admitted that he was aware that jumpers were placed in the ride, which bypassed the safety restraint system. At least one jumper was put in place on Monday night October 21, 2013. After the accident on October 24, 2013, two jumpers were discovered in a junction box located at the center of the device. It was determined that the two jumpers bypassed the safety restraint systems. This allowed the ride to operate with the safety restraints in the open position. Tutterrow stated that one of the jumpers was installed by Joshua Macaroni and that he installed the other one. He stated that he was told by Joshua Macaroni to operate the ride with the jumpers in place. When Tutterrow expressed concern to Macaroni about operating the ride with the jumpers in place, Macaroni told Tutterrow there was no time to identify the problem and they would figure it out at the next spot. With the jumpers in place, the equipment provided for safety, namely the primary and secondary restraints, could not be properly tested.

In addition, following the accident, witnesses reported that ride attendants released the safety restraints from an electrical control cabinet located at platform level on the left side of the ride

as viewed from the front of the ride. Under normal operating conditions, the safety restraints would be released from inside the operator control room.

On Tuesday and Wednesday, October 22 and 23, 2013, the daily inspection report was initiated by T.T., Tim Tutterrow. He indicated in the daily inspection report that the ride passed inspection when it in fact could not have passed inspection with the jumpers in place. The green light on the control panel staying on when the restraints were open was a visual reminder that the safety system was not operating properly. In addition, the safety restraint system should have been released from inside the operator's control room rather than an electrical control cabinet.

- 2) On Thursday, October 24, 2013, the daily inspection report was initiated by O.T., Omar Toranzo. No documentation was provided indicating that Toranzo was experienced or instructed in the proper assembly and operation of the Vortex. Toranzo indicated in the daily inspection report that the ride passed inspection when it in fact could not have passed inspection with the jumpers in place. The green light on the control panel staying on when the restraints were open was a visual reminder that the safety system was not operating properly. In addition, the safety restraint system should have been released from inside the operator's control room.

**Violation 4:**

Citations Issued Against: Family Attractions Amusement, LLC; Joshua Macaroni; and Tim Tutterrow

§ 95-111.7(b). Operation not in accordance with Article or rules and regulations.

No person shall operate or permit to be operated or use any device subject to the provisions of this Article otherwise than in accordance with this Article and the rules and regulations promulgated thereunder.

**13 NCAC 15 .0411 CONTROL OF OPERATION**

Every operator shall have knowledge of the use and function of all normal emergency operation controls and of the proper use of the device. An operator shall be in the immediate vicinity of the operating controls during operation and no other person shall be permitted to handle such controls during normal operation.

On October 24, 2013, the Vortex unexpectedly began cycling during the unloading of passengers. The ride operator failed to engage the emergency operation controls which would have immediately stopped the cycling of the device. An operator possessing knowledge of the use and function of all normal emergency operation controls would have activated the emergency stop to immediately stop the ride cycle.

Tim Tutterrow had knowledge that the safety restraint system had been compromised and continued to operate the Vortex while patrons were on the device. No operator with knowledge of the proper use of the device would have allowed the ride to operate or failed to use the emergency stop in case of malfunction.

**Violation 5:**

Citations Issued Against: Family Attractions Amusement, LLC; Joshua Macaroni; and Tim Tutterrow

§ 95-111.7(b). Operation not in accordance with Article or rules and regulations.

No person shall operate or permit to be operated or use any device subject to the provisions of this Article otherwise than in accordance with this Article and the rules and regulations promulgated thereunder.

**13 NCAC 15 .0424 ELECTRICAL SAFETY REQUIREMENTS**

**General Requirements.** All electrical wiring, equipment and apparatus used for amusement devices or for lighting shall comply with the National Electrical Code, NFPA 70 and shall be properly and legally installed, operated and maintained.

1. Tim Tutterrow admitted knowing that jumpers had been placed in the ride, which bypassed the safety restraint system. At least one jumper was put in place on Monday night October 21, 2013. After the accident on October 24, 2013, two jumpers were discovered in a junction box located at the center of the device. It was determined that the two jumpers bypassed the safety restraint systems, namely the primary and secondary lap bars. This allowed the ride to operate with the safety restraints in the open position. Tutterrow stated that he was told by Joshua Macaroni to operate the ride with the jumpers in place. When Tutterrow expressed concern to Macaroni about operating the ride with the jumpers in place, Macaroni told Tutterrow there was no time to identify the problem and they would figure it out at the next spot. With the jumpers in place, the equipment provided for safety, namely the primary and secondary safety restraint systems, could not be properly tested. The jumpers were not properly or legally installed.
2. Tim Tutterrow alleged that during the set-up of the ride and the inspection process, that a jumper was connected to allow the ride to pass inspection. An unattached jumper was found during the accident investigation. The wire found was in the proper location and was the proper length to corroborate the allegations of Tutterrow. After looking into what the jumper would have done if it had been connected, it was discovered that the jumper would bypass every safety system on the ride, and allow the ride to run even if other systems failed to function properly.

**Violation 6:**

Citations Issued Against: Family Attractions Amusement, LLC; Joshua Macaroni; and Tim Tutterrow

§ 95-111.7(b). Operation not in accordance with Article or rules and regulations.

No person shall operate or permit to be operated or use any device subject to the provisions of this Article otherwise than in accordance with this Article and the rules and regulations promulgated thereunder.

**13 NCAC 15 .0428 SUBSTITUTE DEVICES AND PARTS**

Whenever the owner or operator of an amusement device desires to install or use a substitute part or device which is not consistent with the manufacturer's specifications, the owner or operator shall be responsible for proving, to the satisfaction of the Director, that the use of the substitute part or device is as safe as the use of the manufacturer's specified part or device.

- 1) According to Mr. Tutterrow, the previous owner of the ride did not provide Joshua Macaroni with a control panel that allowed the ride to be lifted or dropped hydraulically while not on the decking. This control panel is used in assembling and disassembling the ride, before the passenger carriers are attached. As this part was not provided, they instead used a substitute device which did largely the same thing but which was not the manufacturer's device or part. The substitution was not shown to the inspectors, and therefore it was impossible for the owner or operator to prove the substitute part to be as safe as the manufacturer's device or part.
- 2) Following the accident, witnesses reported that ride attendants released the safety restraints by pressing a relay in an electrical control cabinet located at platform level on the left side of the ride as viewed from the front of the ride. Under normal operating conditions, the safety restraints would be released from inside the operator control room. Thus, the use of the relay in the cabinet acted as a substitute device for releasing the safety restraint systems instead of the original system in the operator's control room.
- 3) Tim Tutterrow admitted placing a jumper in the ride which bypassed the safety restraint system. At least one jumper was put in place on Monday night October 21, 2013. After the accident on October 24, 2013, two jumpers were discovered in a junction box located at the center of the device. It was determined that the two jumpers bypassed the safety restraint systems. This allowed the ride to operate with the safety restraints in the open position. Tutterrow stated that he was told by Joshua Macaroni to operate the ride with the jumpers in place. When Tutterrow expressed concern to Macaroni about operating the ride with the jumpers in place, Macaroni told Tutterrow there was no time to identify the problem and they would figure it out at the next spot. With the jumpers in place, the equipment provided for safety, namely the primary and secondary lap bars, could not be properly tested. The jumpers were installed inconsistent with the manufacturer's specifications. In addition, the owner or operator did not prove that the use of the jumpers was as safe as the use of the manufacturer's specified safety restraint system.
- 4) Tim Tutterrow alleged that during the set-up of the ride and the inspection process, a jumper was connected to allow the ride to pass inspection. An unattached jumper was found after the accident investigation. The wire found was in the proper location and was the proper length to corroborate the allegations of Tutterrow. After looking into what the jumper would have done if it had been connected, it was discovered that the jumper would bypass every safety system on the ride, and allow the ride to run even if other systems failed to function properly.

**Violation 7:**

Citations Issued Against: Family Attractions Amusement, LLC; Joshua Macaroni; Tim Tutterrow; and Omar Toranzo

§ 95-111.7(b). Operation not in accordance with Article or rules and regulations.

No person shall operate or permit to be operated or use any device subject to the provisions of this Article otherwise than in accordance with this Article and the rules and regulations promulgated thereunder.

#### 13 NCAC 15 .0420 PUBLIC PROTECTION

An amusement device shall not be used or operated while any person is so located as to be endangered by it.

The Vortex was operated with jumpers in place that bypassed its safety restraint systems. The bypass of these systems also allowed the ride to operate when the ride normally would not operate, such as when the safety restraints had been released. Further, the safety restraint release switch that is usually operated from within the operator's control room was instead being accessed from outside on the decking of the ride in an electrical control cabinet. Both Tim Tutterrow and Omar Toranzo operated the ride in this manner and instructed other employees to release the safety restraints from within the zone of operation of the device.

The use and operation of the ride in this manner endangered both patrons and staff who approached the ride during the loading and unloading process because there was the potential for the ride to begin operation.

#### Corrective Action:

Prior to submitting a request for inspection of the Vortex device in North Carolina, the owner or the person permitting the operation of the device must provide written certification from a Professional Engineer licensed in North Carolina that they have examined the device. The certification must conclude that the ride complies with the original design of the manufacturer and that the design complies with NFPA 70. If any changes to the design have been made, or substitute parts have been installed, the certification must make note of those changes. Further, the document must certify that the substitute design or parts are at least as safe as the original design or parts of the device.

The owner or person permitting the Vortex device to be operated must also provide EAD with documentation establishing who will operate the device while it is in North Carolina. These persons shall be trained in the proper operation, emergency procedures, and safety features of the device. Further, the owner shall train the operator in the proper method to inspect the device each day, and the correct steps to take in the instance any issue is discovered during this inspection. The owner or person permitting the operation of the device shall provide documentation to EAD with a certification of the described training, as well as the names of all persons who received the training.

The owner or person permitting the ride to operate must also provide the device with a new nameplate that meets the requirements of the rules. The nameplate must include complete and accurate information about the device, and must be attached for the duration of its use in North Carolina.

Following the satisfactory provision of the above described documentation and certifications, EAD will provide notice that the device may be scheduled for an inspection in the usual course of business. During that inspection, the device will be inspected in the same manner as any other device presented for inspection, and must still comply with all laws, rules, and regulations generally applicable to amusement devices.

## Vortex Ride Photo Index

1. Data Tag found on Vortex
2. Vortex ride day of accident
3. Vortex ride day of accident
4. Vortex ride Gondola
5. Vortex ride lap bar
6. Vortex ride passenger device on set of 4 only lap bar in down position(unlatched)
7. Vortex ride lap bar close up (refer to pic#6)
8. Vortex ride lap bar close up (refer to#6&7)
9. Vortex ride gondola one lap bar down unlatched 3 others in the upright position
10. Vortex ride gondola lap bars open
11. Vortex ride gondola lap bar tub latch
12. Vortex ride lap bar end plunger
13. Vortex ride control room ride controls
14. Vortex ride control panel lap bar light indicator illuminated, all lap bars open or unlatched
15. Vortex ride control panel, control position and indicators
16. Vortex ride control panel, lap bar indicator illuminated lap bars open.
17. Vortex ride control panel
18. Vortex ride control panel (start drives indicator illuminated.
19. Vortex ride control panel (start drive switch illuminated)
20. Vortex ride control panel
21. Vortex ride control panel emergency stop switch
22. Vortex ride state fair safety check sheet.
23. Vortex ride safety fair check sheet
24. Vortex ride junction box Center ride.
25. Vortex ride junction box Center ride
26. Vortex ride junction box center ride
27. Vortex ride junction box terminal strip showing jumpers(orange and black)
28. Vortex ride junction box terminal strip showing jumpers(orange and black)
29. Vortex ride junction box terminal strip showing jumpers(orange and black)
30. Vortex ride junction box terminal strip showing jumpers(orange and black)
31. Vortex ride junction box terminal strip showing jumpers(orange and black)
32. Vortex ride junction box terminal strip showing jumpers(orange and black)
33. Vortex ride controllers center ride platform
34. Vortex ride controller center ride platform interior section
35. Vortex ride controller center ride platform interior section
36. Vortex ride controller center ride platform interior section
37. Vortex ride controller center ride platform interior section
38. Vortex ride controller center ride platform interior showing breaker section
39. Vortex ride controller center ride platform interior section
40. Vortex ride controllers center platform
41. Vortex ride controller center ride platform
42. Vortex ride controller center ride platform interior section
43. Vortex ride controller center ride platform interior section
44. Vortex ride controller center ride platform interior section

## Vortex Ride Photo Index

45. Vortex ride controller center ride platform interior section showing red jumper located in wiring trough
46. Vortex ride controller center ride platform breaker panel
47. Vortex ride controller center ride platform breaker panel
48. Vortex ride controller center ride platform interior section
  
49. Vortex ride controller center ride platform interior section
50. Vortex ride controller center ride platform breaker panel
51. Vortex ride controller center ride platform breaker panel
52. Vortex ride controller center ride platform interior section
53. Vortex ride controller center ride platform interior controller
54. Vortex ride controller center ride platform interior section
55. Vortex ride controller center ride platform controller showing drive units
56. Vortex ride controller center ride platform controller showing drive units
57. Vortex ride controller center ride platform interior section
58. Vortex ride controller center ride platform interior section
59. Vortex ride controller center ride platform interior section
60. Vortex ride controller center ride platform right side interior section
61. Vortex ride controller center ride platform right side disconnect breakers
62. Vortex ride controller center ride platform left side drive unit display 310- u2 orig ARM
63. Vortex ride controller center ride platform left side drive unit display showing fault (DC5500 armature overvoltage)
64. Vortex ride controller center ride platform (same as photo #63)
  
65. Vortex ride controller center ride junction box rear center
66. Vortex ride controller center ride platform side connectors
67. Vortex ride controller center ride platform side connection receiver damaged
68. Vortex ride controller center ride platform junction box rear center interior fuse altered
69. Vortex ride controller center ride platform (same as Photo#68)
70. Vortex ride controller center ride platform (same as Photo#68 &69)
71. Vortex ride trailer center ride trailer set up jack(under repair)
72. Vortex ride controller center ride trailer jack
73. Vortex ride ground next to trailer tool case
74. Vortex ride trailer center ride below platform
75. Vortex ride trailer junction box center trailer below platform
76. Vortex ride gondola wiring harness broken
77. Vortex ride junction box rear center fuse altered
78. Vortex ride controller right side disconnects
79. Vortex ride commentator center ride below platform
80. Vortex ride controller center ride platform (same as photo#79)
81. Vortex ride platform (blood medical )
82. Vortex ride platform (blood medical)
83. Vortex ride platform (blood and medical)
84. Vortex ride platform (blood and medical)
85. Vortex ride controller center ride platform (interior section)
86. Vortex ride controller center ride platform (interior section )

A

1

TECHNICAL PARK VORTEX

MODEL: 33.000.00

YEAR OF MANUFACTURE: 1997

SERIAL NO. 87

HEIGHT: 14 METERS

WIDTH: 19 METERS

DEPTH: 20 METERS

REVOLUTIONS: CENTER 7 RPM, ARMS 3.7 RPM, CARS 20 RPM

CAR LOADING: SIMULTANEOUS

CARS: 2 CARS, 32 SEATS

CAPACITY PER HOUR: 1,000 PER HOUR

FIXED INSTALLATION WEIGHT: 35 TONS

MINIMUM HEIGHT REQUIREMENT: 54"

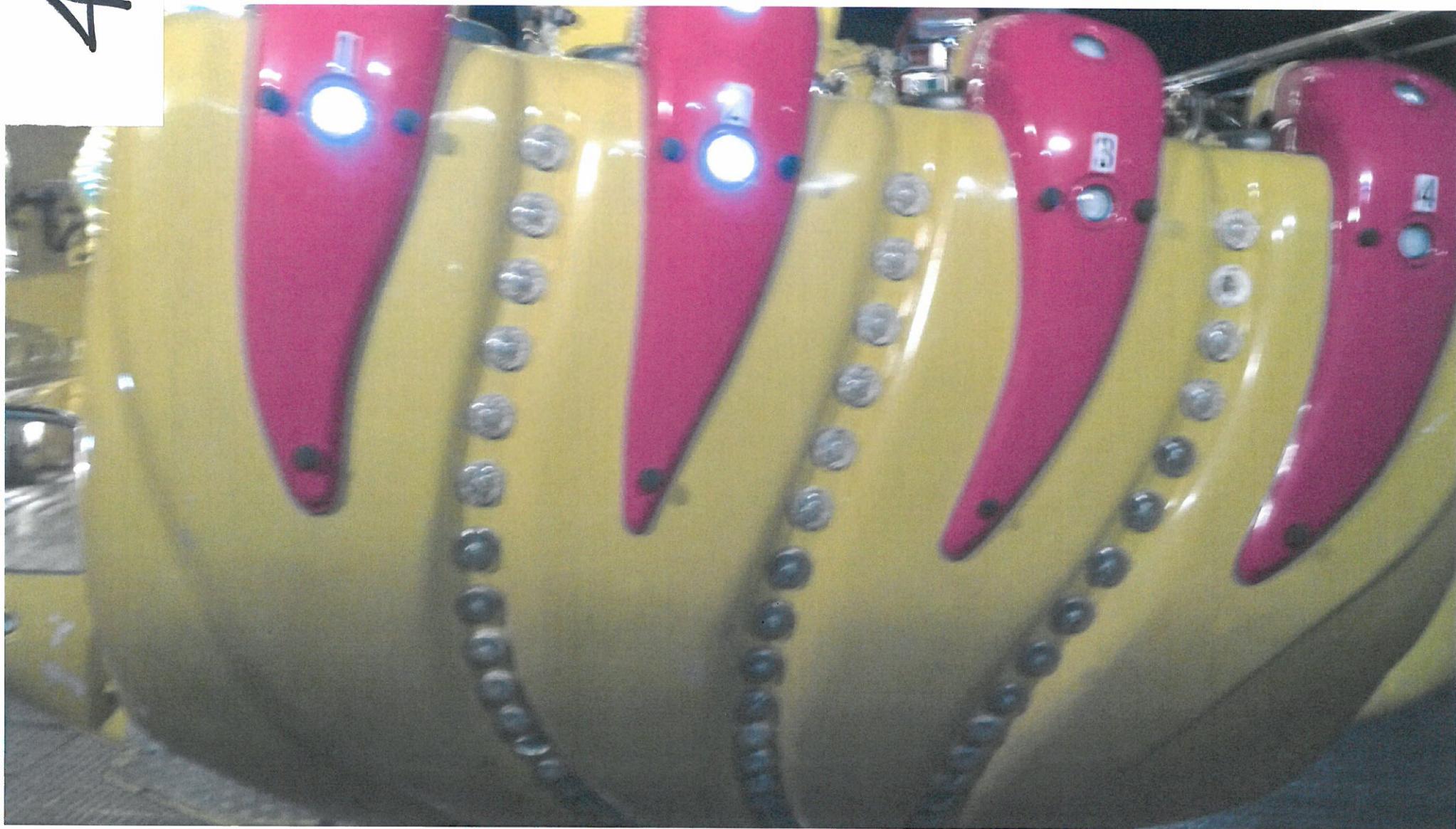
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3



4



5

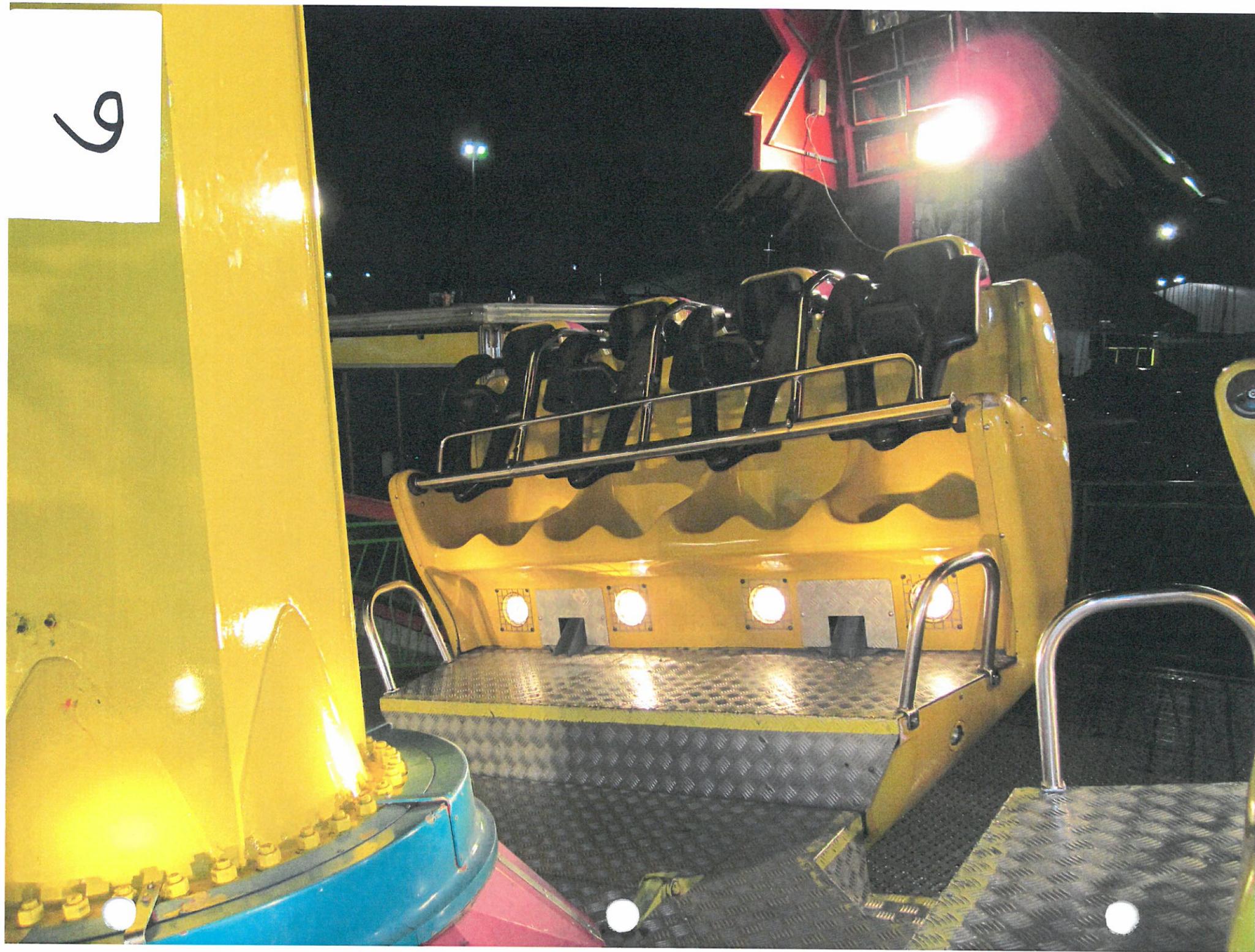


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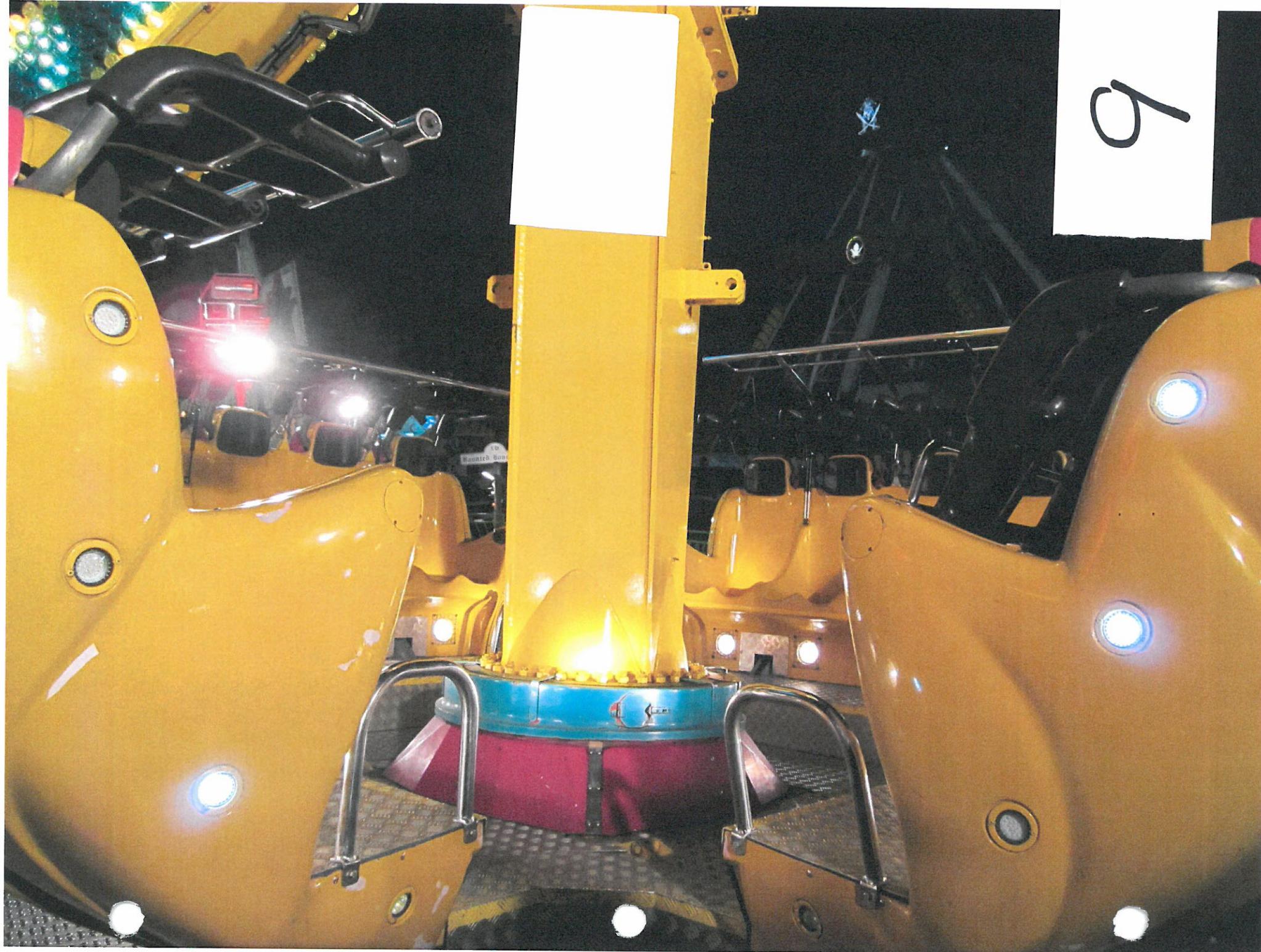
6 B





