

BEFORE THE NORTH CAROLINA

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

RALEIGH, NORTH CAROLINA

COMMISSIONER OF LABOR FOR) DOCKET NO. OSHANC – 2015-5706
THE STATE OF NORTH CAROLINA,)
) INSPECTION NO. 317982387
COMPLAINANT,)
) CSHO ID: A6044
v.	1
ATLANTIC VENTURES dba ATLANTIC) FINAL ORDER
STAFFING CONSULTANTS,)
and its successors,)
)
RESPONDENT.)

THIS CAUSE came on to be heard pursuant to a Notice of Hearing scheduling the above-styled matter for an administrative hearing on July 12, 2016 at the offices of the North Carolina Safety and Health Review Commission, 422 North Blount Street, Raleigh, NC. Complainant was represented by Larissa S. Williamson, Special Deputy Attorney General for the State of North Carolina, and Respondent was represented by Michael C. Lord, with Williams Mullen. The parties met and conferred prior to the formal opening of the case and subsequently informed this hearing officer that they had reached a settlement of all issues and that a hearing would not be necessary. Counsel for the parties agreed to supply the undersigned with the terms of their settlement within one week of the date of the hearing. The parties timely provided the terms, and the Stipulations below reflect first, the Citation Items and second, the parties' agreement as to their resolution.

STIPULATIONS

1. Respondent received one citation with six items, 001a, 001b, 002a, 002b, 003a, 003b. The citation Items were each labeled "Serious" and were respectively as follows:



- a. 29 CFR 1910.146(c)(2): The employer did not inform exposed employees, by posting danger signs or by any other equally effective means, of the existence and location of and the danger posed by the permit spaces:
 - facility, Bag House Glass System (Airlock and Cyclone System) no danger sign or other effective means was provided to warn employees of the hazards of the permit required confined space.
- b. 29 CFR 1910.146(c)(7)(iii): The employer did not document the basis for determining that all hazards in a permit space had been eliminated, through a written certification that contained the date, the location of the space, and the signature of the person making the determination:
 - i. facility, Bag House Glass System (Airlock and Cyclone System) the employer did not document that all hazards had been eliminated, such as the two 480 VAC electrical energy sources for the Glass Suction System (E-42) and the Rotary Valve (E-43), prior to an authorized employee making entry into the permit required confined space.
- c. 29 CFR 1910.147(c)(4)(ii): The energy control procedures did not clearly and specifically outline the scope, purposes, authorization, rules and techniques to be utilized for the control of hazardous energy, including but not limited to Items of this section:
 - i. facility, Bag House Glass System (Airlock and Cyclone System) the hazardous energy control procedures were not specific in that they did not specify the two 480 VAC electrical energy sources required to be isolated, the Glass Suction System (E-42) and the Rotary Valve (E-43), during maintenance activities. On or about March 17, 2015, this condition resulted in injuries to an employee who was utilizing this procedure.
- d. 29 CFR 1910.147(d)(6): Prior to starting work on machines or equipment that had been locked out or tagged out, the authorized employee did not verify that isolation and deenergization of the machine or equipment had been accomplished:
 - i. facility, Bag House Glass System (Airlock and Cyclone System) prior to starting work on the equipment, an authorized employee failed to verify that the isolation and deenergization of the equipment had been accomplished. On or about March 17, 2015, this condition resulted in injuries to an employee.
- e. 29 CFR 1910.146(g)(2)(iv): The employer did not provide training to each affected employee whenever the employer had reason to believe either that there were deviations from the permit space entry procedures required by 29 CFR 1910.146(d)(3) or that there

- i. facility, Bag House Glass System (Airlock and Cyclone System) the employer did not provide training to each affected employee when, in the presence of the entry supervisor, the employee failed to document that all hazards had been eliminated, such as the two 480 VAC electrical energy sources for the Glass Suction System (E-42) and the Rotary Valve (E-43), prior to an authorized employee making entry into the permit required confined space.
- f. 29 CFR 1910.147 (c)(7)(i): The employer did not provide training to ensure that employees acquired the knowledge and skills required for the safe application, usage and removal of energy control devices:
 - facility, Bag House Glass System (Airlock and Cyclone System) no training was provided for an authorized employee who, in the presence of the supervisor, failed to verify that the isolation and deenergization of the equipment had been accomplished.
- 2. All conditions were corrected during inspection.
- 3. The above Items were grouped as one Citation with a gravity-based penalty proposed of \$18,900.
- 4. First, the parties agreed to delete Citation 01 Items 001a, 002a, 003a and 003b.
- 5. Second, Citation I, Items 001b and 002b were reclassified from "Serious" to "Non-Serious" with a total penalty of \$1,225.
- 6. Respondent will evaluate and confirm LOTO procedures provided from its host employer for equipment on which Respondent's employees will be required to perform servicing or maintenance; such evaluation will include an assessment of the LOTO steps for specific equipment in order to determine whether those steps properly and effectively achieve LOTO of the relevant equipment. If Respondent determines that the LOTO procedures are incorrect for any equipment on which its employees will be required to perform servicing and/or maintenance, Respondent will advise the host employer of the results and will not allow Respondent's employees to be exposed to the hazard until the host employer revises such procedures to ensure that proper LOTO is achieved.
- 7. Respondent will train/retrain its employees on the LOTO procedures as evaluated in Stipulation 6 above; such training will be specifically tailored to address the LOTO steps for specific pieces of equipment on which its employees will be required to perform servicing or maintenance when the unexpected energization or start-up of the machines/equipment, or release of stored energy, could cause injury to its employees.

8. The parties agree that none of the foregoing agreements, statements, stipulations and actions taken by the Respondent shall be deemed an admission by the Respondent of any of the allegations contained in the Citation and Notification of Penalty or waiver of defenses; the agreements, statements, stipulations and actions herein are made solely for the purpose of settling this matter economically and amicably without further litigation and shall not be used for any other purpose except for proceedings and matters arising under the Occupational Safety and Health Act (the "Act") and Article 21, Chapter 95 of the North Carolina General Statutes.

FINDINGS OF FACT

Based on the Stipulations submitted, 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 Finding 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 that the terms as stated herein represent the final resolution of this matter.

This the day of September, 2016.

Reagan H. Weaver
Hearing Officer

CERTIFICATE OF SERVICE

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

MICHAEL C. LORD WILLIAMS MULLEN 301 FAYETTEVILLE ST., SUITE 1700 RALEIGH, NC 27601

LARISSA S. 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 RALEIGH, NC 27699-1101

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

ARLENE K. EDWARDS

CHAIRMAN

Karissa B. Sluss

Docket and Office Administrator

NC Occupational Safety & Health Review Commission

2016.

1101 Mail Service Center Raleigh, NC 27699-1101

TEL.: (919) 733-3589 FAX: (919) 733-3020