

BEFORE THE SAFETY AND HEALTH REVIEW BOARD
OF NORTH CAROLINA

COMMISSIONER OF LABOR OF
THE STATE OF NORTH CAROLINA,
COMPLAINANT,

DOCKET NO. OSHANC 2002-4109
OSHA INSPECTION NO. 304738909
CSHO ID NO. B9614

v.

ORDER

RESPONDENT:

APPEARANCES:

Complainant:
Linda Kimbell
Assistant Attorney General
North Carolina Department of Justice
Respondent:
Louis B. Moss
President, Master Woodcraft, Inc.

BEFORE:

Hearing Examiner: Monique M. Peebles

THIS CAUSE came on for hearing and was heard before the undersigned Monique M. Peebles, Administrative Law Judge for the Safety and Health Review Board of North Carolina, on November 13, 2003, at the Granville County Courthouse, District Courtroom - 2nd Floor, 101 Main Street, Oxford, North Carolina.

Present for the hearing for the Department of Labor, OSHA Division, were Nicole Brown, Health Compliance Officer ("HCO Brown") and Phillip Hooper, Health Compliance Supervisor ("Supervisor Hooper"). Present at the hearing for the respondent were Louis B. Moss, president of Master Woodcraft, Inc. ("Master Woodcraft" or "Respondent"), appearing [per se](#) and Alvie Henderson, employee at Master Woodcraft. Prior to presenting evidence, the Court allowed Complainant to withdraw Citation 4, Item 1.

After reviewing the record file, hearing the evidence presented at the hearing, with due consideration of the arguments and contentions of all parties, the undersigned makes the following Findings of Fact and Conclusions of Law and enters an Order accordingly.

FINDINGS OF FACT

- Complainant, the North Carolina Department of Labor, by and through its Commissioner, is an agency of the State of North Carolina charged with inspection for, compliance with, and enforcement of the provisions of N.C. Gen. Stat. §§ 95-126 *et seq.*, the Occupational Safety and Health Act of North Carolina (the "Act").
- This case was initiated by Notice of Contest received by the Complainant, Commissioner of Labor of the State of North Carolina, on or about March 28, 2002, contesting failure to abate citations and a repeat violation citation issued on January 28, 2002, to Respondent, Master Woodcraft, Inc.
- Respondent, a corporation located at 1312 College Street ("worksite"), Oxford NC is subject to the provision of the Act (N.C. Gen Stat § 95-128) and is an employer within the meaning of N.C. Gen. Stat. § 95-127 (10).
- Respondent manufactures elementary school supplies with packaging shipping operations and employs about 14 employees, half of which speak only Spanish.
- The undersigned has jurisdiction over the case (N.C. Gen. Stat. § 95-135).
- On May 29, 2001, HCO Brown conducted a general scheduled inspection and complainant issued several citations on June 25, 2001. Those citations were not contested and the abatement date was July 20, 2001.
- HCO Brown and Eastern Bureau Chief, Tom Hayes, ("Chief Hayes") spoke with Mr. Moss several times requesting documents showing proof of abatement.
- Respondent was granted an extension to abate items in the citations, to October 26, 2001. (Complainant Exhibit B).
- Neither HCO Brown or Chief Hayes were provided with proof of abatement.
- On December 10, 2001, HCO Brown, conducted a partial inspection, a follow-up inspection, of the Respondent's work site in Oxford, North Carolina.
- On December 10, 2001, when HCO Brown arrived at the site in Oxford, she presented her credentials and held an opening conference with Mr. Moss. HCO Brown explained why she was there and she was given permission by Mr. Moss to conduct the inspection. Mr. Moss accompanied HCO Brown during the inspection.
- HCO Brown took pictures, which were incorporated into the file, and conducted employee interviews.
- HCO Brown held a closing conference with Mr. Moss and recommended that failure to abate citations, repeat violation citations and one serious violation citation be issued.
- The recommended failure to abate violations had gone unabated for a total of 133 days.
- On January 28, 2002 Complainant issued failure to abate citations, repeat violation citations and one serious violation.

