

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

FILED

MAY 12 2020

COMMISSIONER OF LABOR OF )  
THE STATE OF NORTH CAROLINA, )  
 )  
COMPLAINANT, )  
 )  
v. )  
 )  
NCDOT SAFETY & RISK MANAGE- )  
MENT MAINTENANCE – YADKIN )  
COUNTY )  
*and its successors,* )  
RESPONDENT. )

ORDER, N.C. Occupational Safety & Health Review Commission

OSHANC NO: 2018-6052  
INSPECTION NO.: 318136223  
CSHO ID: U6329

THIS CAUSE came on for a virtual Prehearing Conference and was heard before the undersigned Reagan H. Weaver, Administrative Law Judge for the North Carolina Occupational Safety and Health Review Commission, on April 21, 2020 at 9:30 am pursuant to the stipulation of the parties instead of a hearing that would have otherwise been postponed because of the pandemic. Melissa Taylor, Special Deputy Attorney General, North Carolina Department of Justice, appeared on behalf of the Complainant with her client representative, Benjamin Harris. Colin Justice, Assistant Attorney General, North Carolina Department of Justice, appeared on behalf of the Respondent with his client representative, Jarvis Gray. All appearances were virtual by the agreement of the parties and their counsel.

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

**STIPULATIONS**

1. Respondent is a division of North Carolina Department of Transportation, an agency of the State of North Carolina, duly organized and existing under the laws of North Carolina
2. During the period between April 27, 2018 and August 21, 2018, Compliance Safety and Health Officer, Danielle Knowland, employed by the North Carolina Department of Labor, inspected Respondent’s worksite located at 1636 Shacktown Road, Yadkinville, North Carolina hereinafter referred to as “the site.”
3. As a result of the inspection, on December 6, 2016, Complainant issued the following Citations:

**CITATION NUMBER ONE (Serious)\***

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1	29 CFR 1910.22(d)(1)	Corrected during insp.	\$1,125.00
2a	29 CFR 1910.184(e)(3)(i)	8/29/2018	-0-
2b	29 CFR 1910.184(c)(14)	8/29/2018	-0-
3a	29 CFR 1910.305(g)(1)(iii)	Corrected during insp.	-0-
3b	29 CFR 1910.305(g)(2)(iii)	Corrected during insp.	-0-
4	29 CFR 1910.1200(f)(6)	Corrected during insp.	-0-

\*Items 2a – 4 were labeled NonSerious.

4. The Respondent submitted a timely Notice of Contest, dated September 11, 2018.
5. Complainant and Respondent have no objection, either procedural or otherwise, to this hearing and both parties consented to the conduct of this hearing by the undersigned.
6. Complainant and Respondent waived the presence of a court reporter and the making of a transcript of the hearing.
7. The parties agree to bear their own attorneys' 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 below, there are no outstanding issues 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 Respondent of any of the allegations contained in the Original Citation as amended or as a 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; e) the agreements, statements, stipulations and actions herein

by Complainant and 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

- I. Complainant moved to make the following amendments to the Original Citation ("Complainant's Motion"):
  - a) Reduce the penalty for Item 1 to \$700.00
  - b) Item 2a contained two sub parts, 'a' and 'b.' The 'a' part is **retained** and concerned inspections of alloy steel chain slings used for lifting tailgates. The 'b' part is **deleted** and concerned inspections of alloy steel chain slings for suspending/storing two brine containers.
  - c) Item 2b contained two sub parts, 'a' and b.' The 'a' part is **retained** and concerned slings without affixed and legible identification markings for lifting tailgates. The 'b' part is **deleted** and concerned affixed and legible identification markings for suspending/storing two brine containers.
  - d) Item 3a is **deleted**.
  - e) Item 3b is **deleted**.
  - f) Item 4 is **retained**.

Respondent did not object to Complainant's motion and confirmed the following:

- a) The violations alleged in the Original Citation as amended have been abated;
- b) Respondent agrees to continue with its present safety program, including conducting regular, periodic meetings with employees to discuss safety issues;
- c) During all safety meetings with employees, employees will be encouraged to communicate safety suggestions or complaints to their supervisor who will forward such information to Respondent's safety spokesperson;

- d) Respondent's safety spokesperson will make recommendations regarding safety to supervisors who will present such information to employees at the regular safety meetings;
- e) Respondent agrees that all employees who make suggestions or complaints shall have the same protection provided employees under Article 21, Chapter 95 of the North Carolina General Statutes;

II. Respondent requested that upon the granting of Complainant's Motion that the undersigned consider the following Motion:

Withdraw its 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 Prehearing Conference 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 North Carolina Safety and Health Review Commission.
3. 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 revisions of the Act.
4. Neither party has any objection, procedural or otherwise, to this Hearing.
5. The Stipulations are incorporated by reference as Findings of Fact to the extent necessary to give effect to the provisions of this Order.

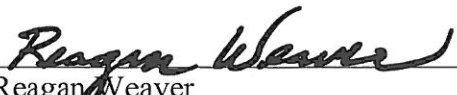
### **CONCLUSIONS OF LAW**

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 11th day of May, 2020.

  
\_\_\_\_\_  
Reagan Weaver  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

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

COLIN JUSTICE  
NC DEPARTMENT OF JUSTICE  
TRANSPORTATION SECTION  
PO BOX 629  
RALEIGH NC 27602

By depositing same in the United States Mail, First Class, postage prepaid at Raleigh, North Carolina, and upon:

MELISSA 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, 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 13 DAY OF May 2020.

  
\_\_\_\_\_

**Karissa B. Sluss**  
Docket and Office Administrator  
NC OSH Review Commission  
1101 Mail Service Center  
Raleigh, NC 27699-1101  
TEL.: (919) 733-3589  
FAX: (919) 733-3020