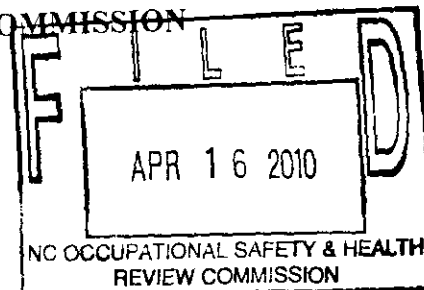


BEFORE THE NORTH CAROLINA
OCCUPATIONAL SAFETY & HEALTH REVIEW COMMISSION
RALEIGH, NORTH CAROLINA



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

v.)

RE-MULCH, INC., *and its successors*,)

INSPECTION NO.: 312196256

CSHO ID: C4570

OSHANC: 2009-4912

ORDER

This matter came on to be heard and was heard before the undersigned Administrative Law Judge on March 9, 2010, in Winston-Salem, North Carolina. Complainant was represented by Tawanda Foster-Williams, Assistant Attorney General, North Carolina Department of Justice (DOJ). Also present for the DOJ was Daniel D. Addison, Special Deputy Attorney General.

Present for the North Carolina Department of Labor, OSHA Division (NCOSH), were Sam Atassi, Safety Compliance Officer in this matter; and observers Ben Harris, Kevin Beauregard, Allen McNeely and Steve Sykes.

Owner, Scott Jones, represented respondent Re-Mulch, Inc. (Re-Mulch) *pro se*. Also present for respondent was Mr. Jones' wife and co-owner of Re-Mulch, Robin Jones. Kim Cruthis observed on behalf of Re-Mulch.

Dana Rayle, wife of decedent in this matter — Thomas Guy Rayle — was present, along with her sister, Tammy Beal.

Kenneth Todd Beane was present pursuant to a subpoena issued by complainant. Shane Beane was present as an observer.

AFTER REVIEWING the record file, studying the evidence, hearing the testimony, judging the credibility of witnesses, hearing the arguments of the representatives, reading the case law handed up by the NCDOJ and reviewing other relevant legal authorities, the undersigned makes the following:

FINDINGS OF FACT

- **Background and History:**

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 (the Act).
2. Respondent Re-Mulch is a North Carolina Corporation, duly organized and existing under the laws of and which does business in the State of North Carolina and maintains a place of business in Greensboro, North Carolina. It is in the business of blowing mulch materials. It is subject to the jurisdiction of the Commission.
3. For approximately a week prior to the OSHA inspection on December 2, 2008, which is the subject of this case, respondent Re-Mulch was dispensing mulch for a new business, Pull-A-Part, at 4125 Patterson Avenue, Winston-Salem, North Carolina (jobsite). (C14)¹
4. On November 29, 2008, the Winston-Salem Police Department was called to the jobsite to investigate a "death/industrial accident." The police were led to a Freightliner Truck attached to a trailer that had been modified to blow mulch. (C14)
5. Winston-Salem Police Department Investigating Officer C.D. Bagwell (the IO) climbed the ladder on the back of the truck. While still on the ladder, the IO looked through a piece of metal grate covering the open top of the trailer:

I observed a pair of gloves and a rake lying on the metal grate. There also was a pitch fork lying on the mulch just beyond the grate at the back of the truck. Contained in the bottom of the rear cargo area of the [trailer] there were ... augers which disperse mulch through a long tube. These augers were not in operation at this time. I also observed a subject, later identified as Mr. [Thomas Guy] Rayle, who was [deceased and] entangled in the...augers.

(C2-5, 9, 13, 14)

¹ References to "C__" or "R__" denote Complainant's Exhibit No. __ or Respondent's Exhibit No. __, respectively.

6. Mr. Kenneth T. Beane (Beane), a co-worker who had been on the jobsite when Rayle had become entangled in the augers, had been taken to the hospital in severe emotional distress. (C14)
7. The IO notified both Mr. Scott Jones (Jones), a co-owner of Re-Mulch and NCOSH of the work-place fatality. Jones was in South Carolina and responded to the notification by saying, "I don't know how this could have happened because they know they are not supposed to be in there while it is running." By telephone, Jones assisted the police in releasing the rear door/tailgate so that Winston-Salem Fire Department recovery personnel could extricate Rayle's body and take it to the hospital morgue. (C14)
8. While still in the hospital, Beane gave his statement to the IO. In pertinent part, Beane described the events of the day to the IO as follows :

