

JUL 14 2021

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

COMMISSIONER OF LABOR FOR)	DOCKET NOS.:
)	2018-6012 and 2018-6017
THE STATE OF NORTH CAROLINA)	
)	
)	INSPECTION NOS.:
)	318120664 and 318120771
Complainant,)	
)	CSHO ID: A2210
v.)	
NC DEPARTMENT OF PUBLIC SAFETY-)	
ADULT CORRECTION PASQUOTANK)	
CORRECTIONAL INSTITUTION)	
and its successors)	
)	
And)	<u>FINAL ORDER</u>
)	
DIVISION OF ADULT CORRECTION OF)	
DEPT. OF PUBLIC SAFETY D/B/A)	
CORRECTION ENTERPRISES)	
and its successors)	
)	
Respondents.)	

THIS CAUSE coming on pursuant to the Pre-Hearing Conference (“Hearing Order”) on July 1, 2021 at 10:00 A.M., Victoria Voight, Special Deputy Attorney General, North Carolina Department of Justice, Raleigh, North Carolina, and Sage Boyd, Assistant Attorney General, North Carolina Department of Justice, Raleigh, North Carolina, appeared as counsel for the Complainant. Sonya Calloway-Durham, Special Deputy Attorney General, North Carolina Department of Justice, Raleigh, North Carolina, and Norlan Graves, Special Deputy Attorney General, North Carolina Department of Justice, Raleigh, North Carolina, appeared as counsel for Respondents.

Pursuant to the Hearing Order, a pre-hearing conference (“the hearing”) was held for the purpose of considering matters about which the parties had agreed to for the purpose of settlement in the above-referenced cases. No affected employee of Respondents, or its representative, attended, or participated as a party in the hearing. At the hearing, Complainant and Respondents notified the Undersigned that the parties wish to agree upon certain stipulations (“Stipulations”) and to make a joint motion (“Motion”) for the entry of a final order.

This hearing was not an evidentiary hearing and the specific facts and circumstances relevant to the Inspection (hereinafter defined) and the Original Citations (hereinafter defined) were not introduced of record and are not included in this Final Order.

As a result of this hearing, Complainant and Respondents request that the Stipulations and Motion be made part of the hearing record and that the Undersigned issue a Final Order. The Stipulations and joint Motion 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”).
2. The Occupational Safety and Health Review Commission has jurisdiction over the parties and the subject matter to this action.
3. Respondent, cited as NC Department of Public Safety-Adult Correction Pasquotank Correctional Institution (“PCI”), is a state agency that operates a facility that is part of the Section of Prisons of the Division of Adult Correction (“DAC”) of the North Carolina Department of Public Safety, duly established under the provisions of N.C.G.S. Section 143B-711, which does business in the State of North Carolina and maintains a place of business in Elizabeth City, North Carolina. Respondent PCI is a facility of the Section of Prisons tasked with providing care, custody and supervision of adults in minimum and close custody who are serving active sentences after conviction for violations of North Carolina law. Respondent PCI 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).
4. Respondent, cited as Division of Adult Correction Of Department of Public Safety D/B/A Correction Enterprises (“CE”), is a state agency known as the Section of Correction Enterprises of the DAC of the North Carolina Department of Public Safety, duly established under the provisions of N.C.G.S. Section 148-128, which does business in the State of North Carolina and maintained a place of business in Elizabeth City, North

Carolina, up until October 12, 2017. Respondent CE develops and operates industrial, agricultural, and service enterprises that employ incarcerated offenders in an effort to provide them with meaningful work experiences and rehabilitative opportunities that will increase their employability upon release from prison. Respondent CE 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).