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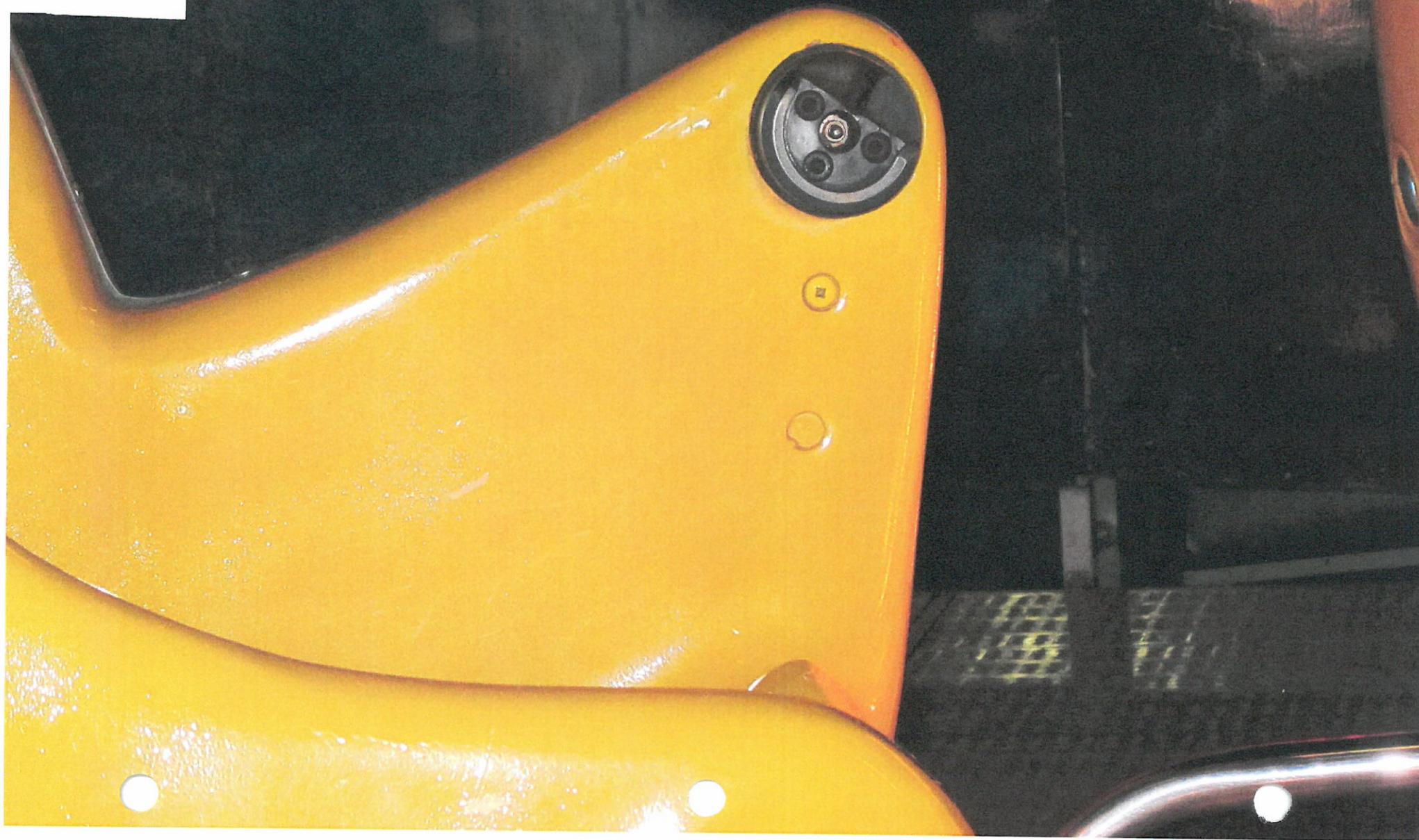




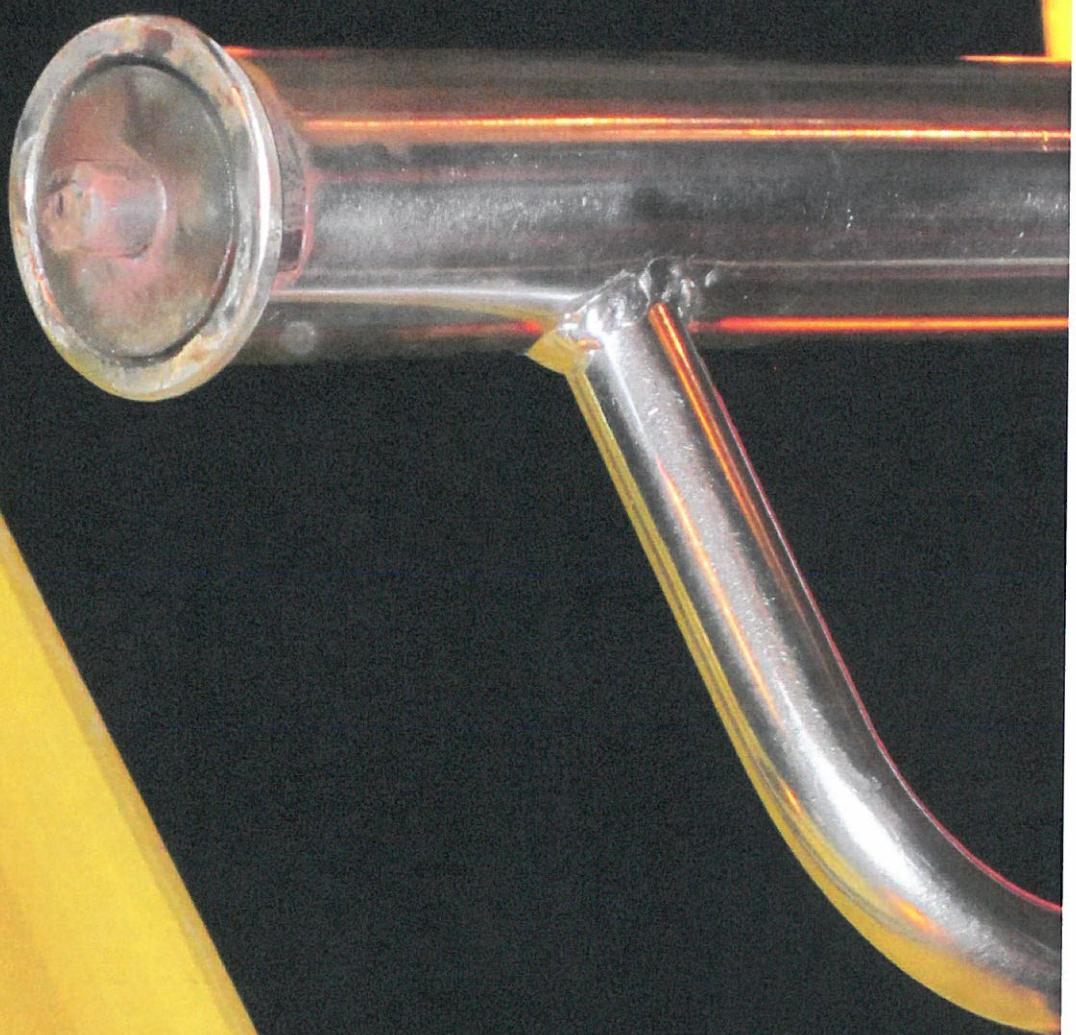
70



11



12



73



14



75



024

16

State Fair

2013 NC STATE FAIR

SUBWAY

ARM BARS CLOSED SIGNAL

ARMS CENTER POSITION

START

START

DIRECT

QUART

SPEED

STOP

SPEED

START

ARM DRIVE

RED

CENTER DRIVE

77

1



BOOM DOWN SLOWLY



HYDRAULIC PUMP

STOP

START DRIVES

BOOM

UP N DOWN

DIRECTION

START

78

79

START DRIVES

BOOM

STOP

UP



HYDRAULIC PUMP



20

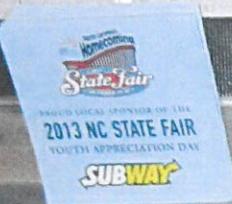
CENTER DRIVE

#### DRIVE AXLE

200 200 200 200

1024

### BOOM DOWN SLOWLY



21



22

2013  
NC STATE FAIR  
AMUSEMENT RIDE OPERATION CHECK

1. Run ride empty one (1) cycle.  
2. Check restraints.  
3. Inspect overall mechanical condition/operation of device.  
4. Check ride fencing.  
5. Check area inside of fence to insure free of obstacles (trip hazards).  
6. Check all stop switches.

Operation Checks completed at these times each day:

DATE:	Supervisor Initials:	10:00 AM	3:00 PM	8:00 PM
10/17/13:	11. 7:50			
10/18/13:	11. 7:50			
10/19/13:	11. 7:50			
10/20/13:	11. 7:50			
10/21/13:	11. 7:50			
10/22/13:	11. 7:50			
10/23/13:	11. 7:50			
10/24/13:	11. 7:50			
10/25/13:	10. CT			
10/26/13:				
10/27/13:				

1101 MAIL SERVICE CENTER • RALEIGH, NORTH CAROLINA 27609-1101  
(919) 807-2750 • FAX (919) 807-2757 • TOLL FREE: CHAMBERS/LEARN.NC.GOV

23

CHAMBERS  
BUREAU CHIEF  
ELEVATOR AND AMUSEMENT DEVICE BUREAU

2013  
NC STATE FAIR

AMUSEMENT RIDE OPERATION CHECK

1. Run ride empty one (1) cycle.
2. Check restraints.
3. Inspect overall mechanical condition/operation of device.
4. Check ride fencing.
5. Check area inside of fence to insure free of obstacles, (trip hazards).
6. Check all stop switches.

Operation Checks completed at these times each day:

DATE:

Supervisor Initial:

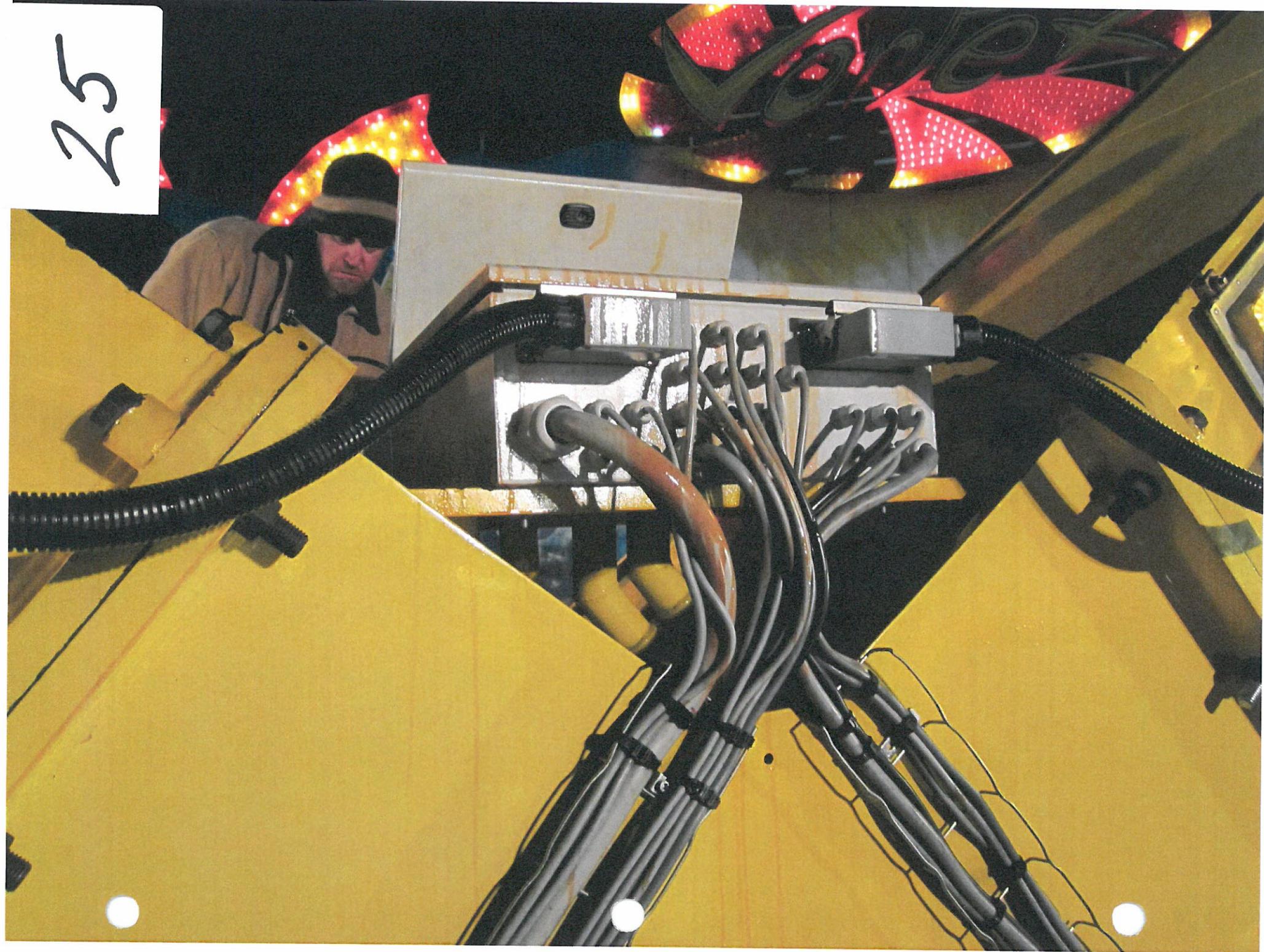
10:00 AM  
3:00 PM  
8:00 PM

10/17/13: T.T. 7:50  
10/18/13: 7:10 AM 7:45 3:30  
10/19/13: 7:10 AM 7:30 3:30  
10/20/13: 7:10 AM 7:30 8:00  
10/21/13: 7:10 AM 7:30 7:50  
10/22/13: 7:10 AM 7:30 8:15  
10/23/13: 7:10 AM 7:30 7:30  
10/24/13: 7:10 AM 7:30 7:30  
10/25/13: 7:10 O.T.  
10/26/13: \_\_\_\_\_  
10/27/13: \_\_\_\_\_

