

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

COMMISSIONER OF LABOR FOR THE STATE OF NORTH CAROLINA)	DOCKET NO: 2012-5311
)	
)	INSPECTION
Complainant,)	NO: 316259035
)	
v.)	CSHO ID: L1173
G&M MILLING CO, INC. and its successors)	<u>FINAL ORDER</u>
Respondent.)	

THIS CAUSE coming on pursuant to the Order of Pre-Hearing Conference (“Hearing Order”) on March 19, 2012 at the Lee House, 2nd Floor Hearing Room, 422 North Blount Street, Raleigh, North Carolina at 10:00 a.m. Larissa Williamson, Assistant Attorney General, appeared as counsel for the Complainant, and Jeffrey C. McNeely, President of Respondent, appeared for the Respondent.

Pursuant to the Hearing Order a pre-hearing conference (the “Hearing”) was held for the purpose of considering matters which would simplify the issues and expedite the proceedings in the above referenced case. At the Hearing Complainant and Respondent notified the Undersigned that the parties wish to agree upon certain stipulations (“Stipulations”) and to make certain motions (“Motions”). Complainant and Respondent request that the Stipulations and Motions be made part of the Hearing record and that the Undersigned issue a Final Order. The Stipulations and Motions are as follows:

STIPULATIONS

1. The Complainant as Commissioner of Labor of the State of North Carolina is charged by law with compliance with and enforcement of the provisions of the Occupational Safety and Health Act of North Carolina (the “Act”).
2. Respondent is a North Carolina corporation with its principal place of business in Statesville, North Carolina.

3. On December 14, 2011 to January 27, 2012, Ted Hendrix , an Occupational Safety and Health Officer with the North Carolina Department of Labor, conducted an inspection of Respondent's worksite located at 4000 Taylorsville Highway in Statesville, North Carolina (the "Inspection").
4. As a result of the Inspection, on February 28, 2012, Complainant issued two citations (Citation 1 and Citation 2) as more specifically described on Exhibit "A" (collectively the "Original Citation"):
5. Respondent submitted a timely Notice of Contest.
6. A Hearing in this matter was scheduled pursuant to the Rules of Procedure of the Safety and Health Review Commission of North Carolina (the "Rules").
7. Neither party has any objection, procedural or otherwise, to the pre-hearing conference or to this Hearing.
8. Respondent posted the Original Citation and the Hearing Order in a conspicuous place at or near the site of the alleged Violations where all affected employees may read each respective document. Neither Complainant nor Respondent have received notification from any affected employee that such employee, or its representative, wishes to have a say in, or participate as a party in, this matter, or has any objections in connection with this matter.
9. Respondent agrees that, although it objects to the penalties set forth in Citation 1 and Citation 2, it does not object to the occurrence of the violations or the classification of each such violation, and Respondent confirms that the violations alleged in Citation 1 and Citation 2 have been abated. Respondent agrees that it will submit to Complainant on or before April 19, 2013, as requested by Complainant, an OSHA Form 2 with appropriate supporting documentation evidencing such abatement.
10. The parties agree that upon granting of the Motion to be made by Complainant with respect to the penalties, the penalty for each Item of each Citation has been calculated in accordance with the standard Field Operating Manual procedure and giving consideration by Complainant to standard mitigating factors and to specific factors applicable to this specific Respondent.
11. Respondent agrees to pay the penalty assessed in this matter of \$2,000 in 10 equal monthly installments of \$200.00 each, with the first installment due and payable on April 10, 2013. All subsequent installments shall be due and payable on the tenth day of each month thereafter. In no event shall the payment term extend beyond a consecutive 10 month period, unless agreed upon by the Complainant. In the event Respondent does not pay each monthly installment as agreed upon, all remaining installments become immediately due and payable, and the Complainant retains the right to institute collection proceeding as allowed by law. Respondent agrees to pay attorney's fees to Complainant in the event that the Complainant has to institute collection proceedings to collect the debt.

12. The parties agree to bear their own fees, costs and other expenses, including attorney's fees, if any, that have been incurred in connection with this case except as provided in Stipulation 11 above.

13. Complainant and Respondent agree that provided the respective Motions of each party are granted there are no other matters that remain to be decided, and other than a ruling with respect to the Motions no outstanding issues remain to be resolved by a hearing of this matter. Complainant and Respondent consent to the entry of this Final Order.

MOTIONS

Complainant moved to

amend Citation 1 and Citation 2 by reducing the amount of the penalty for certain violations to the amounts set forth in Exhibit "B".

Respondent did not object to Complainant's Motion.

Respondent requested that upon the granting of Complainant's Motion that the Undersigned consider the following motion by the Respondent, and Respondent confirmed that all violations in Citation 1 and Citation 2 have been abated:

withdraw Respondent's Notice of Contest to the Citation 1 and Citation 2 as amended.

Complainant did not object to Respondent's Motion.