Citation 2 Item 1: Written Certification of Hazard Assessment

- Citation 2, Item 1 alleges a failure to abate violation of 29 C.F.R. 1910.132(d)(2): "The employer did not verify that the required workplace hazard assessment had been performed through a written certification that identified the workplace evaluated; the person certifying that the evaluation had been performed; the date(s) of the hazard assessment; and, which identified the document as a certification of hazard assessment."
 - silk screening area - where employees used hazardous chemicals, such as but not limited to Enviro Wash and Palette Cleaner C-800, while cleaning the silk screen machine.
 - facility - where employees operated equipment, such as but not limited to, Central Machinery Drill Press (Item 38119, Motor 1/3 hp, 120v) during wood work operations.
- At the time of the original inspection and the follow-up inspection at the site, Master Woodcraft employees working in the silk screen area were exposed to screen ink and C-800 Palette Cleaner.
- Master Woodcraft employees operating the drill press were exposed to flying pieces of wood.
- A hazard assessment was necessary where respondent employees were exposed to hazardous chemicals and flying pieces of wood that necessitated personal protection equipment.
- Evidence showed that Respondent failed to verify that a workplace hazard assessment had been performed at the site.
- Sample certification programs were provided to Mr. Moss and Respondent could have abated the hazardous condition by having written certification that a workplace hazard assessment had been performed.
- At the May 2001 inspection, no penalty was assessed for this violation.
- Respondent was given the maximum 60% reduction for size and the proposed adjusted penalty of \$1,200.00 was computed by multiplying the maximum number of unabated days allowed (30 days) by \$100 (the minimum penalty where no penalty was proposed in the original citation) in accordance with the provisions of the Field Operations Manual.

Citation 2 Item 2: Written Certification of Required Training

- Citation 2, Item 2 alleges a failure to abate violation of 29 CFR 1910.132(f)(4): The employer did not identify that each affected employee had received and understood the required training through a written certification that contained the name of each employee trained, the date(s) of the training, and that identified the subject of the certification:
 - silk screening area - where employees wore Platex rubber gloves, aprons, filtering face piece respirators, and safety glasses, while handling hazardous chemicals, such as but not limited to Enviro Wash and Palette Cleaner C-800, while cleaning the silk screen machine.
 - facility - where employees wore safety glasses while operating equipment, such as but not limited to, Central Machinery Drill Press (Item 38119, Motor 1/3 hp, 120v) during wood work operations.
- HCO Brown spoke to several employees about training and personal protective equipment and the employees were unable to answer her questions.
- HCO Brown asked Mr. Moss for written certification and he stated that the employees had received training, but written certification had not been prepared.
- At the time of the follow-up inspection, the same chemicals were being used and the employees were wearing the same equipment, filtered face piece respirators and latex gloves.
- Respondent could have abated the regulatory requirement by providing documents with the dates and subject of training.
- Respondent was given the maximum 60% reduction for size and the proposed adjusted penalty of \$1,200.00 was computed by multiplying the maximum number of unabated days allowed (30 days) by \$100 (the minimum penalty where no penalty was proposed in the original citation) in accordance with the provisions of the Field Operations Manual.

Citation 3 Item 1a: Machine Guarding

- Citation 3, Item 1a alleges a failure to abate violation of 29 C.F.R. 1910.212(a)(1): One or more methods of machine guarding was not provided to protect the operator and other employees in the machine area from hazards as those created by points of operation, ingoing nip points, rotating parts, and flying chips and sparks:
 - case1 assembly - where employees used drill presses, including, but not limited to a Central Machinery Drill Press (item #38119, motor 1/3 hp, 120v, ½"chuck, 2" spindle) the employer did provide a guard the rotating chuck.
- Respondent was cited in June 2001 for operating drill presses at the site without guards on the rotating chuck.
- Employees used the drill presses to drill holes into school supplies.
- Operating drill presses unguarded created the possibility of an accident, the substantial probable injury being bruises or minor lacerations.
- Respondent knew or should have been aware of the hazard because he walked through the area on a daily basis.
- At the follow-up inspection, the drill presses were still being operated by Respondent's employees without guards on the rotating chuck.
- Prior to the follow-up inspection, HCO Brown faxed over a copy of the catalog picture of guard that was available for the rotating chuck.
- Respondent could have abated this hazardous condition by purchasing the guard.
- The gravity based penalty for this violation was \$750.00.
- Respondent was given the maximum 60% reduction for size and the proposed adjusted penalty of \$9,000.00 was computed by multiplying the maximum number of unabated days allowed (30 days) by \$750 in accordance with the provisions of the Field Operations Manual.