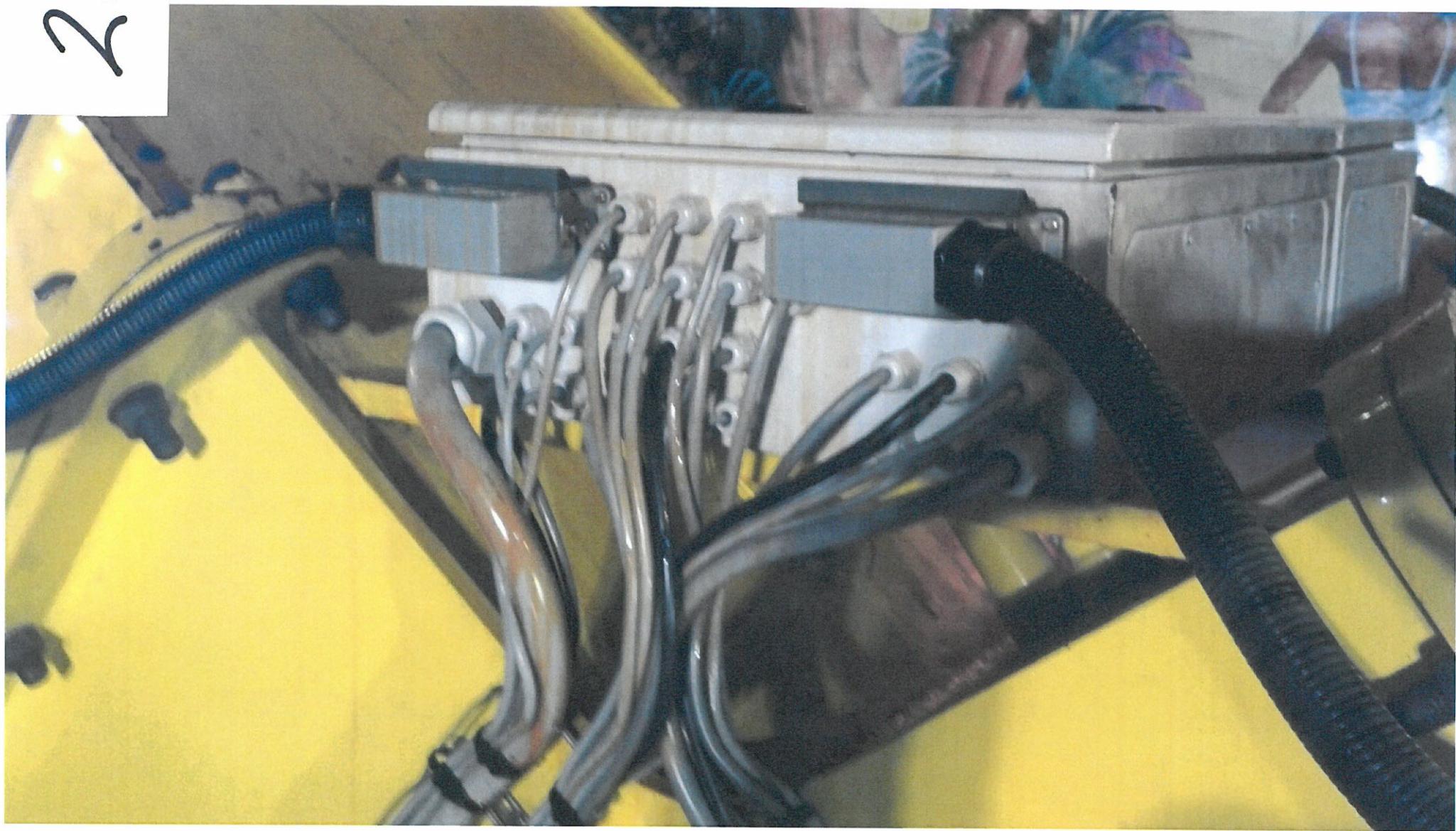
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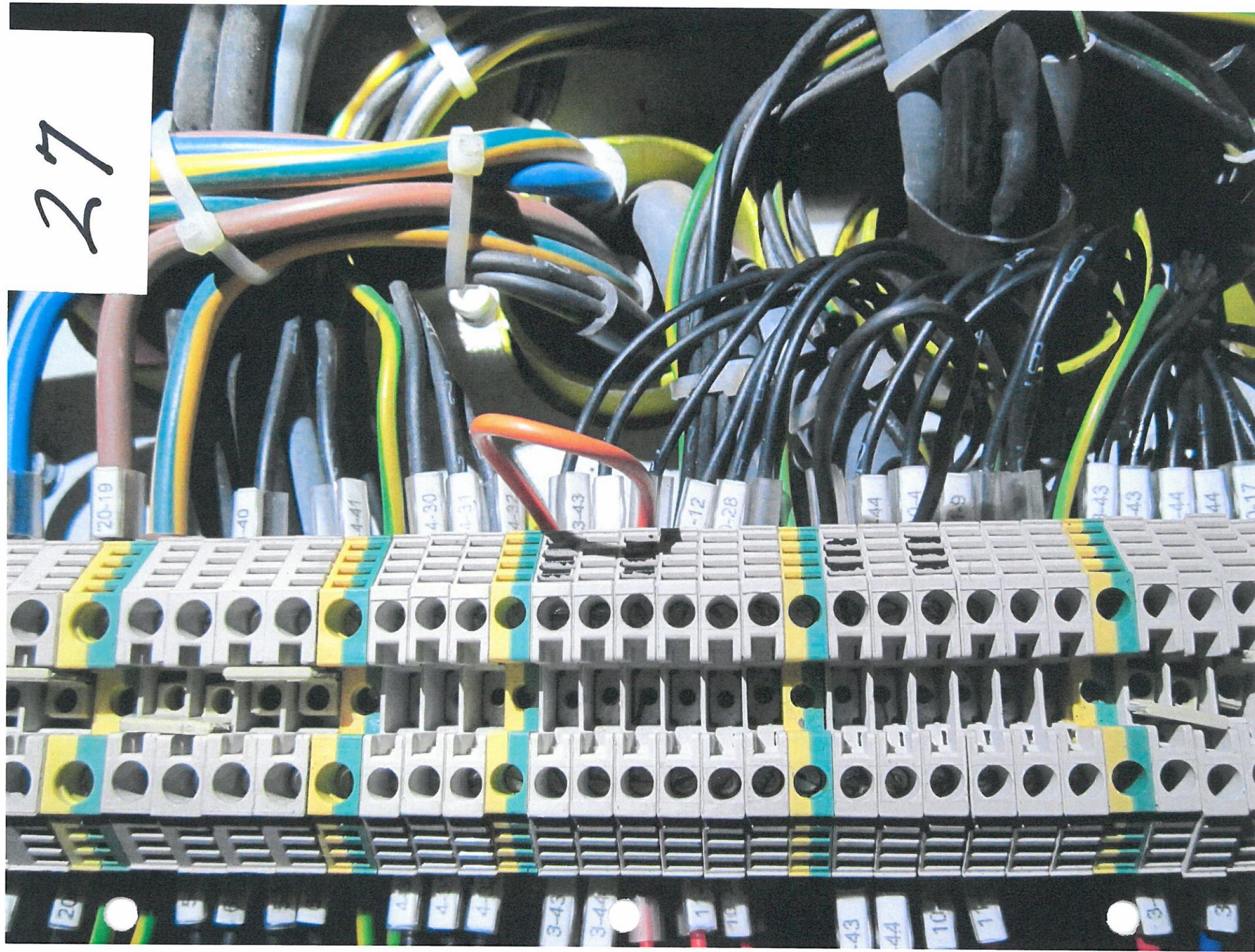
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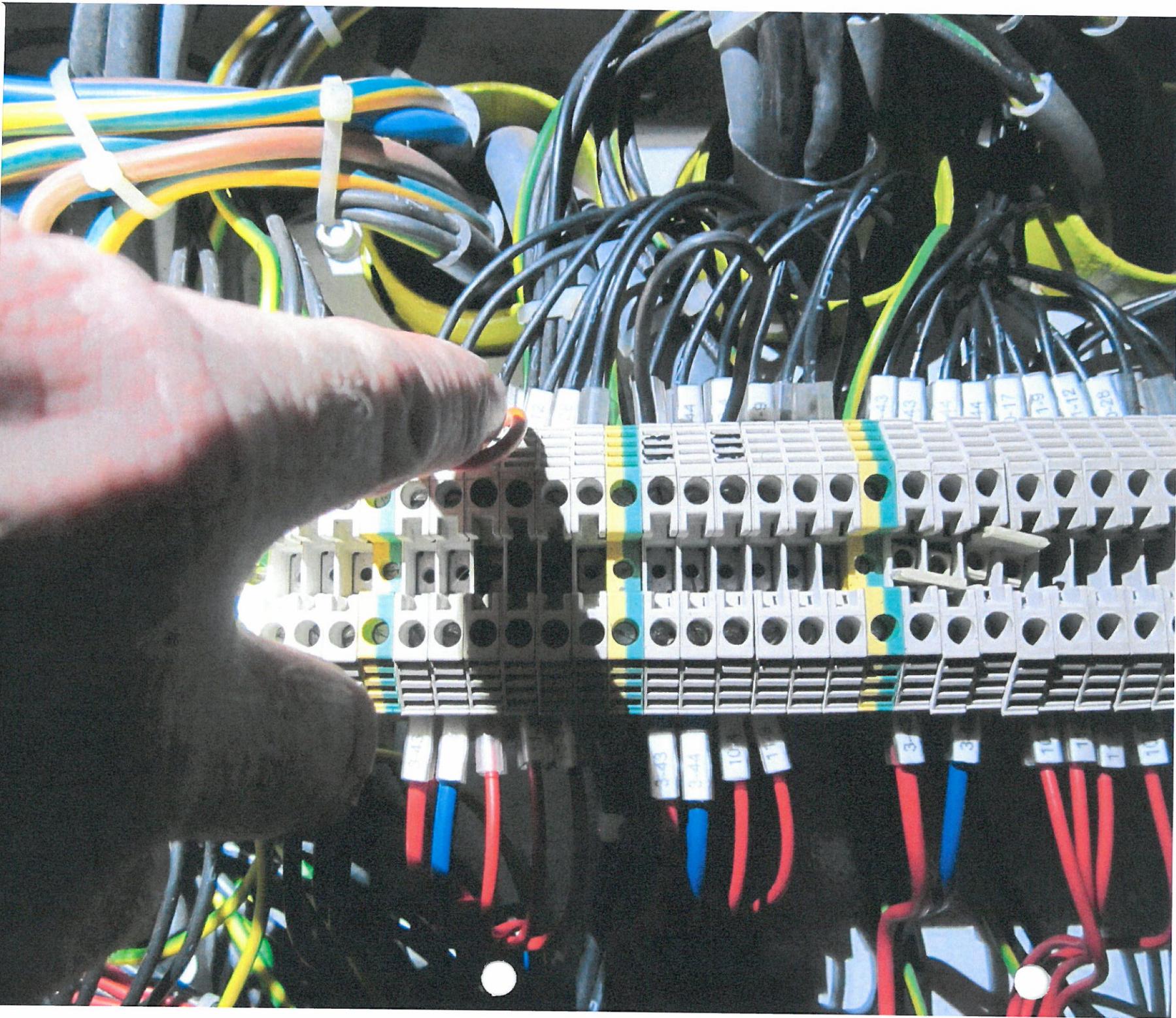
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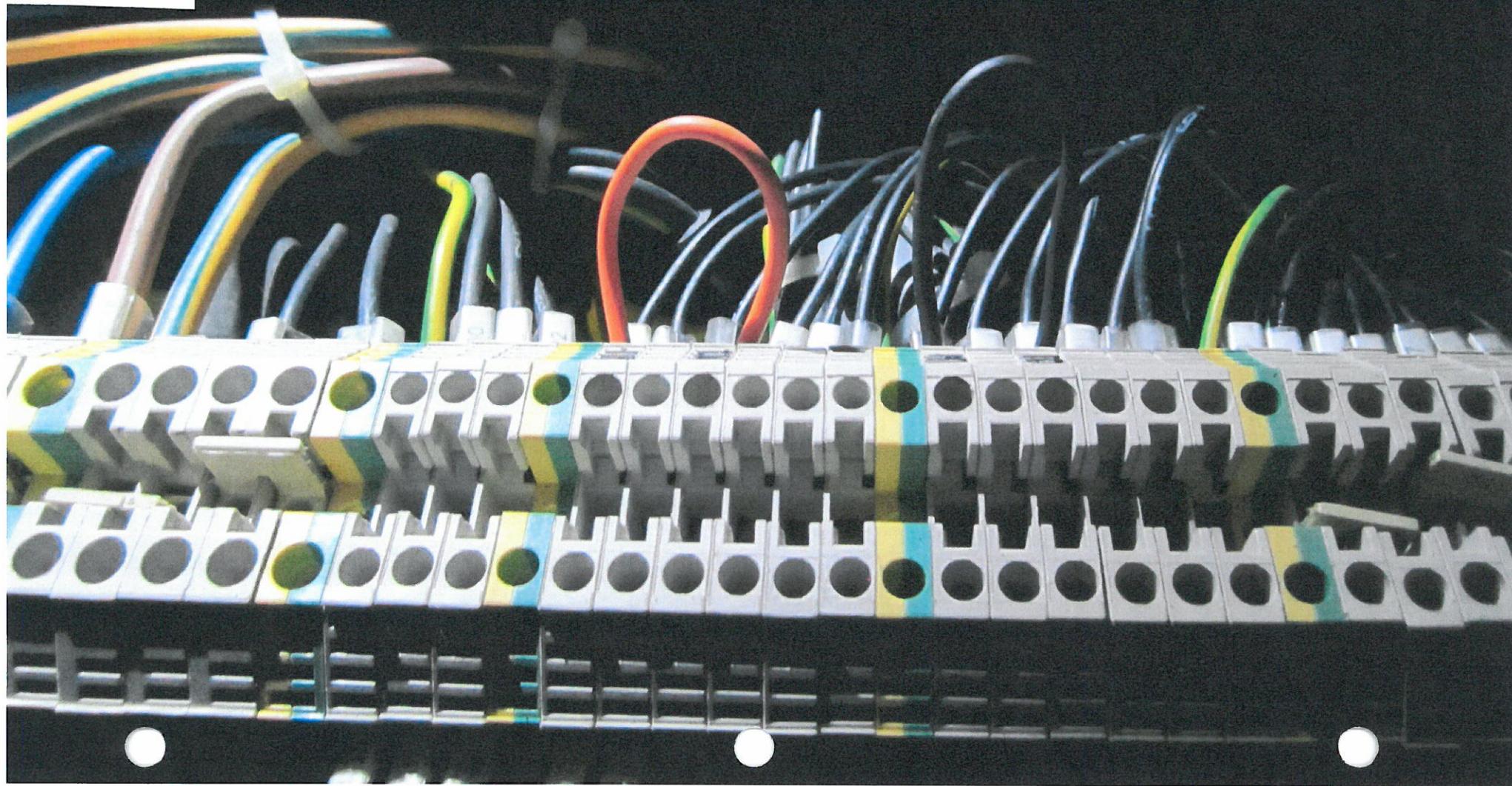
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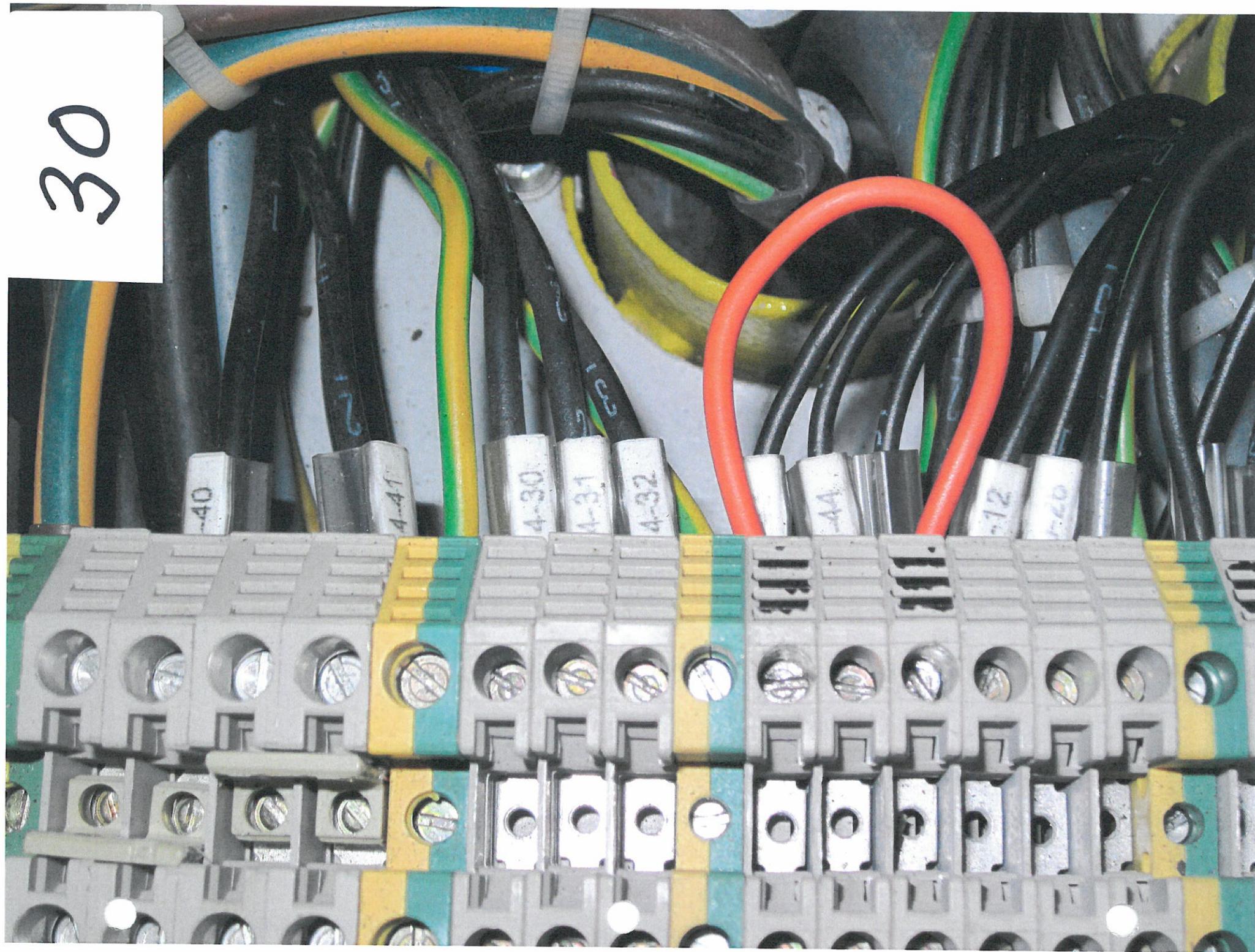
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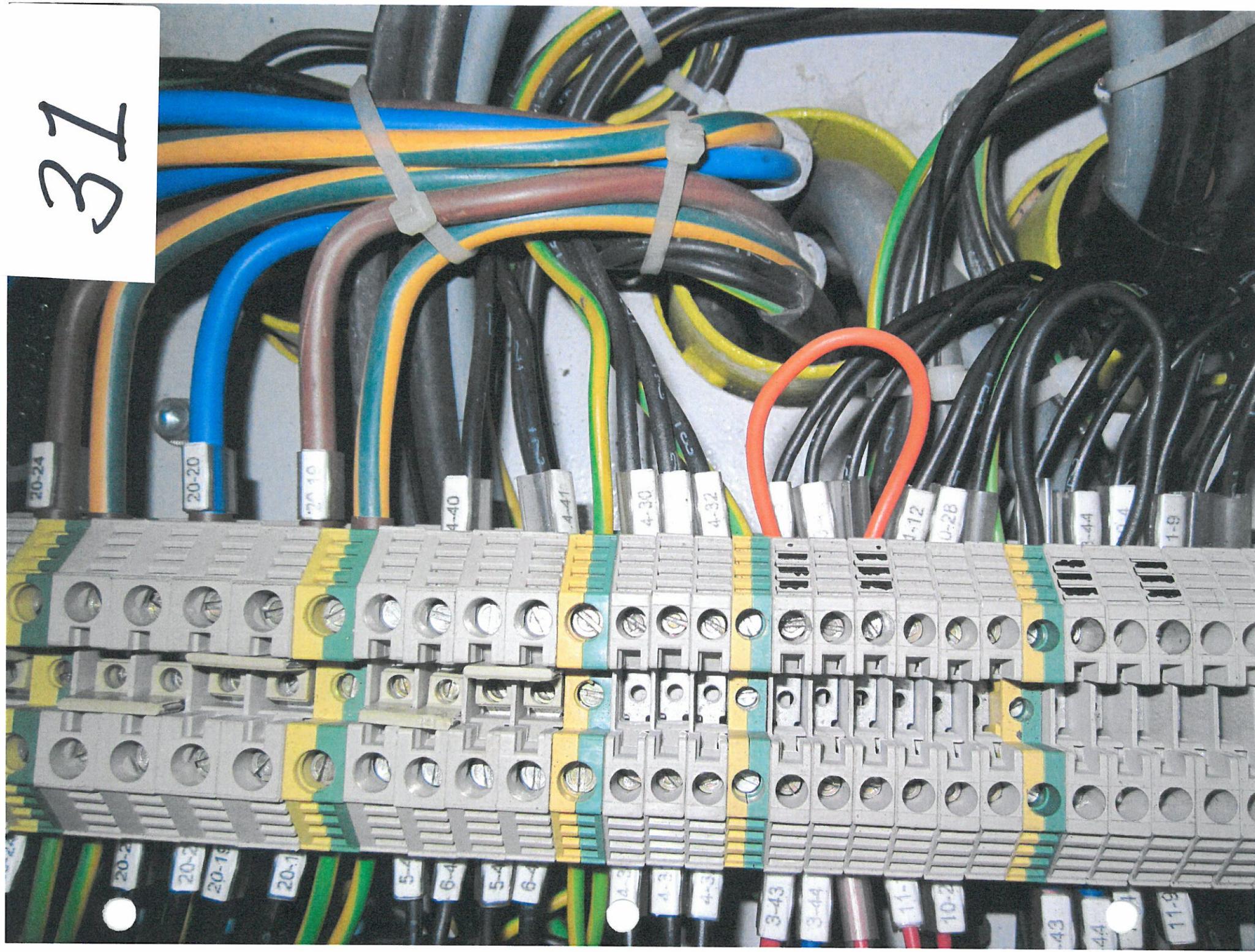
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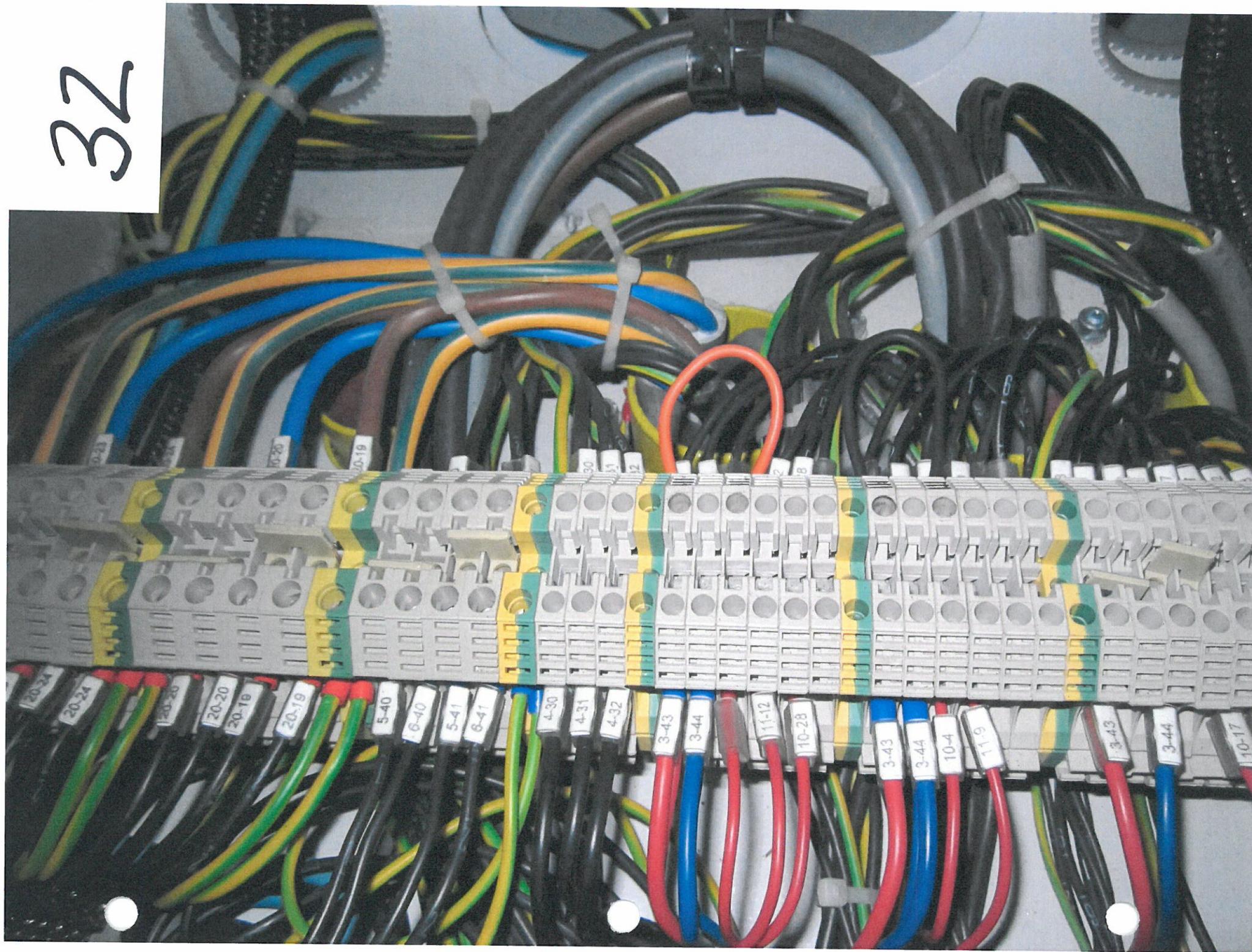
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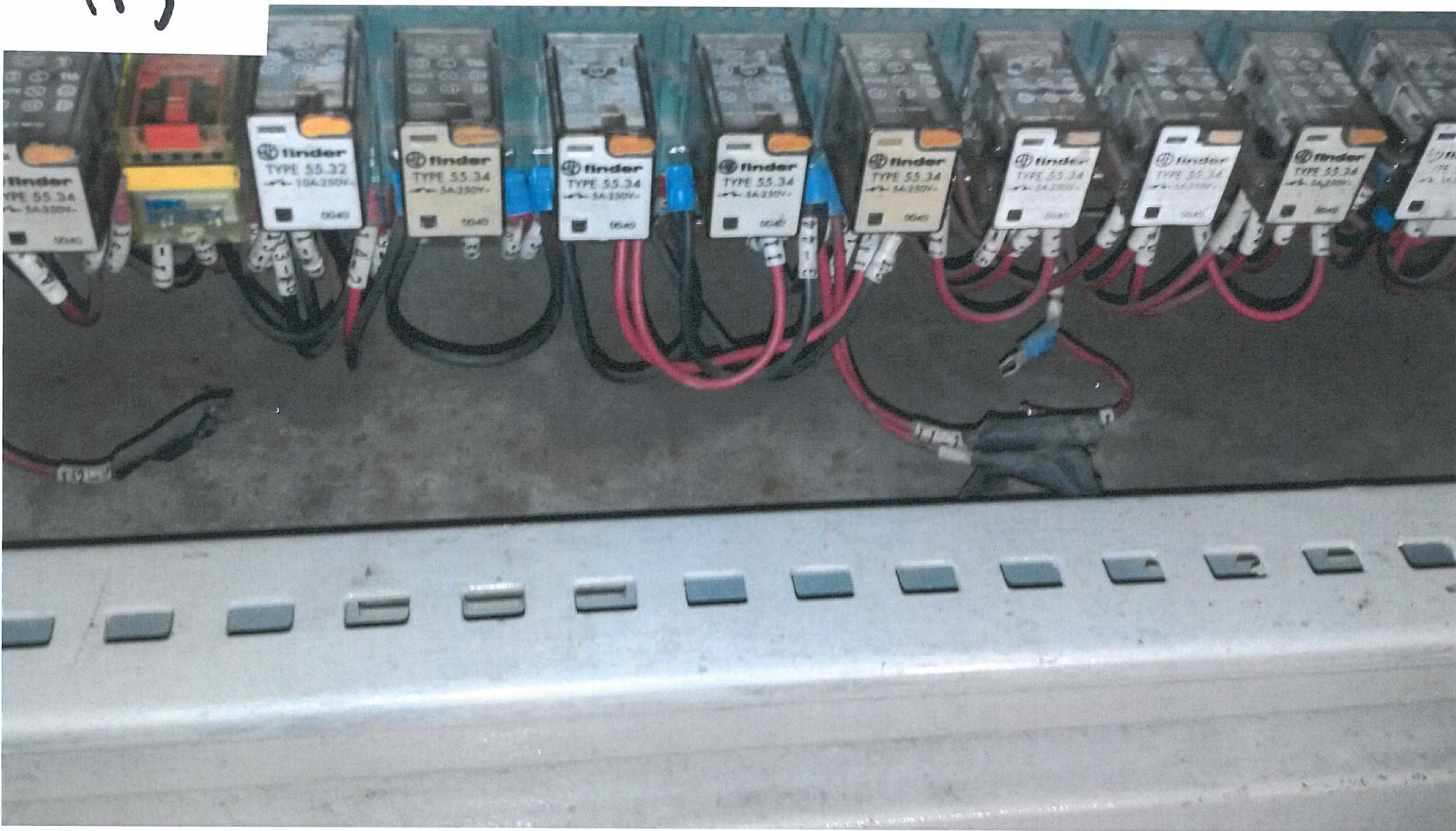
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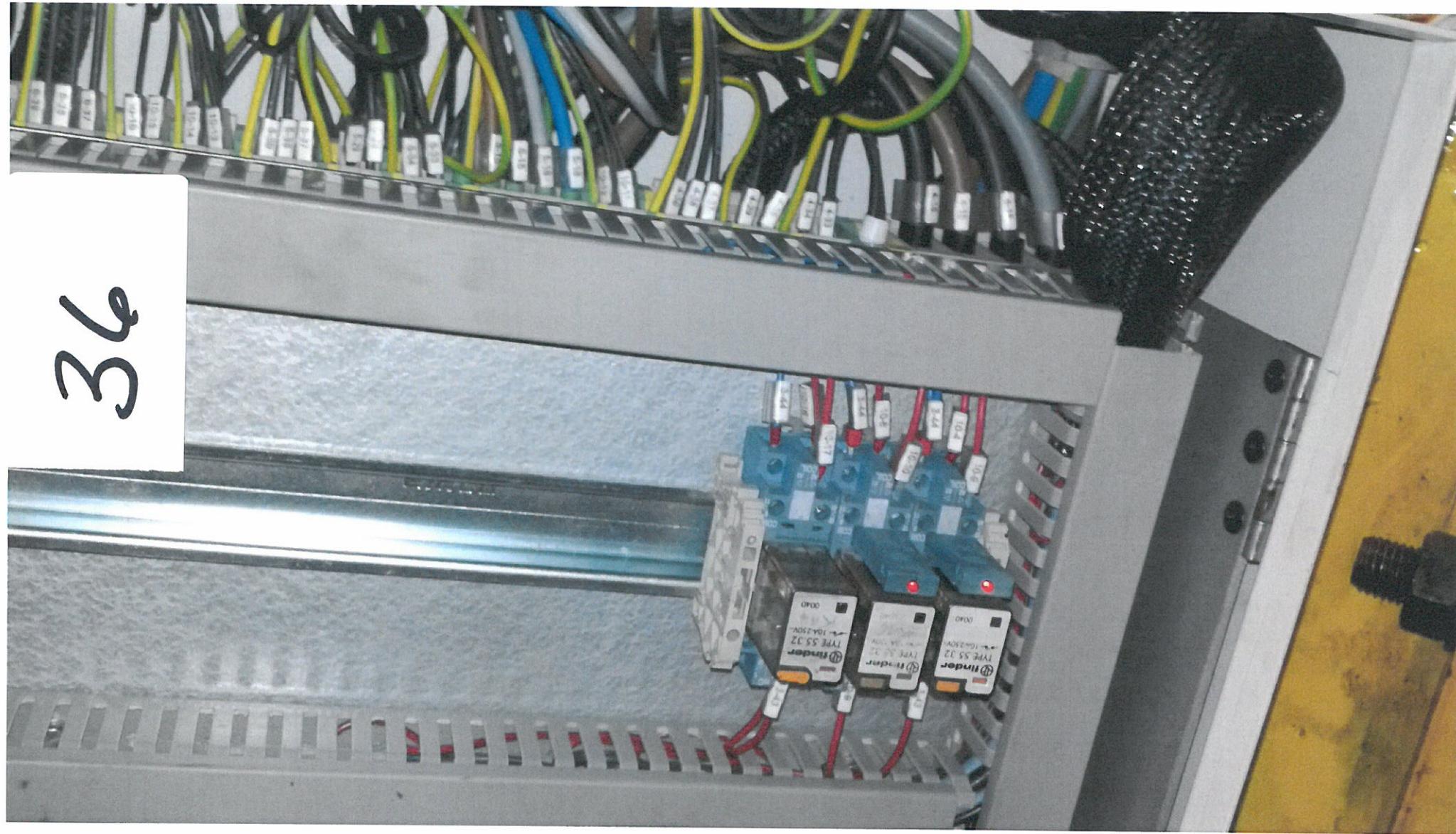
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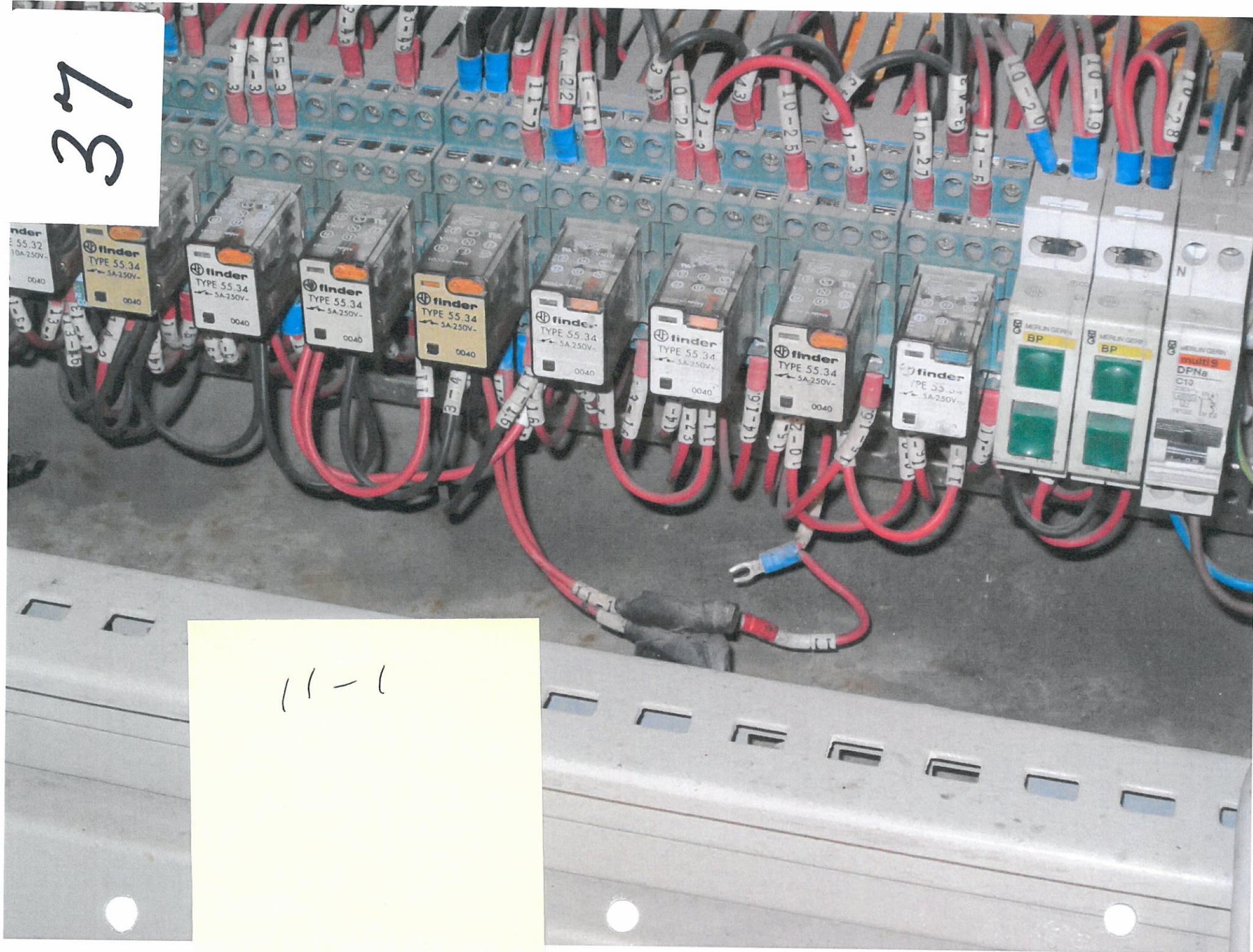


