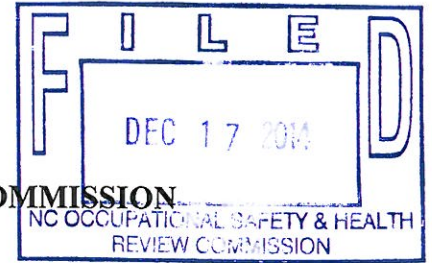


**BEFORE THE NORTH CAROLINA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
RALEIGH, NORTH CAROLINA**



COMMISSIONER OF LABOR FOR THE STATE OF NORTH CAROLINA)	DOCKET NO: 2014 - 5537
)	
)	INSPECTION
)	NO: 317092302
Complainant,)	
)	CSHO ID: R6552
v.)	
CONCRETE & MATERIALS PLACEMENT LLC)	<u>FINAL ORDER</u>
and its successors)	
Respondent.)	

THIS CAUSE coming on pursuant to the Order of Pre-Hearing Conference (“Hearing Order”) on December 17, 2014 at the Lee House, 2nd Floor Hearing Room, 422 North Blount Street, Raleigh, North Carolina at 10:00 a.m. Victoria Voight, Special Deputy Attorney General, appeared as counsel for the Complainant, and William Pollock, Attorney at Law, 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. 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”).

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, Complainant’s Complaint and Respondent’s Answer to Complainant’s Complaint, it appears that injuries were sustained as a result of an accident and that: Respondent was a subcontractor at a work site on Tryon Road in Cary, North Carolina; an inspection was conducted and Complainant alleged a serious violation

of NCGS 95-129(1)¹ bearing a proposed penalty of \$2,100.00 and an abatement date of 11/14/2013; Respondent denied all such allegations, and objected to the proposed penalty and to the abatement date.

As a result of this Hearing, 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, Article 16, Chapter 95 of the General Statutes of North Carolina (hereinafter "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 Charlotte, North Carolina. Respondent is a concrete subcontractor. 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 June 12, 2013, Belvin Horres, an Occupational Safety and Health Compliance Officer with the North Carolina Department of Labor, conducted an inspection of Respondent's worksite located in the vicinity of 6100 Tryon Road in Cary, North Carolina (the "Inspection"). Steve Outen, lead worker and concrete pump truck operator for Respondent, consented to the Inspection.
4. As a result of the Inspection Complainant issued a citation ("Citation 1" or the "Original Citation") dated November 6, 2013. Citation alleging a serious violation of NCGS 95-129(1) bearing a proposed penalty of \$2,100.00 and an abatement date of 11/14/2013.

¹ Citation 1 Item I Type of Violation: Serious North Carolina General Statute 95-129(1) of the Occupational Safety and Health Act of North Carolina: The employer did not furnish each of his employees conditions of employment and a place of employment free from recognized hazards that were causing or likely to cause death or serious physical harm to employees in that employees were exposed to being struck by a collapsing concrete pumper: (a) site address- On or about 06/12/2013, a Putzmeister model BSF 56Z.165H concrete pumper mounted on the chassis of a 2009 model MRU 613 Mack Truck, while in the process of pumping concrete to a construction site with the boom extended 56 meters, while using inadequate cribbing, slipped from the cribbing causing the vehicle to move forward, striking two employees and pinning one down, causing injuries. (re: Appendix A to the operators manual for the vehicle, and para 2.15.1 through 2.15.4 of BPUS03_076_1302EN operators manual, and also the marking and decals posted on the outrigger legs of the vehicle.)

5. Respondent submitted a timely Notice of Contest dated December 2, 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 has 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 that the violation alleged in the Original Citation has been abated.
10. The parties agree that upon granting of Complainant's Motion the penalty for each Item designated in the Original Citation as amended pursuant to Complainant's Motion has been calculated in accordance with the standard Field Operations Manual procedure and giving consideration by Complainant to standard mitigating factors.
12. Respondent agrees
 - * to continue to provide training to its employees regarding the use of equipment in accordance with the manual for the truck being operated; and
 - * to pay the penalty assessed in this matter of \$1,260.00 within 15 business days of the date of this Final Order.

Payment of the penalty is to be made by check or money order made payable to NC Department of Labor, OSHA Division and should include the inspection number (317092302). Send the payment directly to the Department of Labor, addressed to Jack Brinson, Budget Division, 4 West Edenton Street, Raleigh, North Carolina 27602.

13. 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 .
14. 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”):

*amend the Original Citation by reducing the amount of the penalty for Item 1 to \$1,260.00;

except as set forth in this motion, the Original Citation shall remain unmodified or amended.

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”), and Respondent confirmed that the violation alleged in the Original Citation as amended has been abated:

*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 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**.

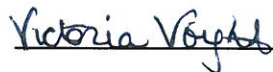
This the 17th day of December, 2014.



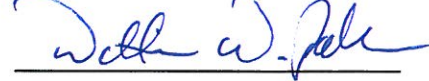
R. Joyce Garrett

Administrative Law Judge

CONSENTED TO:



Victoria Voight, Special Deputy Attorney General
Attorney for Complainant



William W. Pollock, Attorney At Law
| Attorney for Respondent



Pat Urtecho, Director of Safety
| Respondent

CERTIFICATE OF SERVICE

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

WILLIAM W POLLOCK
RAGSDALE LIGGETT PLLC
PO BOX 31507
RALEIGH NC 27622-1507

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

VICTORIA VOIGHT
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
RALEIGH NC 27699-1101

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

THIS THE 18th DAY OF December 2014.

OSCAR A. KELLER, JR.
CHAIRMAN



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