

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

COMMISSIONER OF LABOR FOR)	DOCKET NO: 2013 - 5518
THE STATE OF NORTH CAROLINA)	
)	INSPECTION
Complainant,)	NO: 317275154
)	
v.)	CSHO ID: W2024
DISTRIBUTION CONSTRUCTION LLC)	<u>FINAL ORDER</u>
and its successors)	
Respondent.)	

THIS CAUSE coming on pursuant to the Order of Pre-Hearing Conference (“Hearing Order”) on April 23, 2014 at the Lee House, 2nd Floor Hearing Room, 422 North Blount Street, Raleigh, North Carolina at 10:00 a.m. Melissa H. Taylor, Assistant Attorney General appeared as counsel for the Complainant, and John J. Doyle Jr, Attorney at the law firm of Constangy Brooks & Smith LLP, appeared for the Respondent along with Respondent’s Vice President for Safety, Larry Cripps.

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.

This Hearing was not an evidentiary hearing and the specific facts and circumstances relevant to the Inspection (hereinafter defined) and the Original Citation (hereinafter defined) were not introduced of record, and such facts and circumstances are not included in the Stipulations hereinafter set forth. Based on the Original Citation, Respondent’s Notice of Contest, Complainant’s Complaint, and Respondent’s Answer, it appears that no injuries were sustained and that: Respondent was providing pipe installation services at the Site (hereinafter defined); at the time of the Inspection one or more of Respondent’s employees were working at the Site; one or more of Respondent’s employees were working in the vicinity of an excavation at the Site in which a sloping system was used; the Inspector (hereinafter defined) alleged that

(a) Respondent did not instruct each employee in the recognition and avoidance of unsafe conditions and the regulations applicable to his work environment to control or eliminate any hazards or other exposure to illness or injury, asserting specifically that employees who had not received training specific to excavation and/or who were not familiar with the requirements of the regulations pertaining to excavation were working in, and in the vicinity of, an excavation up to 5 feet deep; and (b) maximum allowable slopes, and allowable configurations for sloping and trenching systems, were not determined in accordance with the conditions and requirements set forth in appendices A and B of 29 CFR 1926.652(b)(2), asserting specifically that in an excavation up to 5 feet deep, where a sloping system was designed as a method of protection for employees from cave-ins, the classification of the soil (as Type A) was made based on the results of one visual analysis only; Respondent denied all such allegations.

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 the subject matter to this action.
2. Respondent is a North Carolina limited liability company, 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 Greensboro, North Carolina. Respondent is in the business of installing gas line pipes. 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 or about July 26, 2013, Deborah Samad, an Occupational Safety and Health Compliance Officer with the North Carolina Department of Labor, conducted a complaint inspection (the “Inspection”) of Respondent’s worksite located at 919 New Sharon Church Road in Hillsborough, North Carolina (the “Site”). Gregorio Segura, foreman of Respondent, consented to the Inspection.
4. As a result of the Inspection, on September 18, 2013, Complainant issued a non-serious citation (“Citation 1”) consisting of Item 1 and Item 2, with a proposed penalty of \$975.00 for each Item, as more specifically described on Exhibit “A” (the “Original Citation”).
5. Respondent submitted a timely Notice of Contest dated October 16, 2013.

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 this Hearing.
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.
9. 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 any stage of these proceedings up to and including the filing of this Order.
10. Respondent agrees as follows: (a) it shall conduct training, and retraining as needed, so that the competent person can evaluate the job site and take appropriate action as required; (b) it shall conduct training, and retraining as needed, so that crew members can safely perform their jobs; and (c) it shall provide for frequent and regular inspections of job sites as required by the Act.
11. 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 Complainant's Motion. The parties further agree that (i) the modification of any portion of the Original Citation 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 and Article 21, Chapter 95 of the North Carolina General Statutes.

MOTIONS

Complainant moved to do the following ("Complainant's Motion"):

***withdraw Citation 1, Items 1 and 2.**

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 ("Respondent's Motion"):

***to withdraw Respondent's Notice of Contest to the Original Citation as amended pursuant to Complainant's Motion 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 Motion is hereby **GRANTED**; and
2. That Respondent's Motion is hereby **GRANTED**.

This the 23 day of April, 2014.



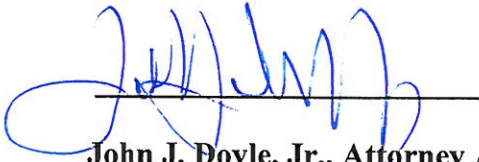
R. Joyce Garrett

Administrative Law Judge

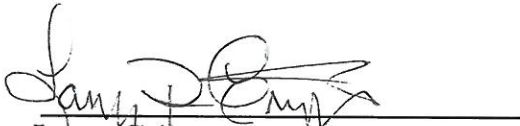
CONSENTED TO:



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



**John J. Doyle, Jr., Attorney At Law
| Attorney for Respondent**



**Larry Cripps,
| Vice President of Safety for Respondent**

Exhibit "A"
Original Citation

CITATION NUMBER 1 (Type of Violation: Nonserious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1	29 CFR 1926.21(b)(2)	11/04/2013	\$ 975.00
2	29 CFR 1026.652(b)(2)	Immediately Abated	\$ 975.00
TOTAL			\$1,950.00

CERTIFICATE OF SERVICE

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

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

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 24th DAY OF April 2014.

OSCAR A. KELLER, JR.
CHAIRMAN



Nancy D. Swaney
Docket and Office Administrator
NC Occupational Safety & Health Review Commission
1101 Mail Service Center
Raleigh, NC 27699-1101
TEL.: (919) 733-3589
FAX: (919) 733-3020