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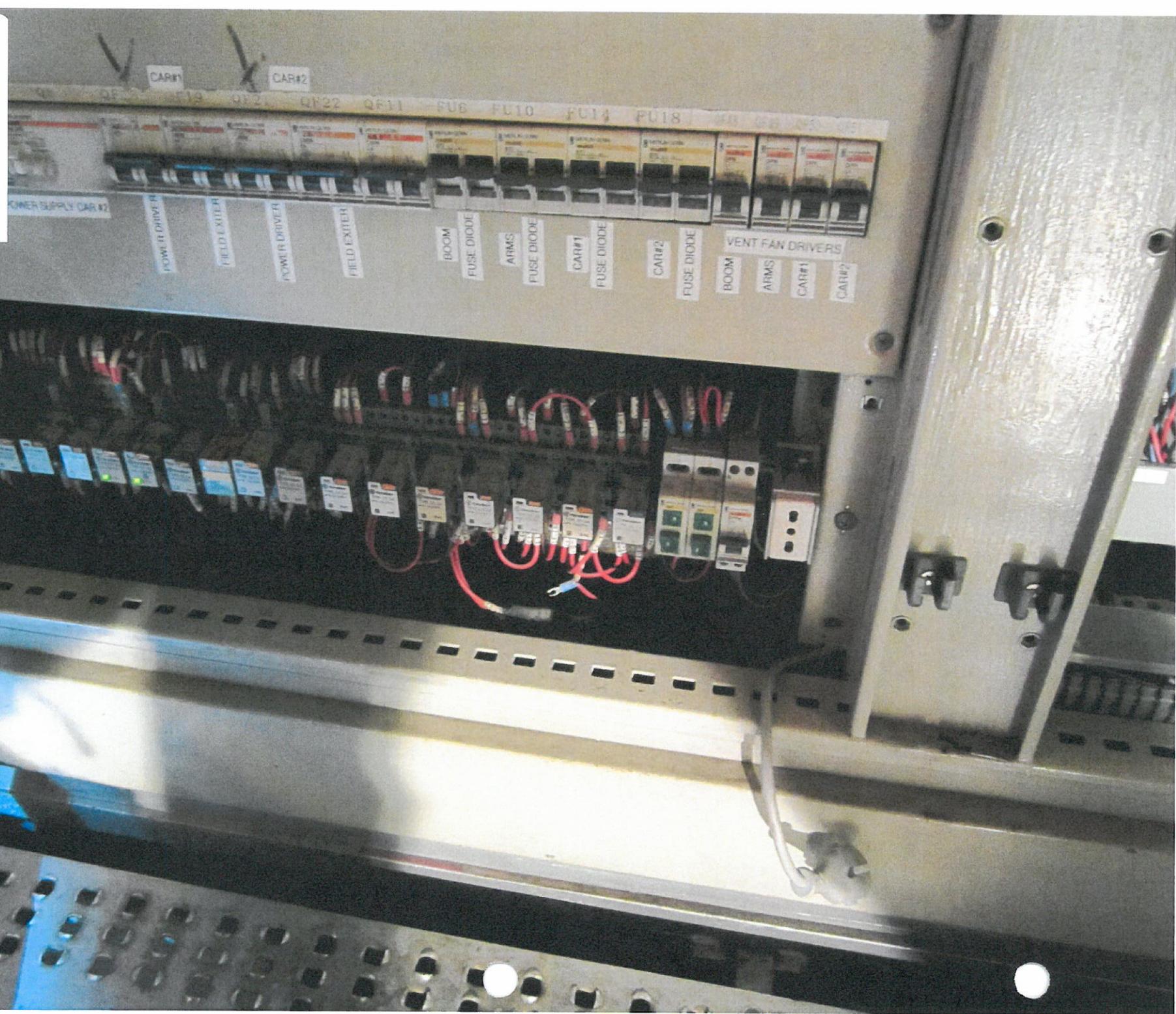
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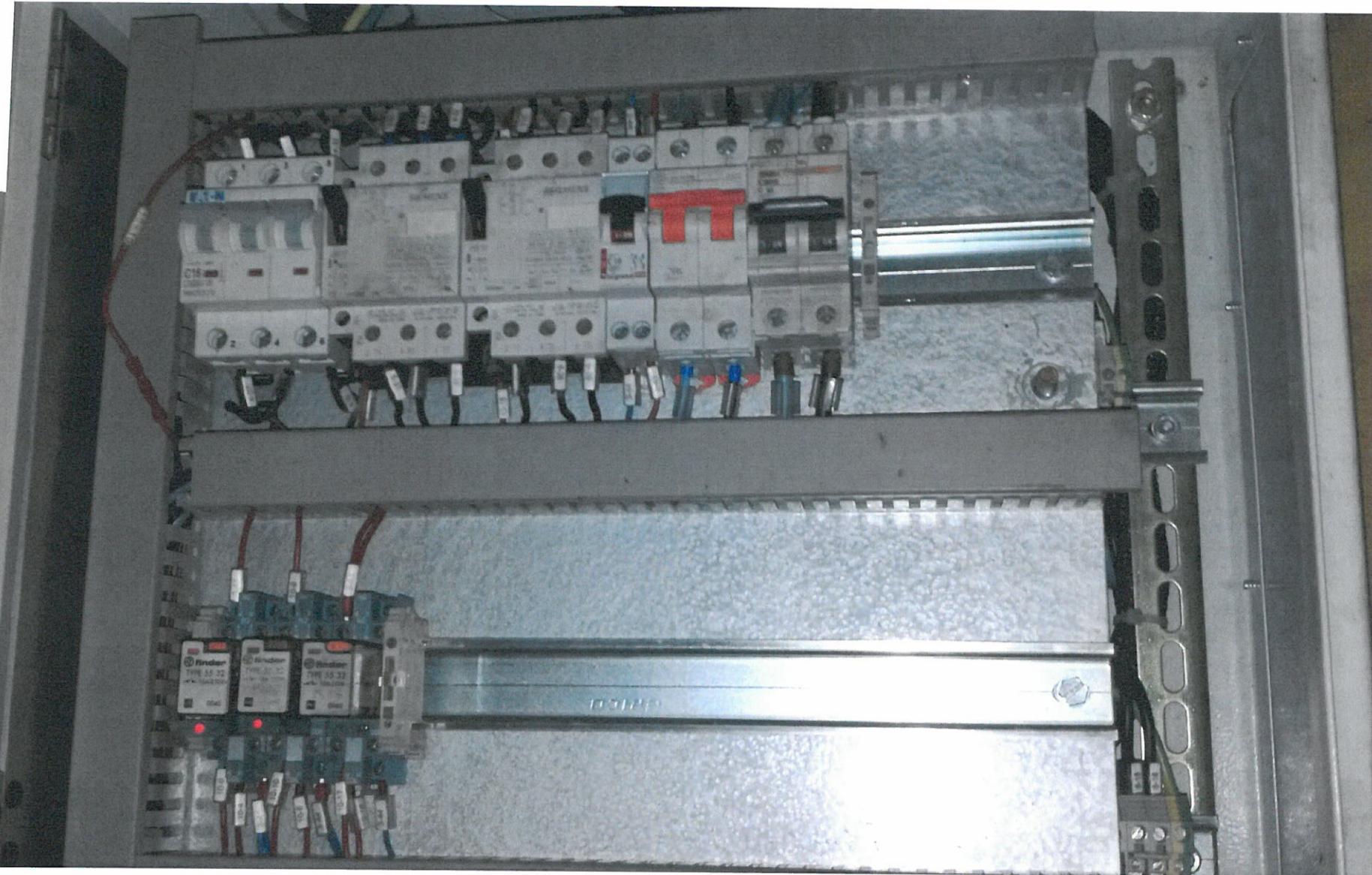
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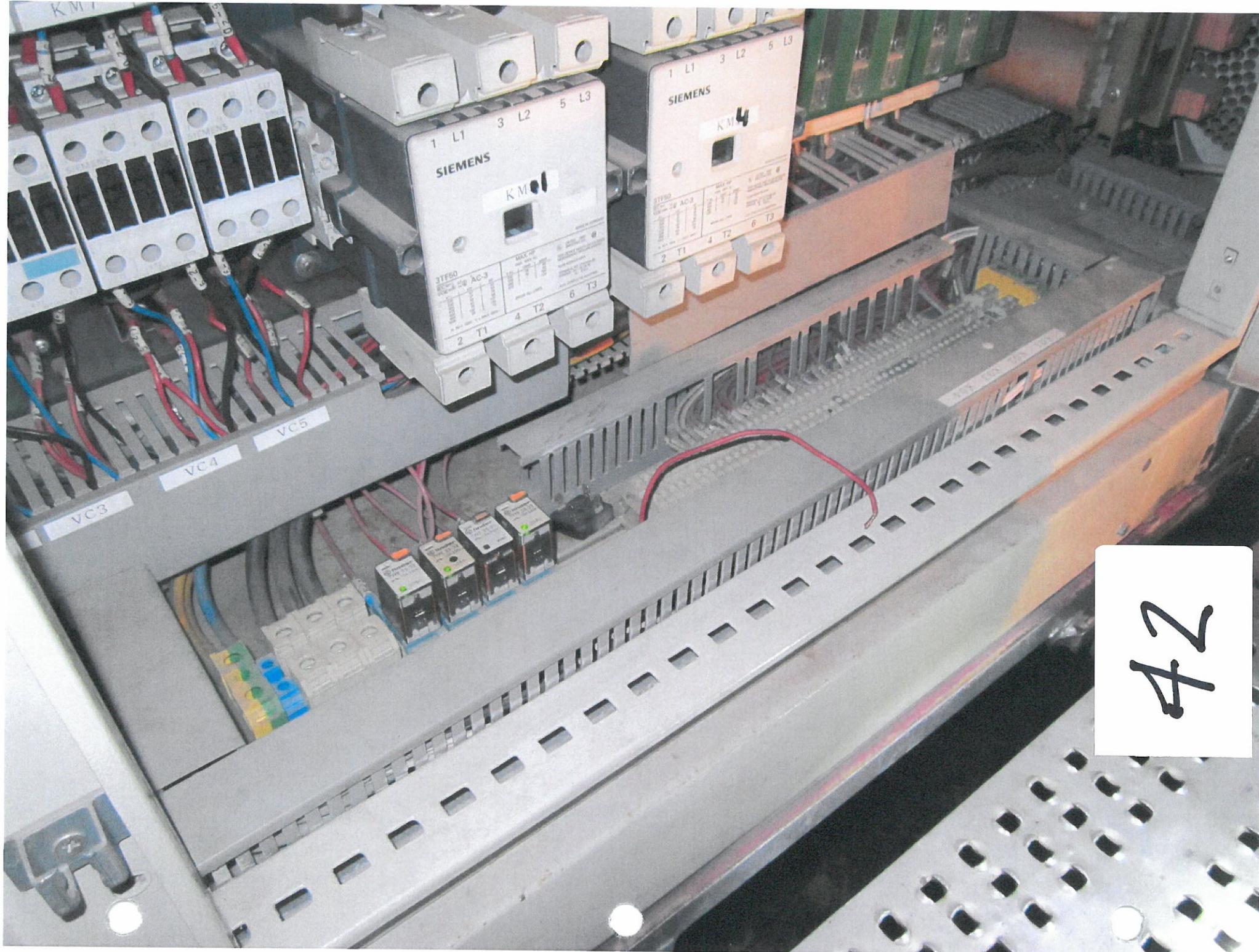


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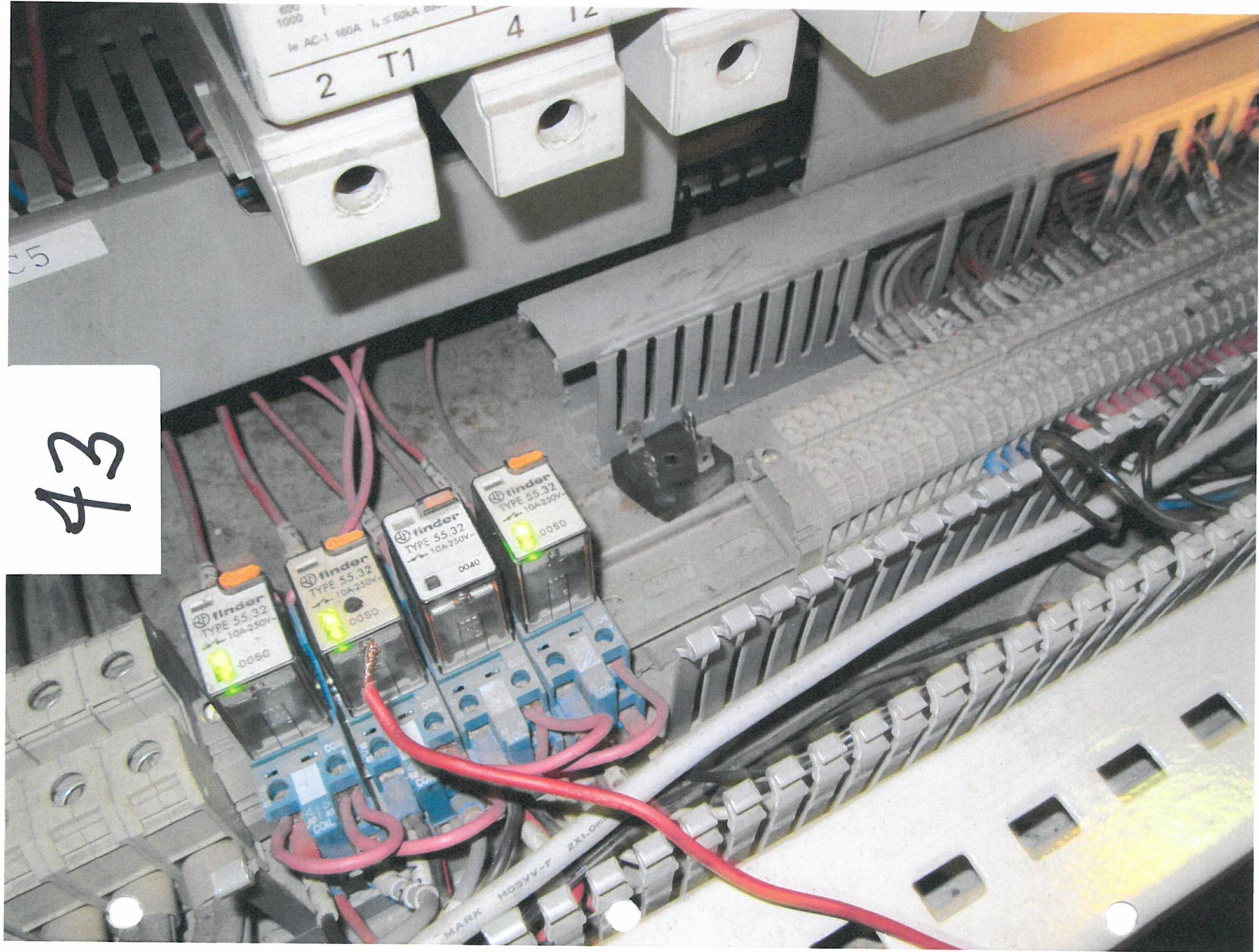




