

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

COMMISSIONER OF LABOR OF THE)
STATE OF NORTH CAROLINA)
)
COMPLAINANT,)
)
v.)
)
QUALITY OIL COMPANY, LLC,)
and its successors)
P.O. Box 2736)
Winston-Salem, NC 27102)
)
RESPONDENT.)

DOCKET NO. OSHANC 2013-5489
INSPECTION NUMBER: 316741255
CSHO ID: U4169

ORDER

This matter came on for hearing before the undersigned Carroll D. Tuttle, Administrative Law Judge for the Safety and Health Review Commission of North Carolina (the "Commission") on May 20, 2014 at the Buncombe County Department of Social Services, 35 Woodfin Street in Asheville, North Carolina.

Complainant was represented by Larissa S. Williamson, Special Deputy Attorney General, North Carolina Department of Justice, Labor Section, 9001 Mail Service Center, Raleigh, North Carolina 27699-9001. Respondent was represented by John J. Doyle, Jr., Constangy Brooks & Smith, PLLC, 100 North Cherry Street, Suite 300, Winston-Salem, North Carolina 27101.

At the May 20 hearing Complainant presented witnesses and offered several exhibits into evidence. Respondent also offered exhibits into evidence but did not present any witnesses. Complainant's witnesses were Health Compliance Officer II Kristi Hall and Health Standards Officer Susan Haritos.

Based upon the evidence presented by the parties at the hearing, their post-hearing briefs and a thorough review of the hearing transcript, the undersigned makes the following Findings of Fact and Conclusions of Law, engages in discussion and enters this Order.

FINDINGS OF FACT

1. 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, N.C.G.S. §§ 95-126 et seq. (the “Act”).

2. Respondent Quality Oil Company, LLC (“QOC” or the “Company”) is a limited liability company, is duly organized and existing under the laws of the State of North Carolina and is engaged in the business of petroleum distribution and retail sales. At all times pertinent herein Respondent maintained a place of business located at 1535 East Main Street in Sylva, North Carolina 28770 (the “Site”).

3. Respondent is an employer within the meaning of N.C.G.S. §§ 95-127(10) and is subject to the provisions of the Act.

4. On January 22, 2013 CHSO Hall commenced a compliance inspection at the Site.

5. On June 14, 2013 Complainant issued two (2) citations (the “Citations”) charging Respondent with multiple violations of the Act:

CITATION NUMBER ONE (Serious)

<u>Item No.</u>	<u>Standard</u>	<u>Penalty</u>
1	1910.106(b)(6) - flammable/combustible liquids	\$5,600.00
2a	1910.146(c)(1) - confined space	\$6,300.00
2b	1910.146(c)(2) - confined space	Grouped
2c	1910.146(c)(4) - confined space	Grouped
2d	1910.146(g)(1) - confined space	Grouped
3a	1910.1200(h)(1) - hazard communication	\$6,300.00
3b	1910.1200(e)(1)(i) - hazard communication	Grouped

CITATION NUMBER TWO (Nonserious)

<u>Item No.</u>	<u>Standard</u>	<u>Penalty</u>
1	1904.39(a) - reporting of fatality	\$4,000.00
2	1910.37(b)(2) - exit signs	\$0.00
3	1910.37(b)(5) - exit signs	\$0.00

6. On July 22, 2013 Respondent submitted a timely notice of contest contesting all violations and proposed penalties in the Citations.

January 18, 2013 Incident

7. The Site includes a small retail sales office and an adjoining apartment where managers of the facility live. In January, 2013 the Site was managed by Scott Brown and his wife Jennifer Brown.

8. There are four (4) underground storage tanks (USTs) at the Site. Each tank has a containment sump on top which houses the mechanism that pumps the fuel from the tank to the fuel dispenser.

9. On the morning of January 18, 2013 an alarm went off in the sales office indicating that liquid had accumulated in the bottom of the premium gas containment sump (the "Sump") at the Site. After unsuccessfully attempting to reset the alarm at the control panel in the sales office, Mr. Brown went out to the Sump to investigate the situation. When Mr. Brown did not return after nearly 45 minutes, Ms. Brown went outside and found Mr. Brown unresponsive inside the Sump.

