

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

COMMISSIONER OF LABOR FOR
THE STATE OF NORTH CAROLINA,

COMPLAINANT,

v.

MCGEE BROTHERS COMPANY, INC.,

RESPONDENT.

DOCKET NO. OSHANC 2003-4296
OSHA INSPECTION NO. 306671785
CSHO ID NO. J2100

ORDER

THIS MATTER was heard by the undersigned on May 26, 2004 in Charlotte, North Carolina.

The complainant was represented by Jane Gilchrist, Assistant Attorney General; the respondent appeared through its vice-president, Don McGee and its safety director, Don Parrish.

After extensive discussions off the record between the representatives of the parties, the matter was called for hearing and the representatives indicated to the undersigned that they had reached an understanding on the conduct of the hearing.

The complainant moved to delete the violations and proposed penalties pursuant to Citation 1, Items 1b and 2 and reduce the penalty on Citation 1, Items 1a and 3 to \$312.50 apiece, for a total of \$625.00. The respondent did not object to this motion and it was granted.

Upon examination by the undersigned, the respondent acknowledged that it would withdraw its notice of contest and answer as to Citation 1, Items 1a and 3, so long as the combined penalty was reduced to \$625.00 as proposed by the complainant, so long as there was no admission of liability and so long as these citation items could not be used as a basis for a repeat violation at a later time by the complainant. The complainant agreed to these conditions.

The undersigned finds that these are sufficient factual and legal bases for entry of this Order with these terms.

Based on the foregoing, IT IS ORDERED as follows:

1. Citation 1, Item 1a is affirmed as a serious violation of 29 CFR 1926.451 (b)(1)(i), with a penalty of \$312.50.
2. Citation 1, Item 1b is dismissed.
3. Citation 1, Item 2 is dismissed.
4. Citation 1, Item 3 is affirmed as a serious violation of 29 CFR 1926.602 (c) (1) (viii) (A) with a penalty of \$312.50.
5. The violations of the standards cited in Citation 1a and 3 cannot be used by the complainant or her department as the basis of a repeat violation of those standards in any subsequent enforcement proceeding against the respondent.
6. The total penalty amount of \$625.00 shall be paid within thirty (30) days of the filing date of this Order.
7. All violations not previously abated shall be immediately abated.

This 27th day of May, 2004.

RICHARD M. KOCH
HEARING EXAMINER