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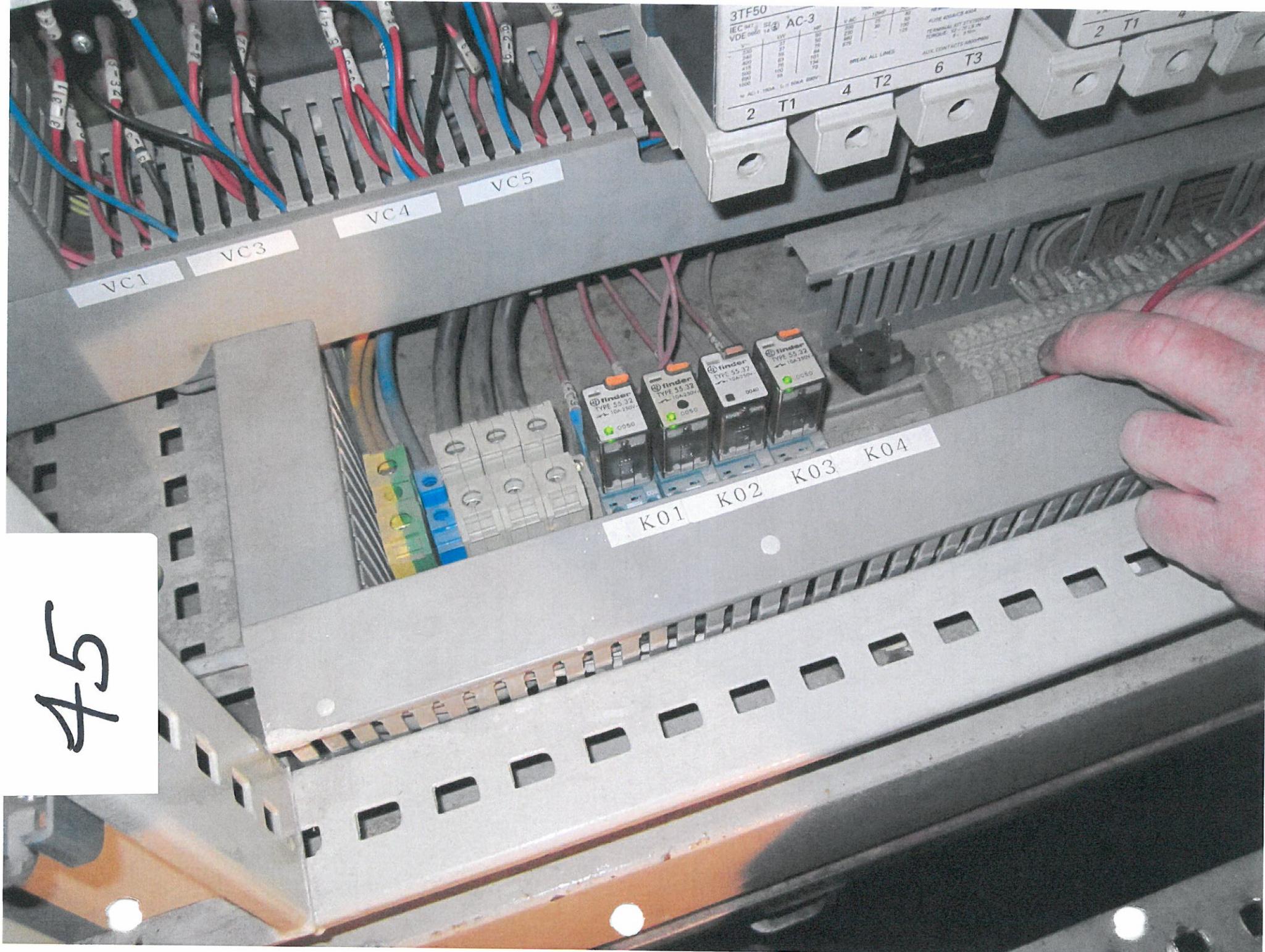


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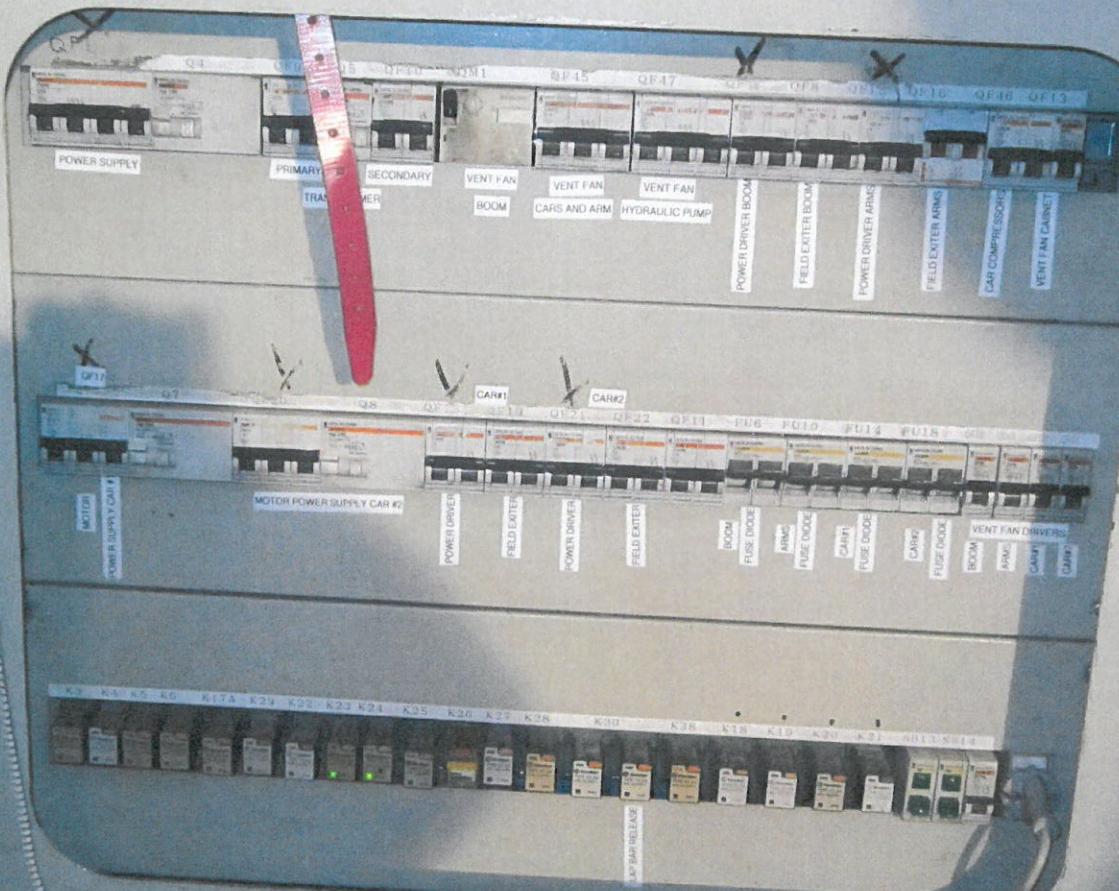


4





46



QF17

Q7

Q120

Q8

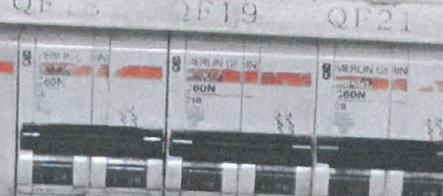
CAR#1

CAR#2

QF11

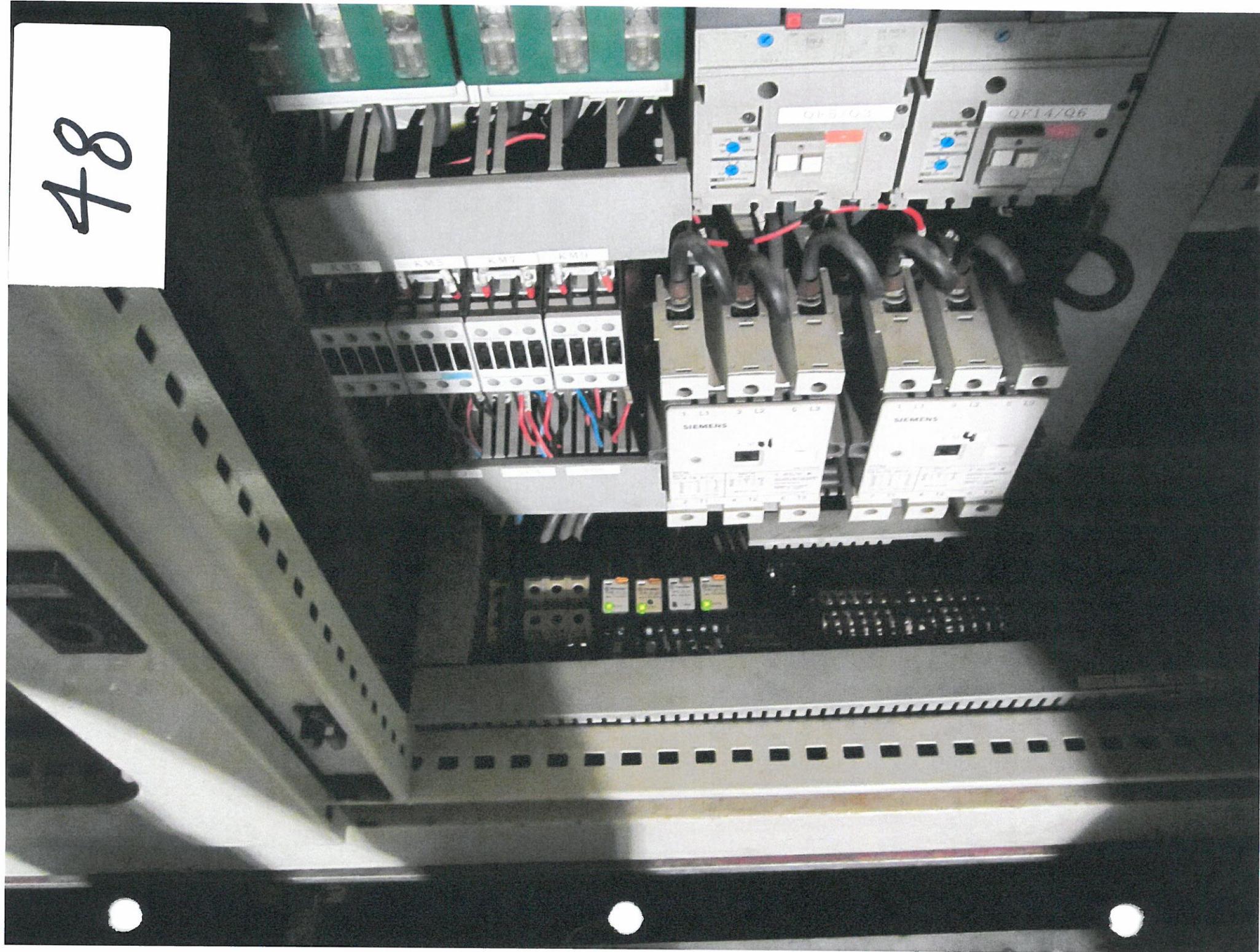
FU6

FU1



47  
LAP BAR RELEASE

48



MADE IN GERMANY  
LISTED ULIC  
WHD CONT. 40  
THIS DEVICE MEETS OR EXCEEDS  
NEEMA/EIAC REQUIREMENTS  
FUSE ASSAICS 400A  
TERMINAL KIT STC750-06  
TORQUE: 57 - 70 LB-IN  
0 - 9 NM  
AUX. CONTACTS ADSP00

6 T3

K2

10-19  
3/4"

K01  
K02  
K03  
K04

64

50

MOTOR POWER SUPPLY CAR #2

POWER DRIVE II

100

1100

111

100

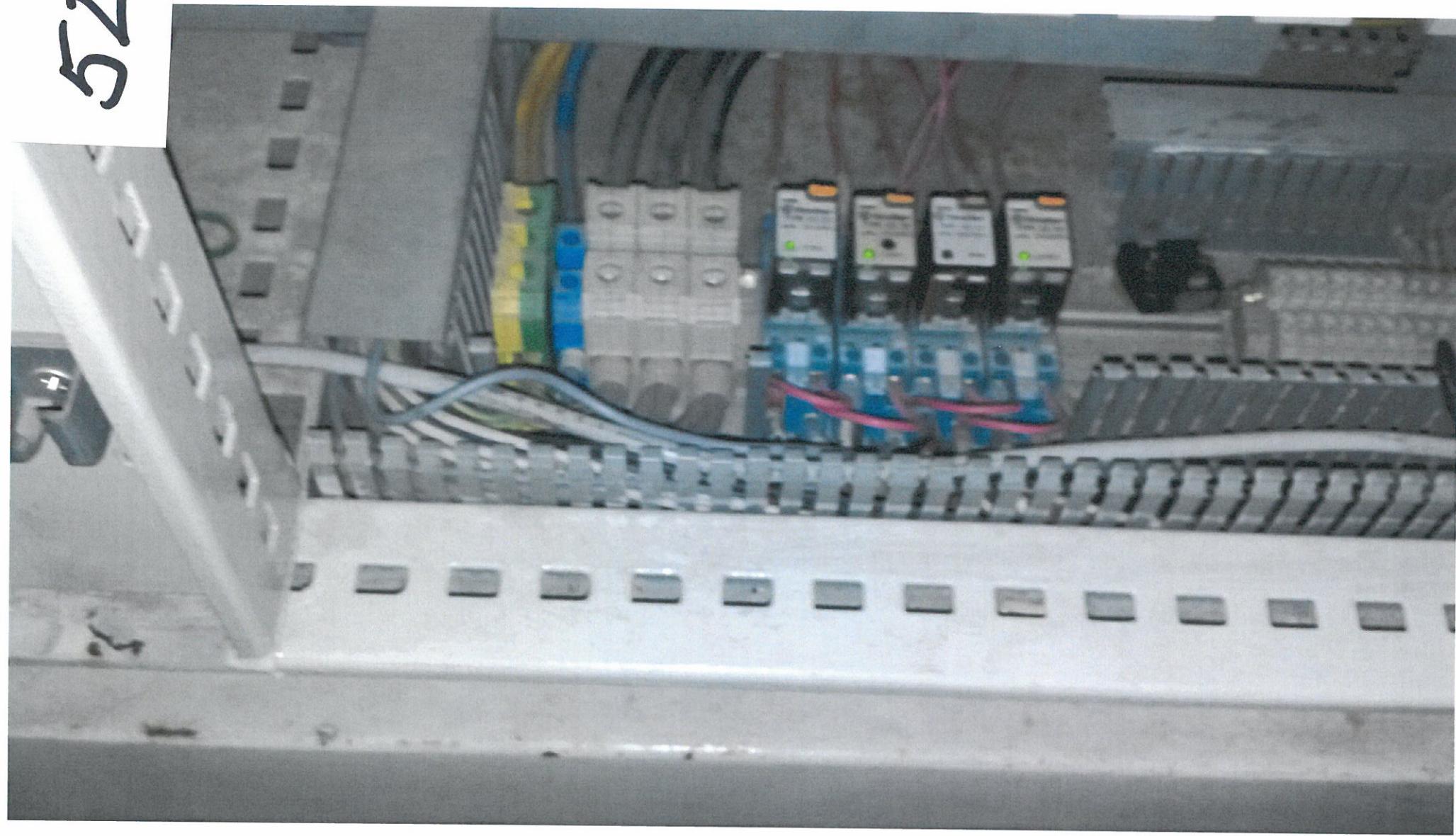
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482

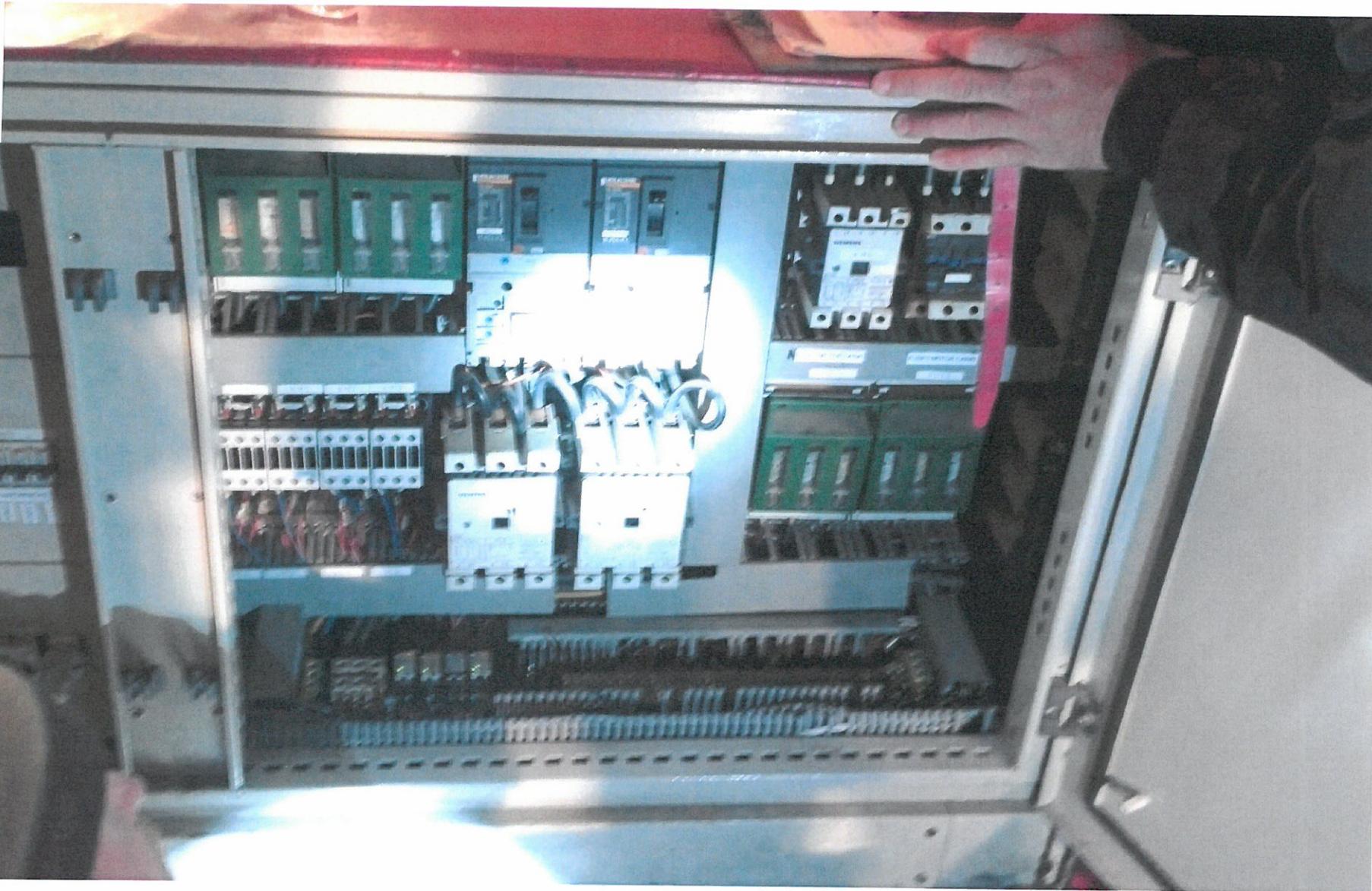
APRIL 1965



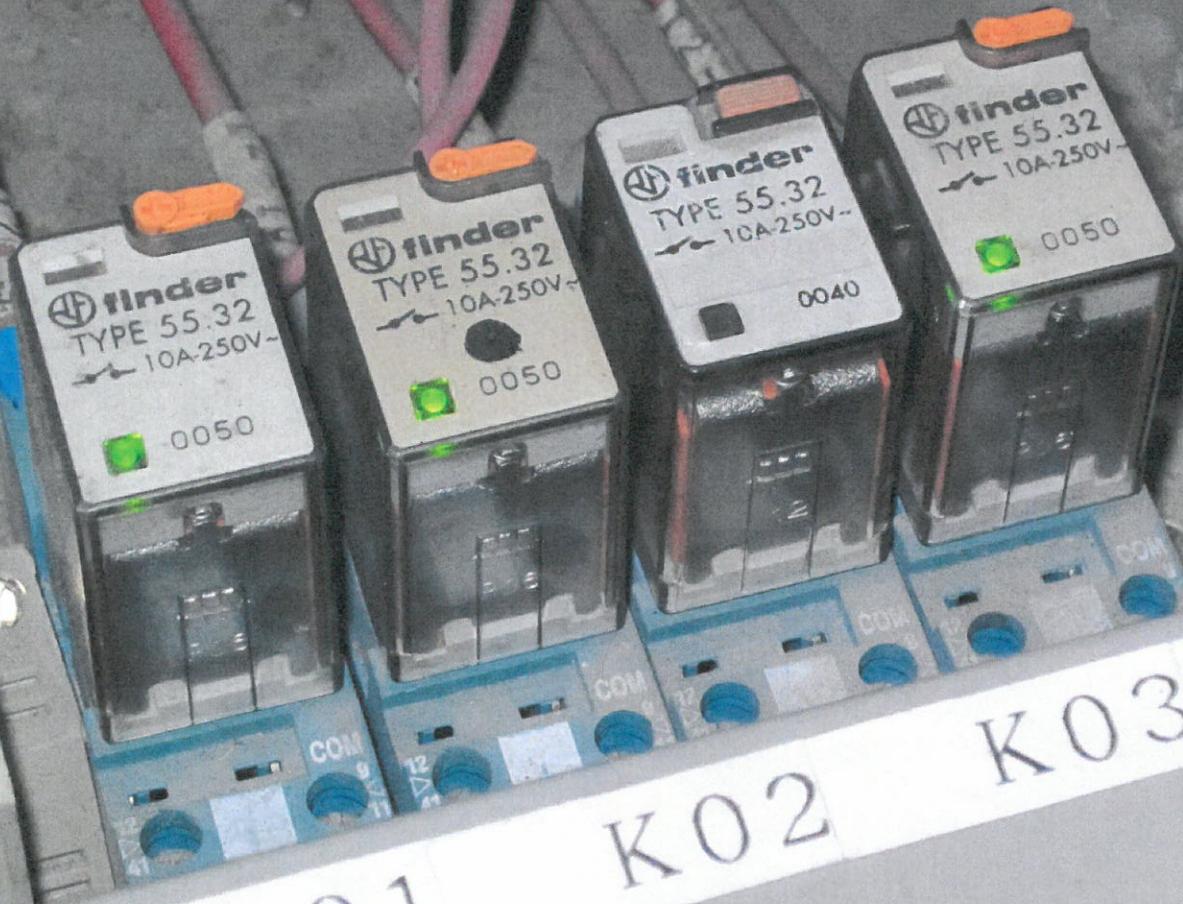
52



53



54



55



DCS 500

A rectangular label with a black border. Inside, there are several icons: a battery, a lightning bolt, a gear, a person, a hand, and a circular symbol with a question mark. Below the icons, the text "DANGEROUS VOLTAGE" is printed in a bold, sans-serif font.