10. EMS personnel arrived at the Site and removed Mr. Brown from the Sump, transporting him to a local hospital. Subsequently, Mr. Brown was admitted to Mission Hospital in Asheville where he died the following day on Saturday, January 19, 2013.

11. A discharge summary sheet from Mission Hospital cited respiratory failure and shock secondary to asphyxia from gasoline fumes as the cause of death. However, an autopsy conducted by the Chief Medical Examiner of the State of North Carolina ultimately determined that Mr. Brown had died from natural causes as a result of a heart attack.

12. The Sump has an initial step-down area that is approximately twenty (20) inches below grade level. The diameter of the Sump opening measures approximately thirty-three (33) inches, while the interior of the Sump ranges in diameter from three and one-half (3.5) to four (4) feet. The Sump measures approximately forty-eight (48) inches deep from the top of the Sump to the Sump floor, and the grade level opening above the Sump measures approximately sixty-eight (68) inches deep from the floor of the Sump to the grade level.

13. On January 18, 2013, the date of the incident, one of Respondent's maintenance technicians, Dean Ladd, observed a small amount of liquid at the bottom of the Sump. Mr. Ladd put paste on a stick which he lowered into the Sump and determined that the liquid was water, not gasoline. Mr. Ladd also checked the Sump for leaks and did not find any present. CHSO Hall interviewed Mr. Ladd during the course of her inspection, and he provided her with a written statement which she included in her investigative file.

Confined Space

14. In answer to Respondent's Request for Admissions, Complainant admitted that prior to the issuance of the Citations in this case, the North Carolina Department of Labor had not issued an OSHA citation to any employer operating a gasoline service station in which Complainant alleged a violation of the confined space standard, 29 CFR § 1910.146 or any subparts thereof (the "Standard") in connection with the employer's operation and/or maintenance of one or more containment sumps for USTs located on the employer's premises.

15. On September 26, 2007 Dave Lilley, Industrial Hygiene Consultant with the North Carolina Department of Environment and Natural Resources, Division of Waste Management, wrote a letter to Ms. Haritos, who at the time worked for Complainant as the OSHA Standards Officer, inquiring about the possible application of the Standard to UST containment sumps at gasoline service stations.

16. On October 10, 2007 Ms. Haritos sent a letter to Mr. Lilley in response to his inquiry. Ms. Haritos opined that "small" UST containment sumps "do not meet the first two elements of the 'confined space' definition [in the Standard]; therefore, they are not 'permit required confined spaces' either and the (S)tandard does not apply." Ms. Haritos went on to opine that "large" UST containment sumps "**may** meet the first [of the Standard], **do** meet the third element, but **do not** meet the second element of the 'confined space' definition; therefore the 'permit required confined space' definition would also not be met and the (S)tandard would not apply."

17. In answer to Respondent's Request for Admissions, Complainant admitted that subsequent to October 10, 2007 the North Carolina Department of Labor has not issued or promulgated any rule, regulation or other published enforcement guidance which explicitly states that the Standard may apply to containment sumps for underground storage tanks at gasoline service stations.

18. Complainant did not present any evidence at the hearing that other North Carolina gasoline service station employers have been cited for violations of the Standard in connection with UST containment sumps at their facilities.

19. Ms. Haritos testified that in 2012 a fatality had occurred in Raleigh when a motorist backed over an individual who was working in a UST containment sump at the station. Ms. Haritos did not know whether OSHA had issued a citation in connection with that fatality, but Complainant has admitted in its answers to Respondent's Request for Admissions that no citation was issued for a violation of the Standard.

20. Complainant did not present any evidence at the hearing of previous accidents or injuries involving employees who were performing work in or around gasoline service station UST containment sumps, either before or after the January 18, 2013 incident at the Site.

Flammable/Combustible Liquids

21. Respondent's maintenance technicians used metal tools and equipment in order to remove the lids from UST containment sumps and access sump opening. Metal tools can create mechanical or frictional sparks when striking other metal objects. However, the secondary lid to the Sump in question was made of fiberglass.

22. Fuel vapors may have been present in one or more of the UST containment sumps at the Site. Gasoline is extremely flammable and may form flammable/explosive vapor/air mixtures.

23. Respondent did not have a written policy or standard operating procedure regarding the use of metal tools inside its UST containment sumps. However, maintenance manager Paul Antonas informed CHSO Hall that Respondent did not allow any power tools inside the UST containment sumps.

