

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

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

**DOCKET NO. OSHANC 2009-4855
OSHA INSPECTION NO.312306566
CSHO ID NO. Z6819**

v.

ORDER

**HOBBS WESTPORT MARINA, LLC
RESPONDENT.**

APPEARANCES:

Complainant:

Daniel D. Addison
Special Deputy Attorney General
North Carolina Department of Justice

Respondent:

Philip M. Van Hoy
Van Hoy, Reutlingler, Adams & Dunn, PLLC
Charlotte, North Carolina

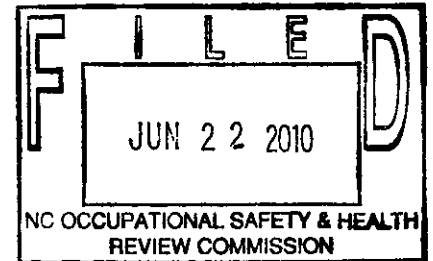
BEFORE:

Hearing Examiner: Carroll D. Tuttle

THIS CAUSE came on for hearing and was heard before the undersigned, Carroll D. Tuttle, Administrative Law Judge for the Safety and Health Review Board of North Carolina, on December 15, 2009, at the County Office Building, 905 West Avenue, in Lenoir, North Carolina.

The Complainant was present and represented by Mr. Daniel D. Addison, Special Deputy Attorney General, North Carolina Department of Justice. The Respondent was present and represented by Mr. Philip M. Van Hoy of Van Hoy, Reutlingler, Adams & Dunn, PLLC.

Based upon the evidence presented at the hearing and 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

1. This case was initiated by a Notice of Contest dated January 22, 2009 which followed citations issued to Respondent by Complainant on November 25, 2008 to enforce the Occupational Safety and Health Act of North Carolina (OSHANC or Act) (N.C.G.S. § 95-126 *et seq.*).

2. 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 the Act (N.C.G.S. § 95-133).

3. Respondent, a North Carolina limited liability company with its principle office located at 7879 Water Oaks Drive, Denver, North Carolina, is subject to the provisions of the Act (N.C.G.S. § 95-128) and is an employer within the meaning of N.C.G.S. § 95-127(9).

4. The undersigned has jurisdiction over the case (N.C.G.S. § 95-135).

5. Between June 11, 2008 and November 24, 2008, Rebecca Warr, Safety Compliance Officer (SCO), and Robert Kastenhuber, Safety Compliance Officer (SCO), employed by the North Carolina Department of Labor, inspected Respondent's work site located at 7879 Water Oaks Drive, Denver, North Carolina, hereinafter referred to as "the site." Officers Warr and Kastenhuber properly entered onto Respondent's site and properly conducted the inspection pursuant to a report of a fatal accident at Respondent's marina on Lake Norman.

8. Prior to beginning their inspection, SCO's Warr and Kastenhuber conducted an opening conference with Lowry Hobbs, president and manager of Respondent, and Anne Hobbs, office manager of Respondent. Permission was granted to conduct an OSH inspection.

9. During the inspection, SCO' Warr and Kastenhuber took and collected photographs, interviewed witnesses, and made notes.

10. On November 25, 2009, as a result of the inspection, Complainant issued to Respondent the following citations and penalties:

Citation 1, Item 1, alleging a serious violation of 29 CFR 1910.106(g)(4)(i)(c), with a proposed adjusted penalty of \$700.00;

Citation 1, Item 2, alleging a serious violation of 29 CFR 1910.106(g)(5)(ii), or in the alternative a serious violation of 29 CFR 1910.106(g)(4)(i)(a), or in the alternative a serious violation of 29 CFR 1910.106(g)(5)(iii), with a proposed adjusted penalty of \$700.00;

Citation 1, Item 3, alleging a serious violation of 29 CFR 1910.303(b)(1), with a proposed adjusted penalty of \$350.00;

Citation 2, Item 1, alleging a nonserious violation of 29 CFR 1910.106(g)(4)(iii)[b];

Citation 2, Item 2, alleging a nonserious violation of 29 CFR 1910.157(g)(1); and

Citation 2, Item 3, alleging a nonserious violation of 29 CFR 1910.1200(e)(1).

11. Respondent withdrew its notice of contest with regard to Citation 2, Items 2 and 3.

12. Respondent operated a marina on Lake Norman. The marina put boats and personal water craft into the water and took them out of the water, provided docking for boats and personal water craft, sold sundries and snack food to the marina's boating customers, and maintained a fueling station for boats, where Respondent's dock hands pumped gasoline into boats docked at the marina.

