

from the horizontal). This was steeper than the required 1.5:1 (34 degrees from the horizontal) in Type C soil.

- b. 29 CFR 1926.652(g)(2): Excavations of earth material to a level no greater than 2 feet (.61m) below the bottom of a shield was permitted:
 - i. jobsite – subcontractor employee(s), who were working in an excavation, which was 160 feet in length, 30 feet in width, and 7 feet 2 inches maximum in depth, were not protected from cave-ins. At 5 feet 11 inches in depth along the south edge, the bottom of the excavation was 4 feet below the bottom of the protective shield.

- c. 29 CFR 1926.651(k)(1): Daily inspections of excavations, the adjacent areas, and protective systems were not made by a competent person for evidence of a situation that could have resulted in possible cave-ins, indications of failure of protective systems, hazardous atmospheres, or other hazardous conditions:
 - i. jobsite – no inspections by a competent person were conducted for subcontractor employee(s) who were working in an excavation. The bottom of the excavation was 4 feet below the bottom of the shield for a length of 25 feet along the south wall. Also, the slope along the west end of the excavation was 0.0:1 (90 degrees from the horizontal). This was steeper than the required 1.5:1 (34 degrees from the horizontal) in Type C soil.

- 2. All conditions were corrected during inspection.
- 3. The above Items were grouped as one Citation with a gravity-based penalty proposed of \$2,100.
- 4. The parties agreed first to delete Citation 01 Item 001b and 001c.
- 5. Second, the parties agreed that the remaining Item 001a and was reclassified as “Non-Serious”.
- 6. Third, the penalty for Item 001a was reduced to \$375 with payment due within thirty (30) days of the entry of this order.
- 7. Fourth, the parties agreed that Respondent will develop a safety checklist to be incorporated in its Daily Report and the sufficiency of the safety checklist will be submitted to Complainant for approval within thirty (30) days of the entry of this order.
- 8. Finally, the parties agreed that this resolution of the above-styled case is a full and final settlement of the claims set out above, and none of the foregoing stipulations or 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; provided; however, that in any subsequent proceeding with respect to matters covered by these stipulations or the resolution of this matter brought directly under the Act by Complainant, this resolution shall have the full force and effect of a final order. 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 and Article 21, Chapter 95 of the North Carolina General Statutes, the "Act".

FINDINGS OF FACT

Based on the Stipulations at the time of the Hearing and the evidence presented, 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 24 day of August, 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

MELISSA H. TAYLOR
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 31 DAY OF August 2016.

ARLENE K. EDWARDS
CHAIRMAN


Karissa B. Sluss
Docket and Office Administrator
NC Occupational Safety & Health Review Commission
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