FINDINGS OF FACT

Based on the Stipulations at the time of the Hearing and the record, the Undersigned makes the following Findings of Fact:

1. This Court has jurisdiction over the parties and the subject matter of this Hearing.
2. Respondent is subject to the provisions of the Act and jurisdiction of the Safety and Health Review Commission of North Carolina.
3. Neither party has any procedural objection to this Hearing.
4. Complainant, Commissioner of Labor of the State of North Carolina, is an agency of the State of North Carolina charged with the administration and enforcement of the provisions of the Occupational Safety and Health Act of North Carolina, Article 16, Chapter 95 of the General Statutes of North Carolina (hereinafter "the Act").

5. The Stipulations are incorporated by reference as Findings of Fact to the extent necessary to give effect to the provisions of this Order.


CONCLUSIONS OF LAW

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.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

1. That Complainant's Motion is hereby **GRANTED**; and
2. That Respondent's Motion is hereby **GRANTED**.

This the 19th day of March, 2013.



R. Joyce Garrett
Administrative Law Judge

CONSENTED TO:



**Larissa Williamson, Assistant Attorney General
Attorney for Complainant**



**Jeffrey C. McNeely, President
Representative for Respondent**

Exhibit "A"
Original Citation

CITATION NUMBER ONE (Type of Violation: Serious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1	29CFR 1910.22(c)	3/2/2012	\$ 150.00
2	29CFR 1910.23(a)(2)	3/2/2012	\$ 500.00
3a	29CFR 1910.23(e)(1)	3/2/2012	\$ 500.00
3b	29CFR 1910.23(c)(1)	3/2/2012	
3c	29CFR 1910.23(e)(3)(iv)	3/2/2012	
4	29CFR 1910.23(c)(2)	3/2/2012	\$ 1,400.00
5	29CFR 1910.27(d)(1)(iii)	3/2/2012	\$ 500.00
6	29CFR 1910.132(a)	3/2/2012	\$ 1,400.00
7a	29CFR 1910.147(c)(4)(i)	4/13/2012	\$ 500.00
7b	29CFR 1910.147(d)(4)(ii)	3/2/2012	
7c	29CFR 1910.147(c)(5)(ii)(D)	3/2/2012	
8a	29CFR 1910.178(l)(4)(ii)(B)	Immediately Abated	\$ 500.00
8b	29CFR 1910.178(l)(4)(iii)	4/13/2012	
9	29CFR 1910.178(m)(5)(iii)	3/2/2012	\$ 300.00
10a	29CFR 1910.180(d)(3)	4/13/2012	\$ 500.00
10b	29CFR 1910.180(d)(4)	4/13/2012	
10c	29CFR 1910.180(d)(5)(i)	4/13/2012	
10d	29CFR 1910.180(e)(2)(i)	4/13/2012	
10e	29CFR 1910.180(g)(1)	4/13/2012	
10f	29CFR 1910.180(g)(2)(ii)	4/13/2012	
11	29CFR 1910.212(a)(5)	3/2/2012	\$ 150.00

12	29CFR 1910.219(c)(2)(i)	3/2/2012	\$ 300.00
13a	29CFR 1910.219(d)(1)	3/2/2012	\$ 150.00
13b	29CFR 1910.219(e)(3)(i)	3/2/2012	
14a	29CFR 1910.219(f)(1)	3/2/2012	\$ 300.00
14b	29CFR 1910.219(f)(3)	3/2/2012	
15	29CFR 1910.242(b)	3/2/2012	\$ 150.00
16	29CFR 1910.272(f)(1)	4/13/2012	\$ 300.00
17a	29CFR 1910.272(j)(1)	4/13/2012	\$ 500.00
17b	29CFR 1910.22(a)(1)	4/13/2012	
18	29CFR 1910.272(k)	3/2/2012	\$ 500.00
19a	29CFR 1910.303(g)(2)(i)	Immediately Abated	\$ 500.00
19b	29CFR 1910.305(b)(1)(ii)	3/2/2012	
20	29CFR 1910.305(b)(2)(i)	3/2/2012	\$ 500.00
21	29CFR 1910.305(g)(2)(iii)	3/2/2012	\$ 500.00
22	29CFR 1910.333(a)	4/13/2012	\$ 500.00

TOTAL \$ 10,600.00

CITATION NUMBER TWO (Type of Violation: Nonserious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1a	29CFR 1904.29(a)	4/13/2012	\$ 100.00
1b	29CFR 1904.29(b)(3)	4/13/2012	
2	29CFR 1910.22(d)(1)	3/2/2012	\$ 0.00
3	29CFR 1910.134(c)(2)(i)	4/13/2012	\$ 0.00
4a	29CFR 1910.157(c)(4)	3/2/2012	\$ 150.00
4b	29CFR 1910.157(c)(1)	3/2/2012	
4c	29CFR 1910.157(e)(2)	4/13/2012	
4d	29CFR 1910.157(e)(3)	4/13/2012	
5	29CFR 1910.212(b)	Immediately Abated	\$ 0.00
6a	29CFR 1910.272(m)(1)	4/13/2012	\$ 150.00
6b	29CFR 1910.272(m)(3)	4/13/2012	
7	29CFR 1910.303(b)(2)	3/2/2012	\$ 150.00