13. The accident that prompted Complainant's inspection occurred at Respondent's marina on June 10, 2008. An 80-foot long, three level, gasoline powered motorized yacht had returned from a day cruise and was docked at the marina. A worker was refueling the yacht. The worker who was refueling the yacht was employed for the most part by Respondent as a dock hand. However, on the day of the accident, the worker was employed for the day by the owner of the yacht as a crew member for the yacht. Prior to the accident, the worker took a gasoline hose and nozzle from one of the marina's four gasoline dispensers to one of the gasoline fueling ports at the stern of the yacht. While the fuel was being pumped into the yacht, the worker did other chores on and about the boat. The worker then returned to the area of the yacht's fuel port. When the worker returned to that part of the boat, a gasoline vapor explosion occurred there. The explosion caused concrete tiles on the deck of the marina's dock to fly into the air and break apart. The fire burned the gasoline dispenser on the dock from which the gasoline was flowing to the yacht. The yacht caught on fire, and eventually sank. Emergency services were summoned. After the fire was extinguished, the boat was raised, and the worker was found at the back of the boat in the area of the fuel port. The worker had died from injuries sustained in the explosion.

Citation 1, Item 1

14. 29 CFR 1910.106(g)(4)(i)(c) requires that gasoline dispenser nozzles at marine service stations be automatic closing without hold-open latches.

15. All of the nozzles on the fuel hoses of the Respondent's gasoline dispensers at Respondent's marine service station were automatic closing, with hold-open latches. The automatic closing devices on the nozzles were designed to stop the flow of gasoline automatically when a boat's fuel tank was full and gasoline backed up in the boat's fuel port, covering the nozzle. The hold-open latches were spring-loaded devices that were locked into place manually, allowing the fuel levers of the fuel nozzles to be held open without the persons doing the fueling having to squeeze the levers continuously. The hold-open latches permitted persons doing the fueling to do other things, besides squeezing the levers on the fuel nozzles, while the boats were being fueled.

16. If a hold-open latch is engaged while a boat is being fueled, and if the automatic closing device does not properly stop the flow of fuel when the boat's fuel tank is full, the flow of

gasoline can continue and the gasoline can overflow the fuel tank.

17. With some boats, if a gasoline tank overflows, gasoline can get into the passenger area of the boat. Overflowing gasoline can also get into areas of the boat containing electrical equipment, creating explosion and fire hazards. When a boat is fueled while in the water, waves can cause boat movement, which in turn can cause a gasoline hose fuel nozzle to come out of a boat's fuel port and fall into the boat. If the hold-open latch is engaged when this happens, fuel can continue to be pumped directly into the boat until someone disengages the hold-open latch. SCO Warr testified that this happened before at Respondent's marina.

18. Lowry Hobbs testified that he was not aware that hold-open latches on gasoline dispenser nozzles violated the above-cited standard. However, the evidence showed that Mr. Hobbs and other of Respondent's managers knew that the gasoline dispenser nozzles at Respondent's marina had hold-open latches. SCO Warr testified that Lowry Hobbs and his son, Alan Hobbs, who was also a manager at Hobbs Westport marina, told her they had trained Respondent's employees how to fuel boats. Ms. Warr said Lowry and Alan Hobbs told her dock employees generally took the nozzle to fuel watercraft, put the nozzle into the tank, squeezed the fuel lever to start the flow of gasoline to the boat's fuel tank, and set the hold-open latch until it clicked to shut off the flow. Lowry Hobbs testified that the hold-open latches were on the fuel nozzles at Respondent's marina when Respondent purchased the marina in 2004.

19. Respondent's employees worked on and about the dock at the marina while hold-open latches on the fuel nozzles were engaged, and the employees were exposed to the hazards of fire and explosion that could occur if gasoline overflowed from boat fuel tanks if a hold-open latch was not disengaged by a nozzle's automatic closing device.

20. It is substantially probable that employees would be burned, or killed, from a gasoline vapor fire or explosion occurring from gasoline overflow from a boat's gasoline tank.

21. Complainant assessed a proposed adjusted penalty of \$700.00 for the violation cited in Citation 1, Item 1. This penalty was calculated in accordance with the Department of Labor's field operations manual, and is appropriate.