24. Respondent's maintenance manager Paul Antonas and maintenance technician Dean Ladd also informed CHSO Hall that Company employees used aluminum tools in connection with their work in and around UST containment sumps. Aluminum is a metal. CHSO Hall did not remember Mr. Antonas and/or Mr. Ladd telling her that Company employees used rubber mallets or rubber hammers in connection with their work in and around UST containment sumps.

25. Complainant proposed a penalty of \$5,600.00 for Respondent's alleged violation of 29 CFR § 1910.106(b)(6). Respondent filed a timely notice of contest as to both the citation and proposed penalty.

Hazard Communication

26. Complainant cited Respondent for two (2) violations of the Hazard Communication Standard: (1) failing to provide employees at the Site with effective information and training on hazardous chemicals in their work areas [29 CFR § 1910.1200 (h)(1)]; and (2) failing to have a list or index of the hazardous chemicals at the Site [29 CFR § 1910.1200(e)(1)(i)].

27. Respondent's employees at the Site routinely handled various chemicals such as gasoline, diesel fuel, kerosene and other items. Respondent had a corporate hazard communication program, and the program required each gasoline station manager to implement the program at his/her location.

28. Respondent maintained the required MSDS sheets in a binder at the Site, and CHSO Hall did not identify any chemical at the Site for which Respondent did not have an MSDS sheet. However, the binder for the MSDS sheets did not contain a list or index.

29. CHSO Hall interviewed several employees at the Site, and they were fully aware of the chemicals with which they were working. While CHSO Hall did not recall Director of Safety and Loss Prevention Bradley Snover telling her that employees at the Site had received hazard communications training, she confirmed that Respondent had provided her with emails documenting the training which the employees had received. However, CHSO Hall did not receive any formal employee training sheets or similar records from Respondent.

30. Complainant grouped the two hazard communication violations for penalty purposes, proposing a total penalty of \$6,300.00 for both offenses. Respondent contested both the alleged violations and proposed penalty.

Reporting of Fatality

31. As noted previously, Mr. Brown was found unresponsive inside the Sump on January 18, 2013. He died at Mission Hospital the following day, January 19, 2013, which was a Saturday. Monday, January 21, 2013 was the Martin Luther King holiday.

32. Respondent's vice president of human resources Tracy Harmon notified the Department of Labor of Mr. Brown's death on January 22, 2013, which was more than eight (8) hours after Mr. Brown's death on January 19, 2013.

33. 29 CFR § 1904.39(a) requires that employers must orally report "the death of any employee from a work-related incident" within eight (8) hours after the death occurs.

34. Although a discharge summary sheet from Mission Hospital initially cited respiratory failure and shock secondary to asphyxia from gasoline fumes as the cause of death, the Chief Medical Examiner of the State of North Carolina ultimately determined that Mr. Brown died from natural causes as a result of a heart attack.

35. Complainant proposed a penalty of \$4,000.00 for Respondent's alleged violation of this standard. Respondent contested both the cited violation and proposed penalty.

Exit Signs

36. Complainant cited Respondent for two (2) non-serious violations involving exit signs at the Site: (1) failing to post an exit sign on a door leading to the outside of the sales office [29 CFR § 1910.37(b)(2)]; and (2) failing to put no-exit signs on two other doors inside the sales office [29 CFR § 1910.37(b)(5)]. Complainant did not propose any penalties for these violations, which Respondent contested.

37. The sales office had three separate doors which were similar in size and color. Employees working in the sales office used these doors daily. One door led to the outside and did not have an exit sign on it. The other two doors did not have signs stating “not an exit” on them.

38. CHSO Hall testified that the lack of proper signs could create a situation in which an employee was delayed or disoriented in an emergency situation. Complainant did not point to any actual examples to support CHSO Hall’s conclusion. Moreover, Complainant did not offer any employee testimony or statements made to CHSO Hall which corroborated her conclusion.

DISCUSSION

Confined Space

Respondent has raised several defenses to the four (4) violations of the Standard for which it was cited. Respondent does not dispute that it failed to comply with the requirements of the Standard, but instead Respondent maintains that the Standard should not be applied to its UST containment sumps at the Site.

