

BEFORE THE NORTH CAROLINA
OCCUPATIONAL SAFETY & HEALTH REVIEW COMMISSION
RALEIGH, NORTH CAROLINA

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

v.)

OVERCASH GRAVEL & GRADING CO,)
INC., *and its successors*,)
RESPONDENT.)

) INSPECTION NO.: 311971451

) CSHO ID: N6184

) OSHANC: 2008-4812

A-N-D

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

v.)

MARAND BUILDERS, Inc., *and its*)
successors,)
RESPONDENT.)

) INSPECTION No.: 3119714796

) CSHO ID: N6184

) OSHANC: 2008-4796

AMENDED ORDER

On January 22, 2009, the case of Overcash Gravel & Grading, Inc., OSHANC #2008-4812 (hereafter, "respondent Overcash") and the case of Marand Builders, Inc., OSHANC #2008-4796 (hereafter, "respondent Marand") were consolidated for hearing by the Honorable Richard M. Koch, Administrative Law Judge for the North Carolina Occupational Safety and Health Review Commission (hereafter, "the Commission").

DATABASE
6/24/09m

These matters came on to be heard and were heard before the undersigned Administrative Law Judge on April 27, 2009, in Greensboro, North Carolina. Complainant was represented by Linda Kimbell, Assistant Attorney General, North Carolina Department of Justice. Jerry Barker, Safety Compliance Officer with the North Carolina Department of Labor, OSHA Division (NCOSHA) and Twanette Haiser, OSHA Health Compliance Officer, NCOSHA were also present.

Respondent Overcash was represented by owner, Ron Overcash, who was assisted by Robin Marlow. Respondent Marand was represented by Darrel Shipman, President of the Commercial Division. Josh Benton, Project Manager, was also present for Marand.

AFTER REVIEWING the record file, after hearing the evidence and judging the credibility of witnesses, after hearing the arguments of counsel and representatives and after reviewing other relevant legal authorities, the undersigned makes the following:

FINDINGS OF FACT

1. Complainant is charged by law with responsibility for compliance with and enforcement of the provisions of N.C. Gen. Stat. §§95-126 et. seq., the Occupational and Safety and Health Act of North Carolina (hereafter "the Act").
2. Respondent Overcash (hereafter "Overcash") is a North Carolina Corporation, duly organized and existing under the laws of the State of North Carolina, which does business in the State of North Carolina and maintains a place of business in Concord, North Carolina. It is in the business of grading, including, but not limited to, digging trenches. It is subject to the jurisdiction of the Commission.
3. Respondent Marand, (hereafter "Marand") is a North Carolina Corporation, duly organized and existing under the laws of the State of North Carolina, which does business in the State of North Carolina and maintains a place of business in Charlotte, North Carolina. It is a General Contractor with an unlimited building license in North and South Carolina with experience in the commercial and residential building markets. It is subject to the jurisdiction of the Commission.
4. Prior to the OSHA inspection on May 1, 2008, which is the subject of these cases, Overcash (subcontractor) and Marand (general contractor) were digging a trench on property located at the corner of Ashdale and Glen Afton Boulevard, Kannapolis, North Carolina (hereafter, "the work site") for the purpose of building a concrete junction box at the meeting of three underground concrete storm water drains.
5. On May 1, 2008, Jerry Barker and Twanette J. Haiser, a Safety Compliance Officer II and a Health Complaint Officer II, respectively, (hereafter, "the COs") were driving

past the work site and observed an excavation underway. Under a national emphasis program, they stopped to inspect.

6. At the time of the inspection, respondent Overcash employed 88 individuals overall. Four were at the work site, including its foreman, Mr. Kerry Beaver.
7. At the time of the inspection, respondent Marand employed 22 individuals overall and one at the job site, its Acting Superintendent Mr. Lemon.
8. From the public right-of-way on which they were driving, the COs observed and photographed the work site and four individuals in a trench. (Exhibit C1A and C2).¹
9. The COs held an opening conference with both Mr. Beaver and Mr. Lemon. The COs determined that Marand was the General Contractor and Overcash was the subcontractor.
10. The COs properly presented their credentials and informed Messrs. Beaver and Lemon the reason for and the scope of their inspection.
11. During the permitted inspection, the COs took notes, photographs and measurements, and interviewed employees of both respondents.
12. In order to enforce the Act, complainant issued the following citations to Overcash on August 13, 2008:

Citation 1, Item 1 - Repeat Serious: 29 CFR 1926.652(a)(1)(a) - the excavation was not protected by cave-ins in accordance with 29 CFR 1926.652(b)(1)(i);

Citation 2, Item 1 - Serious: 29 CFR 1926.300 (b)(3) - the mortar mixer was not properly guarded from hazards created by point of operation, in-going nip points, rotating parts, flying chips and sparks;

¹ References to "C1" or "R1" denote Complainant's Exhibit 1 or Respondent's Exhibit 1, respectively.