22. With regard to Citation 1, Item 1, Respondent has asserted a defense that it was impossible for Respondent to comply with the cited standard. Lowry Hobbs testified that after the 2008 explosion and fire at his marina, he explored the possibility of either removing the hold-open latches on his gasoline dispenser nozzles, or obtaining new nozzles without such latches, and that he has not yet found a way to do so. Mr. Hobbs acknowledged that he searched on the Internet and has found nozzles that comply with the standard. He said, however, that he had not yet found a supplier for those nozzles.

CSO Warr testified that the gasoline dispenser nozzles at Midtown Marina, another marine service station on Lake Norman, did not have hold-open latches. The Lincoln County Fire Marshal, whom Respondent called as its own witness at the hearing, testified that he was aware Midtown Marina was able to comply with the OSHANC standard and had come into compliance

after the 2008 explosion and fire at Respondent's marina.

CSO Warr also testified that during her inspection, she talked with Chris and Arthur Wilson of Petroleum Equipment and Supply, the company that supplied the nozzles at Respondent's marina. They told Ms. Warr that they supplied Sunoco stations with nozzles that did not have hold-open latches. The Wilsons also told Mr. Warr that they could take off the hold-open latches, if the customer requested it.

Additionally, Mr. Hobbs admitted at the hearing that the president of Husky (the company that manufactured some or all of Respondent's nozzles) came to the respondent's marina during Complainant's inspection, and informed someone who informed Mr. Hobbs that Husky would provide written documentation for how to remove the hold-open latches because the nozzles have to also be UL approved.

The evidence does not support Respondent's claim that it was impossible for Respondent to obtain gasoline dispenser nozzles without hold-open latches, or to modify its existing nozzles so they did not have hold-open latches.

Citation 1, Item 2.

23. With regard to Citation 1, Item 2, Complainant alleged that Respondent violated one of three possible alternative OSHANC standards:

- a) 29 CFR 1910.106(g)(5)(ii), which provides:

All electrical equipment and wiring [at service stations] shall be of a type specified by and shall be installed in accordance with subpart S of this part;

- b) 29 CFR 1910.106(g)(5)(iii), which provides:

So far as it applies. Table H-19 shall be used to delineate and classify hazardous areas for the purpose of installation of electrical equipment under normal circumstances. A classified area shall not extend beyond an unpierced wall, roof, or other solid partition.

Table H-19, which is incorporated in 29 CFR 1910.106, indicates that the hazardous, classified area around outdoor dispensers at service stations is up to 18 inches above grade level within 20 feet horizontally of any edge of the enclosure.

- c) 29 CFR 1910.106(g)(4)(i)(a), which provides:

The dispensing area [at marine service stations] shall be located away from other structures so as to provide room for safe ingress and egress of craft to be fueled. Dispensing units shall in all cases be at least 20 feet from any

activity involving fixed sources of ignition.

24. The gasoline dispensers at Respondent's marina were affixed to the surface of the marina's floating dock. There were three electrical receptacles imbedded in the outside walls of the marina's snack bar building, which was also on the floating dock. These receptacles on the snack bar walls were located 14 inches above the surface of the floating dock, and they were therefore 14 inches above the surface on which the gasoline dispensers were affixed. One of these receptacles was 11 feet, eight inches from a gasoline dispenser; another of the receptacles was 15 feet, two inches from a gasoline dispenser; the third receptacle was between 13 and 14 feet from a gasoline dispenser.

25. These electrical receptacles on the outside walls of the snack bar on Respondent's marina dock were used for plugging in electric-powered air pumps, which customers used to blow up inflatable water toys and rafts. The receptacles were also available for use for battery charging.

26. These electrical receptacles were not designed, approved, safe, or intrinsically safe for a location where gasoline dispensers were located within 20 feet of the receptacles, and where the receptacles were less than 18 inches above the horizontal surface of the dock on which the gasoline dispensers were sitting.

27. Lowry Hobbs testified that he did not know the location and design of these receptacles violated OSHANC standards. However, Mr. Hobbs knew that these receptacles were located on the snack bar walls, and that these receptacles were in the proximity, as described above, of the gasoline dispensers on the dock. Respondent knew that these receptacles were used as described in Paragraph 25, above.

28. Electrical equipment plugged into and powered by these receptacles could cause a spark, which could ignite gasoline vapor from the dispensers, causing an explosion or fire. It was substantially probable that such an explosion or fire would cause burns, or death, to employees working in the area of the receptacles. Respondent's employees working in the snack bar, or on the dock, were exposed to this hazard.

29. Complainant assessed a proposed adjusted penalty of \$700.00 for the violation cited in Citation 1, Item 2. This penalty was calculated in accordance with the Department of Labor's field operations manual, and is appropriate.

