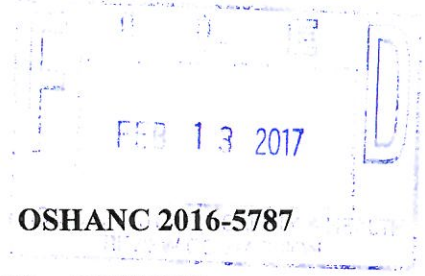


BEFORE THE NORTH CAROLINA OCCUPATIONAL SAFETY AND HEALTH
REVIEW COMMISSION
RALEIGH, NORTH CAROLINA



COMMISSIONER OF LABOR FOR)
THE STATE OF NORTH CAROLINA)
)
COMPLAINANT,)
)
v.)
)
MOFFAT PIPE, INC.)
and its successors)
)
)
RESPONDENT.)

DOCKET NO.: OSHANC 2016-5787
INSPECTION NO.: 318052099
CSHO ID.: R6552

ORDER

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 February 7, 2017, at 10:30 A.M. pursuant to a Notice of Hearing. Melissa H. Taylor, Assistant Attorney General, North Carolina Department of Justice, appeared by teleconference for Complainant. Attorney Greg C. Ahlum, Johnston, Allison & Hord, P.A., 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. Respondent and Complainant waive the presence of a court reporter at the Hearing and the making of a transcript of the Hearing.
2. Respondent is a North Carolina corporation duly authorized under the laws of the State of North Carolina. Respondent maintains a place of business in Wake Forest, North Carolina.
3. Respondent withdraws its Motion For Continuance. 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.

4. On February 23, 2016, Belvin Horres, an Occupational Safety and Health Officer with the North Carolina Department of Labor, conducted an inspection of Respondent's worksite located in the vicinity of 806 Lassiter Place, Raleigh, North Carolina.

5. As a result of the inspection, on March 16, 2016, Complainant issued the following Citation (herein referred to as the "Original Citation"):

CITATION ONE (Serious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001	29 CFR 1926.651(c)(2)	Corrected	\$ 900.00
002	29 CFR 1926.651(j)(2)	Corrected	\$ 450.00

6. The Respondent submitted a timely Notice of Contest.

7. 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.

8. Complainant and Respondent agree that provided the respective Motions of each party are granted (a) 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; (b) this Order is a full and final resolution of the claims set out in the underlying Original Citation, as amended pursuant to Complainant's Motion; (c) 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, (d) none of the 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 Order brought directly under the Occupational Safety and Health Act of North Carolina (hereinafter referred to as the "Act") by Complainant, this Order shall have the full force and effect of a final order; and (e) 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; (f) 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; and (g) there has been no employee objection to the reasonableness of any abatement period.

9. Respondent agrees to continue to use its best efforts to comply with the requirements of the Act.

MOTIONS

Complainant moved to make the following amendments to the Original Citation (“Complainant’s Motion”):

- a) **amend Citation 1 by deleting Item 001, and its associated penalty, in its entirety; and**
- b) **amend Citation 1 Item 002 by reclassifying from Serious to NonSerious without a change in the proposed penalty of \$450.00;**

Complainant agrees that it shall notify the appropriate governmental authorities of the amendments to the Original Citation so that the OSHA historical establishment data bases relating to the Respondent are modified accordingly to accurately reflect the amendments to the Original Citation;

except as set forth in this motion, the Original Citation shall remain unmodified or amended and Respondent shall pay the new proposed penalty of \$450.00 within ten (10) days following the date of this Order (payment is to be by check payable to North Carolina Department of Labor, OSHA Division (identifying Inspection No.318052099) and mailed to Budget-Collections, North Carolina Department of Labor, 1101 Mail Service Center, Raleigh, North Carolina 27699-1101.

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 objection, procedural or otherwise, 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.

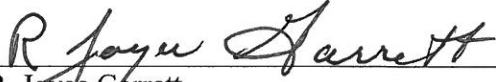
CONCLUSIONS OF LAW

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**. Respondent shall pay the penalty of \$450.00 in the manner set forth in Complainant's Motion.

This 7th day of February, 2017.



R. Joyce Garrett
Administrative Law Judge

CONSENTED TO:

For Complainant



Melissa H. Taylor, Assistant Attorney General
North Carolina Department of Justice

For Respondent

Greg C. Ahlum, Attorney At Law
Johnston, Allison & Hord, P.A.

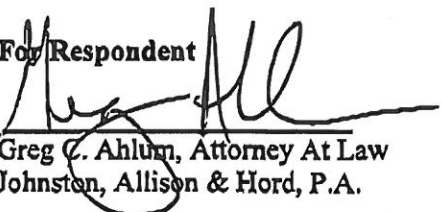
OSHANC 2016-5787

CONSENTED TO:

For Complainant

Melissa H. Taylor, Assistant Attorney General
North Carolina Department of Justice

For Respondent



Greg C. Ahlum, Attorney At Law
Johnston, Allison & Hord, P.A.

CERTIFICATE OF SERVICE

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

GREG C. AHLUM
JOHNSTON, ALLISON, & HORD, P.A.
1065 E. MOREHEAD ST.
CHARLOTTE, NC 28204

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 13 DAY OF February 2017.

ARLENE K. EDWARDS
CHAIRMAN


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