[Beane] was approximately 75 feet away from the truck blowing mulch. He said it's a common practice to look back and check on each other... . [H]e was blowing mulch for approximately 6 minutes when the mulch stopped blowing. This prompted him to look back toward the truck. He said he noticed Mr. Rayle was missing at that time. He said he didn't shut off the augers because he thought Mr. Rayle might have been in the back of the truck pushing mulch into the ... augers or that he might have been in the truck cab getting a drink. Mr. Beane climbed the ladder on the back of the truck and looked into the back of the truck where the mulch is located and he thought he observed a jacket but when he looked again he realized it was Mr. Rayle. Mr. Beane stated he jumped down off the truck and hit the emergency shut off to the ... augers.

I asked Mr. Beane if it was common practice to leave tools in the mulch while the augers were running, he stated that no tools were supposed to be in the back with the ... augers running... .

Mr. Beane advised that when he looked in the rear of the truck he observed Mr. Rayle entangled in the augers but that the augers were not turning. I asked Mr. Beane if there was a safety cut off and he advised that Mr. Rayle should have been wearing a remote device on his hip which would control the ... augers.

(C14)

9. On December 2, 2008, Safety Compliance Officer Sam Atassi (SCO) arrived at the jobsite to conduct a Fatality Investigation/Comprehensive Investigation. He held an opening conference with co-owner, Jones. The SCO presented his credentials and explained why he was there.

10. Jones indicated that his company employed 6 workers and gave the SCO permission to conduct his investigation. The SCO took photographs and obtained from Jones, the owner's manual for the machinery, an Express Blower® (EB).
11. On December 17, 2008, the SCO took a statement from Beane, who indicated that the last time he saw Rayle alive, "he saw Guy on the top of the trailer standing on [the] cage. I saw him standing with the remote attached to his pants (right side)." (C1)
12. The SCO obtained additional information from Robert Portney, Director of Engineering for Express Blower, Inc. (C1, 16)
13. The SCO obtained Rayle's autopsy from the state medical examiner, who determined cause of death to be "compressional asphyxia [with m]arkedly congested head, neck, face...[and] lungs... ." The medical examiner also noted, among other things, blunt force injuries to the head, face, neck, and body and to the upper and lower extremities. The manner of death was cited as "accidental" and was based upon police investigative reports that: "the decedent was on top of an industrial scale mulcher when he apparently fell into the mulcher." (C15)
14. The SCO cited Re-Mulch for a Serious Willful violation of the General Duty Standard of the Occupational Safety and Health Act of North Carolina (OSHANC) as set forth in North Carolina General Statute §95-129(1). The citation reads as follows:

The employer did not furnish to each of his employees conditions of employment and a place of employment which were free from recognized hazards that were causing or likely to cause death or serious physical harm to employees in that employees were exposed to fall hazards and being caught-in and/or between the rotating augers on a Express Blower Mulcher:

- a. jobsite (4125 N. Patterson Ave, WS) - for the employees standing on top of the trailer's door/safety screen of the Express Blower Mulcher, while exposed to an outside fall hazard of 11 feet onto the ground and an inside fall hazard of up to 7'9" onto the floor of the trailer (cargo box) and/or rotating augers.

note: one feasible and acceptable method of abatement to correct this hazard was to follow the manufacturer's instructions by not standing on the unguarded platform (top of the trailer's door/safety screen).