Citation 1, Item 3

30. 29 CFR 1910.303(b)(1) requires that electric equipment shall be free from recognized hazards that are likely to cause death or serious physical harm to employees.

31. On the walls of the snack bar of the floating dock at Respondent's marina, there were electrical receptacles both on the outside walls (i.e., the ones referenced in Citation 1, Item 2, above) and the walls inside the snack bar. There were no ground fault circuit interrupters ("GFCI") in the circuits for these receptacles. GFCI's are switches in electrical circuits that

detect differences in incoming and outflowing electricity, such as when there is a ground fault in the circuit (i.e., electricity flowing to a source outside the circuit, rather than back through the circuit to a grounding device). A ground fault might occur if the housing of an electrical device plugged into a receptacle becomes electrically energized. In such a situation, electric current flowing to the outside of the device, rather than flowing back through the circuit, can flow to the person touching the device, and the person can be shocked. A GFCI quickly detects the change in current, and shuts down the flow of electricity in the circuit, preventing serious injury to the person.

32. The absence of GFCI's for the receptacles at Respondent's dock snack bar is a recognized hazard. The National Electric Code, Section 555.19(B)(1), provides that, for marinas and boatyards:

Ground-Fault Circuit-Interrupter - Protection for Personnel. Fifteen and 20-amp, single-phase, 125-volt receptacles installed outdoors, in boathouses, buildings used for storage, maintenance, or repair where portable electrical hand tools, electrical diagnostic equipment, or portable lighting equipment are to be used shall be provided with GFCI protection for personnel.

Some of the receptacles at the respondent's marina were installed outdoors, and were thus covered by this standard. The indoor receptacles were installed in a boat house, and were thus also covered by the standard.

33. The outside receptacles at the snack bar at Respondent's marina were used for blowing up inflatable toys with electric air pumps. The inside receptacles were used to provide electricity to a freezer, coolers for drinks, a microwave, a cash register, and an ice machine. Since the receptacles and this equipment were on a floating dock, there was potential for water to be all around them. Water conducts electricity, and if employees came in contact in their work with water and these appliances with no GFCI's, a fault could occur as the electricity flowed to the water, and employees could be shocked without the current stopping. A substantially probable result of such electric shocks was electrocution. Employees working inside and outside the snack bar came in contact with electrical equipment plugged into these receptacles, and they were exposed to this hazard.

34. Lowry Hobbs testified that he did not know of the requirement for GFCI-protected receptacles at these locations. However, Lowry Hobbs, Ann Hobbs and Alan Hobbs, Respondent's managers, knew or with reasonable diligence could have known, there was no GFCI protection for these receptacles by virtue of their work in and around the snack bar. They could tell that the receptacles were not GFCI protected because the receptacles would either be marked as such if they were protected, or one could tell by looking in the electrical panel.

35. Complainant assessed a proposed adjusted penalty of \$350.00 for the violation cited in Citation 1, Item 2. This penalty was calculated in accordance with the Department of Labor's field operations manual, and is appropriate.

Citation 2, Item 1

36. 29 CFR 1910.106(g)(4)(iii)[b] requires that, at marine service stations, a readily accessible valve to shut off the supply of flammable or combustible fuel from shore shall be provided in each pipeline at or near the approach to the pier and at the shore end of each pipeline adjacent to the point where a flexible hose is attached.

37. At Respondent's marine service station, gasoline was stored in an underground tank on shore. The gasoline flowed through pipes under the dock to the dispensers on the dock. There was a shut-off valve to stop the flow of gasoline from the storage tank to the dispensers. However, this valve was in a manhole near the gangway to the dock, under a manhole cover that would have to be removed to get to the shut-off valve. Additionally, below the manhole cover there was a metal plate bolted in place. The shut-off valve was not in a readily accessible location.

38. Lowry and Alan Hobbs, Respondent's managers, were not aware of the shut-off valve located in the manhole. However, they did know that there were no other readily accessible shut-off valves at or near the approach to the pier at the shore end of the gasoline pipeline. Lowry Hobbs testified that he did not know about the requirements of the cited standard.