5. During the period between October 13, 2017 and March 7, 2018, an Occupational Safety and Health Compliance Officer with the North Carolina Department of Labor conducted an inspection of Respondents’ worksites which were both located at 527 Commerce Drive in Elizabeth City, North Carolina (the “Inspections”). Mr. Joe Simpson, Safety Director for the North Carolina Department of Public Safety, consented to the Inspection.
6. As a result of the Inspection # 318120664 on April 6, 2018, Complainant issued the following Citations and Notification of Penalty (herein referred to as the “Original Citation”):

CITATION 01 (Serious) Inspection # 318120664 (2018-6012)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001	N.C.G.S. § 95-129(1)	5/2/2018	\$7,000.00

7. As a result of the Inspection # 318120771 on April 6, 2018, Complainant issued the following Citations and Notification of Penalty (herein referred to as the “Original Citation”):

CITATION 01 (Serious) Inspection #318120771 (2018-6017)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001	N.C.G.S. § 95-129(1)	5/2/2018	\$7,000.00

8. Respondents submitted timely Notices of Contest dated May 14, 2018 for both inspection citations.
9. The hearing in these matters was scheduled pursuant to 24 NCAC 03.0402 of the Rules of Procedure of the Safety and Health Review Commission of North Carolina (the “Rules”).

10. Complainant and Respondents have no objection, either procedural or otherwise, to this hearing and all parties consent to the conducting of this hearing by the Undersigned and to entry of this Final Order.
11. Respondents posted the Original Citation and the Hearing Order as required by the Rules. Neither Complainant nor Respondents 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.
12. Respondents agree that the hazards alleged in Citation 01, Item 001 for Inspection # 318120771, as amended, have been abated, and agree to use their best efforts to comply with the requirements of the Act with respect to the cited statute.
13. The parties agree that the penalty for Citation 1, Item 01 designated in the Original Citation for Inspection # 318120771 has been calculated in accordance with the standard Field Operations Manual procedure and given consideration by Complainant to standard mitigating factors and to specific factors applicable to Respondent.
14. Respondent CE agrees to:
 - a. Accept Citation 01, Item 001, in Inspection # 318120771 as amended to read as follows:

NCGS § 95-129(1): The employer did not furnish to each of his employees conditions of employment and a place of employment free from recognized hazards that were causing or were likely to cause death or serious injury or serious physical harm to its employees in that employees were exposed to assaults by inmates:

 - a) Facility, Correction Enterprises Sewing Plant/2nd floor hallway- where the Sewing Plant door leading to the hallway was not kept locked through which inmates roamed unsupervised in and out of the Sewing Plant, and into the hallway leading to the vestibule for the freight elevator.
 - b) Facility, Correction Enterprises Sewing Plant/2nd floor – where an inmate was allowed to check out class “A” tools to break down pallets in the Sewing Plant stockroom, and was not directly supervised.
 - c) Facility, Correction Enterprises Sewing Plant/2nd floor – where production facility continued to operate at full capacity despite a pre-scheduled medical absence of one of four CE employees assigned to the Sewing Plant.

Date By Which Violation Must Be Abated: 5/2/2018

Proposed Penalty: \$7,000.00.

b. Withdraw its notice of contest.

15. Complainant agrees, as a condition of Respondent CE accepting Citation 01, Item 01 as amended herein, to:

a. Withdraw Citation 01, Item 01 in OSHANC 2018-6012 PCI, Inspection # 318120664, in its entirety;

16. Complainant agrees that as to Respondent CE, Citation 1 Item 1 will be amended to reflect that the following are among other feasible and acceptable methods of abating this violation at the work site; and Respondent CE agrees:

- a. As to instance a) Locks and Keys, ensure that any CE door(s) not otherwise required to remain unlocked in its facility, remain(s) locked when not in use.
- b. As to instance a) Locks and Keys, routinely audit the key and lock control policy of CE and the host facility of the Section of Adult Prisons, to ensure compliance with CE's own policies and proper integration of the policies of the host facility of the Section of Adult Prisons.
- c. As to instance b) Tools, prohibit inmates from checking out class A tools without obtaining approval from a CE employee and the direct supervision of a CE employee.
- d. As to instance b) Tools, routinely audit CE's tool policy to ensure compliance.

17. Respondent CE agrees to routinely review CE staffing levels to ensure that available CE personnel is adequate for the supervision of inmates during day-to-day operations in accordance with CE's standard operating procedures.

18. Respondent CE agrees to pay the penalty of \$7,000.00 in this matter within 30 business days of the date of this Final Order.

19. Respondent CE agrees that payment is to be by check payable to the North Carolina Department of Labor, OSHA Division (identifying Inspection # 318120771) and mailed within ten (10) days of the signing of this Final Order to the North Carolina Department of Labor Financial Services Division, ATTN: Collections Division, 1101 Mail Service Center, Raleigh, North Carolina 27699-1101.