- **The Pertinent Workings of the Express Blower (EB):**

15. Among other things, the EB consists of the following:

- a. A 2001 Freightliner truck "with a modified chassis and a custom-built truck box." The truck box (cargo box) built inside the cargo hold of the trailer is "V" shaped to guide the mulching material to the floor of the trailer (C2, 13, 17);
- b. "The floor of the truck box is actually a conveyor belt, which moves material toward the floor opening and into the feeder..." at the trailer's rear (C5, 13);
- c. The material is fed into diagonally positioned augers (the feeder) which are housed in and attached to each side of the inner tailgate, while a vertically positioned mixer is attached to the center of the door above the augers (C3, 17);
- d. The mixer and blower systems are mounted to the modified chassis underneath the cargo box and attached to hundreds of feet of hose used to guide the mulch from the trailer to the intended landscape locations. "Hydraulic motors drive the augers and mixer, which rotate to loosen the material in the cargo box and push it toward the feeder on the hydraulically powered conveyor-belt floor." Pressure sensors keep the floor belt from moving forward if the feeder, mixer and/or blowers become backed up with (pressured by) material. "If the auger pressure reaches a more heightened level, the augers and mixer automatically reverse motion and move the material in the opposite direction" (C 2-13, 17 and R1);
- e. The tailgate is equipped from top to bottom with a seven-rung steel viewing ladder (C9);
- f. Above the viewing ladder - over the top of the tailgate area - is an unpainted metal rail. It spans the width of the tailgate and is less than 6 inches deep. At the hearing, it is variously referred to as "the top rail," "on top," "the top of the door." In Exhibit C3(a), a red-dotted circle marks the center of the top rail;
- g. A red-painted metal safety mesh spans the entire width of the exposed top of the trailer and extends approximately 22 inches deep from the back of the trailer over the feeder augers. The metal safety mesh is attached to the top rail located above the tailgate. The purpose of the metal grate is to allow workers to safely see into the feeder from the second-to-the-top rung of the viewing ladder, without exposing them to a fall hazard or flying debris (C3 and C3(a) where the witness has written a blue "C").
- h. Throughout the testimony and physical evidence, this metal safety mesh is variously referred to as a/the:

- i. Metal mesh or metal safety mesh;
 - ii. Grate;
 - iii. Platform;
 - iv. Perforated screen;
 - v. Safety screen;
 - vi. Viewing screen: and/or.
 - vii. A cage.
- i. The top rail and grate combined are referred to as "on top of the truck."
 - j. The SCO measured the top of the truck as 11 feet above the ground and 7 feet, 9 inches above the moving floor and the rotating augers in the trailer; and.
 - k. Four white bars span the width of the open trailer and support a tarp used to cover the load during transport. (R1, p. 12) In Exhibit C3(a), a blue number "1" designates the first bar. In Exhibit C2(a), all four bars are visible and a blue number "1" designates the first bar.
16. Power to the EB is generated from the truck engine after engaging the Master Control Switch in the cab of the truck. The power is both hydraulic (truck engines) and electric (truck engines and batteries). The power is turned off by disengaging the Power Take Off (PTO) in the cab, turning off the truck engine and removing the key. To shut off the electrical power, the batteries may also be disconnected. (C17)
17. The operations of the EB (i.e. feeder, augers, floor, etc.) are managed either at the Master Control Panel, located on the right rear outer panel of the trailer or by remote control on a belt clip radio transmitter. (C10-11,17)²
18. The Master Control Panel gives access to a large white EMERGENCY STOP knob (kill switch) located at top left of the Master Control Panel. (C10-11)
19. As soon as the Master Control Switch in the cab has been engaged and power is being supplied to the EB, the kill switch on the Master Control Panel should be pulled out and turned clockwise to the ON position. Pushing in the kill switch immediately shuts down all EB operations, including but not limited to the following:
- a. The hydraulically powered tailgate control;
 - b. The blower, regulated by the tractor's engines with the blower speed measured by RPMs and the blower turned off by putting the truck in idle mode; and.

² A photo of the belt-clip remote control was not offered into evidence.

c. The conveyor-belt floor, the augers (feeder) and the mixer. (C 7, 8,10, 11, 17)

• **The Manufacturer's Warnings & Precautions:**

20. At all times after Jones came into possession of the EB, a sticker warning was affixed to the top rail of the trailer as follows:

DANGER: TO PREVENT SERIOUS INJURY OR DEATH FROM FALL OR MOVING PARTS:

- **Do not stand on top rail of cargo box.**
- **Do not stand on top rung of ladder.**
- **Maintain a hand hold on ladder at all time.**
- **Do not push cargo, unplug, adjust or service unloading system with machine operating.**
- **Disconnect and lockout power source before adjusting or servicing.**

(C 17, and R4) (Bold original)

21. The actual sticker on the EB in this case can be seen inside a red-dotted circle affixed to the top rail of the tailgate in Exhibit C3(a) and in a close-up in Exhibit C6.

22. Everyone climbing the tailgate ladder to the second-to-the-top rung would be faced with the sticker on the top rail.

23. Express Blower, Inc. trained Jones in the safe use of the EB, including, providing him the Operation and Safety Manual (R1), which contains, in pertinent part, the following:

a. **Following General Safety Guidelines**

The instructions and guidelines contained in this manual should be followed to avoid incidents of personal injury and damage to equipment. All warnings and instructions posted on the Express Blower truck, truck box, and equipment should be followed at all times.

