



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

COMMISSIONER OF LABOR FOR THE STATE OF NORTH CAROLINA)	DOCKET NO: 2012-5387
)	
)	INSPECTION
)	NO: 315965855
Complainant,)	
)	CSHO ID: S5229
v.)	
DUPLIN COUNTY-MAINTENANCE)	<u>FINAL ORDER</u>
and its successors)	
Respondent.)	

THIS CAUSE coming on pursuant to the Order of Pre-Hearing Conference (“Hearing Order”) on June 25, 2013 at the Lee House, 2nd Floor Hearing Room, 422 North Blount Street, Raleigh, North Carolina at 10:00 a.m. Melissa Taylor, Assistant Attorney General appeared by teleconference as counsel for the Complainant. Wendy Sivori, Duplin County Attorney, appeared by teleconference as counsel 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. No affected employee of Respondent, or its representative, attended to have a say in, or participate as a party in, the Hearing. 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”). The Review Commission has jurisdiction over the parties and subject matter to this action.

2. Respondent is a North Carolina county, 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 Kenansville, North Carolina. Respondent is responsible for the maintenance and upkeep of approximately 35 county buildings and their surrounding grounds. Respondent is an “employer” within the meaning of N.C.G.S. Section 95-127(10); all of Respondent’s employees referred to in this matter are “employees” within the meaning of N.C.G.S. Section 95-127(9).

3. On August 9, 2012, Compliance Safety and Health Officers Don Johnson and Derrick Gibbs with the North Carolina Department of Labor, conducted a walk-around inspection of Respondent’s work site at the Facilities Maintenance Department located at 211 Seminary Street, Kenansville, North Carolina (the “Inspection”).

4. As a result of the Inspection, on September 25, 2012 Complainant issued one citation (“Citation 1”) as more specifically described on Exhibit “A” (the “Original Citation”).

5. Respondent submitted a timely Notice of Contest dated October 22, 2012.

6. On November 26, 2012 Complainant files a Complaint and Motion to Amend, and on December 1, 2012 Respondent filed its Answer and Response to Complainant’s Motion to Amend, a part of which was Respondent’s objection to Complainant’s Motion to Amend. This 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 this Hearing. Respondent withdraws its objection to Complainant’s Motion to Amend Citation Number 1, Item 1a, to change the cited violation from “29 CFR 1910.334(a)(2)(i)” to “29 CFR 1910.334(a)(2)(ii)”.

8. Respondent posted the Original Citation and the Hearing Order as required by the Rules. 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 including without limitation objection to the reasonableness of any abatement period.

9. Respondent agrees upon the entry of this Final Order to the following:

* Respondent agrees to develop and implement an electrical inspection checklist that provides guidance on what employees should be looking for prior to using any electrical equipment.

10. The parties agree that upon granting of the Motion to be made by Complainant the penalty for all Items designated in Citation 1 has been calculated in accordance with the standard Field Operations Manual procedure and giving consideration by Complainant to standard mitigating factors and to specific factors applicable to Respondent.

11. Respondent shall pay the penalty assessed in this matter of \$ 1,375.00 in 5 equal monthly installments of \$275.00 each, with the first installment due and payable on July 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 5 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 (except as provided in Stipulation 11 above) that have been incurred in connection with any stage of these proceedings up to and including the filing of this Final Order.

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 that other than a ruling with respect to the Motions no outstanding issues remain to be resolved by an evidentiary hearing of this matter. The parties agree that this Final Order is a full and final resolution of the claims set out in the underlying Original Citation, as amended pursuant to the Motions by Complainant. The parties further agree that (i) the modification of any portion of Citation 1 by Complainant shall not be deemed to be an admission by Complainant that any such portion was alleged without merit, and (ii) none of the foregoing agreements, statements, stipulations and actions taken by Respondent shall be deemed an admission by the Respondent of any of the allegations contained in the Original Citation as amended or waiver of defenses; provided however that in any subsequent proceeding with respect to matters covered by this Final Order brought directly under the Act by Complainant, this Final Order shall have the full force and effect of a final order. The agreements, statements, stipulations and actions herein by Complainant and by Respondent are solely for the purpose of resolving this matter economically and amicably without litigation and shall not be used for any other purpose except for proceedings and matters arising under the Act.

COMPLAINANT'S PENDING MOTION TO AMEND

Complainant's Motion to Amend set forth in Complainant's Complaint and Motion to Amend is hereby GRANTED, and Citation Number 1, Item 1a, is hereby amended to change the sited violation from "29 CFR 1910.334(a)(2)(i)" to "29 CFR 1910.334(a)(2)(ii)".

MOTIONS

Complainant moved to

Reduce the penalty for Citation 1 Item 1a and 1b from \$2,750.00 to \$1,375.00; the result being a total penalty of \$1,375.00.

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 alleged in Citation 1 as amended have been abated:

to withdraw Respondent's Notice of Contest to Citation 1 as amended pursuant to Complaint's Motions set forth above.

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 Motions are hereby **GRANTED**; and
2. That Respondent's Motion is hereby **GRANTED**.

This the 25th day of June, 2013.


R. Joyce Garrett

Administrative Law Judge

Duplin County-Maintenance
2012-5387

CONSENTED TO:



**Melissa H. Taylor, Assistant Attorney General
Attorney for Complainant**

**Wendy Sivori, Duplin County Attorney
Attorney for Respondent**

Duplin County-Maintenance
2012-5387

CONSENTED TO:

**Melissa H. Taylor, Assistant Attorney General
Attorney for Complainant**



**Wendy Sivori, Duplin County Attorney
Attorney for Respondent**

Exhibit "A"

Original Citation

CITATION 1 (Type of Violation: Serious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1a	29CFR 1910.334(a)(2)(i)	Immediately abated	\$ 2,750.00
1b	29CFR 1910.305(g)(2)(iii)	Immediately abated	
		TOTAL	<u>\$2,750.00</u>

CERTIFICATE OF SERVICE

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

WENDY SIVORI
DUPLIN COUNTY LEGAL DEPARTMENT
PO BOX 969
KENANSVILLE NC 28349

MELISSA TAYLOR
NC DEPARTMENT OF JUSTICE
LABOR SECTION
PO BOX 629
RALEIGH NC 27602-0629

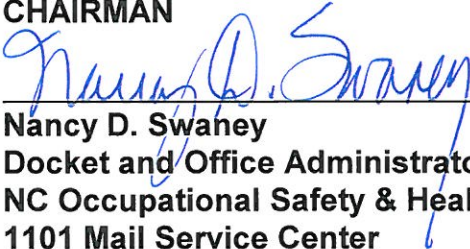
by depositing a copy of the same in the United States Mail, Certified Mail, postage prepaid, at Raleigh, North Carolina, and upon:

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 26th DAY OF June 2013.

OSCAR A. KELLER, JR.
CHAIRMAN



Nancy D. Swaney
Docket and Office Administrator
NC Occupational Safety & Health Review Commission
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