

**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 - 5620
)	
)	INSPECTION
)	NO: 317359511
Complainant,)	
)	CSHO ID: R6552
v.)	
RALEIGH METAL RECYCLING and its successors)	<u>FINAL ORDER</u>
)	
Respondent.)	

THIS CAUSE coming on pursuant to the Order of Pre-Hearing Conference (“Hearing Order”) on November 4, 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 Greg Brown, Managing Member 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. 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 and the Statement of Employer’s/Respondent’s Position, it appears that a single citation (“Citation 1”) was issued alleging a serious violation of 29 CFR 1910.252(b)(3)¹ (Item 001a) which was grouped with an

¹ Citation 1 Item 001a: 29 CFR 1910.252(b)(3): Employees exposed to the hazards created by welding, cutting, or brazing operations were not protected by personal protective equipment in accordance with the requirements of 29 CFR 1910.132 (site address: on or about 11/26/2013, an employee using a Victor Bulldog model 8TC1151C four

alleged serious violation of 29 CFR 1910.132(d)(2)² (Item 001b) because they involve similar or related hazards that may increase the potential for injury or illness, with a assessed proposed penalty of \$1,200.00; each alleged violation was ‘Corrected During Inspection’; Respondent denied such allegations and objected to such penalty.

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, the full legal name of which is Raleigh Recycling NC Scrap Metal, LLC, is a Delaware limited liability company, authorized to do business 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 Raleigh, North Carolina. Respondent is in the business of scrap metal recycling. 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 December 16, 2013, an Occupational Safety and Health Compliance Officer with the North Carolina Department of Labor conducted an inspection of Respondent’s worksite located at 2310 Garner Rd in Raleigh, North Carolina (the “Inspection”).
4. As a result of the Inspection, on May 23, 2014, Complainant issued Citation 1 (also sometimes referred to herein as 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”).

foot torch with a straight cutting tip to cut a large turbine wheel into manageable scrap, was not provided adequate protection and received serious burns.

² Citation 1 Item 001b: 29 CFR 1910.132(d)(2): The employer did not verify that the required workplace hazard assessment has been performed through a written certification that identifies the workplace evaluated; the person certifying the evaluation has been performed; the date(s) of the hazard assessment; and which identifies the document as a certification of the hazard assessment (site address-employer did not verify the PPE program for employees engaged in torch cutting of scrap metal).

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 including without limitation objection to the reasonableness of any abatement period.
9. 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.
10. **Respondent agrees**
 - * **to provide to Complainant a copy of Respondent's revised hazard assessment pertaining to cutting and welding and the specific PPE required for such tasks;**
 - * **to provide to Complainant a copy of Respondent's certification of hazard assessment in a form reasonably acceptable to Complainant;**
 - * **to pay the penalty assessed in this matter of \$720.00 within 15 business days of the date of this Final Order.**
11. 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.
12. 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 Citation 1 by deleting Item 001a and by reducing the penalty for Item 001b to \$720.00, for a total penalty of \$720.00 for Citation 1;

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**.

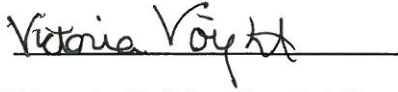
This the 4th day of November, 2014.



R. Joyce Garrett

Administrative Law Judge

CONSENTED TO:



**Victoria Voight, Special Deputy Attorney General
Attorney for Complainant**



**Greg Brown, Managing Member
Representative for Respondent**

CERTIFICATE OF SERVICE

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

GREG BROWN
MANAGING MEMBER
RALEIGH METAL RECYCLING
2310 GARNER RD
RALEIGH NC 27610

VICTORIA VOIGHT
NC DEPARTMENT OF JUSTICE
LABOR SECTION
PO BOX 629
RALEIGH NC 27602-0629

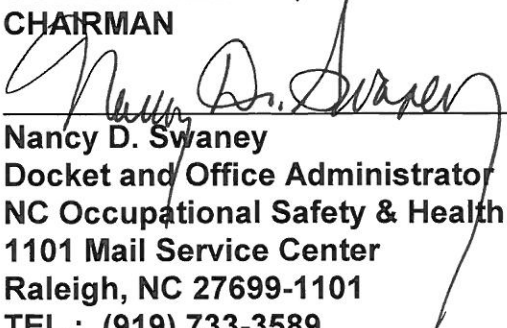
by depositing a copy of the same in the United States Mail, Certified Mail, postage prepaid, at Raleigh, North Carolina, and upon:

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 5th DAY OF November 2014.

OSCAR A. KELLER, JR.
CHAIRMAN



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