ABB

DCS 500

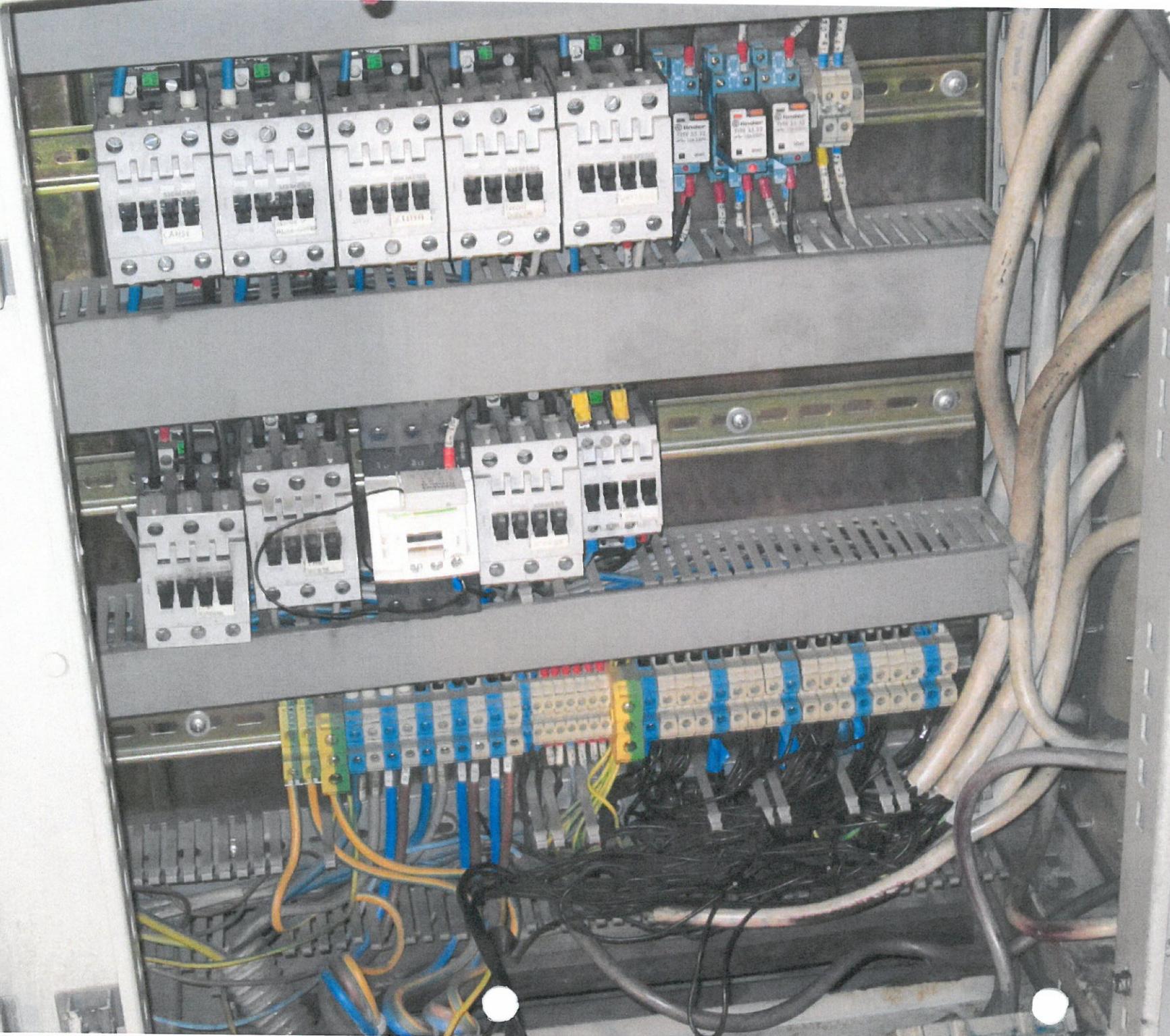
BOON

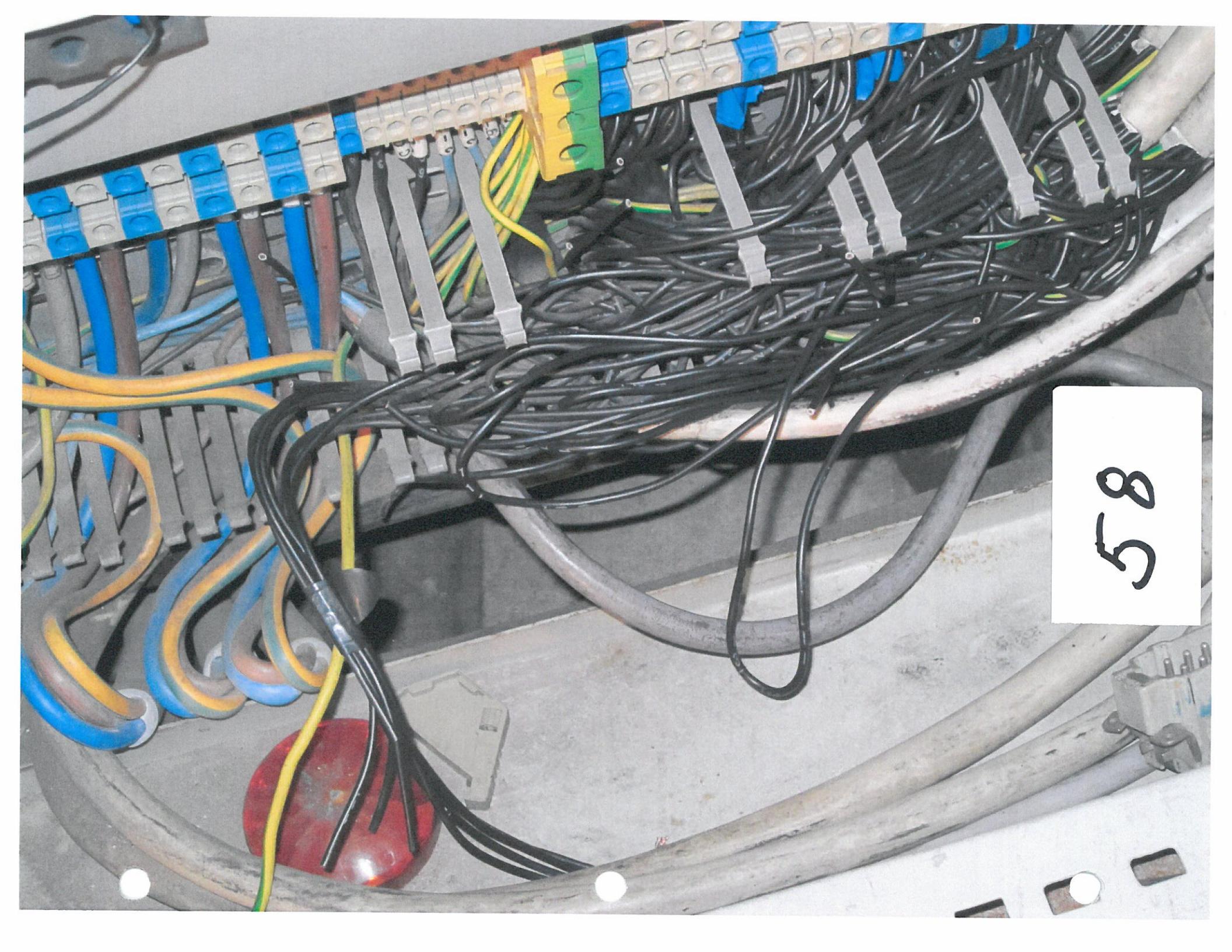
ABB

500

۱۶۹

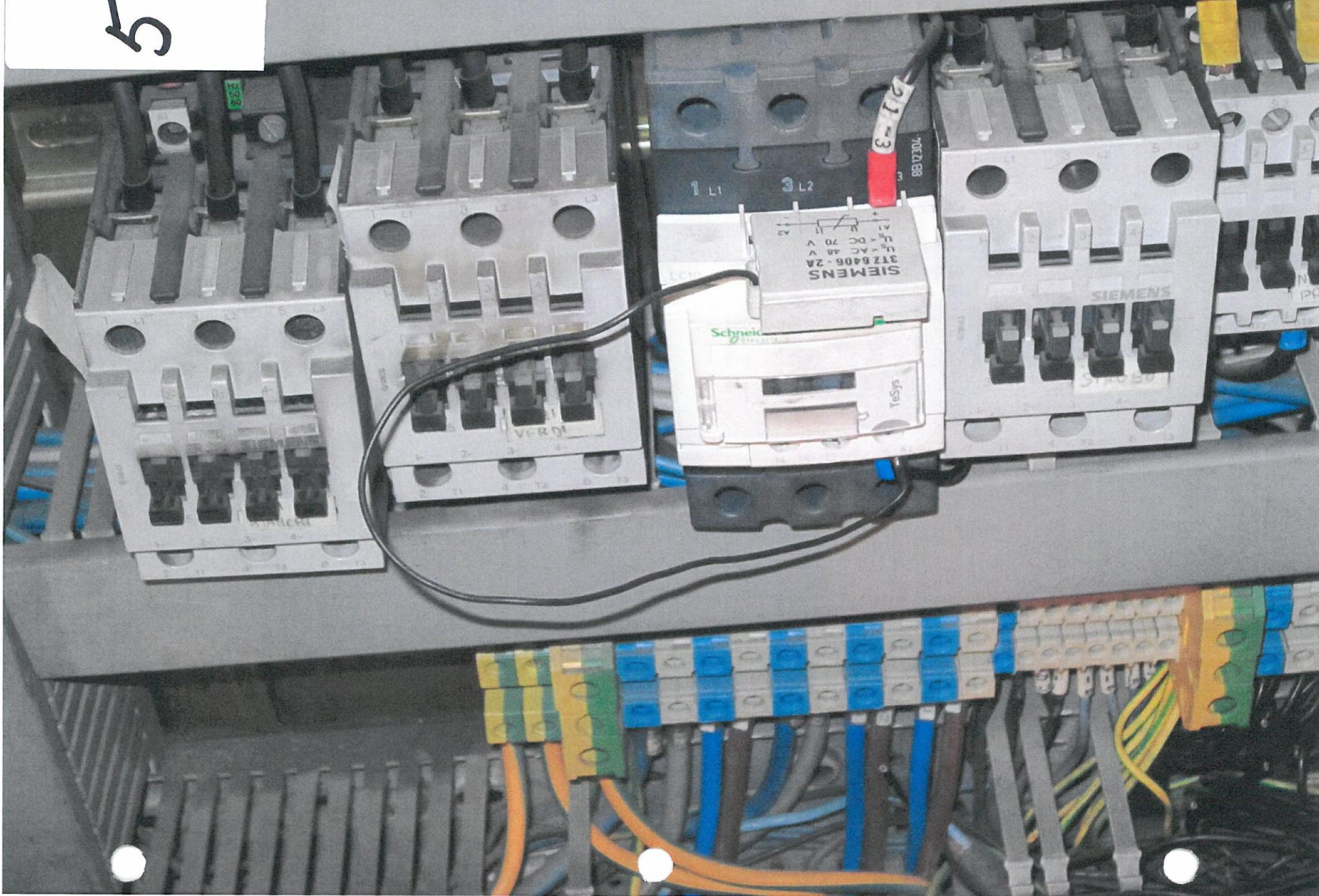
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58

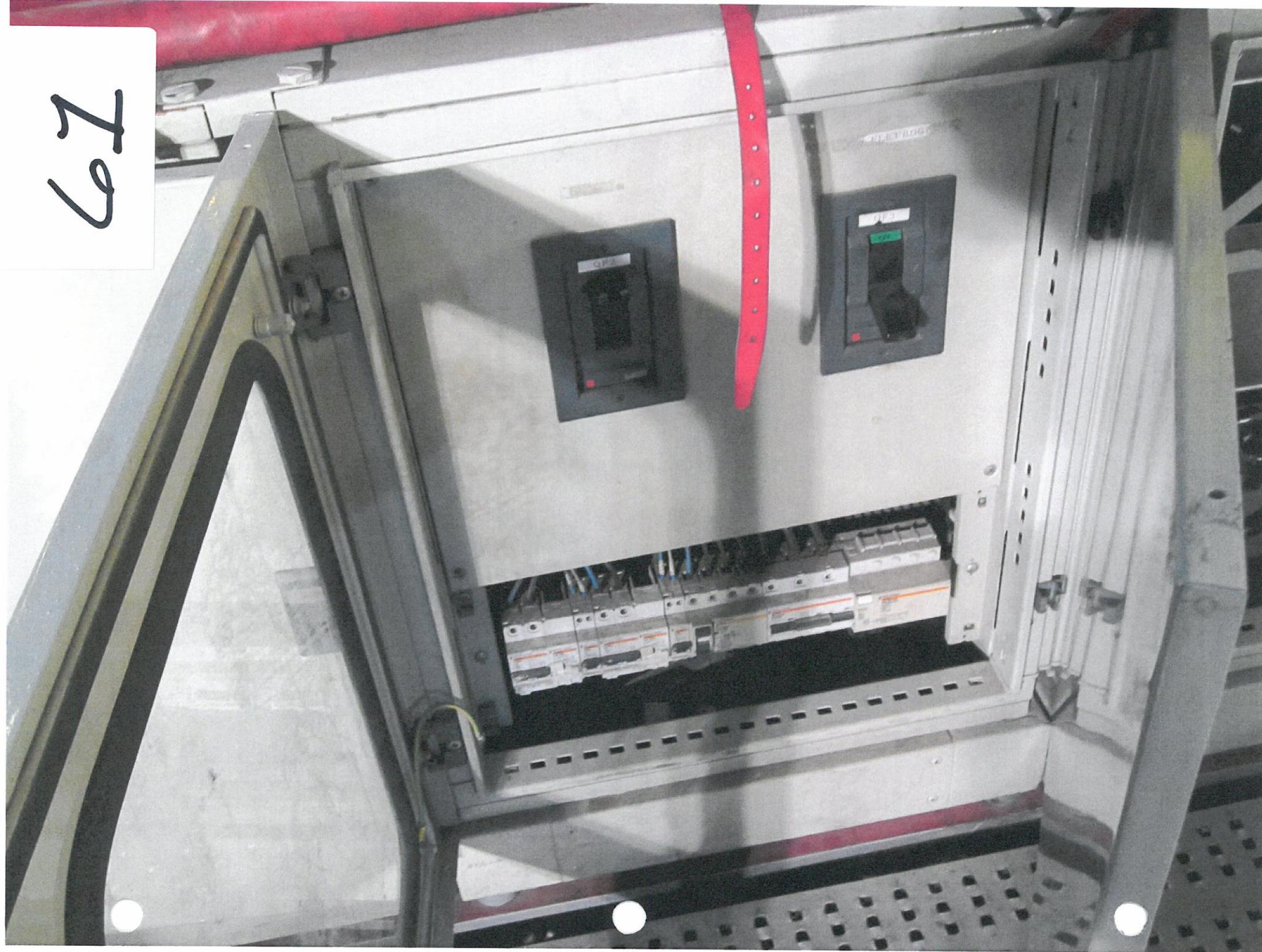
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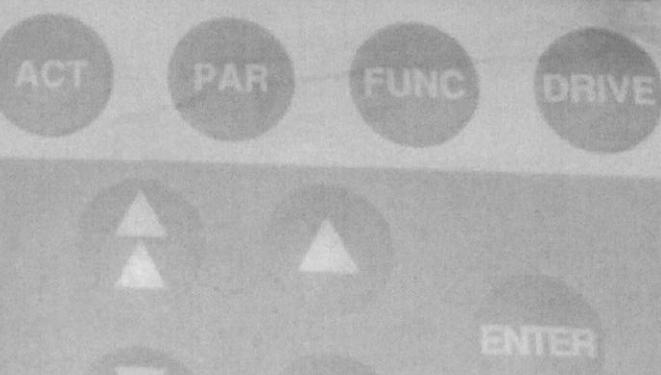


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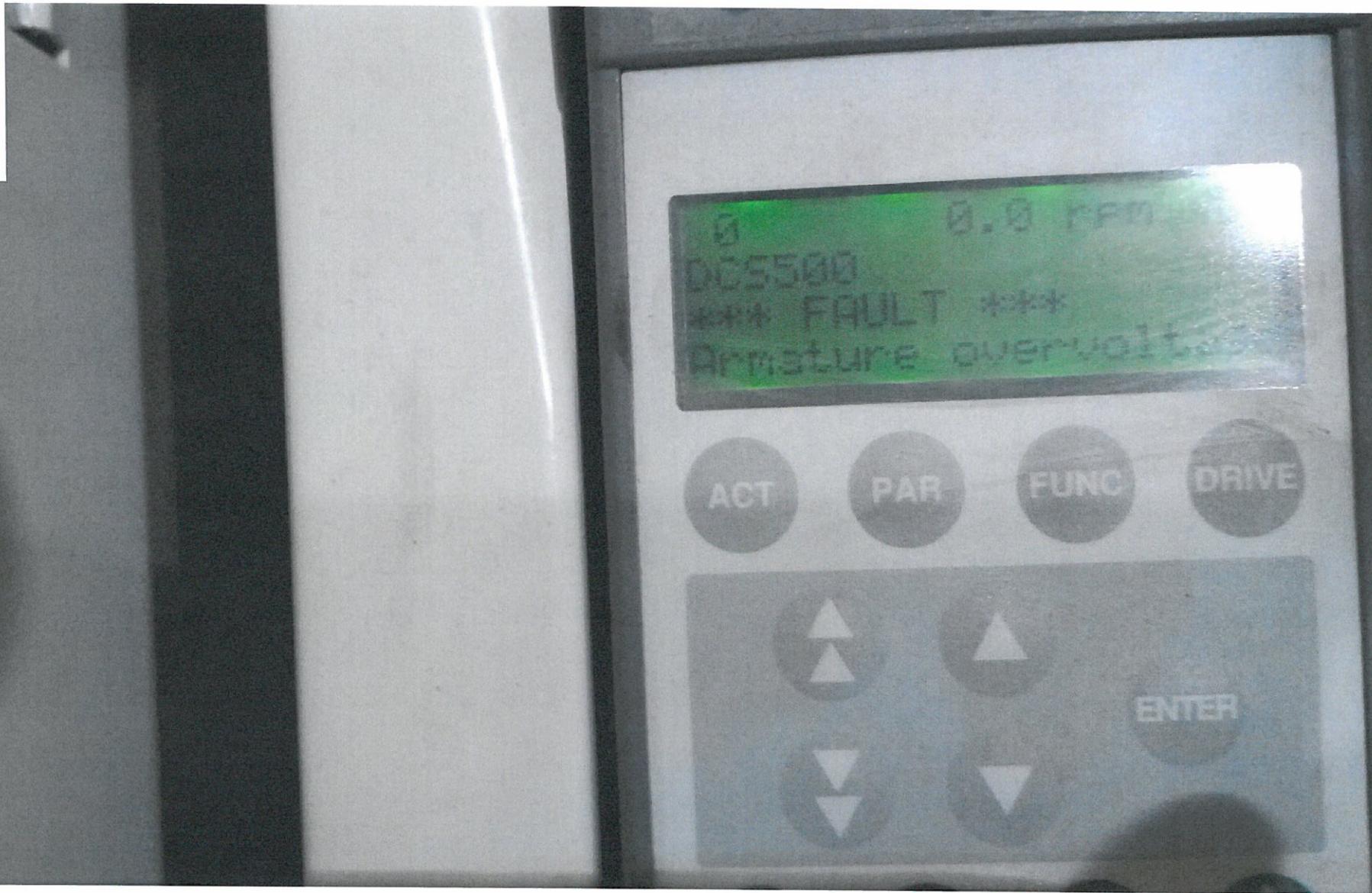


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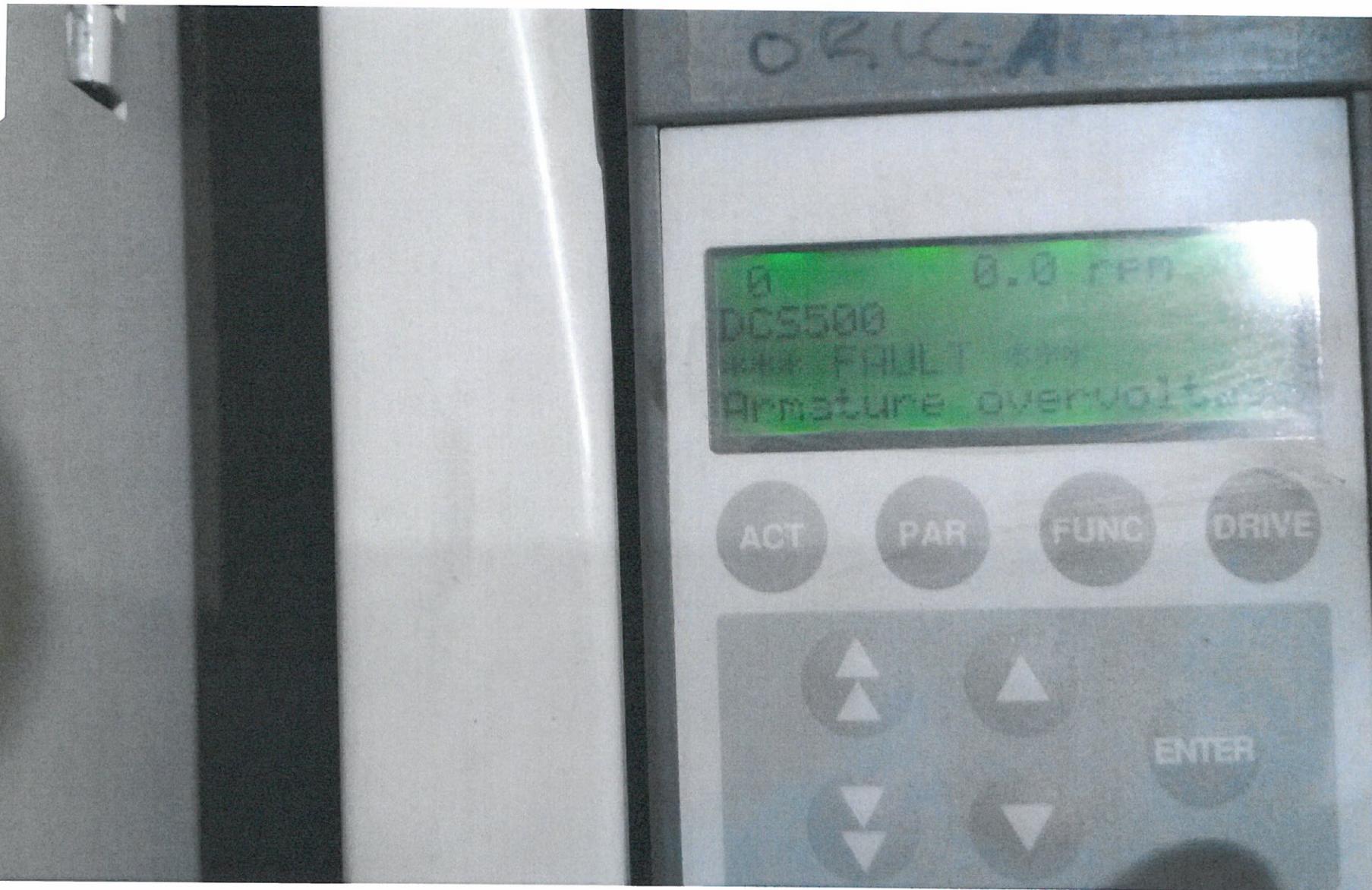
310-42  
0216 Arm