Citation 3 Item 1b: Machine Anchoring

- Citation 3, Item 1b alleges a failure to abate violation of 29 C.F.R. 1910.212(b): Machine(s) designed for fixed location(s) were not securely anchored to prevent walking or moving:
 - case1 assembly - where employees used drill presses, including, but not limited to a Central Machinery Drill Press (item #38119, motor 1/3 hp, 120v, ½"chuck, 2" spindle stroke) that were not securely anchored to the floor and/or workbench/table.
- Respondent was cited in June 2001 for operating a table-mounted drill press that was not securely mounted or anchored to a work bench/table.
- Respondents' employees operating the drill press were exposed to this hazard, which created the possibility of accident if the drill press tipped over during movement, due to the top-heavy nature of the drill press, the likely substantial injury from this hazard is bruises or lacerations.
- At the follow-up inspection, the hazardous condition had not been abated and HCO Brown pointed it out to Mr. Moss.
- Mr. Moss proceeded to attach a table clamp to the drill press to secure it.
- Respondent could have abated this hazardous condition by having the drill press anchored with bolts in the holes at the base of the drill press.
- In May, 2001 this violation was grouped with Citation 3 Item 1a.
- Failure to abate violations cannot be grouped.
- Respondent was given the maximum 60% reduction for size and the proposed adjusted penalty of \$9,000.00 was computed by multiplying the maximum number of unabated days allowed (30 days) by \$750 in accordance with the provisions of the Field Operations Manual.

Citation 4 Item 2: Appendix D

- Citation 4, Item 2 alleges a failure to abate violation of 29 C.F.R. 1910.134(c)(2)(g): Appendix D of this section was not provided to employees whose use of respirators was determined to be voluntary by the employer:
 - facility - where employees voluntarily used filtering face piece respirators (AO Safety R1085 Disposable Nuisance Dust Mask; single strap) during silk screening and wood cutting operations.
- Several of respondents' employees voluntarily wore filtered face piece respirators designed to prevent exposure to certain particulates.
- Respondent was cited with failing to provide information for employees using respirators when not required under the standard in June 2001.
- Prior to the follow-up inspection, HCO Brown had Appendix D translated to Spanish and Moss was given 2 copies of Appendix D, one in English and one in Spanish.
- At the time of the follow-up inspection, Mr. Moss stated that his employees could not read or write and it was a waste of time to provide this information.
- Respondent could have abated the regulatory requirement by verbally reviewing form with employees and having them sign their name.
- Respondent was given the maximum 60% reduction for size and the proposed adjusted penalty of \$1,200.00 was computed by multiplying the maximum number of unabated days allowed (30 days) by \$100 in accordance with the provisions of the Field Operations Manual.

Citation 4 Item 5a: Operator Forklift Training

- Citation 4, Item 5a alleges a failure to abate violation of 29 C.F.R. 1910.178(f)(6): The employer failed to certify that each operator has been trained and evaluated as required by this paragraph (1).
 - production area - where employees operated a Mitsubishi industrial truck (Type G w/ propane tank, No. AF25-50058) without adequate training.
- When the June 2001 citation was issued, some of respondents' employees had received training and respondent provided written certification.
- The forklift operator at that time of the May 2001 inspection had not received the required training and respondent was unable to provide written certification.
- At the time of the follow-up inspection, respondent was unable to provide documentation through written certification that the forklift operators had been trained and evaluated.
- Respondent could have abated the regulatory requirement by training the forklift operators and providing certification that the operator had been trained and evaluated in accordance with the standard.
- Respondent was given a maximum 60% reduction for size and the proposed adjusted penalty of \$1,200.00 was computed by multiplying the maximum number of days allowed (30 days) by \$100, in accordance with the provisions of the Field Operations Manual.