Citation 2, Item 2 - Serious: 29 CFR 1926.651(c)(2) - the excavation lacked a stairway, ladder, ramp or other safe means of egress within 25 feet of the areas of the excavation 4 feet in depth or more;

Citation 2, Item 3 - Serious: 29 CFR 1926.651(j)(2) - employees in the trench were not protected by placing and keeping excavated materials at least 2 feet from the edge of the excavation or by the use of appropriate restraining devices; and,

Citation 2, Item 4 - Serious: 29 CFR 1926.651(k)(1): - the competent person on site did not perform daily inspection of the work site for evidence of a situation that could possibly cause hazardous conditions.

13. In order to enforce the Act, Complainant issued the following citations to Marand on June 11, 2008:

Citation 1, Item 1 - Serious: 29 CFR 1926.652(a)(1)(a) - the excavation was not protected by cave-ins in accordance with 29 CFR 1926.652(b)(1)(i); and,

Citation 1, Item 2 - Serious: 29 CFR 1926.651(j)(2) - employees in the trench were not protected by placing and keeping excavated materials at least 2 feet from the edge of the excavation or by the use of appropriate restraining devices.

**OVERCASH CITATION 1, ITEM 1
MARAND CITATION 1, ITEM 1
29 C.F. R. §1926.652(a)(1) - REPEAT SERIOUS
(Protection of Employees in Excavations)**

14. The COs documented their measurements of the excavation as follows:

Measured Area:	Measurements:
Length of trench from east to west:	35 feet
Depth at west end of trench:	6 feet 3 inches
Width at bottom of west end of trench:	10 feet

Width at top of west end of trench	22 feet
Depth at east end of trench:	7 feet
Width at bottom of east end of trench:	10 feet
Width at top of east end of trench:	16 feet

(C1-6).

OVERCASH

15. Overcash was not using support systems, shield systems or any other protective systems to prevent dirt from caving in and sliding into the trench.
16. For trenches over 5 feet deep in Type B soil, the minimum required ratio of sloping or benching of the sides is one foot horizontal to every foot vertical (1:1 or 45°). Therefore, pursuant to 29 C.F.R. §§1926.652(a)(1); 652(b) and (c) and Subpart P, Appendix B, Table B-1, respondents should have sloped the sides of the trench 1 foot horizontal to every foot vertical (1:1 or 45°).
17. The minimum safe width at the top of a trench is measured by adding the depth of the trench by each of its two walls and then adding the width at the base. (wall depth + wall depth + base width = minimum top width)
18. The minimum safe width at the top of the west end of the trench was 22 feet 6 inches (6 feet, 3 inches for each trench wall, plus 10 feet of width at its base).
19. The actual width at the top of the west end of the trench was 20 feet: 2½ feet too narrow for a safe trenching operation according to the Act.
20. The proper top width at the east end of the trench was 24 feet (7 feet for each trench wall, plus 10 feet of width at its base).
21. The actual width of the trench at the top was 16 feet: 8 feet too narrow for a safe trenching operation according to the Act.
22. The failure of Overcash to adequately slope the side walls of the excavation created the possibility of an accident, to wit: a cave-in.
23. Four or more of Overcash's employees were in the west end of the trench when the COs arrived to inspect the work site. (C1A and C2)
24. At least one of Overcash's employees was in the east end of the trench prior to the COs

arrival, as evidenced by footprints at the base of the 7 foot wall. (C11, pp. 1 and 2)