8	29CFR 1910.303(b)(7)	3/2/2012	\$	150.00
9	29CFR 1910.303(b)(7)(i)	3/2/2012	\$	0.00
10	29CFR 1910.303(c)(3)(i)	3/2/2012	\$	150.00
11	29CFR 1910.305(g)(1)(iv)(A)	3/2/2012	\$	150.00
12	29CFR 1910.305(g)(1)(iv)(B)	3/2/2012	\$	0.00
13	29CFR 1910.305(g)(1)(iv)(C)	3/2/2012	\$	150.00
14	29CFR 1910.305(g)(2)(ii)	3/2/2012	\$	150.00
15	29CFR 1910.334(a)(2)(ii)	3/2/2012	\$	150.00
16a	29CFR 1910.1200(e)(1)	4/13/2012	\$	0.00
16b	29CFR 1910.1200(g)(1)	4/13/2012		
16c	29CFR 1910.1200(h)(1)	4/13/2012		
			TOTAL	\$ 1,450.00

Exhibit "B"
Amended Citation

CITATION NUMBER ONE (Type of Violation: Serious)

<u>Item No.</u>	<u>Standard</u>	<u>Adjusted Penalty</u>
1	29CFR 1910.22(c)	\$ 25.50
2	29CFR 1910.23(a)(2)	\$ 85.00
3a	29CFR 1910.23(e)(1)	\$ 85.00
3b	29CFR 1910.23(c)(1)	
3c	29CFR 1910.23(e)(3)(iv)	
4	29CFR 1910.23(c)(2)	\$ 190.00
5	29CFR 1910.27(d)(1)(iii)	\$ 85.00
6	29CFR 1910.132(a)	\$ 238.00
7a	29CFR 1910.147(c)(4)(i)	\$ 85.00
7b	29CFR 1910.147(d)(4)(ii)	
7c	29CFR 1910.147(c)(5)(ii)(D)	
8a	29CFR 1910.178(l)(4)(ii)(B)	\$ 85.00
8b	29CFR 1910.178(l)(4)(iii)	
9	29CFR 1910.178(m)(5)(iii)	\$ 51.00
10a	29CFR 1910.180(d)(3)	\$ 85.00
10b	29CFR 1910.180(d)(4)	
10c	29CFR 1910.180(d)(5)(i)	
10d	29CFR 1910.180(e)(2)(i)	
10e	29CFR 1910.180(g)(1)	
10f	29CFR 1910.180(g)(2)(ii)	
11	29CFR 1910.212(a)(5)	\$ 25.50

12	29CFR 1910.219(c)(2)(i)	\$ 51.00
13a	29CFR 1910.219(d)(1)	\$ 25.50
13b	29CFR 1910.219(e)(3)(i)	
14a	29CFR 1910.219(f)(1)	\$ 51.00
14b	29CFR 1910.219(f)(3)	
15	29CFR 1910.242(b)	\$ 25.50
16	29CFR 1910.272(f)(1)	\$ 51.00
17a	29CFR 1910.272(j)(1)	\$ 85.00
17b	29CFR 1910.22(a)(1)	
18	29CFR 1910.272(k)	\$ 85.00
19a	29CFR 1910.303(g)(2)(i)	\$ 85.00
19b	29CFR 1910.305(b)(1)(ii)	
20	29CFR 1910.305(b)(2)(i)	\$ 85.00
21	29CFR 1910.305(g)(2)(iii)	\$ 85.00
22	29CFR 1910.333(a)	\$ 85.00

TOTAL \$ 1,754.00

CITATION NUMBER TWO (Type of Violation: Nonserious)

<u>Item No.</u>	<u>Standard</u>	<u>Penalty</u>
1a	29CFR 1904.29(a)	\$ 17.00
1b	29CFR 1904.29(b)(3)	
2	29CFR 1910.22(d)(1)	\$ 0.00
3	29CFR 1910.134(c)(2)(i)	\$ 0.00
4a	29CFR 1910.157(c)(4)	\$ 25.50
4b	29CFR 1910.157(c)(1)	
4c	29CFR 1910.157(e)(2)	
4d	29CFR 1910.157(e)(3)	
5	29CFR 1910.212(b)	\$ 0.00
6a	29CFR 1910.272(m)(1)	\$ 25.50
6b	29CFR 1910.272(m)(3)	
7	29CFR 1910.303(b)(2)	\$ 25.50

8	29CFR 1910.303(b)(7)	\$	25.50
9	29CFR 1910.303(b)(7)(i)	\$	0.00
10	29CFR 1910.303(c)(3)(i)	\$	25.50
11	29CFR 1910.305(g)(1)(iv)(A)	\$	25.50
12	29CFR 1910.305(g)(1)(iv)(B)	\$	0.00
13	29CFR 1910.305(g)(1)(iv)(C)	\$	25.50
14	29CFR 1910.305(g)(2)(ii)	\$	25.50
15	29CFR 1910.334(a)(2)(ii)	\$	25.00
16a	29CFR 1910.1200(e)(1)	\$	0.00
16b	29CFR 1910.1200(g)(1)		
16c	29CFR 1910.1200(h)(1)		

TOTAL \$ 246.00