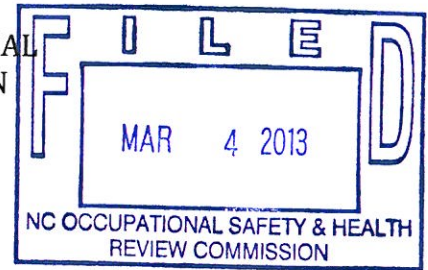


BEFORE THE NORTH CAROLINA OCCUPATIONAL  
SAFETY AND HEALTH REVIEW COMMISSION



COMMISSIONER OF LABOR OF  
THE STATE OF NORTH CAROLINA,

Complainant,

DOCKET NO. OSHANC-2011-5140  
OSHA INSPECTION NO. 314376765  
CSHO ID: N8928

vs.

DOUBLE D TRAILERS, INC.  
*and its successors*

ORDER

Respondent.

THIS CAUSE came on for hearing and was heard before the undersigned Monique M. Peebles, Administrative Law Judge for the North Carolina Occupational Safety and Health Review Commission, on August 28, 2012, at the North Carolina Medical Society Auditorium, 222 North Person Street in Raleigh, North Carolina.

The Complainant presented the affidavit of Tom O'Connell, District Supervisor of the Bureau of Safety Compliance, division of Occupational Safety and Health, North Carolina Department of Labor. The Respondent received proper notice of the hearing however, Respondent did not show up for the hearing.

After reviewing the record file, the undersigned makes the following Findings of Fact and Conclusions of Law and enters an Order accordingly.

**FINDINGS OF FACT**

1. 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 N.C. Gen. Stat. § 95-126 et. seq., the Occupational Safety and Health Act of North Carolina (the "Act").
2. This case was initiated by Notice of Contest received by the Complainant, Commissioner of Labor of the State of North Carolina, on

or about March 11, 2011, contesting a citation issued on December 23, 2010 to Respondent, Double Trailers, Inc. (“Respondent” or “Double D Trailers”).

3. Respondent, a horse trailer manufacturing company, 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, subject to the provision of the Act (N.C. Gen Stat § 95-128 and 129) and is an employer within the meaning of N.C. Gen. Stat. § 95-127 (10). Respondent maintains a place of business in Kinston, North Carolina, and employs 21 workers.
4. The undersigned has jurisdiction over the case (N.C. Gen. Stat. § 95-135).
5. On November 23, 2010, Compliance Safety and Health Officer Gene Powell (“CSHO Powell”), accompanied by CSHO Deborah Durbin, opened a complaint inspection of partial scope and inspected Respondent’s worksite at 403 Neuse Road, Kinston, North Carolina (“site”).
6. CSHO Powell properly entered the site and presented credentials to Judy Chadwick, office manager and received consent to the inspection by Mr. Brad Heath, president, owner and operator of Double D Trailers (“Heath”).
7. CSHO Powell conducted an opening conference via telephone with Heath, in the presence of Mr. Bartley Heath, co owner and operator of Double D Trailers.
8. CSHO Powell initiated a walk around of the site and interviewed Respondents’ employees.
9. CSHO Powell conducted a closing conference with Mr. Bartley Heath and Mr. James Snyder, Respondent’s supervisor. At the completion of the inspection at the site, he recommended that citations be issued.
10. As a result of the recommendations of the compliance officer, on December 23, 2010 the Complainant issued the following Citations:

**Citation 1 Item 1: Serious**

Citation 1, Item 1, alleges a serious violation of 29 CFR 1910.23(c)(1): “very open sided floor or platform four feet or more above adjacent floor or ground level shall be guarded by a standard railing ( or the equivalent as specified in paragraph (e)(3) of this section) on all open

sides except where there is entrance to a ramp, stairway, or fixed ladder.

- a) Facility, wood cutting area – where employees performing work on trailer roofs that were seven to eight feet wide by up to thirty-four long and approximately three feet above ground level without protection from falling.

The proposed penalty for this violation was \$1000.00.

- 11. There was no protection in place to prevent an employee from falling from the top of the trailer down to the concrete floor.
- 12. CSHO Powell found the severity to be high, the probability low, and accessed a Gravity based penalty of \$5,000. He applied a 60% credit for size, 10% for cooperation and 10% for history, and proposed an adjusted penalty in the amount of \$1,000. The proposed penalties were computed in accordance with the provisions of the Field Operations Manual.