20. 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.

21. Complainant and Respondents agree that provided the joint Motion is granted, there are no other matters or outstanding issues that remain to be decided or 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 Citations.
22. The parties further agree that (i) the deletion of Citation 1, Item 1 in Inspection # 318120664 and the amendment as noted herein of the Original Citation by Complainant in Inspection # 318120771 shall not be deemed to be an admission by Complainant that the citations or any portions of the citations as alleged was without merit, (ii) none of the foregoing agreements, statements, stipulations and actions taken by Respondents shall be deemed an admission by the Respondents to any of the allegations contained in the Original Citations, the citation as amended herein, and shall not constitute a waiver of any defenses that Respondents might have to the original citations or the amended citation accepted herein; and (iii) the sole purpose of Respondent CE accepting Citation 01, Item 01 in Inspection # 318120771 as amended, is for judicial economy.
23. The agreements, statements, stipulations and actions herein by Complainant and by Respondents are solely for the purpose of resolving this matter economically and amicably without litigation and shall not be used for any other purpose including any civil or administrative proceeding other than matters or proceedings arising under the Act and Article 21, Chapter 95 of the North Carolina General Statutes.
24. The parties agree that the citation may be used as the basis of a repeat violation up to and including three years from its issuance on April 6, 2018.
25. The parties agree that the current Protective Order in place for both OSHANC files 2018-6012 and 2018-6017 remains in effect in accordance with the terms of the order.

MOTION

Complainant and Respondents jointly move this Court for the entry of a final order in this matter consistent with the agreements set forth herein.

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. Respondents are subject to the provisions of the Act and jurisdiction of the Occupational Safety and Health Review Commission of North Carolina.

3. None of the parties 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 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 the parties' joint Motion is hereby **GRANTED**;
2. The citation and penalty issued to Respondent PCI in Inspection # 318120664 (2018-6012) is withdrawn;
3. The citation and penalty issued to Respondent CE in Inspection # 318120771 (2018-6017) is amended consistent with the stipulations agreed to herein; and
4. This order is not subject to the terms of the Protective Order in OSHANC files 2018-6012 and 2018-6017, and may be disseminated publicly. However, as to the remaining contents in OSHANC files 2018-6012 and 2018-6017, said Protective Order remains in effect in accordance with its terms.

This the 14th day of July 2021.

R. Joyce Garrett
R. Joyce Garrett (Jul 14, 2021 11:16 EDT)

R. Joyce Garrett
Administrative Law Judge

CONSENTED TO:

COMPLAINANT

**Victoria
Voight**

Digitally signed by Victoria Voight
DN: C=US, OU=Labor Section, O=NCDOJ,
CN=Victoria Voight, E=vvoight@ncdoj.gov
Reason: I am the author of this document
Location: your signing location here
Date: 2021-07-07 17:24:46
Foxit PhantomPDF Version: 9.7.5

**Victoria Voight, Special Deputy Attorney General
Attorney for Complainant**

Sage Boyd

Digitally signed by Sage
Boyd
Date: 2021.07.07
16:55:49 -04'00'

**Sage Boyd, Assistant Attorney General
Attorney for Complainant**

RESPONDENT

**Sonya
Calloway-Durham**

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**Sonya Calloway-Durham, Special Deputy Attorney General
Attorney for Respondent**

**Norlan
Graves**

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**Norlan Graves, Special Deputy Attorney General
Attorney for Respondent**

CERTIFICATE OF SERVICE

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

SONYA CALLOWAY-DURHAM
NC DEPARTMENT OF JUSTICE
PUBLIC SAFETY SECTION
PO BOX 629
RALEIGH NC 27602-0629

NORLAN GRAVES
NC DEPARTMENT OF JUSTICE
PUBLIC SAFETY SECTION
PO BOX 629
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VICTORIA VOIGHT
NC DEPARTMENT OF JUSTICE
LABOR SECTION
PO BOX 629
RALEIGH, NC 27602-0629

SAGE BOYD
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, first class, 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 15 DAY OF July 2021.



Karissa B. Sluss
Docket and Office Administrator
NC Occupational Safety & Health Review Commission
1101 Mail Service Center
Raleigh, NC 27699-1101
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