25. The substantial probable result of a cave-in would be compound fractures, or death by asphyxiation after being engulfed in thousands of pounds of dirt.
26. Overcash knew or should have known that a 45 degree angle was the proper angle of sloping from their experience in property development.
27. Overcash knew or should have known of the hazard because: (1) its foreman, Mr. Kerry Beaver, was operating the back hoe at the work site excavation when the COs photographed him before their inspection. (C2); and (2) because Overcash had been assessed and had paid \$450 for a violation of the same standards within three years of this inspection (C7).
28. The COs properly calculated the amount of Overcash's penalty of \$3,500.00 (Three Thousand, Five Hundred Dollars) according to the Operations Manual as follows:
 - i. The severity of the violation was high due to the substantial probability of death as a result of a cave-in;
 - ii. The probability factor was medium because four or more employees were exposed to the hazard;
 - iii. The Gravity Based Penalty was determined to be \$3,500;
 - iv. The sum was doubled to \$7,000 as a result of the repeat violation;
 - v. A 40% reduction was applied for Overcash's size;
 - vi. A maximum 10% reduction was applied for Overcash's cooperation; and,
 - vii. Overcash received no credit for history or a safety and health program as this was a repeat violation of the same standard within three years.
29. Multiplying \$7000 by a 50% total credit, Overcash's proper penalty is \$3,500.
30. The trench no longer exists and the question of abatement is moot.

MIRAND

31. Mirand knew or should of known of the hazard because their Acting Superintendent

and competent person, Mr. Lemon, was on the work site just prior to and at the time of the COs inspection. (C1A - with the white cap facing the camera).

32. The inspection site was a multi-employer worksite on which Mirand was the general contractor. Mr. Lemon could and should have observed the hazardous conditions. Marand failed in its duty to ensure a safe and healthful work environment. Commissioner of Labor v. Romeo Guest Associates, Inc., OSHANC 96-3513, Slip Op., (RB 1998).

33. The COs properly calculated the amount of the penalty of \$350.00 (Three Hundred and Fifty Dollars) according to the Operations Manual as follows:

- i. The severity of the violation was high due to the substantial probability of death as a result of a cave-in;
- ii. The probability factor was medium because four or more of its subcontractors employees were exposed to the hazard;
- iii. The Gravity Based Penalty was determined to be \$3,500;
- iv. A 60% reduction was applied for respondent's size;
- v. A maximum 10% reduction was applied for respondent's cooperation;
- vi. A maximum of 10% reduction was applied for no violation history; and,
- vii. A maximum of 10% reduction was applied for a safety/health program.

34. Multiplying \$3500 by a 90% total credit, Mirand's proper penalty is \$350 (Three Hundred and Fifty Dollars). The trench no longer exists and the question of abatement is moot.

**MIRAND CITATION 1, ITEM 2
OVERCASH CITATION 2, ITEM 3
29 C.F. R. §1926.651(j)(2) - SERIOUS
(Safe Placement of Excavated Materials)**

35. The dirt removed from the trench was piled adjacent to and within 2 feet of the trench. (C1A, C3 and C12).

36. The east end of the trench was 7 feet deep.

OVERCASH

37. The failure of Overcash to place the excavated materials more than 2 feet from the edge of the trench caused the possibility of an accident, to wit: a struck-by-hazard or engulfment by a cave-in.

38. Four or more of Overcash's employees were in the west end of the trench when the COs arrived to inspect the work site. (C1A and C2)

39. At least one of Overcash's employees was in the east end of the trench prior to the COs arrival, as evidenced by footprints at the base of the 7 foot wall. (C11, pp. 1 and 2)

40. The substantial probable result of a cave-in would be compound fractures, or death by asphyxiation after being engulfed in thousands of pounds of dirt.

41. Overcash failed to provide any type of retaining device for the spoil pile.

42. Overcash knew or should have known that the weight of a spoil pile within 2 feet of the edge of a trench created the possibility of an accident.

43. Overcash knew or should have known of the hazard because its foreman, Mr. Kerry Beaver, was operating a back hoe at the work site excavation when the COs photographed him before their inspection. (C2);

44. The COs properly calculated the amount of Overcash's penalty of \$1,400.00 (One Thousand, Four Hundred Dollars) according to the Operations Manual as follows:

- i. The severity of the violation was high due to the substantial probability of compound fractures and death as a result of a cave-in;
- ii. The probability factor was medium because four or more employees were exposed to the hazard;
- iii. The Gravity Based Penalty was determined to be \$3,500;
- iv. A 40% reduction was applied for Overcash's size;
- v. A 10% reduction was applied for Overcash's history; and,
- vi. A 10% reduction was applied for Overcash's cooperation.