(R1, p.5)(Bold and underline original)

b. **Federal, state, and local laws regulating job safety must be followed at all times. All owners of an Express Blower must develop their own LOCKOUT, SAFETY, AND MAINTENANCE PROGRAMS OR POLICIES.**

No attempt should be made to ...service any part of the Express Blower while it is operating. Lockout procedures must be initiated before any maintenance service or unjamming is performed.

Lockout is achieved by disengaging the PTO, turning the truck off, and removing the key. Releasing or blocking any stored energy is required.

(R1, p. 6)(Bold and capital letters original)

c. **WARNINGS AND PRECAUTIONS**

General Warnings and Cautions

Power Source and Lockout

- If a clog should occur in the feeder or hose, any resulting buildup of pressure could be harmful or cause personal injury. Caution should be exercised. **Disengaging the PTO and turning the truck engine off will release any hydraulic pressure.**

(R1, p. 10)(Capital letters and bold print original)

d. **Precautions - WARNING!!!**

- **NEVER** attempt to lubricate, repair, clean, or service any part of the Express Blower while it is operating. **Always initiate lockout procedures first...**
- **NEVER** enter the cargo area of the truck box without first initiating the lock out procedures (*see lockout tagout information*)... .
- **NEVER** allow anyone to climb on ... the truck while operating any of the trucks unloading functions. This must apply to your employees, customers, or any by-standers. Always enforce the lockout procedures.

Always ...

- Keep hands and feet on the tailgate ladder or any other ladder used to inspect the truck box prior to loading... .

- Follow all federal, state, and local laws regulating job safety... .
- Follow your company's lockout policies and procedures when doing repairs, maintenance, and inspections... .
- **KNOW WHAT THE POWER SOURCE IS AND WHEN TO LOCK IT OUT.**

(R1, pp.11-12)(Capital letters, bold, italics, underlines and exclamation points original)

e. The Safety Manual also contains a sheet of paper beginning with the caution: "Adhere to **LOCKOUT** procedures on **ALL** of the following. Failure to do so could result in serious bodily injury or even death":

1. AUGERS

- a. Never unclog augers without lockout procedure
- b. Never assist material without lockout procedure
- c. Never service augers without lockout procedure

2. FEEDERS

- a. Never clean out feeders...without lockout procedure...
- c. Never unclog feeder without lockout procedure...

3. FLOOR

- a. Never clean floor and box without lockout procedure
- b. Never assist material flow without lockout procedure...

4. TOP OF DOOR & BOX

- a. Never stand on or above the top rung of the viewing ladder!...
- c. Never stand on top of the door!...
- f. Never enter box without lockout procedure for any reason.

(C17. R2)(Capital letters, bold print, underlines and exclamation points original)

• **Respondent Re-Mulch's Knowledge of the Violation(s):**

24. Jones - a co-owner of Re-Mulch, traveled to Eugene, Oregon to pick up the EB. Express Blower, Inc. provided for him with 6 hours of training and an Operation & Safety Manual containing the material described in paragraph 23.

25. Jones trained Rayle on the safe operation of the EB, including providing him the Operation and Safety Manual containing the same warnings, cautions, precautions, NEVER dos and ALWAYS dos.
26. Jones trained Rayle how to train his other employees on the safe operation of the EB, including providing them, among other things, safety videos, meetings and the Operation and Safety Manual containing the same warnings, cautions, precautions, and the lists of "NEVER dos" and "ALWAYS dos."
27. Based solely on the sticker placed on the top rail, Jones, Rayle and Beane all understood the danger to them of standing on the metal safety screen, including fall hazards onto the ground or into the cargo box.
28. Jones entrusted Rayle to supervise the employees during mulch blowing.
29. Rayle was the Re-Mulch's supervisor on the jobsite.
30. It was routine for Jones, Rayle and Beane to stand on the metal safety screen while the EB was in operation.
31. While the EB was in operation, Rayle and Beane routinely stood on the mulch in the truck box, using rakes or pitch forks to move the material toward the augers.
32. Jones indicated that once, he almost slipped down into the truck box.
33. Jones periodically monitored the work of Rayle and other employees.
34. While the EB was in operation, Jones periodically watched Rayle, Beane and other employees of Re-Mulch stand on the metal safety screen.
35. While the EB was in operation, Jones periodically saw Rayle and Beane on top of the mulch in the truck box, using rakes or pitch forks to move the material towards the augers.
36. Jones told Rayle and Beane that, if they were going to break the rules, safety guidelines or warnings, they should be in the safest place or position. Jones instructed that the safest place or position would be behind the first bar, or eight feet from the augers.
37. The pitchfork on top of the mulch in the cargo box was bent, broken, and repaired with duct tape in a manner consistent with being long-used to move materials into the rotating feeder augers. (C3, 4, 13)
38. The pitchfork on top of the mulch in the cargo box is consistent with Rayle using the pitchfork to move materials into the moving feeder augers prior to his accident. (C3-4)