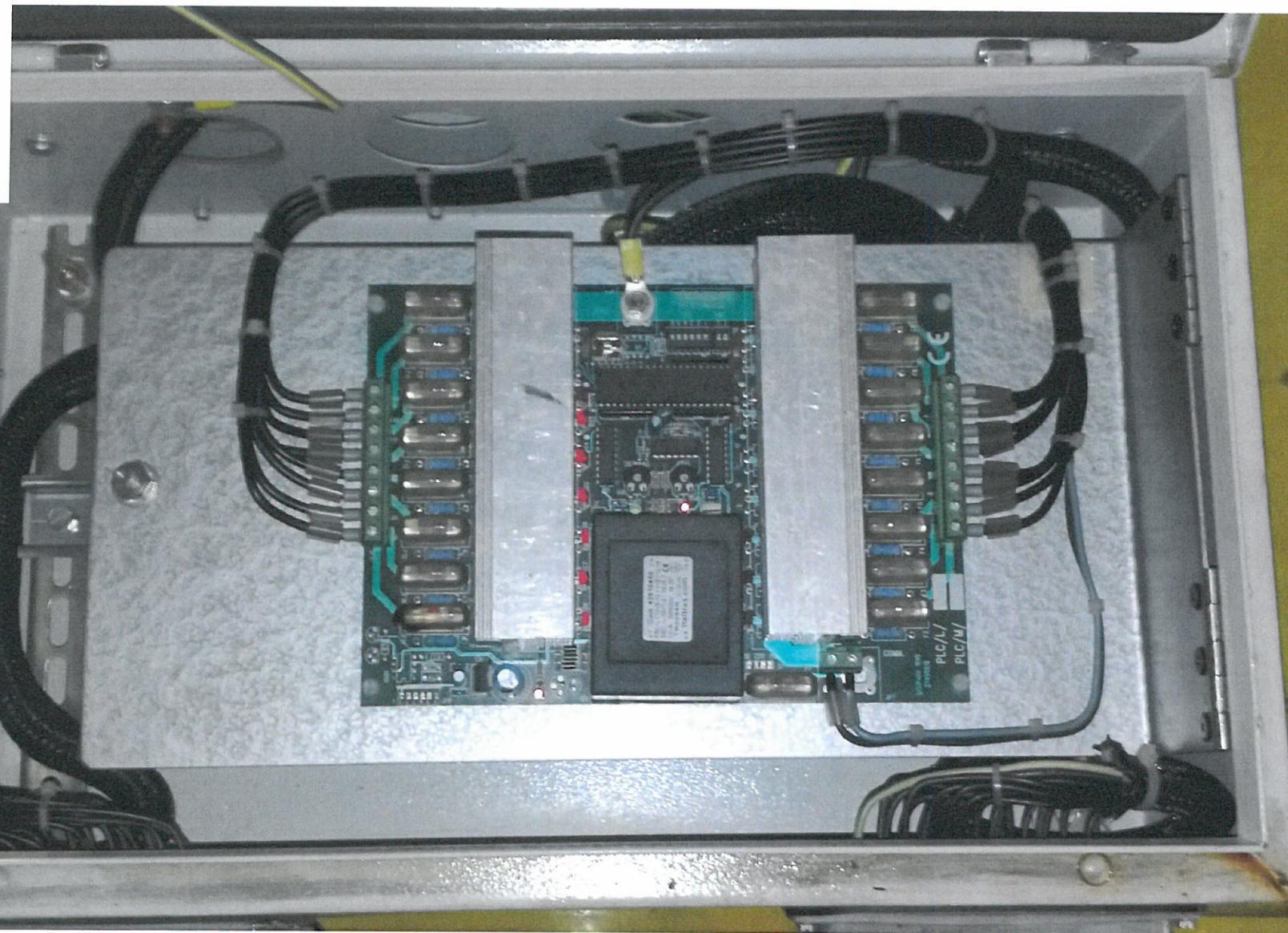
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64

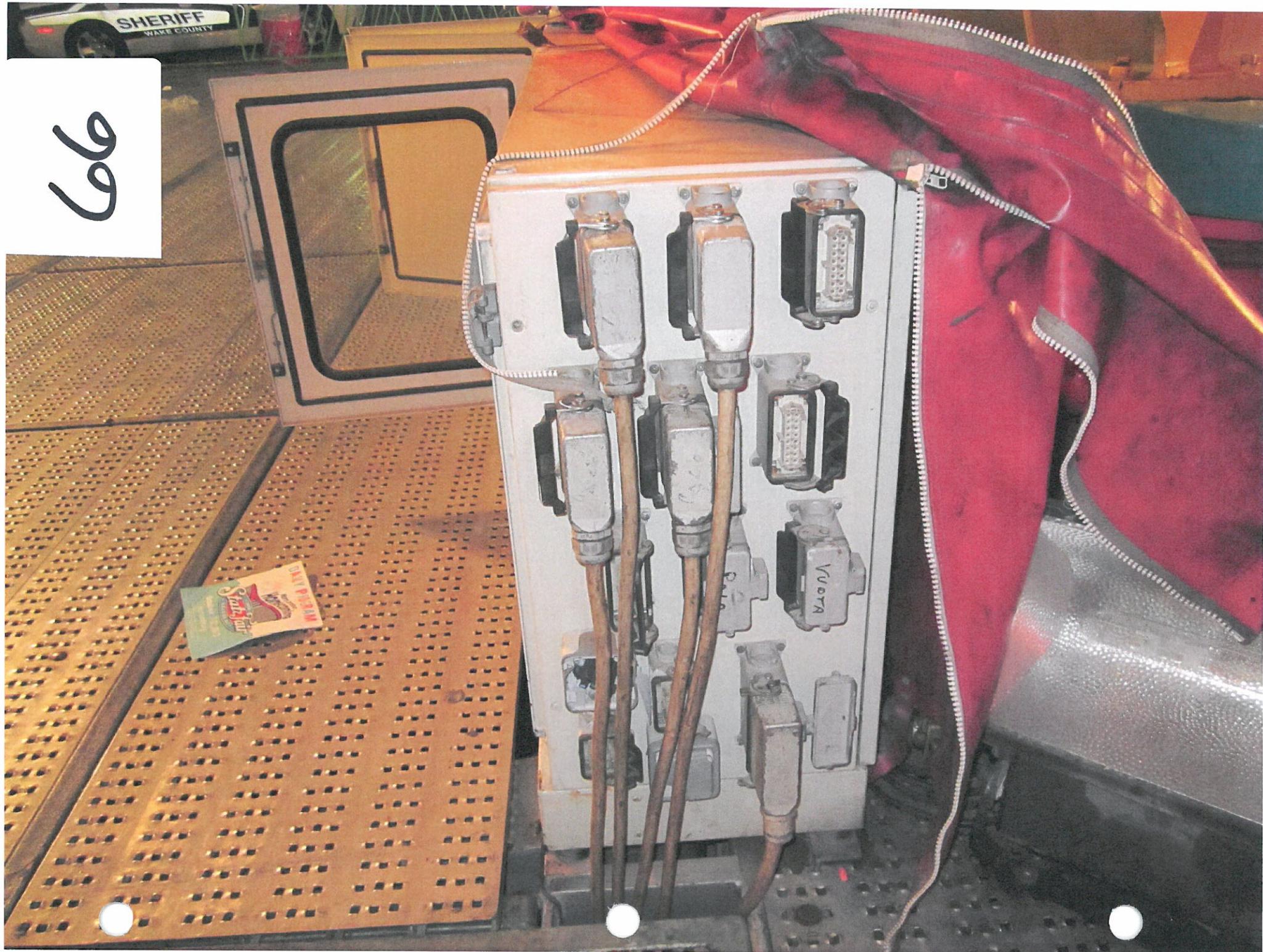


65



SHERIFF  
WAKE COUNTY

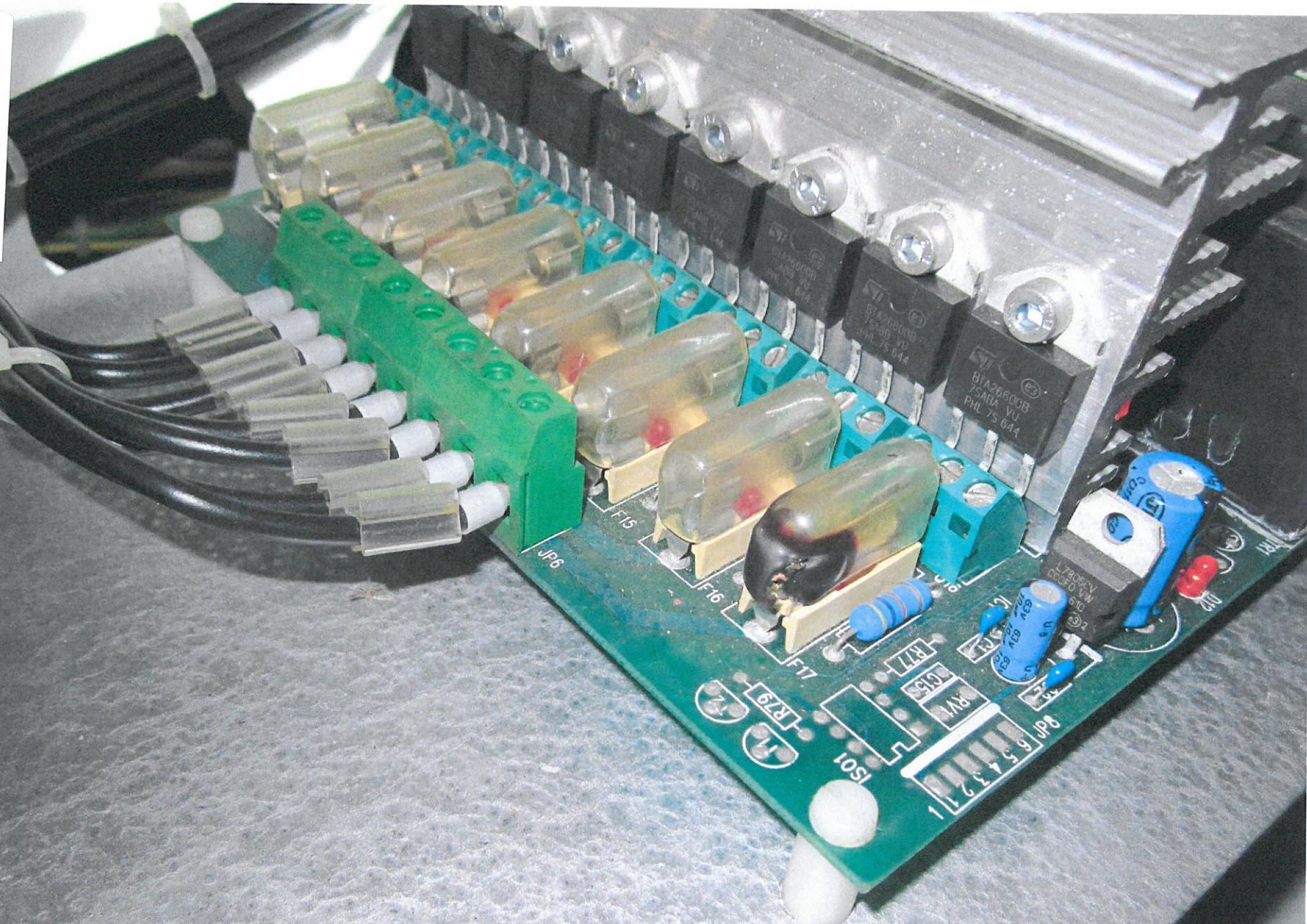
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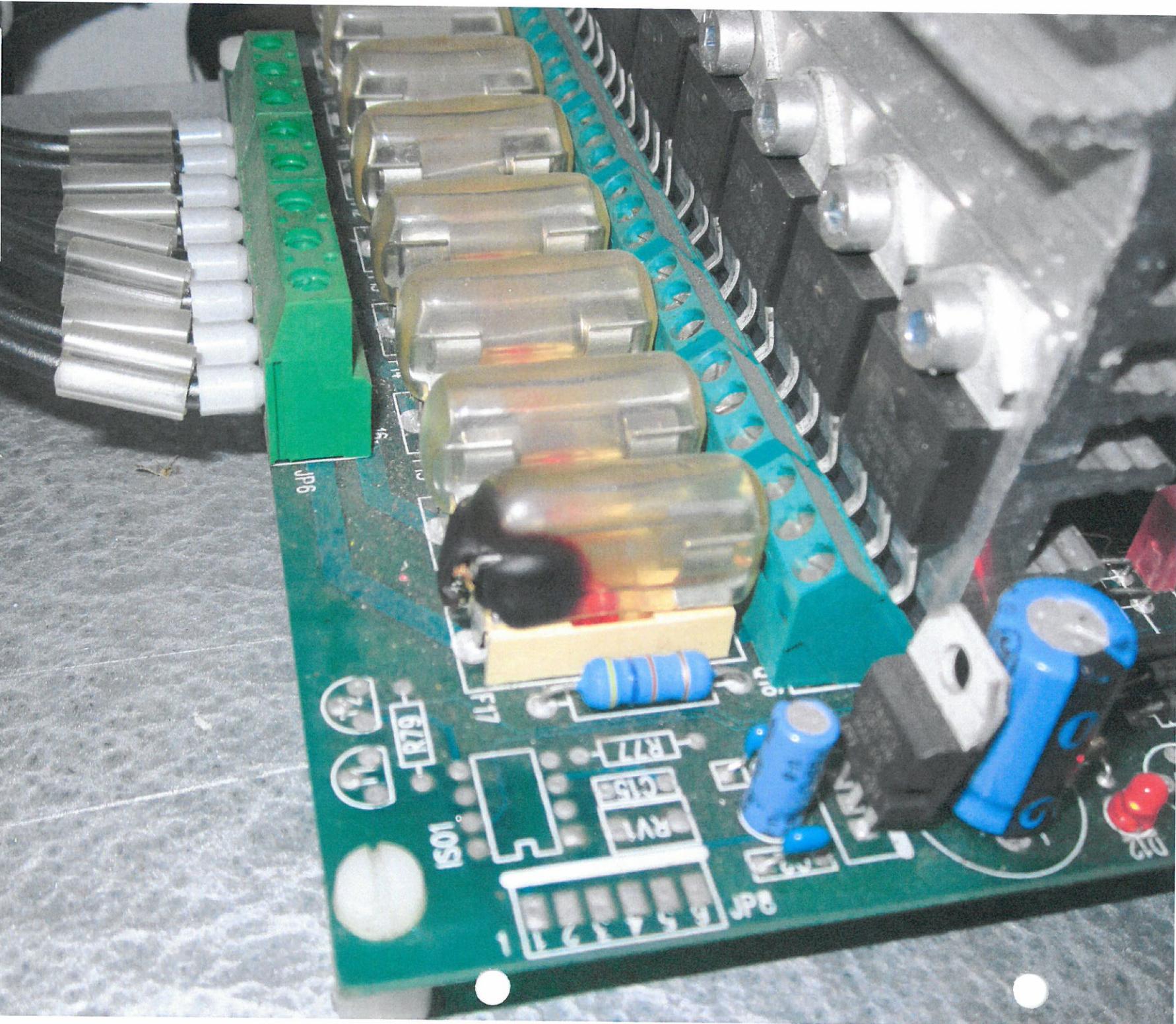
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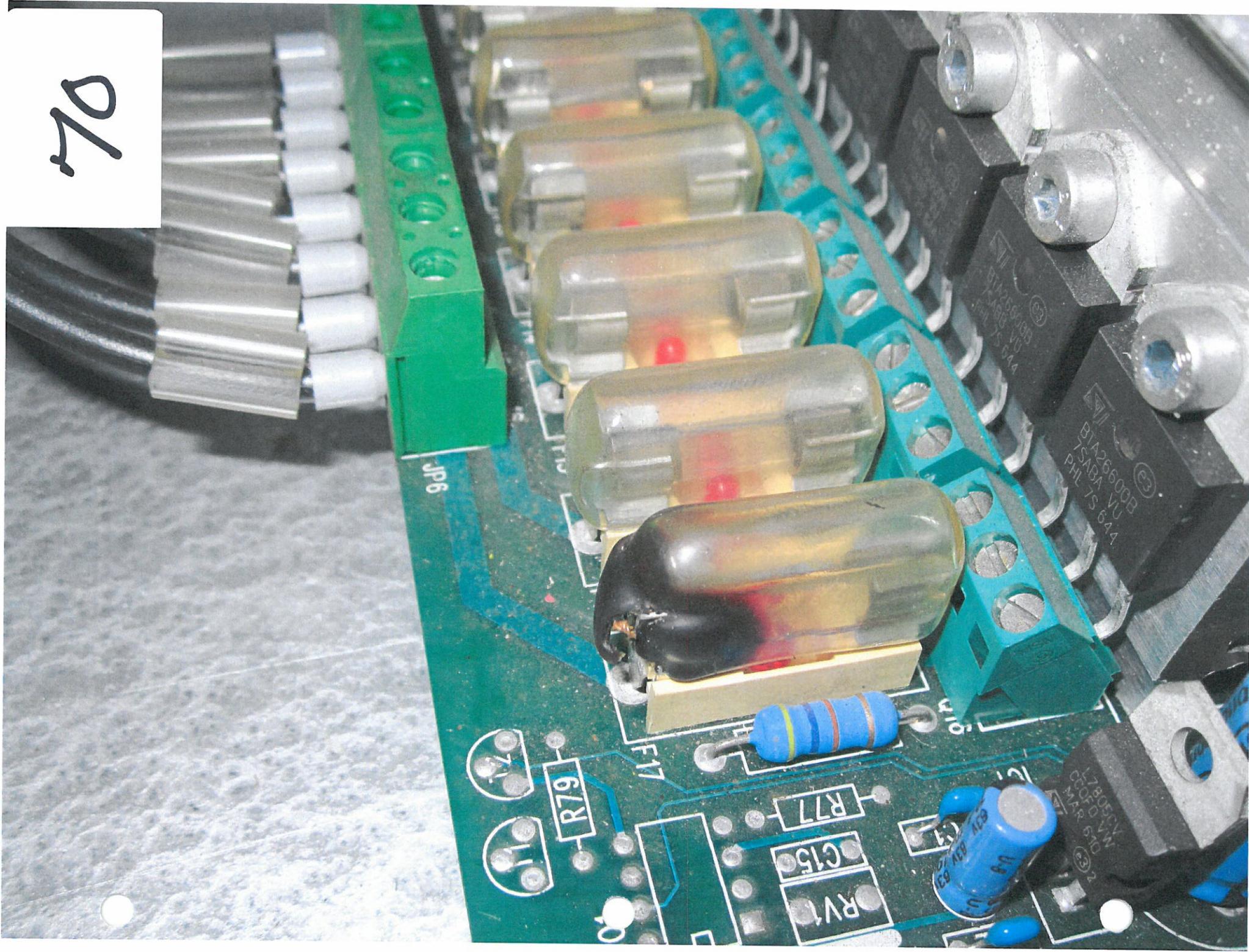
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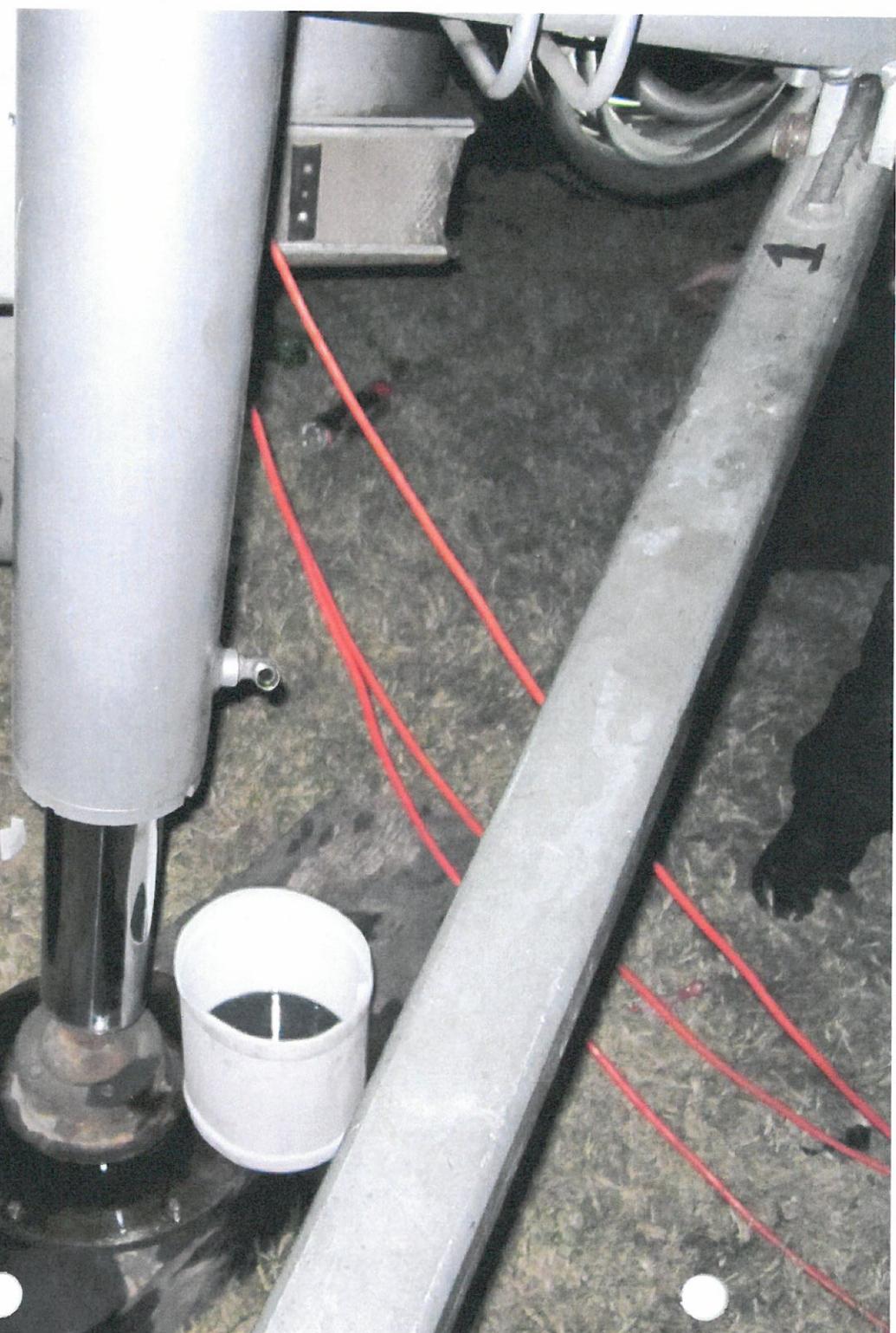


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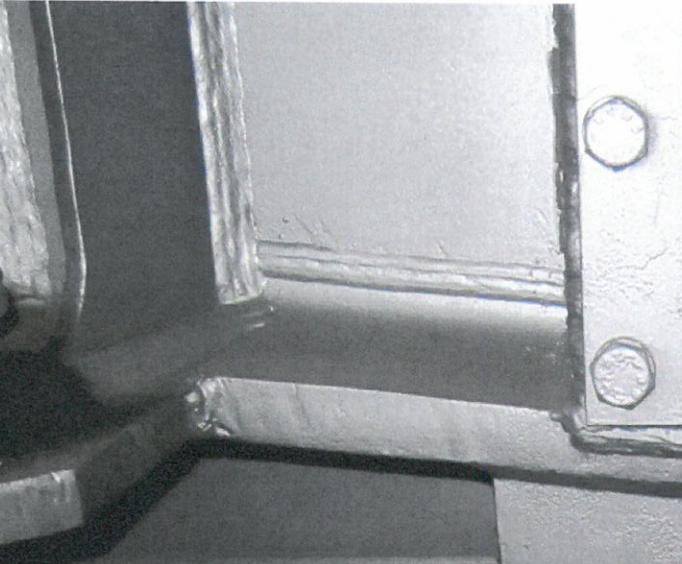


