

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

JAN 15 2021

NC Occupational & Safety
Review Commission

COMMISSIONER OF LABOR OF)
THE STATE OF NORTH CAROLINA,)

COMPLAINANT,)

v.)

SMITH-ROWE, LLC)
and its successors,)

RESPONDENT.)

CONSENT ORDER

OSHANC NO: 2019-6134
INSPECTION NO.: 318159423
CSHO ID: S007

THIS CAUSE came on for a virtual Pre-Hearing Conference before the undersigned Reagan H. Weaver, Administrative Law Judge for the North Carolina Occupational Safety and Health Review Commission, on October 20, 2020 at 10:00 am. The parties announced that they had settled the case pursuant to the terms recorded below. Melissa Taylor, Special Deputy Attorney General, North Carolina Department of Justice, appeared by teleconference on behalf of the Complainant and Rodney Griffin, Safety Director for Respondent, appeared on behalf of 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 is a limited liability corporation duly organized and existing under the laws of the State of North Carolina. Respondent maintains a place of business in Mount Airy, North Carolina.
2. During the period, March 12, 2019 – April 3, 2019, Ben Harris, an Occupational Safety and Health Officer with the North Carolina Department of Labor, conducted an inspection of Respondent's worksite located at 147 Cherry Street, Winston-Salem, North Carolina 27101.
3. As a result of the inspection, on April 24, 2019, Complainant issued the following Citation:

CITATION NUMBER ONE (Repeat Serious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1	29 CFR 1926.652(a)(1)	Corrected prior to inspection	\$10,000.00

4. The Respondent submitted a timely Notice of Contest, dated June 11, 2019.
5. 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 the entry of this order.
6. Complainant and Respondent waive 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, there are no other matters that remain to be decided, and that other than a ruling with respect to the motions, there are no outstanding issues to be resolved by an evidentiary hearing of this matter. The parties agree that this Consent Order is a full and final resolution of the claims set out in the underlying Original Citation, as amended pursuant to Complainant's Motion. The parties further agree that (i) 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, and (ii) 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 Consent Order shall have the full force and effect of a final order. 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.
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) Reclassify Citation One, Item 1 as “Serious” and reduce the penalty to \$5,000.00.

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

- a) Respondent will retrain its employees regarding evacuation safety emphasizing proper use of trench boxes and entrapment hazards on two occasions:
 - i. With all of Respondent’s utility crews within ninety (90) days of the signing of this Consent Order; and
 - ii. At the Company Safety Meeting to be conducted in February or March, 2021;
- b) Respondent will conduct periodic unannounced audits over a ninety (90) day period beginning with the signing of this Consent Order and will document these periodic inspections in writing and make them available to NC OSH upon reasonable request.
- c) 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 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 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.
6. The parties agree that the validity of this Order shall not be affected by the fact that the consenting signatures of the parties may be executed in multiple counterparts or that they are electronically applied and communicated to the Court.


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:

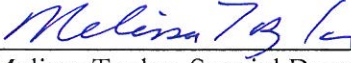
1. That Complainant's Motion is hereby **GRANTED**; and
2. That Respondent's Motion is hereby **GRANTED**.
3. Respondent shall pay the total sum of \$5,000.00 assessed in this matter within thirty (30) days of the date of this Consent Order [payment to be made by check payable to North Carolina Department of Labor, OSHA Division (identifying Inspection No. 318159423)] and mailed to Budget-Collections, North Carolina Department of Labor, 1101 Mail Service Center, Raleigh, North Carolina 27699-1101.

This the 27th day of October, 2020.


Reagan H. Weaver
Administrative Law Judge

Consented to:

For Complainant:



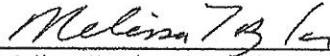
Melissa Taylor, Special Deputy Attorney General
North Carolina Department of Justice

For Respondent:

Rodney Griffin, Safety Director
Smith-Rowe, LLC

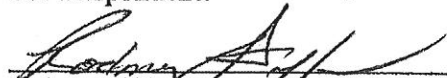
Consented to:

For Complainant:



Melissa Taylor, Special Deputy Attorney General
North Carolina Department of Justice

For Respondent:



Rodney Griffin, Safety Director
Smith-Rowe, LLC

CERTIFICATE OF SERVICE

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

MELISSA TAYLOR
NC DEPARTMENT OF JUSTICE
LABOR SECTION
P O BOX 629
RALEIGH, NC 27602-0629

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

RODNEY GRIFFIN
SMITH-ROWE LLC
639 OLD US 52 S
MOUNT AIRY NC 27030

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 19 DAY OF January ²⁰²¹~~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