Citation 4 Item 5b: Industrial Truck Inspection

- Citation 4, Item 5b alleges a failure to abate violation of 29 C.F.R. 1910.178(q)(7): Industrial Trucks were not examined before being placed in service:
 - production area - where employees operated a Mitsubishi industrial truck (Type G w/ propane tank, No. AF25-50058) without performing a daily check.
- Respondent was cited in June 2001 for failing to examine respondent's forklift before it was placed in service.
- Respondent's forklift was not used on a daily basis and when in use, does not travel more than 8 feet at a time.
- At the follow-up inspection, the forklift was in good working condition.
- Respondent's forklift operator checked the tires and horn.
- Respondent did not use a daily forklift checklist (Exhibit G), a copy of which was forwarded to Mr. Moss.

Citation 4 Item 5a: Written Hazard Communication Program

- Citation 4, Item 5a alleges a failure to abate violation of 29 C.F.R. 1910.1200(c)(1): The employer did not develop, implement and maintain at each workplace, a written hazard communication program which at least describes how the criteria specified in paragraphs (f), (g), and (h) of this section for labels and other forms of warning, material safety data sheets and employee information and training will be met:
 - facility - where employees were allowed to use hazardous chemicals, such as but not limited to Butyl Cellosolution (ethylene glycol monobutyl ether) and Enviro Wash and Palette Cleaner C-800 (irritant), and the employer did not implement and maintain the hazardous communication program.
- Respondents' employees were working on site where they used hazardous chemicals.
- Respondent was cited in June 2001 for not having a hazard communication program.
- At the time of the follow-up inspection, respondent had not developed a hazard communication program.
- Respondent could have abated the regulatory requirement by developing a hazard communication program.
- Respondent was given a maximum 60% total reduction for size and the proposed penalty of \$1,200.00 was computed by multiplying the maximum number of days allowed (30 days) by \$100, in accordance with the provisions of the Field Operations Manual.

Citation 1 Item 1: Repeat Nonserious Unsantary Washing Facilities

- Citation 1, Item 1 alleges a repeat violation of 29 C.F.R. 1910.141(d)(1):
Washing facilities were not maintained in a sanitary condition.
 - mens restroom - employee's bathroom floors, commodes and sinks were soiled and stained.
- Master Woodcraft, Inc. was previously cited for a violation of this Occupational Safety and Health Standard or its equivalent 1910.141(d)(1) which was contained in inspection #304259260, Citation 4, Item 3, which was issued on 6/25/01.
- Respondent was cited in June 2001 for failing to maintain the mens restroom in a sanitary condition.
 - The Respondent was cited for an unsanitary restroom located in the "production area".
 - The restroom near the front office utilized by Mr. Moss was clean.
 - After the June 2001 citation was issued, the production area restroom was cleaned.
 - Mr. Moss testified that the employees did not keep it clean.
 - At the time of the follow-up inspection, the restroom was unsanitary.
 - The hazardous condition of the restroom created the possibility of employees being exposed to bacterial or viral infections.
 - Respondent knew or should have known of the hazardous condition because Mr. Moss was in the production area daily.
 - Respondent could have abated the hazardous condition by setting up a cleaning regiment.
 - Respondent was given a 60% reduction for size and 10% reduction for cooperation and the proposed penalty of \$100 was computed in accordance with the provisions of the Field Operations Manual.