10





72



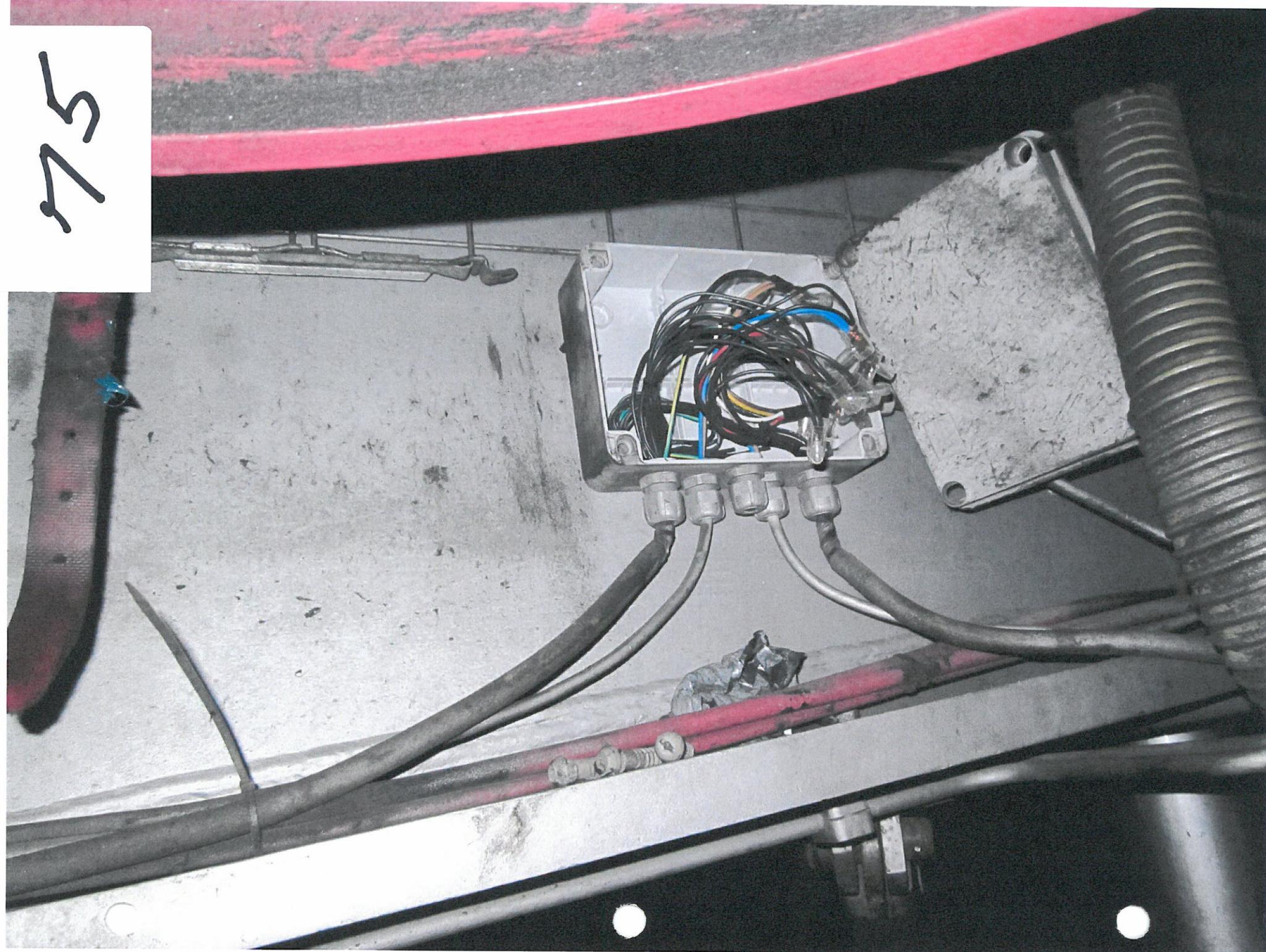
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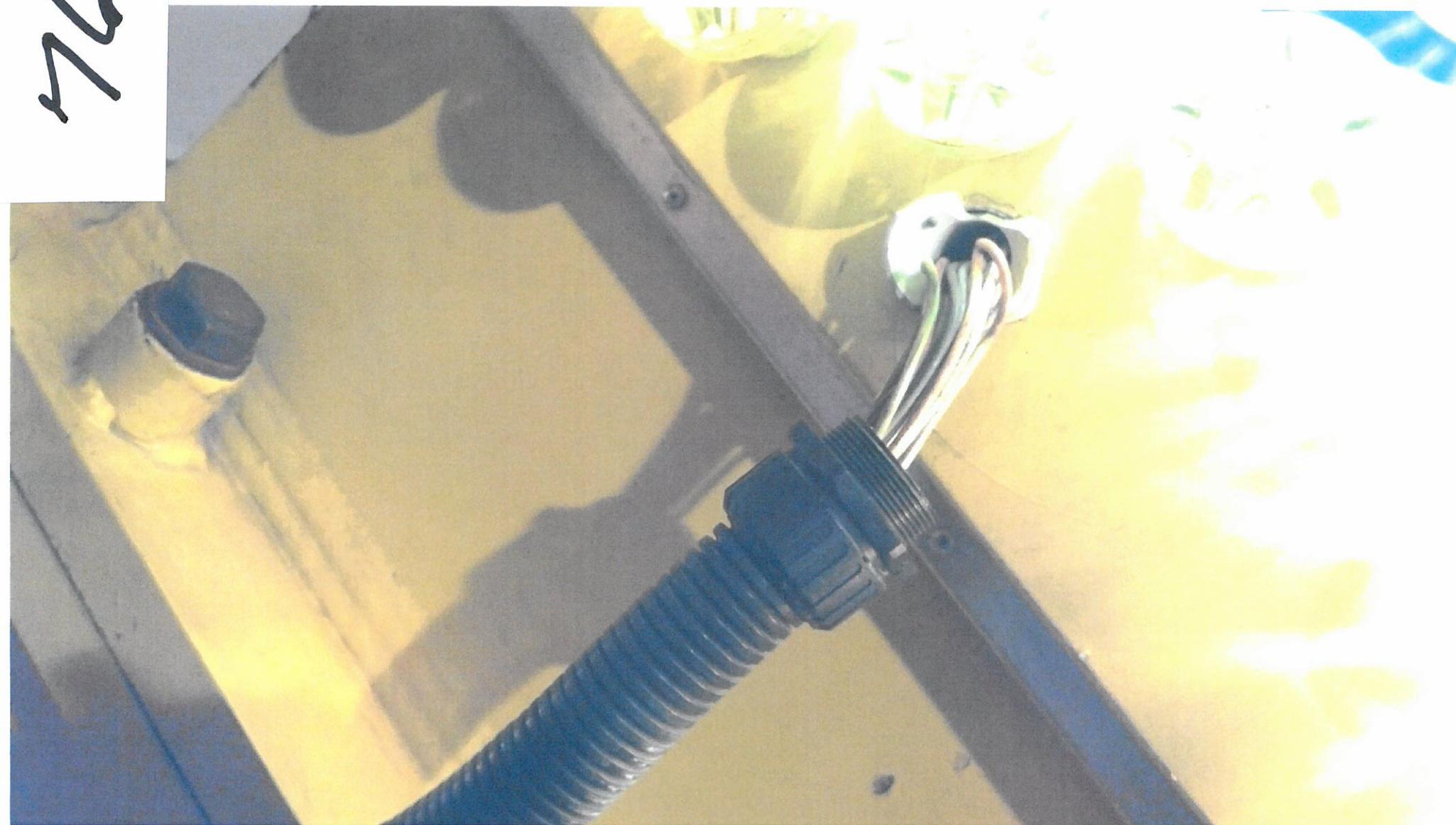
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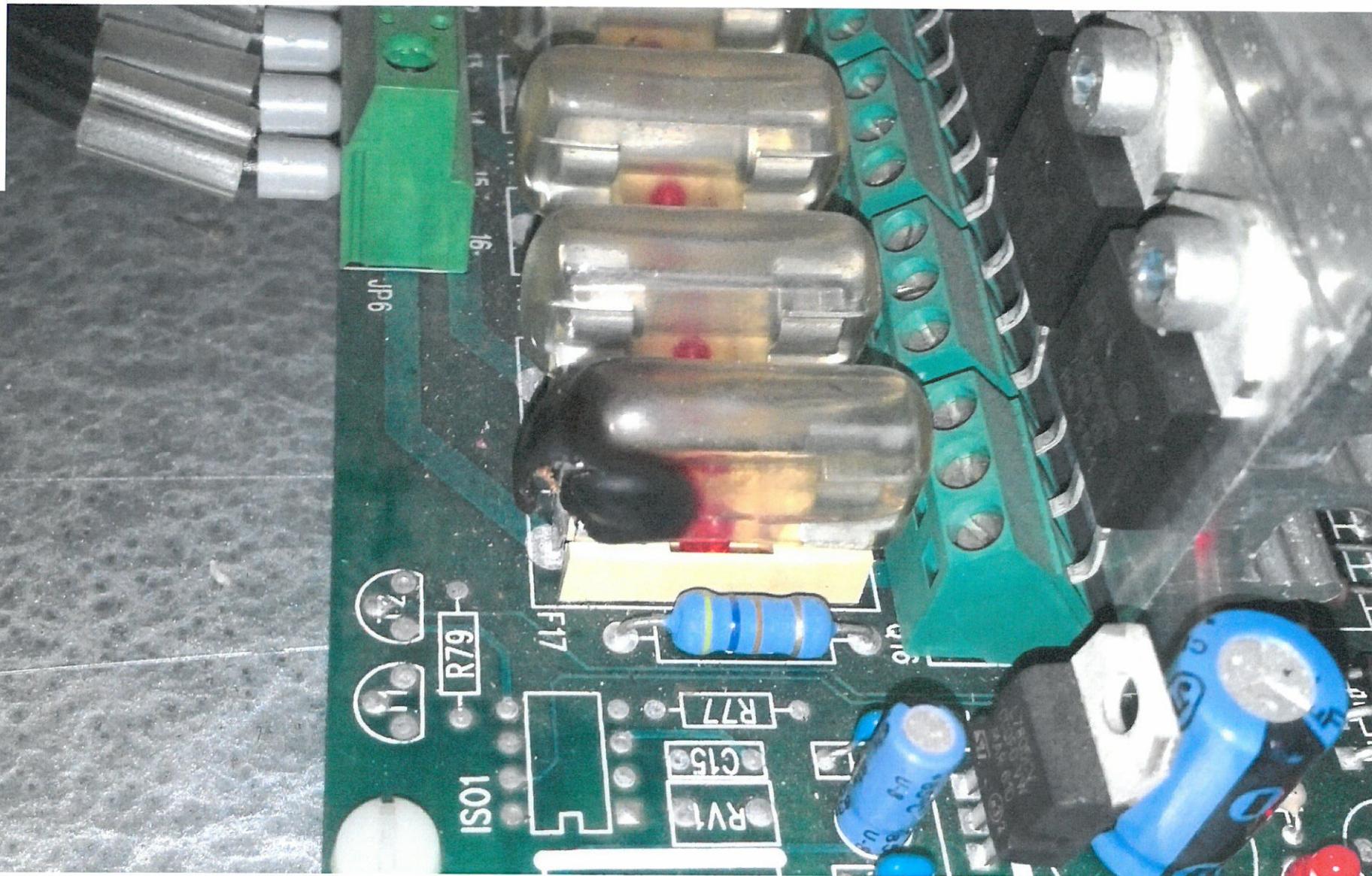


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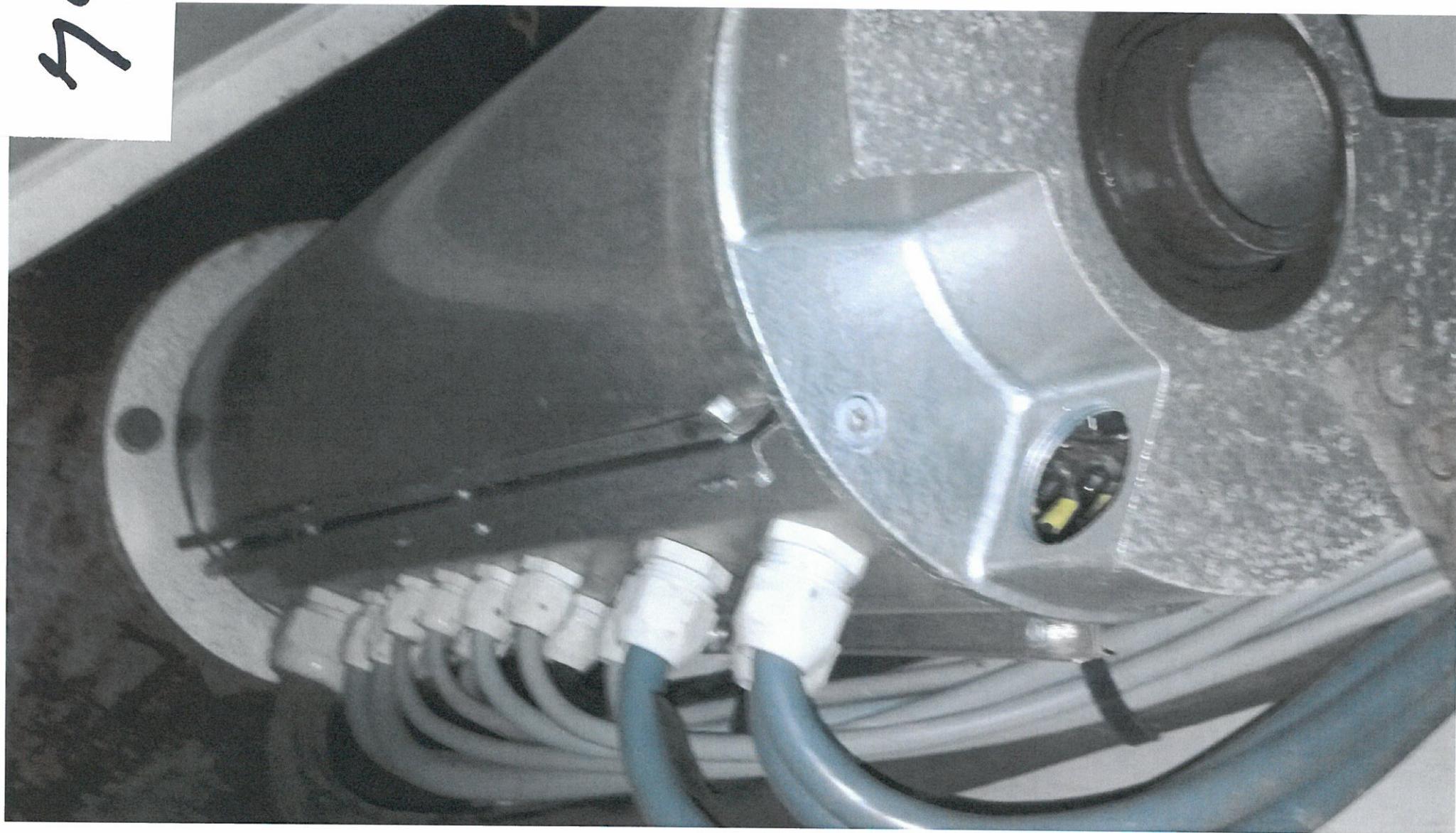




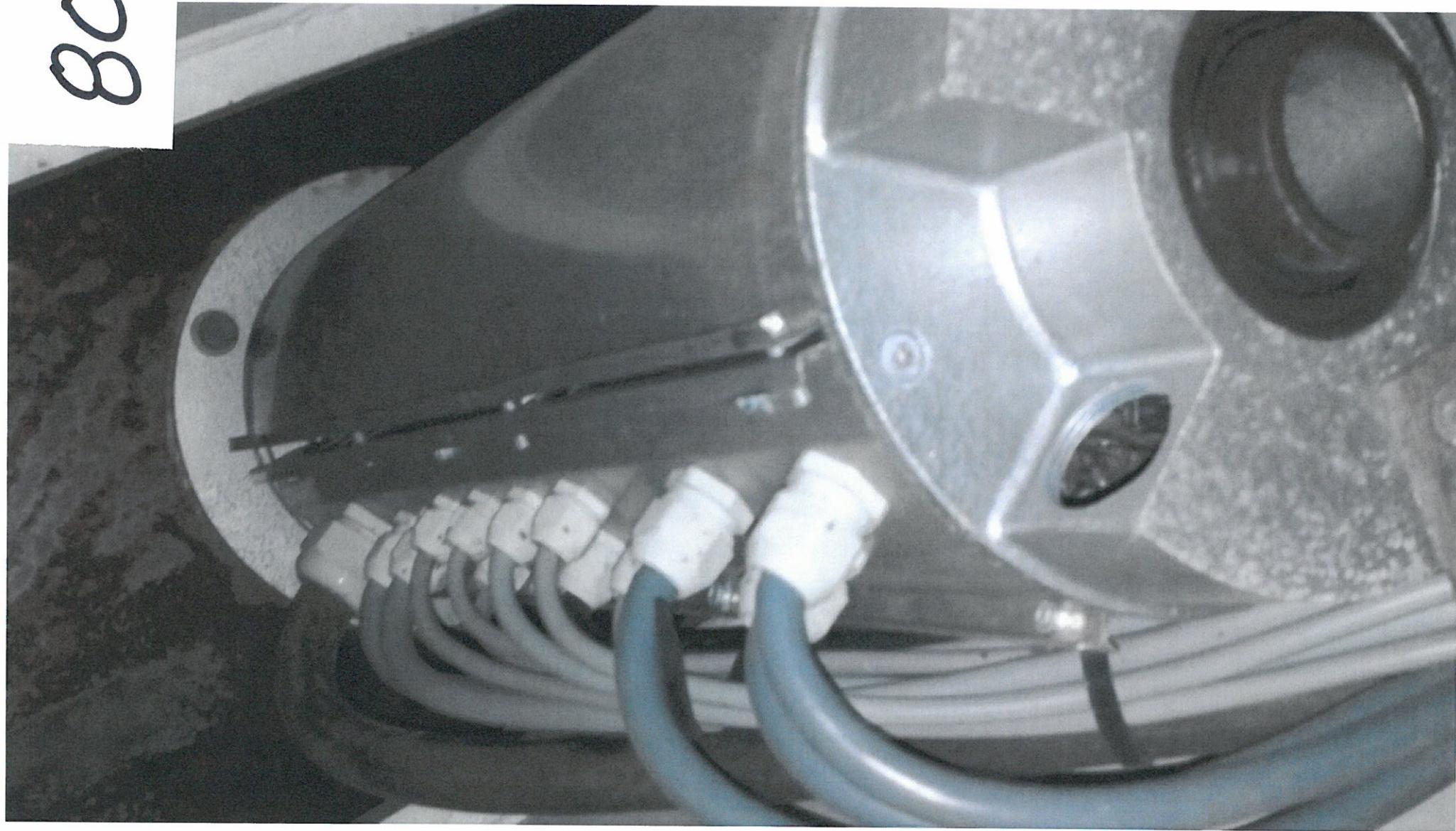
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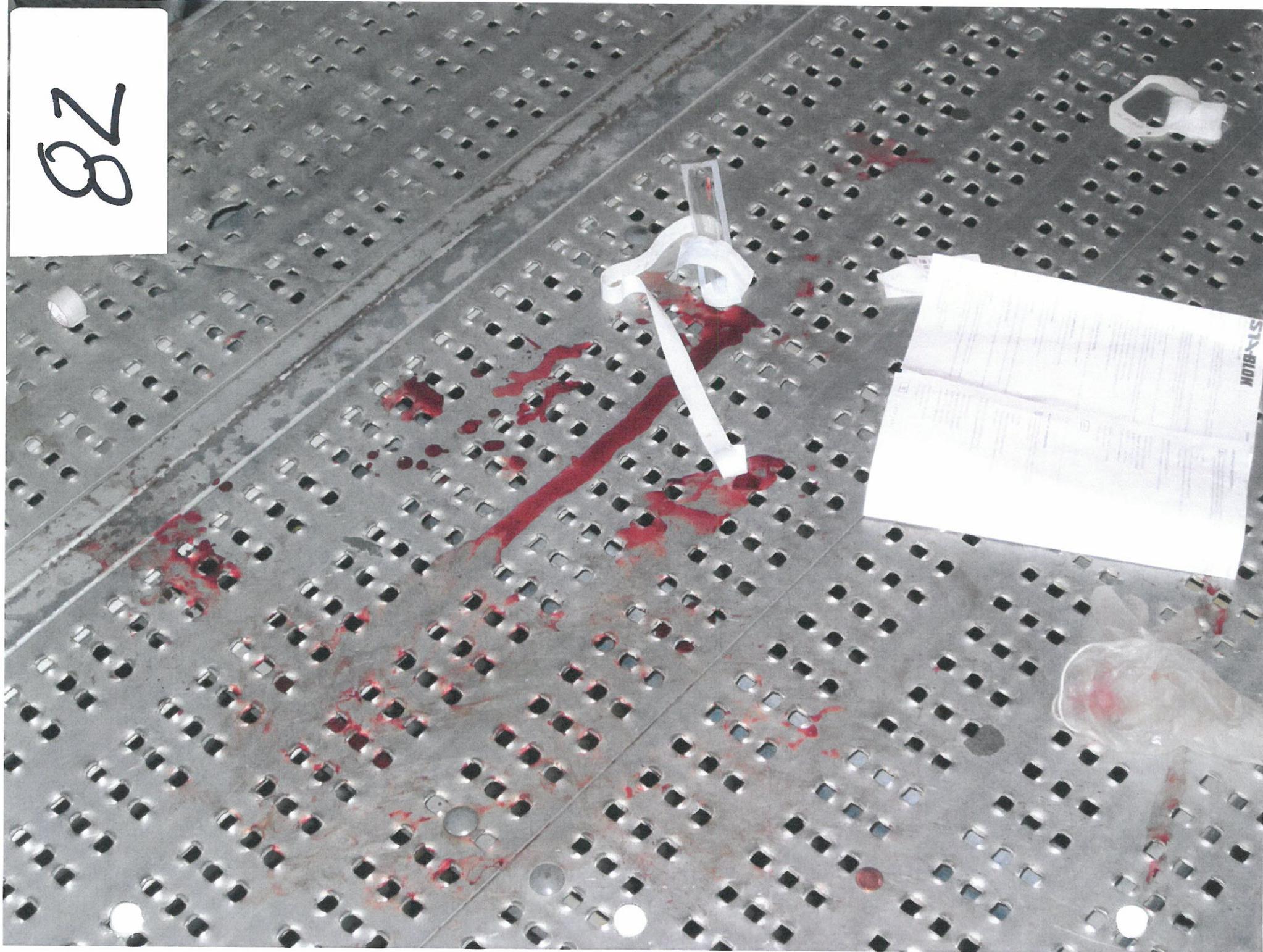
80



81



62  
88



83



84



85