**Citation 1 Item 2: Serious**

Citation 1, Item 2, alleges a serious violation of 29 CFR 1910.110(h)(12): Conspicuous signs prohibiting smoking were not posted within sight of customers served at LP gas dispensing areas.

- a) facility. outside - where conspicuous signs customers, specifically, the employees dispensing propane from the one 500 gallon (S/N AA4724, 1969) storage tank.

The proposed penalty for this violation was \$1000.00.

- 13. The 500 gallon tank was used to refill fuel cylinders for forklifts.
- 14. The propane tank was located out in the open within the perimeter fencing of the facility.
- 15. There were no signs to indicate the contents, hazards or warnings.
- 16. CSHO Powell found the severity to be high, the probability low, and accessed a Gravity based penalty of \$5,000. He applied a 60% credit for size, 10% for cooperation and 10% for history, and proposed an adjusted penalty in the amount of \$1,000. The proposed penalties were computed in accordance with the provisions of the Field Operations Manual.

### **Citation 1 Item 3: Serious**

Citation 1, Item 3, alleges a serious violation of 29 CFR 1910.134(c)(2)(ii): The employer did not establish and implement those elements of a written respiratory protection program necessary to ensure that any employee using a respirator voluntarily is medically able to use that respirator and that the respirator is cleaned, stored and maintained so that its use does not present a health hazard to the user.

a) facility, wood cutting area - where an employee that wore an AOSafety 8000, dual cartridge, air purifying respirator on a voluntary basis was not medically evaluated to wear a respirator, tested, or trained in the proper care and maintenance of the respirator.

The proposed penalty for this violation was \$1400.00.

17. Respondent did not establish and implement a written respiratory protection program with worksite-specific procedures for the use of respirators.
18. CSHO Powell found the severity to be high, the probability greater, and assessed a Gravity based penalty of \$7,000. He applied a 60% credit for size, 10% for cooperation and 10% for history, and proposed an adjusted penalty in the amount of \$1,400. The proposed penalties were computed in accordance with the provisions of the Field Operations Manual.

### **Citation 1 Item 4a: Serious**

Citation 1, Item 4a, alleges a serious violation of 29 CFR 1910.304(g)(5): The path to ground from circuits, equipment, and enclosures was not permanent, continuous, and effective.

a) facility, wood cutting area - where the ground prong was missing from the plug of a Stanley, Indoor Blower Fan, Model 655702 rated at 115V ac, which was required for safe operation when using one or both of the two 120V accessory outlets.

The proposed penalty for this violation was \$1000.00.

19. The ground prong was missing from the plug of a Stanley, Indoor Blower Fan, Model 655702 rated at 115V ac, which was required for safe operation when using one or both of the two 120V accessory outlets.

20. CSHO Powell found the severity to be high, the probability high, and accessed a Gravity based penalty of \$5,000. He applied a 60% credit for size, 10% for cooperation and 10% for history, and proposed an adjusted penalty in the amount of \$1,000. The proposed penalties were computed in accordance with the provisions of the Field Operations Manual.

**Citation 1 Item 4b: Serious**

Citation 1, Item 4b, alleges a serious violation of 29 CFR 1910.334(a)(2)(ii): When there was a defect or evidence of damage that could expose an employee to injury, the defective or damaged item was not removed from service until the repairs and tests necessary to render the electric equipment safe had been made:

a) facility, wood cutting area - where a Stanley Indoor Blower Fan. Model 655702 rated at 115V ac, was damaged due to a missing ground prong and had not been taken out of service and was available for use.

21. The Stanley, Indoor Blower Fan, Model 655702 rated at 115V ac, was not taken out of service due to a missing ground prong.

**Citation 1 Item 5: Serious**

Citation 1, Item 5, alleges a serious violation of 29 CFR 1910.1052(d)(2): The employer did not perform initial exposure monitoring for employees exposed to methylene chloride.

a) facility, wood cutting area - where 3M Scotch-Weld 'Hi-Strength Non-Flammable 98NF Red Cylinder Spray Adhesive containing 60-85 percent by weight methylene chloride was used to install carpet ceilings in the living quarters of horse trailers. Airborne levels of methylene chloride had not been determined in the work area.