39. The gloves and rake on top of the metal grate is consistent with Rayle or Beane being on top of that platform prior to the accident. (C3, 3(a))

• **Respondent, Re-Mulch violated the General Duty Clause set forth in the Act at N.C. Gen. Stat. §§95-126 et. seq.**

40. The failure of respondent to prevent and keep employees from standing on top of the mulch in the cargo box and from standing on the top of the metal safety screen while the EB was in operation, created the possibility of an accident, to wit: a fall from a height or a fall into moving machinery parts.

41. Two or more of respondent's employees were exposed to the hazard, to wit: Thomas Guy Rayle and Kenneth Todd Beane.

42. At least one of respondent's employees, Thomas Guy Rayle, was on top of the metal safety screen or on top of the mulch in the cargo box while the EB was in operation just prior to his entanglement in the augers.

43. The substantial probable result of a fall from such a location would be compound fractures, or death by asphyxiation after falling into the moving augers.

44. Respondent knew or should have known that allowing its employees to stand on the platform or on the mulch pile while the EB was in operation was hazardous.

45. Respondent knew or should have known of the actual hazard because:

a. The co-owner of Re-Mulch had himself stood upon the platform and had almost slipped into the cargo box;

b. On previous occasions while the EB was in operation, Jones had seen his employees on top of the metal safety screen and on top of the mulch in the cargo box Jones told Rayle and Beane that, if "they were going to break the rules, safety guidelines or warnings, they should be in the safest place or position".

c. Jones instructed Rayle and Beane that the safest place or position "if they were going to break the rules, safety guidelines or warnings," would be to stand behind the first bar, or eight feet from the augers; and,

d. Just prior to his death, respondent's supervisor, Thomas Guy Rayle was standing on the platform and/or on the mulch in the cargo box while the EB was in operation.

- **The SCO assessed proper penalties against Respondent.**

46. The SCO properly calculated the amount of respondent's penalty of \$14,000 (Fourteen Thousand 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 fall from height or into the auger feeder;
- ii. The probability factor was medium because two or more employees were frequently exposed to the hazard;
- iii. The Gravity Based Penalty was determined to be \$3,500;
- iv. The sum was multiplied by a factor of 10 to \$35,000 as a result of respondent's willful violation;
- v. A 60% reduction was applied for respondent's size;
- vi. Due to the willfulness of the violation, respondent received no credit for cooperation, history or a safety and health program.

47. After multiplying \$35,000 by .40 (a 60% reduction), the SCO properly calculated respondent's penalty as \$14,000.

48. The appropriate means for abatement would be to allow workers to safely see into the feeder only from the second-to-the-top rung of the ladder and to allow workers in the truck box only after all power sources have been turned off, all residual power released and all power sources locked out.

- **Discussion and Application of the Law:**

The Act provides, among other things, that "[e]ach employer shall furnish to each of his employees conditions of employment and a place of employment free from recognized hazards that are causing or are likely to cause death or serious injury or serious physical harm to his employees." N.C. Gen. Stat. §95-129(1).

Chapter 95, subsection 127(18) of the Act deems a serious violation to exist in a work place, if there is:

...a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use at such place of employment, unless the employer did not know, and could not, with the exercise of reasonable diligence, know of the presence of the violation.

The term "willful" has been defined by the North Carolina Supreme Court as, "a deliberate purpose not to discharge some duty necessary to the safety of the person or property of another." Brewer v. Harris, 279 N.C. 288, 297, 182 S.E. 2d 345, 350 (1971) (quoting Foster v. Hyman, 197 N.C. 189, 191, 148 S.E. 36, 37 (1929)).