A threshold question is whether the UST containment sumps at the Site constitute a confined space as that term is defined in the Standard. Section 1910.146(b) provides that a confined space is a space that: (1) is large enough and so configured that an employee can bodily enter and perform assigned work; and (2) has limited or restricted means for entry or exit; and (3) is not designed for continuous employee occupancy. Complainant argues that the Sump meets this definition, while Respondent disagrees.

Complainant asserts that Mr. Brown entered the Sump in order to investigate the cause of the alarm; that Respondent's maintenance technicians perform work inside UST containment sumps; that the Sump had limited or restricted means for entry and exit; and that the Sump was not designed for extended or continuous employee occupancy because of the lack of ventilation and lighting. However, Respondent notes that Complainant's own witness Ms. Haritos previously had opined that both "smaller" sumps, which she described as having a depth of two (2) to five (5) feet, as well as "larger" sumps, ranging in depth from five (5) feet to eight (8) feet, do not meet the definition of a confined space.

In her testimony Ms. Haritos reaffirmed her opinion that "smaller", shorter sumps do not meet the requirements of the Standard because they are not configured so that an employee can easily enter and perform work inside them and also because they do not have limited or restricted means of entry or exit. Similarly, Ms. Haritos conceded that as to "deeper" sumps she had

advised NCDENR representative Lilley that those sumps also do not meet the second element of the Standard because they do not have limited or restricted means for entry or exit. At the hearing Respondent relied upon Ms. Haritos' opinion letter to Mr. Lilley as well as her hearing testimony to support its position that the Sump did not constitute a confined space within the meaning of the Standard.

Considering the arguments of both parties, the undersigned believes that the Sump technically met the definition of a permit required confined space within the meaning of the Standard. However, that determination is not dispositive of the four confined space citations.

Respondent also maintains that the Standard should not be applied to Respondent's UST containment sumps at the Site because of a lack of fair notice to Respondent and other gasoline station retailers in North Carolina that their UST containment sumps are considered to be confined spaces and are subject to enforcement by the North Carolina Department of Labor (the "Department") for alleged violations of the Standard. The undersigned agrees with Respondent's position.

Respondent obtained explicit admissions from Complainant that prior to the issuance of the instant citations, the Department had never issued an OSHA citation to any employer operating a gasoline service station in which Complainant asserted a violation of the Standard in connection with the employer's operation and/or maintenance of one or more containment sumps for USTs located on the employer's premises. Further, Complainant admitted that prior to the issuance of the citations in this case, it had not promulgated any rule, regulation or other published enforcement guidance which explicitly states that the Standard may apply to UST containment sumps at gasoline service stations.

In a similar case of first impression, the undersigned previously held that it is fundamentally unfair to North Carolina employers for Complainant to apply individual standards or the general duty clause in instances where there has been no prior notice to the North Carolina employers that the standard and/or general duty clause governed the alleged hazard in question. See Commissioner of Labor of the State of North Carolina v. New River Tree Company, Inc., Docket No. OSHANC 2012-5309. The same principle applies here.

In the instant case, prior to the issuance of the Citations neither Respondent nor any other North Carolina gasoline station retailer had reason to believe that the Department considered their UST containment sumps to be confined spaces for the purposes of the Standard and/or that the Department intended to enforce the Standard as to those UST sumps. Indeed, the only documentation generated by the Department on this issue suggested just the opposite - - that UST containment sumps were not confined spaces within the meaning of the Standard. Accordingly, it would be fundamentally unfair and a denial of substantive due process to apply the Standard to the Sump under the facts of this case. Accordingly, the four confined space citations should be vacated.

Flammable/Combustible Liquids

Respondent was cited for violating 29 CFR § 1910.106(b)(6) because in the judgment of CHSO Hall the Company had not taken appropriate measures to ensure that employees working inside and around its UST containment sumps used only non-sparking tools, such as those made of aluminum or brass. Complainant pointed to Mr. Ladd's use of a metal crowbar to remove the outer lid to the Sump as well as the absence of any written policy or standard operating procedure prohibiting the use of ferrous metal tools in and around the UST sumps.