The proposed penalty for this violation was \$1400.00.

22. Airborne exposure levels of methylene chloride had not been performed to determine the necessity of respirator use in the work area.
23. CSHO Powell found the severity to be high, the probability greater, and accessed a Gravity based penalty of \$7,000. He applied a 60%

credit for size, 10% for cooperation and 10% for history, and proposed an adjusted penalty in the amount of \$1,400. The proposed penalties were computed in accordance with the provisions of the Field Operations Manual.

**Citation 1 Item 6: Serious**

Citation 1, Item 6, alleges a serious violation of 29 CFR 1910.1200 (f)(5)(i): The employer did not ensure that each container of hazardous chemicals in the workplace was labeled, tagged or marked with the identity of the hazardous chemical(s) contained therein:

- a) Facility, outside - where a 500 gallon (S/N AA4724, 1969) storage tank was not labeled as to its contents.

The proposed penalty for this violation was \$1000.00.

- 24. CSHO Powell observed two 100 gallon white storage tanks and one 500 gallon silver storage tank outside of the facility without any labeling.
- 25. The 500 gallon tank is used to refill the cylinders that fuel the propane operated forklifts.
- 26. CSHO Powell found the severity to be high, the probability low, and assessed a Gravity based penalty of \$5,000. He applied a 60% credit for size, 10% for cooperation and 10% for history, and proposed an adjusted penalty in the amount of \$1,000. The proposed penalties were computed in accordance with the provisions of the Field Operations Manual.

**Citation 1 Item 7: Serious**

Citation 1, Item 7, alleges a serious violation of 29 CFR 1910.1200 (f)(5)(ii): The employer did not ensure that each container of hazardous chemicals in the workplace was labeled, tagged or marked with the appropriate hazard warning, or alternatively, words, pictures, symbols, or combination thereof, which provide at least general information regarding the hazards of the chemicals and which, in conjunction with the other information immediately available to employees under the hazard communication program will provide employees with the specific information regarding the physical and health hazards of the hazardous chemical.



- b) Facility, outside - where a 500 gallon above ground propane storage tank (S/N AA4724, 1969) was not labeled as to its hazards.

The proposed penalty for this violation was \$1000.00.

- 27. CSHO Powell found the severity to be high, the probability low, and accessed a Gravity based penalty of \$5,000. He applied a 60% credit for size, 10% for cooperation and 10% for history, and proposed an adjusted penalty in the amount of \$1,000. The proposed penalties were computed in accordance with the provisions of the Field Operations Manual.

**Citation 1 Item 8: Serious**

Citation 1, Item 8, alleges a serious violation of 29 CFR 1910.1200 (g)(8): The employer did not maintain in the workplace copies of the required material safety data sheets for each hazardous chemical and did not ensure that they were readily accessible during each work shift to employees when they were in their work area(s)

- a) Facility, wood cutting area – where material safety sheets were not maintained and accessible for hazardous chemicals used by employees such as, but not limited to 3M Scotch-Weld Hi-Strength Non-Flammable 98NF Red Bulk Adhesive.

The proposed penalty for this violation was \$1400.00.

- 28. CSHO requested material data safety sheets and neither Mr. Bartley Heath, or Supervisor Jimmy Snyder were able to produce any of the MSDSs.
- 29. Material safety sheets were not maintained and accessible for hazardous chemicals used by employees such as, but not limited to 3M Scotch-Weld Hi-Strength Non-Flammable 98NF Red Bulk Adhesive.
- 30. CSHO Powell found the severity to be high, the probability greater, and accessed a Gravity based penalty of \$7,000. He applied a 60% credit for size, 10% for cooperation and 10% for history, and proposed an adjusted penalty in the amount of \$1,400. The proposed penalties were computed in accordance with the provisions of the Field Operations Manual.

**Citation 1 Item 9: Serious**

Citation 1, Item 9, alleges a serious violation of 29 CFR 1910.1200 (h)(1): Employees were not provided with effective information and training on hazardous chemicals in their work area at the time of their initial assignment and whenever a new physical or health hazard, the employees have not previously been trained about, is introduced into their work area.