The North Carolina Safety and Health Review Commission, (Commission), has consistently held that a willful violation may be proven by showing the following:

1. Employer knowledge of the standard, rule, regulation or Act;
2. Knowledge of the violative condition;
3. A subsequent violation of that standard; and,
4. A state of mind that evokes either "intentional disregard of" the standard or "plain indifference to" the requirements of the Act.

The North Carolina Supreme Court examined these four elements in Associated Mechanical Contractors, Inc. v. Payne, and held that "The definition and elements used by the Review Board are consistent with the definitions of willfulness expounded by this Court and quoted above." 342 N.C. 825 at 834, 467 S.E. 2d 398 (1996). Proof of a bad intent or evil motive is not required. Prior citations for the same or similar standards may be used to prove employer knowledge, although employer knowledge of a standard may be proven by other methods.

A willful violation may also be proven by careless disregard of or plain indifference to employee safety and health. In the City of Mt. Airy, OSHANC # 91-2077, the Commission (formerly the "Board") "adopts the view that a willful violation can be proven by conduct marked by intentional disregard of or plain indifference to employee safety and health. . . ." In reaching that conclusion the Commission held that, "[o]nce careless disregard of employee safety was shown there was no need to prove that the employer knew that it was violating the Act." (Citations to Other Cases Omitted)

Respondent's violation of N.C. Gen Stat. §95-129(1) was willful in that it showed a deliberate purpose not to discharge its duty under OSHANC, in reckless disregard for the safety of its employees. Jones and Rayle were familiar with the Safety Manual's repeated and frequently emphasized warnings, cautions, and precautions about this hazard. They were each familiar with and viewed each time they climbed the tailgate ladder, the huge sticker which warned: **"DANGER...TO PREVENT SERIOUS INJURY OR DEATH FROM FALL OR MOVING PARTS:**

- **Do not stand on top rail of truck box.**
- **Do not stand on top rung of ladder.**
- **Maintain a hand hold on ladder at all times.**

- **Do not push cargo, unplug, adjust or service unloading system with machine operating.**
- **Disconnect and lockout power source before adjusting and servicing.”**

(Emphasis Original) Respondent possessed actual knowledge of the extreme danger to Re-Mulch workers when — while the EB was in operation — Jones and supervisor Rayle stood on or watched others stand on either the mulch pile in the cargo box or on the metal viewing screen over the augers. Instead, Jones and Rayle should have mandated that all employees needing to watch the EB in operation, view the cargo box and augers through the viewing screen from the safety of the second rung of the tailgate ladder.

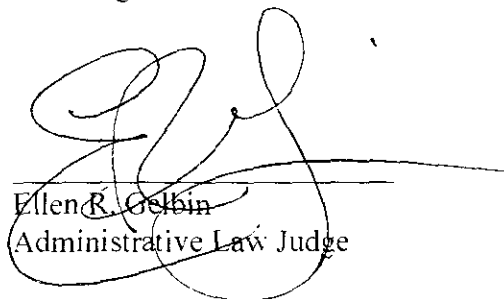
CONCLUSIONS OF LAW

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. Respondent Re-Mulch, Inc. is subject to the provisions and jurisdiction of the Act.
3. Complainant met its burden of proof that respondent committed a serious and willful violation of the General Duty Clause of the N.C. Gen. Stat. §95-129.(1) of the Act.
4. Citation 1, Item 1 should be affirmed and respondent should pay a penalty of \$14,000 (Fourteen Thousand Dollars).

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

1. Respondent Re-Mulch, Inc.'s Citation 1, Item 1 is affirmed and Respondent shall pay the \$14,000 (Fourteen Thousand Dollar) penalty as set forth in the Conclusions of Law, above.
2. The penalty shall be paid within ten (10) days of the filing date of this Order.

This the 15th day of April, 2010.


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:

SCOTT A JONES
RE-MULCH INC
PO BOX 760
PLEASANT GARDEN NC 27313

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

TAWANDA FOSTER-WILLIAMS
NC DEPARTMENT OF JUSTICE
LABOR SECTION
P O BOX 629
RALEIGH NC 27602-0629

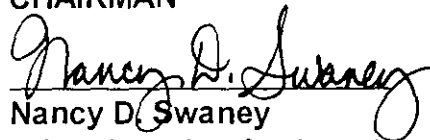
by depositing a copy of the same in the United States Mail, First Class;

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 19th DAY OF April 2010.

OSCAR A. KELLER, JR.
CHAIRMAN


Nancy D. Swaney

Administrative Assistant
NC Occupational Safety & Health Review Commission
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