

warranty. Respondent is an “employer” as defined by N.C.G.S. Section 95-127(10) and it maintains employees as defined by N.C.G.S. Section 95-127(9).

3. During the period of November 13, 2018, and February 15, 2019, an Occupational Safety and Health Compliance Officer with the North Carolina Department of Labor conducted an inspection of Respondent’s worksite located at 1412 Castle Court in Gastonia, North Carolina (the “Inspection”).

4. As a result of the Inspection, on March 18, 2019, Complainant issued the following Citation and Notification of Penalty (herein collectively referred to as the “Original Citation”):

CITATION NUMBER ONE (Willful Serious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1	29 CFR 1910.217(c)(1)(i)	Immediately	\$42000.00

CITATION NUMBER TWO (Repeat Serious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1	29 CFR 1910.147(c)(4)(i)	Immediately	\$8400.00

CITATION NUMBER THREE (Serious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1	29 CFR 1910.147(c)(6)(i)	Immediately	\$4200.00
2	29 CFR 1910.147(c)(7)(i)(A)	Immediately	\$4200.00
3	29 CFR 1910.217(e)(1)	Immediately	\$4200.00
4	29 CFR 1910.219(b)(1)(i)	Immediately	\$4200.00

CITATION NUMBER FOUR (Nonserious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1	29 CFR 1910.217(g)(1)	Immediately	\$1500.00
2	29 CFR 1910.242(b)	Immediately	\$900.00
3	29 CFR 1910.305(g)(2)(ii)	Corrected	\$900.00

5. Respondent submitted a timely Notice of Contest.

6. The 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. Complainant and Respondent agreed that the Hearing in this matter shall be conducted via the video conferencing platform known as “Lifesize”, the presence of a court reporter during the Hearing is waived, the Hearing’s audio and video will be recorded through Lifesize (the

“Recording”), the Recording will be the official record of the Hearing, and the Hearing will be deemed to have taken place in Raleigh, North Carolina. 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 Final Order.

8. Respondent posted the Original Citation and the Notice of Hearing 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. No abatement documentation is required.

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 Final Order.

11. 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 claim 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 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 by Respondent are solely for the purpose of resolving this matter economically and amicably without further 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.

12. Respondent agrees to:

- Continue, maintain, and periodically update any current safety and health program. As part of that safety and health program, the employer agrees to conduct a job hazard analysis for all production related positions;
- Establish a machine guarding audit process. The employer will ensure that any new machinery/equipment is audited for proper guarding prior to putting the machinery/equipment into operation and will periodically audit all machines/equipment to ensure guarding is in place and operational;

- Conduct safety training, as necessary, to include the safety representative attending an OSHA 10 Hour General Industry Class within 3 months of signing this agreement to ensure the person is adequately and effectively trained in the recognition and control or avoidance of hazards associated with the work environment; and
 - Ensure that safety and health rules are enforced (by the employer) through scheduled and unscheduled, documented worksite inspections and established, documented disciplinary procedures. The frequency of such inspections shall be no less than monthly. In addition, the employer will maintain records of all worksite inspections and disciplinary actions associated with safety and health issues.
 - No abatement documentation is required.
13. Respondent will pay the penalty of \$ 55,000.00 assessed in this matter in the following manner:
- within 10 days of the date of this Final Order, Respondent shall pay \$5,000.00.
 - Each month following the initial payment for a period of 25 months or until the remaining balance is paid, whichever period is shorter, Respondent shall pay \$2,000.00.
 - There shall be no penalty for pre-payment of the penalty.
 - If Respondent fails to pay two payments consecutively, NCDOL shall have the right to accelerate the payment schedule and demand full payment of the penalty.
 - Respondent shall make payment by check payable to North Carolina Department of Labor, OSHA Division (identifying Inspection No.318149739) and mailed to Budget-Collections, North Carolina Department of Labor, 1101 Mail Service Center, Raleigh, North Carolina 27699-1101.

MOTIONS

Complainant moved to do the following (“Complainant’s Motion”):

- **Reclassify Citation 1, Item 1 to Serious and maintain penalty of \$42,000.00;**
- **Reclassify Citation 2, Item 1 to Serious and maintain penalty of \$8,400.00;**
- **Delete Citation 3, Items 1 and 3 and associated penalties;**
- **Delete Citation 4, Items 1 and 3 and associated penalties;**
- **Adjust the penalty of Citation 3 Item 2 and Citation 3 Item 4 to each be \$2,000.00;**
- **Adjust the penalty of Citation 4, Item 2 to \$600.00;**
- **Have a new total owed penalty of \$55,000.00.**

Except as set forth in this motion, the Original Citation shall remain unmodified or amended. No abatement documentation for the Citation Items is required.

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”):

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 \$55,000.00 in the manner set forth in the Stipulations.

Jan 27, 2022

This the _____ day of January, 2022.

Richard Koch

Richard Koch (Jan 27, 2022 14:34 EST)

Richard M. Koch
Administrative Hearing Examiner

CERTIFICATE OF SERVICE

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

TRAVIS W VANCE
FISHER & PHILLIPS
PO BOX 36775
CHARLOTTE NC 28236

By depositing same in the United States Mail, Certified Mail, Return Receipt Requested, postage prepaid at Raleigh, North Carolina, and upon:

RORY AGAN
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

via email to carla.rose@labor.nc.gov.

THIS THE 28 DAY OF January 2022.



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
NCOSHRC@labor.nc.gov