

**BEFORE THE NORTH CAROLINA OCCUPATIONAL
SAFETY AND HEALTH REVIEW COMMISSION
RALEIGH, NORTH CAROLINA**

COMMISSIONER OF LABOR FOR
THE STATE OF NORTH CAROLINA,

COMPLAINANT,

v.

STEEL SUPPLY & ERECTION COMPANY,

RESPONDENT.

OSHANC NO. 2006-4650
INSPECTION NO. 310303870
CSHO ID NO. F8091

ORDER

THIS MATTER was heard by the undersigned on December 13, 2006 in Charlotte, North Carolina.

The complainant was represented by Jane T. Hautin, Special Deputy Attorney General; the respondent was unrepresented by counsel but its president, Eric D. Newton, appeared on its behalf.

When the matter was called for hearing, counsel for complainant and Mr. Newton stipulated and agreed that the respondent was not contesting the existence of a violation of the standard cited in Citation 1, Item 1 but the respondent was disputing the characterization of the violation as serious.

Based on this stipulation and after hearing and receiving the evidence and hearing the arguments of counsel and Mr. Newton, the undersigned makes the following

FINDINGS OF FACT

1. The complainant is charged by law with the 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 corporation engaged in the business of steel erection. It is headquartered in Asheboro, North Carolina and has 27 employees.
3. On July 20, 2006, complainant's health compliance officer Darius Chisholm conducted an inspection of a construction jobsite at 125 North Pointe Boulevard in Statesville, North Carolina. This inspection was the result of complainant's special emphasis program for areas in which more than two employment related fatalities had occurred in the past year.
4. On the North Pointe construction site at the time of the inspection a steel framed building was being constructed. The general contractor on the job was Morgan Construction. The respondent contracted with Morgan for the steel erection.
5. The respondent contracted with Charles Poole & Associates ("Poole") to perform a portion of its steel erection subcontract. In order to assist Poole in performing its subcontract for respondent, respondent rented an aerial lift for Poole to use. It also provided Poole with respondent's forklift.
6. From the public road, Mr. Chisholm observed and photographed employees of Poole, including Mr. Poole himself, using the aerial lift to weld the steel rafters of the building under construction. The employees on the lift were working approximately 20 feet above the concrete floor.
7. Poole employees were also utilizing respondent's forklift to ferry employees up to the aerial lift. At least one employee would ride the forks as the lift rose to the required height. The employees utilized no fall protection when on the tines of the forklift. This was also observed and photographed by Mr. Chisholm.
8. Mr. Chisholm also observed and photographed Poole employees standing on top of and outside the bucket of the aerial lift while performing the welding work. These employees used no fall protection.
9. Poole's work on the jobsite was to take approximately seven days. At the time of the inspection, Poole's employees had been on the job for four days. On three of those days, Poole's employees were performing the same work in the same way Mr. Chisholm observed. No representative of the respondent had been on the site during the time of Poole's work.
10. Based on his observations and employee interviews, Mr. Chisholm cited respondent with a serious violation of 29 CFR 1926.20(b)(2) for failure to conduct frequent and regular safety inspections.
11. If respondent had conducted any inspection of the jobsite, it might have observed Poole's employees' unsafe use of the forklift and the aerial lift.
12. Mr. Chisholm determined the violation to be serious because the manner in which Poole's employees were working created the possibility of an accident the substantially probable result of which would have been broken bones, serious internal injuries or death. A fall of 20 feet to a concrete floor would likely result in such an outcome.
13. The proposed penalty of \$1,050.00 was calculated pursuant to the Field Operations Manual and was based on a gravity based penalty of \$3,500.00 with size and good faith credits totaling \$2,450.00. The respondent received no credit for history because it had had another serious violation within the past three years.

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 violated the provisions of 29 CFR 1926.20 (b)(2) for failure to conduct any inspections of the North Pointe jobsite. The lack of inspections over four days of work was not frequent or even periodic over a seven day work period.
4. This violation was a serious violation of the Act.
5. The North Pointe jobsite was a multi employee worksite under the Act and respondent was responsible as was Poole for the safety supervision of the Poole employees. See, Commissioner of Labor v Weekley Homes, LP, 169 N.C. App. 17, 609 S.E. 2d 407 (2005).

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

1. Citation 1, Item 1 is affirmed as a serious violation of 29 CFR 1926.20 (b)(2) with a penalty of \$1,050.00;
2. The penalty shall be paid within twenty (20) days of the date of this Order; and
3. All violations not previously abated shall be immediately abated.

This 31st day of January, 2007.

RICHARD M. KOCH
HEARING EXAMINER