45. Multiplying \$3,500 by a 60% total credit, Overcash's proper penalty is \$1,400.00.
46. The trench no longer exists and the question of abatement is moot.

MARAND

47. Mirand knew or should have known of the hazard because their Acting Superintendent and competent person, Mr. Lemon, was on the work site just prior to and at the time of the COs inspection. (C1A)
48. The inspection site was a multi-employer worksite on which Mirand was the general contractor. Marand's Acting Superintendent, Mr. Lemon, was not only on the work site, but most likely created the spoil pile at the edge of the trench. Mr. Lemon could and should have observed the hazardous conditions. Marand failed in its duty to ensure a safe and healthful work environment. Commissioner of Labor v. Romeo Guest Associates, Inc., OSHANC 96-3513, Slip Op., (RB 1998).
49. The COs properly calculated the amount of the penalty of \$350.00 (Three Hundred and Fifty Dollars) according to the Operations Manual as follows:
 - i. The severity of the violation was high due to the substantial probability of compound fractures death as a result of a cave-in;
 - ii. The probability factor was medium because four or more of its subcontractors employees were exposed to the hazard;
 - iii. The Gravity Based Penalty was determined to be \$3,500;
 - iv. A 60% reduction was applied for Marand's size;
 - v. A maximum 10% reduction was applied for Marand's cooperation;
 - vi. A maximum of 10% reduction was applied for no violation history; and,
 - vii. A maximum of 10% reduction was applied for its safety/health program.
50. Multiplying \$3,500 by a 90% total credit, Mirand's proper penalty is \$350 (Three Hundred and Fifty Dollars).
51. The trench no longer exists and the question of abatement is moot.

OVERCASH CITATION 2, ITEM 1
29 CFR 1926.300(b)(3) - SERIOUS
(Machine Guarding)

52. Overcash's mortar mixer, located at the job site, was not guarded in two places where employees were exposed to moving parts, to wit: the rotating shaft of the mortar mixer's engine and the rotating paddles which mix the mortar.
53. The unguarded machine created the hazard of employees falling in the mortar mixer and being injured by the rotating paddles or the bolt laden engine shaft;
54. The substantial probable result of such an accident would be compound or multiple fractures. (C8-9)
55. One or more of Overcash's employees was exposed to the hazard as evidenced by the CO's testimony that during his interview of them, they were preparing to mix mortar to use for the concrete junction box. (C8)
56. Overcash knew or should have known of the hazard in that its foreman, Kerry Beaver, was on site before and during the inspection and the mortar mixer was in plain view.
57. The COs properly calculated the amount of Overcash's penalty of \$1,000 (One Thousand Dollars) according to the Operations Manual as follows:
 - i. The severity of the violation was medium due to the probability of compound and multiple fractures;
 - ii. The probability factor was medium because up to four employees were exposed to the hazard;
 - iii. The Gravity Based Penalty was determined to be \$2,500;
 - iv. A 40% reduction was applied for Overcash' size;
 - v. A 10% reduction was applied for Overcash's cooperation; and,
 - vi. A 10% reduction was applied for Overcash's good faith/safety programs.
58. Multiplying \$2,500 by a 60% total credit, Overcash's proper penalty is \$1,000.

59. The trench no longer exists and the question of abatement is moot.

OVERCASH CITATION 2, ITEM 2

29 CFR 1926.651(c)(2) - SERIOUS

(Safe Means of Egress)

60. Overcash's employees indicated that their route out of the trench was to the northeast corner of the trench, where the COs could see at least four shovels laid to rest at the end of a trodden path. (C 3, 4, 10, and 12)
61. The trench lacked any ladders, stairs, ramps or any safe means of egress from its 7 foot deep eastern end.
62. The distance from the 7 foot wall of dirt to the trodden path on the north east corner of the trench was 35 feet, 10 feet longer than allowed for trenches 4 feet deep or more.
63. The substantial probable result of such an accident would be compound or multiple fractures or death.
64. One or more of Overcash's employees was exposed to the hazard as evidenced by the footprints at the bottom of the 7 foot eastern terminus of the trench adjacent to the spoil pile. (C11, pp 1-2)
65. Overcash knew or should have known of the hazard in that its foreman, Kerry Beaver, was on site just prior to and at the time of the inspection, had been the one to excavate the trench and the trench was in plain view.
66. The COs properly calculated the amount of Overcash's penalty of \$1,400.00 (One Thousand , Four Hundred Dollars) according to the Operations Manual as applied in Citation 2, Item 3, above.
65. The trench no longer exists and the question of abatement is moot.