Respondent noted that both Mr. Antonas and Mr. Ladd had informed CHSO Hall that the Company used aluminum tools in connection with their work in and around the sumps and that aluminum is not a ferrous metal. However, CSHO Hall did not remember Respondent's representatives telling her that Company employees used rubber mallets or rubber hammers to perform work inside the sumps.

Despite the conflict in testimony, I believe that the greater weight of the evidence supports a finding of the violation for which Respondent was cited. However, I also believe that the \$5,600.00 penalty which Complainant has proposed is excessive under the circumstances presented here. Specifically, Respondent's evidence that employees were not permitted to use power tools inside the sumps, that employees instead used aluminum tools to perform work in and around the sumps and that employees also used rubber mallets or rubber hammers to perform work there strongly mitigates against the penalty which Complainant has proposed. Because of Respondent's evidence of its good faith efforts to use spark-proof tools and equipment when working in and around the containment sumps, I conclude that a more appropriate penalty for the cited violation is \$1,000.00.

Hazard Communication

As noted previously, Complainant cited Respondent for two violations of the Hazard Communication Standard: (1) failing to provide employees at the Site with effective information and training on hazardous chemicals in their work areas; and (2) failing to have a list or index of the hazardous chemicals at the Site.

There is no dispute that Respondent maintained required MSDS sheets in a binder at the Site and had sheets for all chemicals used at the Site. However, there was no list or index in the binder. As such Respondent's practice did not comply with the requirements of 29 CFR § 1910.1200(e)(1)(i). Respondent argued that it had substantially complied with the standard by maintaining all necessary MSDS sheets in the binder. Nevertheless, the absence of an index or list of chemicals for the MSDS sheets constituted a technical violation of the hazard communication standard. For that reason the violation cited by Complainant in Item 3(b) should be sustained.

Respondent also asserted that it had substantially complied with the overall requirements for maintaining a proper hazard communication program. Indeed, CHSO Hall acknowledged that Respondent has a corporate hazard communication program which required each station manager to provide training to employees at his/her worksite. Additionally, CHSO Hall interviewed several employees at the Site and determined that they were fully aware of the chemicals with which they were working. However, CHSO Hall was uncertain whether Respondent had provided her with emails documenting hazardous communication training provided to employees at the Site. As such, I conclude that Respondent has complied substantially with 29 CFR § 1910.1200(h)(1) and do not sustain the violation cited in Item 3(a).

Reporting of Fatality

Again, there is no dispute about the facts underlying this cited violation. Mr. Brown died at Mission Hospital on Saturday, January 19, 2013, and Respondent did not report his death to the Department of Labor until January 22, 2013. Notwithstanding the facts that Mr. Brown died over the weekend and that there was an intervening holiday, 29 CFR § 1904.39(a) provides that employers must report the death of an employee from a “work-related incident” within eight (8) hours after the death occurs.

Respondent argues that Mr. Brown’s death was not a “work-related incident” within the meaning of the standard, pointing to the determination by the Chief Medical Examiner that Mr. Brown died from natural causes, i.e. a heart attack, and that the liquid in the bottom of the Sump was water, not gasoline.

Even though Respondent may be correct about both Mr. Brown’s cause of death and the absence of gasoline from the bottom of the Sump, I believe that the purpose of the Standard will be frustrated if the reporting requirement becomes dependent upon a later determination of whether the accident was work-related. Indeed, absent some clear evidence otherwise at the time of the incident, the employer must assume that an accident/fatality which occurs on its premises is work-related for reporting purposes. For that reason the Complainant’s citation for violation of the reporting standard should be sustained. I also find the proposed penalty of \$4,000.00 to be appropriate for a violation of this standard.

Exit Signs

Respondent contested the two (2) non-serious violations involving exit signs at the Site. It is undisputed that none of the three doors in the sales office had directional signs on them. The exit door did not have an exit sign on it; and the two other doors did not have no-exit signs on them. The absence of those signs constituted violations of 29 CFR § 1910.37(b)(2) and 29 CFR § 1910.37(b)(5).

Respondent argued that these alleged violations exceeded the scope of CHSO Hall's inspection, which she described as a "partial inspection" that focused on the alleged accident/fatality and also covered "any plain-sight hazards." However, CHSO Hall's investigation led her to visit the sales office where the alarm system had gone off, and for that reason it was appropriate for her to issue citations for any plain-sight violations which she observed there.

