

FILED

SEP 18 2019

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

COMMISSIONER OF LABOR FOR
THE STATE OF NORTH CAROLINA

Complainant,

v.

D. H. GRIFFIN INFRASTRUCTURE, LLC
and its successors

Respondent.

) DOCKET NO: 2018 - 6067

) INSPECTION NO: 318134319

) CSHO ID: # V2763

) FINAL 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 September 10, 2019, at 10:30 A.M. pursuant to a Notice of Hearing.

Ms. Stacey A. Phipps, Assistant Attorney General, North Carolina Department of Justice, appeared for Complainant. Also present on behalf of Complainant was Attorney Melissa Taylor of the North Carolina Department of Justice, CSHO Kristi Bryson, and Nancy R Hall, District 6 Supervisor.

Mr. Jay M. Wilkerson, attorney with Conner Gwyn Schenck, PLLC, Raleigh, North Carolina, appeared for the Respondent. Mr. Larry Gillen, General Counsel for Respondent was present; also present on behalf of Respondent was Jeff Hendren, Chris Carter, and Jon Stevens. No other affected employees of Respondent, or its representative, attended to have a say in, or participate as a party in, the Hearing.

Based on the record in this matter and the matters presented at the time of the Hearing, the undersigned makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT.

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 (the "Act"). The Review Commission has jurisdiction over the parties and subject matter to this action.
2. Respondent is a North Carolina limited liability company which is duly organized and existing under the laws of the State of North Carolina, which maintains a place of business, and does business, in the State of North Carolina. Respondent 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).
3. The Review Commission has jurisdiction over the subject matter and the parties to this action.

4. On October 4, 2018 Complainant issued to Respondent a Citation and Notification of Penalty (herein referred to as "Citation 01") alleging violations as follows: Citation 01 Item 001, Serious violation of 29 CFR 1926.800(b)(3) with a proposed penalty of \$4,200; and Citation 01 Item 002, Serious violation of 29 CFR 1926.800(j)(3) with a proposed penalty of \$4,200

5. During the Hearing the parties entered into the following Stipulations intending them to be in effect and enforceable:

Stipulation 1: Respondent will provide 'Keep Out' / 'Do Not Enter' or similar warning signs at its trenching and confined space operation sites.

Stipulation 2: When the Pre-Task Plan requires a confined space permit Respondent will include monitoring for oxygen, hydrogen sulfide, carbon monoxide, nitrogen dioxide, and LEL on the confined space entry permit.

Stipulation 3: For each new project, Respondent will review for subcontractors involved in boring and trenching processes the following: OSHA safety record; competent person training; PPE training; respiratory protection training. During the 18 months period following this agreement Respondent shall provide to the OSHA District 6 Supervisor a written report verifying Respondent's review; such report to be provided on a quarterly basis, commencing December 10, 2019.

Stipulation 4: Respondent shall conduct random monthly audits to ensure that the activities reported on its PTP by a subcontractor are in fact being performed by such subcontractor.

Stipulation 5: Respondent will monitor, or cause to be monitored, oxygen, hydrogen sulfide, carbon monoxide, nitrogen dioxide, and LEL pursuant to the requirements of 29 CFR 1926.800(j)(1)(iii)(A).

Stipulation 6: Respondent shall conduct random monthly review, or otherwise have reviewed, the calibration and air monitoring data of subcontractors involved in trenching and boring operations.

Stipulation 7: Respondent shall implement an emergency response plan for underground boring operations, and provide a copy to OSHA upon request.

Stipulation 8: Respondent shall have a safety consultant to review its safety program for trenching and boring operations; such review to be initiated within 6 months of the date of this agreement.

The agreement stated in these Stipulations shall be effective until March 30, 2021. Respondent agrees that in the event it does not comply with the terms of the Stipulations, after written notice for non-compliance from OSHA and a reasonable period for cure (such written notice given by OSHA to the Manager of Respondent, currently Christopher M. Carter), then Respondent shall allow OSHA to conduct an inspection of any of its then active trenching and boring worksites (a list of such active worksites to be provided by Respondent to OSHA).

5. Based upon agreement by the parties to the Stipulations stated above the parties stated that they had certain Motions which they wished to make in open Court.

6. Other than a ruling with respect to the Motions there are no other matters that remain to be decided, and no outstanding issues remain to be resolved, by further evidentiary hearing of this matter.

Complainant moved to modify Citation 01 by (a) deleting in its entirety Item 001; and (b) by deleting in its entirety Item 002. Respondent had no objection to Complainant's Motion.

Respondent then moved to withdraw its Notice of Contest to the Citation as amended. Complainant had no objection to Respondent's Motion.

Based on the Findings of Fact set forth above and the record, the Undersigned makes the following

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 10th day of September, 2019.



R. Joyce Garrett, Administrative Law Judge

CERTIFICATE OF SERVICE

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

JAY M. WILKERSON
CONNER GWYN SCHENCK, PLLC
P O BOX 30933
RALEIGH, NC 27622

STACEY A. PHIPPS
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, 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 18 DAY OF September, 2019.

ARLENE K. EDWARDS
CHAIRMAN



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