- a) Facility, wood cutting area – where information and training concerning the chemical hazards, physical and health hazards and measures employees could take to protect themselves was not provided for hazardous chemicals they worked with such as, but not limited to 3M Scotch-Weld Hi-Strength Non-Flammable 98 NF Red Bulk Adhesive, Windsong II Stain Base and Pre-stain, Behr Premium Solid color Deck, Fence & Siding Weatherproofing Wood Stain No. 5016 and Behr Premium Semi-Transparent Weatherproofing Deck, Fence & Siding Wood Stain White Base No. 5-88.

The proposed penalty for this violation was \$1400.00.

- 31. Mr. Stacey Pridgen, finisher for Respondent, revealed in interviews with CSHO Powell that he had not heard about a hazard communication program nor received an training or information about the chemicals or personal protection equipment he was using in his area.
- 32. CSHO Powell found the severity to be high, the probability greater, and assessed a Gravity based penalty of \$7,000. He applied a 60% credit for size, 10% for cooperation and 10% for history, and proposed an adjusted penalty in the amount of \$1,400. The proposed penalties were computed in accordance with the provisions of the Field Operations Manual.

**Citation 2 Item 1: Non Serious**

Citation 2, Item 1, alleges a serious violation of 29 CFR 1910.132 (d)(2): The employer shall verify that the required workplace hazard been performed assessment has through a written certification that identifies the workplace evaluated.; the person certifying that the evaluation has been performed.; the date(s) of the hazard assessment; and, which identifies the document as a certification of hazard assessment:

- a) facility - where certification of the required workplace hazard. assessment that determines which job duties expose employees to



7. Complainant proved by a preponderance of the evidence that the Citation 1, Item 5, was a serious violation of 29 CFR 29 CFR 1910.1052(d)(2).
8. Complainant proved by a preponderance of the evidence that the Citation 1, Item 6, was a serious violation of 29 CFR 29 CFR 1910.1200(f)(5)(i).
9. Complainant proved by a preponderance of the evidence that the Citation 1, Item 7, was a serious violation of 29 CFR 29 CFR 1910.1200(f)(5)(ii).
10. Complainant proved by a preponderance of the evidence that the Citation 1, Item 8, was a serious violation of 29 CFR 29 CFR 1910.1200(g)(8).
11. Complainant proved by a preponderance of the evidence that the Citation 1, Item 9, was a serious violation of 29 CFR 29 CFR 1910.1200(h)(1).
12. Complainant proved by a preponderance of the evidence that the Citation 2, Item 1, was a serious violation of 29 CFR §1910.132(d)(2).
13. Complainant proved by a preponderance of the evidence that the Citation 2, Item 2, was a serious violation of 29 CFR §1910.134(c)(2)(i).
14. Complainant proved by a preponderance of the evidence that the Citation 2, Item 3, was a serious violation of 29 CFR §1910.1200(e)(4).

BASED UPON the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, **IT IS ORDERED, ADJUDGED, AND DECREED** that all of the citations and penalties are hereby affirmed; and Respondent shall pay the penalties as set forth in the Findings of Fact and Conclusions of Law above.

This the 28 day of February 2013.



Monique M. Peebles  
Administrative Law Judge

CERTIFICATE OF SERVICE

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

BARTLEY HEATH  
FINANCIAL ANALYST  
DOUBLE D TRAILERS  
403 NEUSE ROAD  
KINSTON NC 28501

LARISSA WILLIAMSON  
NC DEPARTMENT OF JUSTICE  
LABOR SECTION  
P O BOX 629  
RALEIGH NC 27602-0629

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

BARTLEY HEATH  
FINANCIAL ANALYST  
DOUBLE D TRAILERS  
403 NEUSE ROAD  
KINSTON NC 28501

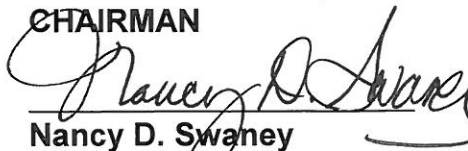
by depositing a copy of the same in the United States Mail, First Class;

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 5<sup>th</sup> DAY OF March 2013.

OSCAR A. KELLER, JR.  
CHAIRMAN



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Docket and Office Administrator  
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