

**BEFORE THE SAFETY AND HEALTH REVIEW BOARD
OF NORTH CAROLINA
RALEIGH, NORTH CAROLINA**

COMMISSIONER OF LABOR FOR
THE STATE OF NORTH CAROLINA,

COMPLAINANT,

v.

EAGLE A INC.,

RESPONDENT.

DOCKET NO. OSHANC 2002-4200
OSHA INSPECTION NO. 305817934
CSHO ID NO. P2687

ORDER

THIS MATTER was scheduled for hearing before the undersigned on February 11, 2004 in Charlotte, North Carolina.

The complainant was represented by Jane Gilchrist, Assistant Attorney General; the respondent was unrepresented. It has communicated with the Safety and Health Review Board through its vice president, Brian Ruff.

The respondent did not appear at the February 11, 2004 hearing. It did send a letter dated January 20, 2004 addressed to complaint's counsel that it was out of business and would not attend the scheduled hearing on February 11, 2004. In that letter the respondent did not indicate any objection to the evidence to be presented by the complainant at the hearing.

The complainant submitted its case file in affidavit form, which was received in evidence without objection from the respondent. Such file was accepted without objection as prima facie evidence of the existence of the violations alleged in the Citation items and the appropriateness of the penalties.

Based on the foregoing and after receiving the evidence, the undersigned makes the following

FINDINGS OF FACT

1. The complainant as Commissioner of Labor for the State of North Carolina is charged by law with responsibility for compliance with and enforcement of the provisions of the Occupational Safety and Health Act of North Carolina (the "Act").
2. The respondent is a North Carolina corporation with a place of business in Union County, North Carolina.
3. The respondent was cited by the complainant on November 16, 2002 with two citations containing sub-items, alleging repeat violations of the Act.
4. The respondent timely filed a notice of contest on November 25, 2002.
5. The respondent has advised the undersigned that it is out of business and did not attend or participate in the February 11, 2004 hearing or object to the evidence of the complainant.
6. The respondent's letter of January 20, 2004 effectively operates as a waiver of any objection to the complainant's evidence and operates as a withdrawal of its notice of contest.

Based on the foregoing Findings of Fact, the undersigned makes the following

CONCLUSIONS OF LAW

1. 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.
2. The respondent is subject to the provisions of the Act.
3. The respondent has violated the cited provisions of the Act. Such violations are serious and repeat violations.
4. The penalties were properly calculated in accordance with the complainant's Field Operations Manual.

Based on the foregoing Findings of Fact and Conclusions of Law, **IT IS ORDERED** as follows:

1. Citation 1, Item 1a is affirmed as a repeat serious violation of 29 CFR 1926.20 (b) (2), with a penalty of \$2,100.00.
2. Citation 1, Item 1b is affirmed as a repeat serious violation of 29 CFR 1926.21 (b) (2), with a penalty grouped with Citation 1, Item 1a.
3. Citation 1, Item 2a is affirmed as a repeat serious violation of 29 CFR 1926.501 (a) (13), with a penalty of \$2,100.00.
4. Citation 1, Item 2b is affirmed as a repeat serious violation of 29 CFR 1926.503 (a) (1), with a penalty grouped with Citation 1, Item 2a.
5. Citation 1, Item 2c is affirmed as a repeat serious violation of 29 CFR 1926.503 (b) (1), with a penalty grouped with Citation 1, Item 2a.
6. Citation 2, Item 1 is affirmed as a serious violation of North Carolina General Statutes §95-129(1), with a penalty of \$2,100.00.
7. All penalties shall be paid within twenty (20) days of the filing date of this Order.
8. All violations not previously abated shall be immediately abated.

This 26th day of February, 2004.

RICHARD M. KOCH

HEARING EXAMINER