Moore's Fiberglass, Inc 2016-5857

# BEFORE THE NORTH CAROLINA APR - 4 2018 OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION RALEIGH, NORTH CAROLINA

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) DOCKET NO: 2016-5857
) INSPECTION
,
) NO: 318077716
) CSHO ID: S4339
)
) <u>FINAL ORDER</u>
)
)
)

THIS CAUSE came on for hearing and was heard before the undersigned R. Joyce Garrett, Administrative Law Judge for the North Carolina Occupational Safety and Health Review Commission, on March 28, 2018 (continued from February 7, 2018), at 10:30 A.M. pursuant to a Notice of Hearing. Larissa Williamson, Special Deputy Attorney General, North Carolina Department of Justice, appeared by teleconference for Complainant. Michael C. Lord, attorney with Williams Mullen, Raleigh, North Carolina, appeared by teleconference for the Respondent. No affected employee of Respondent, or its representative, attended to have a say in, or participate as a party in, the Hearing.

At the time of the Hearing the parties agreed upon and consented to the following Stipulations.

## **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, active and in good standing, in the State of North Carolina, and maintains a place of business in Walstonburg, North Carolina. Respondent is an "employer" as defined by N.C.G.S. Section 95-127(11) and it maintains employees as defined by N.C.G.S. Section 95-127(10).

3. On July 6, 2016, Veatasha Dorsey, an Occupational Safety and Health Officer with the North Carolina Department of Labor, conducted an inspection of Respondent's worksite located at 403 N. Wilson Street in Walstonburg, North Carolina (the "Inspection"). The Inspection was conducted pursuant to a special emphasis program for Exposures to Health Hazards.

4. As a result of the Inspection, on September 8, 2016, Complainant issued the following Citation and Notification of Penalty (herein referred to collectively as the "Original Citation"):

# CITATION 01 (Serious)

Item No.	Standard	Abatement Date	Penalty	
001 002 003 004 005 006 007 008 009	29 CFR 1910.106(d)(4)(i) 29 CFR 1910.106(d)(4)(iv) 29 CFR 1910.106(d)(4)(v) 29 CFR 1910.106(h)(7)(i)(b) 29 CFR 1910.132(d)(2) 29 CFR 1910.134(c)(2)(ii) 29 CFR 1910.157(g)(1) 29 CFR 1910.178(1)(1)(i) 29 CFR 1910.213(h)(1)	Immediately Upon Receipt Immediately Upon Receipt Immediately Upon Receipt Immediately Upon Receipt Immediately Upon Receipt Immediately Upon Receipt Corrected During Inspection Corrected During Inspection Immediately Upon Receipt	\$ \$ \$ \$ \$ \$ \$ \$ \$	900.00 900.00 900.00 450.00 450.00 450.00 900.00 2,800.00
CITATION 0	2 (NonSerious)			

Item No.	Standard	Abatement Date	Pena	<b>Penalty</b>	
001	29 CFR 1910.107(g)(7)	10/4/2016	\$	0.00	
002	29 CFR 1910.134(c)(2)(i)	Immediately Upon Receipt	\$	0.00	

5. The Respondent submitted a timely Notice of Contest dated October 13, 2016.

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. Respondent and Complainant waive the presence of a court reporter at the Hearing and the making of a transcript of the Hearing. Complainant and Respondent have no objection, either procedural or otherwise, to this Hearing and both parties consent to the conduct of this Hearing by the Undersigned and to entry of this Order.

8. Respondent posted the Original Citation, the Hearing Order and the Order to Continue 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. Respondent confirms that the violations alleged in the Original Citation as amended pursuant to Complainant's Motion have been abated, subject to the terms of the Stipulation regarding Citation 1 / Item 9.

10. The parties agree to bear their own attorney's fees, costs and other expenses that have been incurred in connection with any stage of these proceedings up to and including the filing of this Order.

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- 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 to Withdraw its MotionTo Postpone Hearing is hereby **GRANTED**.
- 2. That Complainant's Motion is hereby **GRANTED**;
- 3. That Respondent's Motion is hereby **GRANTED**; Respondent shall pay the penalty of \$1,800.00 in the manner set forth in the Stipulations.

This 28th day of March, 2018.

R. Joyce Garrett Administrative Law Judge

CONSENTED TO:

For Complainant

Larissa Williamson, Special Deputy Attorney General North Carolina Department of Justice

For Respondent

Michael C. Lord, Attorney at Law Williams Mullen

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For Complainant

Larissa Williamson, Special Deputy Attorney General North Carolina Department of Justice

For Respondent

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