Citation 1 Item 2: Repeat Nonserious Unsantary Washing Facilities

- Citation 1, Item 2 alleges a repeat violation of 29 C.F.R. 1910.141(d)(2)(iii): Lavatories were not provided with hand soap or similar cleansing agent.
 - facility restrooms - where the employer did not ensure hand soap or a similar cleansing agent was in the men's restroom.
- Master Woodcraft, Inc. was previously cited for a violation of this Occupational Safety and Health Standard or its equivalent 1910.141(d)(2)(iii) which was contained in inspection #302354147, Citation 2, Item 5, which was issued on 12/30/98 and inspection #304259260, Citation 2, Item 3, which was issued on 6/25/01.
- Respondent was cited in June 2001 for failing to provide hand soap or similar cleansing agent in the mens restroom.
 - After the June 2001 citation was issued, Respondent provided bar soap, but Mr. Moss testified that the employees would steal the soap and take it home.
 - At the time of the follow-up inspection, the restroom was without any cleansing agent.
 - The hazardous condition of the restroom created the possibility of employees being exposed to bacterial or viral infections.
 - Respondent knew or should have known of the hazardous condition by visual observation, walking through the facility daily.
 - Respondent could have abated the hazardous condition by implementing a cleaning regiment or have housekeeping come in the restroom periodically to check for hand soap.
 - Respondent was previously cited in December 1998 and June 2001.
 - Respondent was given a 70% total adjustment for size and cooperation and the proposed penalty of \$150.00 was computed in accordance with the provisions of the Field Operations Manual.

Citation 1 Item 3: Repeat Nonserious Lavatories without Hand Towels

- Citation 1, Item 3 alleges a repeat violation of 29 C.F.R. 1910.141(d)(2)(iv): Lavatories were not provided with individual hand towels or sections thereof, of cloth or paper, warm air blowers or clean individual sections of continuous cloth toweling.
 - mens restrooms - where the employer did not ensure hand towels were available for employee use.
- Master Woodcraft, Inc. was previously cited for a violation of this Occupational Safety and Health Standard or its equivalent 1910.141(d)(2)(iv) which was contained in OSH inspection # 302354147, Citation 2, Item 4, which was issued on 12/30/98 and inspection #304738909, Citation 2, Item 4, which was issued on 6/25/01.
- Respondent was cited in June 2001 for failing to provide hand towels or warm air blowers in the mens restroom.
 - After the June 2001 citation was issued, Respondent provided paper towels, but Mr. Moss testified he left it up to the employees to let him know when they were out.
 - At the follow-up inspection, the paper towel dispenser was empty and there was no warm air blower.
 - Respondent failed to provide a way for respondents' employees to dry their hands.
 - The hazardous condition created the possibility of employees being exposed to bacterial or viral infections.
 - Respondent knew or should have known of the hazardous condition by visual observation, walking through the facility daily.
 - Respondent could have abated the hazardous condition by implementing a cleaning regiment or have housekeeping come in the restroom to check the paper towels.
 - Respondent was previously cited in December 1998 and June 2001.
 - Respondent was given a 70% total adjustment for size and cooperation and the proposed adjusted penalty of \$150.00 was computed in accordance with the provisions of the Field Operations Manual.

Citation 2 Item 1: No Protective Materials and Hardware

- Citation 2, Item 1 alleges a serious violation of 29 C.F.R. 1910.147(c)(5)(g): Locks, tags, chains, wedges, key blocks, adapter pins, selflocking fasteners, or other hardware were not provided by the employer for isolating, securing, or blocking of machines or equipment from energy sources:
 - facility - where employees changed out the saw blade on the Cain Planer Saw (440v, 6 hz) while performing routine maintenance and/or repairs.
- At the follow-up inspection, HCO Brown observed two of Respondents' employees changing out the saw blade on the Cain Planer Saw.
- There was no locking device on the on/off switch.
- Lock out devices are required when you have multiple energy sources to ensure that the equipment cannot be operated until the lockout device is removed and that the equipment has been de-energized.
- The hazardous condition created the possibility of accident occurring if there was residual energy in the saw or if someone moved it into the "on" position, the likely substantial injury was amputation or severe lacerations.
- Mr. Moss was with HCO Brown when she observed the blade being changed.
- Respondent could have prevented the hazardous condition by using locking devices.
- HCO Brown found the frequency of exposure to be daily, the severity to be high, the probability to be low and assessed a Gravity based penalty of \$1,750.00.
- Respondent was given an 80% total reduction for size, good faith and cooperation and the proposed adjusted penalty was \$350.00. The proposed adjusted penalty was computed in accordance with the provisions of the Field Operations Manual.