39. CSO Warr testified that the purpose of requiring a readily accessible shut-off valve on shore, near the approach to the pier, is so that if there were a fire on the dock, employees could leave the dock and shut off the flow of gasoline to the dock's dispensers without having to go toward the fire on the dock. CSO Warr testified that there was an electrical switch in the snack bar on the dock that could be used to cut off electricity to the pump that pumped gasoline from the on-shore storage tank to the dispensers on the dock. CSO Warr testified that when the June 10, 2008 explosion and fire occurred, Alan Hobbs ran back onto the dock from the shore, toward the fire, to reach this electrical switch to cut off power to the pumps.

40. CSO Warr testified that employees who had to run back to the snack bar to shut off the gasoline pump during a fire risked minor burns. CSO Warr predicted only minor burns because she thought the general action of employees would be to go away from the fire, not to return to the fire where they could get hurt.

Based upon the foregoing Findings of Fact, the undersigned Hearing Examiner concludes as a matter of law the following:

CONCLUSIONS OF LAW

1. The foregoing findings of fact are incorporated by reference hereunder as Conclusions of Law to the extent necessary to give effect to the provisions of this Order;
2. The Review Board has jurisdiction of this case and the parties are properly before the Board;
3. Respondent is subject to the provisions of the Act (N.C.G.S. 95-128) and is an employer

within the meaning of N.C.G.S. 95-127(9).

4. With regard to Citation 1, Item 1, Respondent committed a serious violation 29 CFR 1910.106(g)(4)(i)(c), in that the gasoline dispenser nozzles at Respondent's marine service station had hold-open latches. The proposed penalty of \$700.00 for this violation was calculated in accordance with the Department of Labor's field operations manual, and is appropriate.

5. Respondent has raised the defense of impossibility of compliance with regard to Citation 1, Item, for having hold-open latches on its gasoline dispenser nozzles. Impossibility of compliance is an affirmative defense, and the Respondent has the burden of proving it by a preponderance of the evidence. *Brooks v. Berryhill Fabricators, Inc.*, 102 N.C. App. 212, 216, 401 S.E.2d 795, 798 (1991). In proving the defense of impossibility, the employer must show that (1) compliance with the standard was not possible or would preclude performance of the work and (2) that the employer used alternative means of protection not specified in the standard, or that alternative means of protection were unavailable. *Id.* 102 N.C. App. at 217, 401 S.E.2d at 798. Respondent has failed to prove the defense of impossibility of compliance with regard to this citation.

6. With regard to Citation 1, Item 2, Complainant alleged that Respondent committed a serious violation of one of three alternatively-cited standards. The undersigned holds that Respondent committed a serious violation of 29 CFR 1910.106(g)(4)(i)(a) in that there were fixed electrical receptacles in the walls of the marina dock's snack bar within 20 feet of the gasoline dispensers of Respondent's marine service station, and these receptacles were used to provide electric current to electrical equipment. While the undersigned has determined that 29 CFR 1910.106(g)(4)(i)(a) is the most applicable of the three standards cited in the alternative by Complainant, the undersigned also holds that there was substantial evidence to prove that Respondent committed serious violations of the other alternatively-cited standards. Specifically, the evidence proved that Respondent committed serious violations of 29 CFR 1910.106(g)(5)(ii) and 29 CFR 1910.106(g)(5)(iii), in that there were 3 electrical receptacles in the snack bar walls at Respondent's marina that were within the hazardous location (i.e., within 20 feet horizontally, and less than 18 inches above grade level) of gasoline dispensers at Respondent's marine service station, and these receptacles were not of a type specified in Subpart S of the OSHANC standards for that location, namely, the receptacles were neither intrinsically safe, approved for that hazardous (classified) location, nor safe for that hazardous (classified) location. The proposed penalty of \$700.00 for this violation was calculated in accordance with the Department of Labor's field operations manual, and is appropriate.

7. With regard to Citation 1, Item 3, Respondent committed a serious violation of 29 CFR 1910.303(b)(1), in that electric equipment at Respondent's worksite was not free from recognized hazards that are likely to cause death or serious physical harm to employees. The hazards were electric receptacles on the inside and outside walls of Respondent's marina dock snack bar that were not protected with ground fault circuit interrupters. This hazard is recognized pursuant to National Electric Code, Section 555.19(B)(1). The proposed penalty of \$350.00 for this violation was calculated in accordance with the Department of Labor's field operations manual, and is appropriate.

8. With regard to Citation 2, Item 1, Respondent committed a nonserious violation of 29 CFR 1910.106(g)(4)(iii)[b], in that, at Respondent's marine service station, a readily accessible valve to shut off the supply of gasoline from shore to the dispensers on the dock was not provided in each pipeline at or near the approach to the pier and at the shore end of each pipeline adjacent to the point where a flexible hose is attached.