OVERCASH CITATION 2, ITEM 4

29 CFR 1926.651(k)(1) - SERIOUS

(Daily Inspections by a Competent Person)

66. Mr. Kerry Beaver, Overcash's competent person on the job site, failed to inspect the excavation where he could have identified the hazards described above as in plain view, and he could have taken steps to abate them or halt the project until it could comply with North Carolina's safety regulations.

67. The competent person's failure to perform his daily inspection created the possibility of a hazard, to wit: employees being seriously injured or killed by a trenching cave-in.
68. The substantial probable result of such an accident would be compound or multiple fractures or death.
69. At the time the COs first observed the job site, Overcash's employees were in the ditch and exposed to these hazards.
70. Respondent Overcash knew or should have known of the hazard in that its foreman and competent person, Kerry Beaver, was on site just prior to and at the time of the inspection and excavated the trench.
71. The COs properly calculated the amount of Overcash's penalty of \$1,400 (One Thousand, Four Hundred Dollars) according to the Operations Manual as followed in Citation 2, Item 3, above.

RESPONDENT OVERCASH'S EVIDENCE AND ARGUMENTS

72. Overcash and Shipman testified and argued that the COs measurements were incorrect and that the trench was dug so "wide open" that there was no obvious potential hazard of a cave-in
73. Overcash further testified and argued that his employees had benched the excavation to render it safe in which to work; and removed the guards from the mortar mixer to have them repaired and were not going to use the machine until the guards were replaced.
74. Based upon the undersigned's observations of the witnesses and other evidence of record, respondents Overcash and Shipman failed to credibly impeach CO Barker's expertise and inspection of the work site.
75. Neither Overcash nor Shipman presented their own measurements or photographs to rebut complainant's *prima facie* case that the trench was unsafely sloped, with a spoil pile within two feet of the 7 foot deep edge, with no safe manner of egress. By presenting unsupported assertions that the trench "looked safe," Overcash and Shipman evidenced their lack of understanding of the science and empirical evidence behind the regulations and the potentially life-altering consequences of not respecting them.
76. Respondent Overcash argued that his employees had used a "benching" system to minimize the hazard of a cave-in. (C10, 11, 12, and R1) Mr. Overcash described two "benches" which jutted inward from the center of both sides of the trench. (C12) While it did appear that Overcash had attempted some benching, the type B soil at the

site required the same minimum "sloping or benching ratio" of 1:1 (45°) as did the slopes. Therefore, pursuant to 29 C.F.R. §§1926.652(a)(1); 652(b) and (c) and Subpart P, Appendix B, Table B-1, respondents should have benched the sides of the trench 1 foot horizontal to every foot vertical. Based upon the CO's credible and unchallenged measurements, Overcash failed to properly bench the trench.

77. Respondent Overcash argued that his employees used a "benching" system to provide egress from the deepest part of the pit. (C11 and 12) The photographs vaguely evidence 6 small dirt benches carved at sequentially higher levels up and out of the south east corner of the excavation. This means of egress was unsafe because the series of horizontal "benches" up: (1) did not have near vertical surfaces between levels; (2) were constructed in loose rock and soil; (3) with no support system and; (4) had no protection from falling, rolling or sliding material or equipment as required by 26 CFR 1926.650, 651, 652 and Subpart P, Appendix B. The first step was a cinderblock sitting ajar on the floor of the pit. (C12) The second step was a round concrete sewage drain with less than 24 inches of walking surface. Thus, the first two "steps" were unstable and unsafe as described above. The activity of employees walking up the remaining uneven and unstable dirt wall "benches" created the possibility of a fall from an unprotected height or could, in itself, have weakened the integrity of the south wall creating the possibility of a fatal cave-in for the bench climber(s) or ditch workers.
78. Respondent Overcash argued that there was a safe means of egress on the south west portion of the trench. (C10, C12) The manner of egress would have been from the cinder block to the 24" concrete storm water drain lying in the center of the trench, to the broken 24" concrete storm drain entering from the south side of the ditch onto the dirt and up the dirt path. The first three steps are unstable and unsafe as described above. The walk from step two to step three were unsafe due to the necessity of negotiating over watery mud puddles, across a sharp and wide right angle between the pipes, onto a broken pipe and up a slippery mud path. (C10, C12)
79. Respondent Overcash argued that his employees had removed the guards from the mortar mixer and taken them to be repaired. He did not intend for the employees to use the mixer without the guards. Overcash's employees told CO Baker that they were preparing to mix mortar when he and his associate arrived for inspection. Exhibits C8 and 9 evidence dried concrete on portions of the machinery that requires guards, begging the question of how it got there if the moving parts were guarded while the machine was operating. There is a tool in the bucket full of wet cement mortar sitting in front of the mortar mixer suggesting preparation for mortar mixing. Due to the quick drying nature of mortar, it is not credible that employees would have been preparing to mix mortar if they did not intend imminently to use the machine.