Respondent also challenged the stated premise underlying both citations - - that the absence of exit/no-exit signage was likely to create confusion in the event of an emergency. Respondent pointed to the absence of any testimony or other information from employees at the Site which would suggest that they were likely to be confused by the absence of signage on the doors, since employees who worked in the office were there on a daily basis and were very familiar with all three doors.

Notwithstanding Respondent's arguments, the likelihood of employee confusion is not a necessary element of proof for the violations which Complainant has cited. Rather, it is sufficient for Complainant to simply establish that the doors to the sales offices existed and that they did not have exit/no-exit signage on them. Accordingly, I will sustain both of the signage violations which Complainant has cited.

CONCLUSIONS OF LAW

1. The foregoing Findings of Fact in Paragraphs 1 through 38 and the discussion section above are incorporated by reference into these Conclusions of Law to the extent necessary to give effect to the provisions of this Order.

2. The undersigned has jurisdiction over the case and the parties are properly before the Review Commission.

3. Complainant established by the greater weight of the evidence that the Sump technically fits the definition of a permit required confined space. However, Complainant failed to demonstrate that Respondent had received fair notice that the UST containment sumps at the Site are considered to be confined spaces by the Department of Labor and are subject to enforcement for alleged violations of the Standard.

4. Complainant failed to meet its burden of proving that Respondent violated the Standard.

5. Complainant failed to meet its burden of proving a violation of the Standard where (a) the testimony and evidence show that the Department of Labor had never issued an OSHA Citation to any employer operating a gasoline service station in which Complainant asserted a violation of the Standard in connection with the employer's operation and/or maintenance of one or more containment sumps for USTs located on the employer's premises; and (b) Complainant had not promulgated any rule, regulation or other published enforcement guidance which explicitly states that the Standard applies to USTs containment sumps at gas stations in North Carolina.

6. Respondent violated 29 CFR § 1910.106(b)(6) for not taking the appropriate measures to ensure that employees working in and around its UST containment sumps at the Site used only non-sparking tools.

7. However, Complainant's proposed penalty for Respondent's violation of 29 CFR § 1910.106(b)(6) is excessive under the circumstances presented here. Respondent's use of non-sparking tools and equipment when working in and around the UST containment sumps supports a reduction in the proposed penalty to \$1,000.00.

8. Respondent established that it had complied with the Hazard Communication Standard and had provided employees at the Site with information and training on hazardous chemicals in their work areas. Accordingly, Complainant failed to establish that Respondent violated 29 CFR § 1910.1200(h)(1).

9. Respondent violated 29 CFR § 1910.1200(e)(1)(i) by failing to have a list or index of all hazardous chemicals at the Site.

10. Respondent violated 29 CFR § 1904.39(a) by failing to report the fatality of Mr. Brown within the required eight (8) hour time frame.

11. Respondent failed to comply with 29 CFR § 1910.37 (b) (2) and 29 CFR § 1910.37(b)(5) by failing to put one exit and two no-exit signs on three (3) doors at the Site.

ORDER

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

Citation No. 1, Item 1 is affirmed with a reduced penalty of \$1,000.00.

Citation No. 1, Items 2a, 2b, 2c, and 2d charging Respondent with serious violations of 29 CFR § 1910.146 are dismissed with prejudice.


Citation No. 1, Item 3a charging Respondent with a violation of 29 CFR § 1910.1200(h) is dismissed with prejudice.

Citation No. 1, Item 3b charging Respondent with a violation of 29 CFR § 1910.(e)(1)(i) is affirmed with a penalty of \$6,300.00.

Citation No. 2, Item 1 charging Respondent with of a violation of 29 CFR § 1904.39(a) is affirmed with a penalty of \$4,000.00.

Citation Nos. 2 and 3 charging Respondent with non-serious violations of 29 CFR § 1910.37(b)(2) and 29 CFR § 1910.37(b)(5) are affirmed without any penalty.

This the 15th day of ~~October~~ December, 2014.



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:

JOHN J DOYLE JR
CONSTANGY BROOKS & SMITH LLP
100 N CHERRY STREET
SUITE 300
WINSTON-SALEM NC 27101-4016

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

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

THIS THE 18th DAY OF December 2014.

OSCAR A. KELLER, JR.
CHAIRMAN


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