9. With regard to Citation 1, Items 1, 2 and 3, and with regard to Citation 2, Item 1, Respondent asserted that it is not liable for violating the cited standards because it did not know the conditions at its marina were in violation of the cited standards. An employer's failure to know that the law prohibits certain conditions or actions is not an excuse or defense for those conditions or actions. It is universally accepted that ignorance of the law is not an excuse for its violation. *State ex rel. Atkins v. Fortner*, 236 N.C. 264, 271, 72 S.E.2d 594, 598 (1952); *Ed Taylor Constr. Co. v. OSHRC*, 938 F.2d 1265, 1272 (11th Cir. 1991) ("Whether or not employers are in fact aware of each OSHA regulation and fully understand it, they are charged with this knowledge and are responsible for compliance") (citing *North Ala. Express, Inc. v. United States*, 585 F.2d 783, 787 n.2 (5th Cir. 1978)); *United States v. Green Drugs*, 905 F.2d 694, 696 (3d Cir.), cert. denied, 498 U.S. 985 (1990); *Kenneth P. Thompson Co.*, 8 BNA OSHC 1696, 1704, 1980 CCH OSHD P24,593, p. 30,179 (No. 76-2623, 1980) ("Respondent is presumed to have knowledge of the cited standard by virtue of its publication in the Federal Register.")

Respondent's argument that Complainant has failed to prove the knowledge element of the cited OSHANC standards violations is misplaced. To prove a violation of an OSHANC standard, the Commissioner must prove that the employer knew, or with reasonable diligence could have known, of the hazardous *condition*. *Commissioner v. Metric Constructors*, OSHANC No. 96-3407 (RC 1998). There is no requirement that the Commissioner prove the employer knew the condition violated an OSHANC standard. The evidence in this case supports the conclusion that Respondent knew of the existence of the violative conditions at its marina, even if it did not know that those conditions were prohibited by OSHANC standards. Complainant has proven that Respondent, as an employer, knew of the violative *conditions* for which it was cited.

10. Respondent withdrew its notice of contest with regard to Citation 2, Items 2 and 3. Therefore, Respondent's nonserious violations of 29 CFR 1910.157(g)(1) and 29 CFR 1910.1200(e)(1) are established as a matter of law.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby ORDERED that

1. Citation 1, Item 1, alleging a serious violation of 29 CFR 1910.106(g)(4)(i)(c), is hereby affirmed, and its associated proposed penalty of \$700.00 is affirmed; and,

2. Citation 1, Item 2, alleging a serious violation of 29 CFR 1910.106(g)(4)(i)(a), is hereby affirmed, and its associated proposed penalty of \$700.00 is affirmed; and,

3. Citation 1, Item 3, alleging a serious violation of 29 CFR 1910.303(b)(1) is hereby affirmed;

and its associated proposed penalty of \$350.00 is affirmed; and,

4. Citation 2, Item 1, alleging a serious violation of 29 CFR 1910.106(g)(4)(iii)[b] is hereby affirmed;

5. Citation 2, Item 2 alleging a nonserious violation of 29 CFR 1910.157(g)(1), is hereby affirmed;

6. Citation 2, Item 3, alleging a nonserious violation of 29 CFR 1910.1200(e)(1), is hereby affirmed; and

7. The above penalties shall be paid within ten (10) days of the filing date of this Order.

This the 16th day of June, 2010.

Carroll D. Tuttle

Carroll D. Tuttle
Administrative Law Judge Presiding

CERTIFICATE OF SERVICE

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

PHILLIP M VAN HOY
VAN HOY REUTLINGER ADAMS & DUNN
737 EAST BOULEVARD
CHARLOTTE NC 28203

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

DANIEL ADDISON
NC DEPARTMENT OF JUSTICE
LABOR SECTION
P O BOX 629
RALEIGH NC 27602-0629

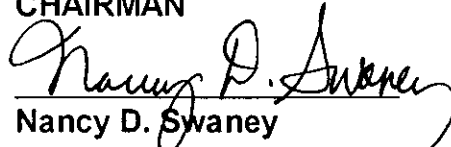
by depositing a copy of the same in the United States Mail, First Class;

NC DEPARTMENT OF LABOR
LEGAL AFFAIRS DIVISION
1101 MAIL SERVICE CENTER
RALEIGH NC 27699-1101

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

THIS THE 23rd DAY OF June 2010.

OSCAR A. KELLER, JR.
CHAIRMAN



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