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. Respondents Overcash and Marand are subject to the provisions and jurisdiction of the Act.
3. Complainant properly proved that Overcash committed a repeat serious violation of 29 C.F.R. 1926.652(a)(1) and that Citation 1, Item 1 should be affirmed and Overcash should pay a penalty of \$3,500 (Three Thousand, Five Hundred Dollars).
4. Complainant properly proved that Overcash committed a serious violation of 29 C.F.R. 1926.300(b)(3) and that Citation 2, Item 1 should be affirmed and Overcash should pay a penalty of \$1,000 (One Thousand Dollars).
5. Complainant properly proved that Overcash committed a serious violation of 29 C.F.R. 1926.652(c)(2) and that Citation 2, Item 2 should be affirmed and Overcash should pay a penalty of \$1,400 (One Thousand, Four Hundred Dollars).
6. Complainant properly proved that Overcash committed a serious violation of 29 C.F.R. 1926.651(j)(2) and that Citation 2, Item 3 should be affirmed and Overcash should pay a penalty of \$1,400 (One Thousand, Four Hundred Dollars).
7. Complainant properly proved that Overcash committed a serious violation of 29 C.F.R. 1926.651(k)(1) and that Citation 2, Item 4 should be affirmed and Overcash should pay a penalty of \$1,400 (One Thousand, Four Hundred Dollars).
8. Complainant properly proved that Marand committed a serious violation of 29 C.F.R. 1926.652(a)(1) and that Citation 1, Item 1 should be affirmed and Marand should pay a penalty of \$350 (Three Hundred and Fifty Dollars).
10. Complainant proved by a preponderance of the evidence that Marand committed a serious violation of 29 C.F.R. 1926.651(j)(2) and that Citation 1, Item 2 should be affirmed and Marand should pay a penalty of \$350 (Three Hundred and Fifty Dollars).

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

1. Overcash's Citation 1, Item 1, and Citation 2, Items 1,2, 3 and 4 are affirmed and Overcash shall pay the penalties as set forth in the Conclusions of Law, above.

2. Respondent Marand's Citation 1, Items 1 and 2 are affirmed and Marand shall pay the penalties as set forth in the Conclusions of Law, above.
3. The penalties shall be paid within ten (10) days of the filing date of this Order.

This the 22 day of June, 2009.



Ellen R. Gelbin
Administrative Law Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this date served a copy of the foregoing ORDER upon:

**J. DARREL SHIPMAN, PRESIDENT
MARAND BUILDERS INC
4215-B STUART ANDREW BLVD
CHARLOTTE NC 28217**

**RONALD OVERCASH
OVERCASH GRAVEL & GRADING CO INC
P O BOX 5030
CONCORD NC 28027**

by depositing same the United States Mail, Certified Mail, postage prepaid at Raleigh, North Carolina, and upon:

**LINDA KIMBELL
NC DEPARTMENT OF JUSTICE
Labor Section
P O Box 629
Raleigh NC 27602-0629**

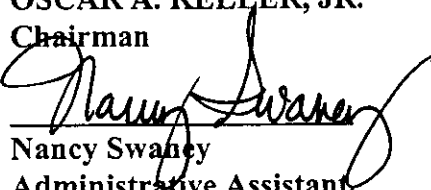
by depositing a copy of the same in the United States Mail, First Class;

**NC DEPARTMENT OF LABOR
Legal Affairs Division
1101 Mail Service Center
Raleigh, North Carolina 27699-1101**

by depositing a copy of the same in the NCDOL Interoffice Mail.

THIS THE 25th DAY OF June, 2009.

**OSCAR A. KELLER, JR.
Chairman**


**Nancy Swaney
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