

NORTH CAROLINA
FORSYTH COUNTY

SHELTON PIPELINE, INC.,

Petitioner,

v.

CHERIE K. BERRY,
COMMISSIONER OF LABOR OF
THE STATE OF NORTH CAROLINA

Respondent.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

03 CVS 7684

OSHANC NO. 01-4069

OSHA INSPECTION NO. 304543135

CSHO ID NO. K7109

ORDER

THIS CAUSE coming on to be heard before the undersigned judge presiding at the October 25, 2004 session of Forsyth County, North Carolina Court of Justice, Superior Court Division, on Petitioner's motion for judicial review of the November 17, 2003 decision of the North Carolina Safety and Health Review Board, and the Court, having examined the official record filed by the Review Board, the briefs and arguments of counsel and the applicable regulations, regulatory guidance, statutes and case law, as required by N.C.G.S. § 150B-51, finds as facts that:

1. On or about June 4, 2001 employees of Petitioner dug a boring and receiving pit on opposite sides of Hope Church Road, Winston-Salem.
2. On June 4, 2001, employees of Petitioner horizontally bored under Hope Church Road, during which operations a mismarked Piedmont Natural Gas Company pipeline was punctured.
3. The puncture resulted in a gas explosion and fire, causing the death of one of Petitioner's employees and serious injury to another.
4. Petitioner was cited by Respondent for violating 29 C.F.R. 1926.651(b)(3) during its horizontal boring operations.
5. Petitioner has timely appealed that citation, first at an administrative hearing, then to the Safety and Health Review Board, and finally to this Court.

Based on the Court's factual findings, the official record filed by the Safety and health Review Board, the briefs and arguments of counsel and the applicable regulations, regulatory guidance, statutes and case law, the Court concludes, after *de novo* review, that the Review Board's decision should be reversed and the challenged citation be dismissed.

NOW, THEREFORE, IT IS HEREBY ORDERED Petitioner's petition is **GRANTED**, that the decision of the North Carolina Safety and Health Review Board is **REVERSED**, that the citation and accompanying penalty are **DISMISSED**, and that this Order finally disposes of this action.

This the 10th day of November, 2004

W. Douglas Albright

Judge Presiding