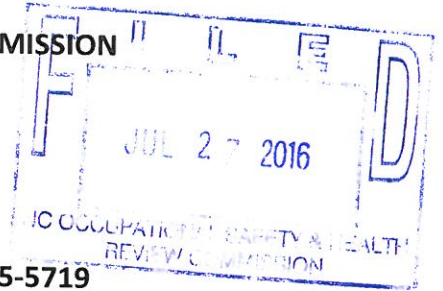


BEFORE THE NORTH CAROLINA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
RALEIGH, NORTH CAROLINA



COMMISSIONER OF LABOR FOR)	DOCKET NO: 2015-5719
THE STATE OF NORTH CAROLINA)	INSPECTION NO: 317946481
)	CSHO ID: I0931
Complainant,)	
)	
v.)	
)	
RENDEQ INC)	
and its successors)	<u>FINAL ORDER</u>
Respondent.)	

THIS CAUSE coming on pursuant to the Order of Pre-Hearing Conference (“Hearing Order”) on July 27, 2016 at the Lee House, 2nd Floor Hearing Room, 422 North Blount Street, Raleigh, North Carolina at 10:00 a.m. Rory Agan, Associate Attorney General appeared as counsel for the Complainant, and Mark Deweese, Vice President 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 Respondent’s Notice of Contest, it appears that no injuries were sustained and that: as the result of an Inspection (herein after defined) of Respondent’s work site two citations were issued to Respondent alleging that (a) employees used a Clarke Metalworker 6 inch bench grinder to sharpen tungsten welding rods while the grinder was missing the adjustable tongue guard on both abrasive wheels leaving a gap

of 1 inch on the left and a gap of ½ inch on the right; (b) Respondent did not provide Appendix D of the standard to employees wearing Elipse ¼ tight fitting respirator with SA 00818 filters; (c) Respondent did not ensure that employees were medically evaluated to be able to wear respirator protection; (d) Respondent did not perform an 8-hour initial determination for employees exposed to chromium; and (e) employees were not familiar with the hazards associated with exposure to chromium. Respondent denied all such allegations.

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 corporation, 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 Burlington, North Carolina. Respondent is in the business of manufacturing industrial processing equipment. 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 February 10, 2015, an Occupational Safety and Health Compliance Officer with the North Carolina Department of Labor, conducted a referral inspection (partial) of Respondent’s worksite located at 1813 Frank Holt Drive in Burlington, North Carolina (the “Inspection”).
4. As a result of the Inspection, on July 20, 2015, Complainant issued two citations (“Citation 01” and “Citation 02”) as more specifically described on **Exhibit “A”** (collectively the “Original Citation”). Citation 01 consisted of 1 item designated as Serious and Citation 02 consisted of two items (each with 2 subitems) designated as NonSerious.
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”).
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 and to specific factors applicable to Respondent.

10. **Respondent agrees**

to pay the penalty assessed in this matter of \$420.00 within 30 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 (317943025). Payment should be sent directly to the Department of Labor, addressed to Jack Brinson, Budget Division, 1101 Mail Service Center, Raleigh, North Carolina 27699-1101.

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 01 by reducing the amount of the penalty for the sole Item by 30% such that the total of the penalty for Citation 01 is \$420.00.

amend Citation 02 Item 001a and 001b by deleting the penalty in its entirety.

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 violations alleged in the Original Citation as amended have 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 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**.

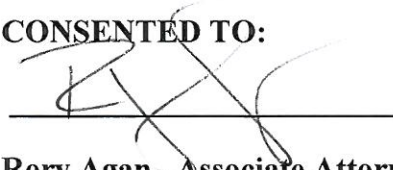
This the 27th day of July, 2016



R. Joyce Garrett

Administrative Law Judge

CONSENTED TO:



**Rory Agan, Associate Attorney General
Attorney for Complainant**



**Mark Dewese, Vice President
Representative for Respondent**

Exhibit "A"
Original Citation

CITATION NUMBER 01 (Type of Violation: Serious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001	29 CFR 1910.215(b)(9)	7/28/2015	\$ 600.00

CITATION NUMBER 02 (Type of Violation: NonSerious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001a	29 CFR 1910.134(c)(2)(i)	8/13/2015	\$ 300.00
001b	29 CFR 1910.134(c)(2)(ii)	8/13/2015	\$ 300.00
002a	29 CFR 1910.1026(d)(1)	9/3/2015	\$ 00.00
002b	29 CFR 1910.1026(l)(2)(i)(A)	8/13/2015	\$ 00.00

TOTAL \$ 1,200.00

CERTIFICATE OF SERVICE

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

MARK DEWEESE
1813 FRANK HOLT DR.
BURLINGTON, NC 27215

RORY AGAN
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 29 DAY OF July 2016.

ARLENE K. EDWARDS
CHAIRMAN


Karissa B. Sluss
Docket and Office Administrator
NC Occupational Safety & Health Review Commission
1101 Mail Service Center
Raleigh, NC 27699-1101
TEL.: (919) 733-3589
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