CONCLUSIONS OF LAW

- The foregoing findings of fact are incorporated by reference as Conclusions of Law to the extent necessary to give effect to the provisions of this Order.
- Respondent is subject to the provisions and jurisdiction of the Act.
- In order to establish a failure to abate, the Complainant must prove by a greater weight of the evidence that an inspection was duly conducted and a citation of alleged violation was issued; 2) no extension of the abatement period had been granted; 3) the finding of the violation had become a final order; 4) a re-inspection was duly conducted; 5) the same identical violation condition existed upon re-inspection; 6) the alleged violative condition was in fact a violation of the Act at the time of the inspection and at the time of the re-inspection.
- Complainant proved by a preponderance of the evidence that respondent violated and failed to abate 29 C.F.R. 1910.132(d)(2).
- Complainant proved by a preponderance of the evidence that respondent violated and failed to abate 29 C.F.R. 1910.132(f)(4).
- Complainant proved by a preponderance of the evidence that respondent violated and failed to abate 29 C.F.R. 1910.212(a)(1).
- Complainant proved by a preponderance of the evidence that respondent violated and failed to abate 29 C.F.R. 1910.134(c)(2)(g).
- Complainant proved by a preponderance of the evidence that respondent violated and failed to abate 29 C.F.R. 1910.178(f)(6).
- Complainant failed to prove by a preponderance of the evidence that respondent violated and failed to abate 29 C.F.R. 1910.178(q)(7).
- Complainant proved by a preponderance of the evidence that respondent violated and failed to abate 29 C.F.R. 1910.1200(c)(1).
- Complainant proved by a preponderance of the evidence that respondent committed a repeat nonserious violation of 29 C.F.R. 1910.141(d)(1).
- Complainant proved by a preponderance of the evidence that respondent committed a repeat nonserious violation of 29 C.F.R. 1910.141(d)(2)(iii).
- Complainant proved by a preponderance of the evidence that respondent committed a repeat nonserious violation of 29 C.F.R. 1910.141(d)(2)(iv).
- The complainant has proved by the greater weight of the evidence a serious violation of the standards alleged to have been violated in 29 C.F.R. 1910.147(c)(5)(g).
- The penalties were calculated in accordance with the Field Operations Manual.

BASED UPON the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, IT IS ORDERED as follows:

- Citation Two, Item 1 is hereby affirmed as a failure to abate violation of 29 CFR 1910.132(d)(2), with an adjusted penalty of \$1,200.00.
- Citation Two, Item 2 is hereby affirmed as a failure to abate violation of 29 CFR 1910.132(f)(4), with an adjusted penalty of \$1,200.00.
- Citation Three, Item 1a is hereby affirmed as a failure to abate violation of 29 CFR 1910.212(a)(1), with an adjusted penalty of \$9,000.00.
- Citation Three, Item 1b is hereby affirmed as a failure to abate violation of 29 CFR 1910.212(b), with an adjusted penalty of \$9,000.00.
- Citation Four, Item 2 is hereby affirmed as a failure to abate violation of 29 CFR 1910.134(c)(2)(g), with an adjusted penalty of \$1,200.00.
- Citation Four, Item 5a is hereby affirmed as a failure to abate violation of 29 CFR 1910.178(f)(6), with an adjusted penalty of \$1,200.00.
- Citation Four, Item 5b is hereby dismissed.
- Citation Four, Item 5a is hereby affirmed as a failure to abate violation of 29 CFR 1910.1200(c)(1), with an adjusted penalty of \$1,200.00.
- Citation One, Item 1 is hereby affirmed as a repeat nonserious violation of 29 CFR 1910.141(d)(1), with an adjusted penalty of \$100.00.
- Citation One, Item 2 is hereby affirmed as a repeat nonserious violation of 29 CFR 1910.141(d)(2)(iii), with an adjusted penalty of \$150.00.
- Citation One, Item 3 is hereby affirmed as a repeat nonserious violation of 29 CFR 1910.141(d)(2)(iv), with an adjusted penalty of \$150.00.
- Citation Two, Item 1 is hereby affirmed as a serious violation of 29 CFR 1910.147(c)(5)(g), with an adjusted penalty of \$350.00.
- All penalties shall be paid within twenty (20) days of service of this Order.
- All violations not previously abated, shall be immediately abated.

This the 19th day of December 2003.

Monique M. Peebles
Administrative Law Judge