

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

COMMISSIONER OF LABOR OF THE
STATE OF NORTH CAROLINA,

COMPLAINANT,

v.

PSNC ENERGY DBA DOMINION
ENERGY NORTH CAROLINA,
and its successors,

RESPONDENT.

) DOCKET NO.: OSHANC 2019-6211
) INSPECTION NUMBER: 318163409
) CSHO ID: F1857
)
)
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) STIPULATION AND
) NOTICE OF SETTLEMENT
)
)
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FILED

NOV 4 2022

NOW COME the parties in the above-captioned action, pursuant to Rule .0701 of the Rules of Procedure adopted by the North Carolina Occupational Safety and Health Review Commission, and respectfully show unto the Hearing Examiner as follows:

INCIDENT SUMMARY AND BACKGROUND

On April 10, 2019, a construction crew punctured a natural gas line in the vicinity of 115 N. Duke Street, Durham, North Carolina, while using a horizontal directional drilling machine. This address was home to several businesses, including a coffee shop. According to the Durham Fire Department's incident report, the line was compromised at approximately 9:06 a.m.

The first 811 (utility damage prevention line) call regarding the line breach was made at 9:28 a.m.; the same caller reached out to 911 at 9:38 a.m. according to Durham emergency dispatch. Per protocol, 811 alerted Respondent Public Service Company of North Carolina, Inc. d/b/a Dominion Energy North Carolina ("Respondent" or "Dominion") and others about the gas leak.

An employee of Respondent arrived on scene and parked his truck near the front of the coffee shop at approximately 10:03 a.m. The employee was charged with assessing the situation and notifying proper authorities within and external to his company.

Approximately three minutes after exiting his vehicle, at approximately 10:06 a.m., an explosion occurred. The employee tragically suffered injuries as a result of the explosion which lead to his death on April 25, 2019.

FACTS

1. Complainant is an agency of the State of North Carolina charged with the administration and enforcement of the provisions of the Occupational Safety and Health Act of North Carolina, including making inspections and issuing citations and other pleadings, pursuant to N.C.G.S. Article 16, Chapter 95.
2. Respondent is a Corporation duly-organized and operating under the laws of the State of South Carolina, and is authorized to do business in North Carolina.
3. Respondent provides natural gas to commercial and residential customers and maintains gas lines in North Carolina.
4. Respondent is subject to the Act (N.C.G.S. §§ 95-128 and -129).
5. Respondent is an "employer" within the meaning of N.C.G.S. §95-127(11); all of Respondent's employees referred to herein are "employees" within the meaning of N.C.G.S. §95-127(11).
6. Beginning on April 10, 2019, CSHOs from the North Carolina Department of Labor conducted an inspection and investigation of the incident.
7. As a result of the inspection, one **Serious/General Duty Clause** citation was issued on October 8, 2019, carrying the following proposed abatement dates and penalties:

CITATION NUMBER ONE (Serious)

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

8. For the alleged violation, the Complainant calculated the proposed penalty and proposed abatement date according to the procedures set forth in the Complainant's North Carolina

Operations Manual. Pursuant to Chapter VI, section B of the North Carolina Operations Manual, Complainant applied the following Adjustment Factors to the Gravity Based Penalty of \$5,000.00 to calculate the Proposed Adjusted Penalty, as appropriate: 0% credit for size, 0% credit for good faith, and 0% credit for history, yielding a \$5,000.00 penalty.

9. Respondent submitted a Notice of Contest, dated November 15, 2019.
10. On or about January 13, 2020, Complainant received "Employer's/Respondent's Statement of Position," which requested that formal pleadings be served.
11. A complaint and answer were timely filed.
12. The parties having reached a Settlement Agreement now seek approval of said Agreement by the Hearing Examiner.

STIPULATIONS

Effective upon approval of this Stipulation and Notice of Settlement, the parties to this action hereby agree and stipulate to the following settlement of the matters at issue herein:

1. Respondent agrees to continue to use its best efforts to comply with the requirements of the Occupational Safety and Health Act of North Carolina (hereinafter referred to as the "Act").
2. Complainant agrees to make the following amendment to the Citation and Notification of Penalty:

(a) Delete Citation 1, Item 001 and the penalty associated therewith.

3. In consideration of this Agreement, the Employer agrees to:

(a) Continue to follow Dominion's Gas-Filled Structures Emergency Response Standard Operation Procedure ("SOP") published on April 23, 2021. This SOP establishes Evacuation Exclusion Zones with specific guidelines for what activities must occur (and not occur) in each zone and provides specific steps for Dominion's first responders to take when responding to a gas leak involving a potential gas-filled structure;

- (b) Continue to follow Dominion’s Personal Protective Equipment (PPE) Policy published July 2, 2021, which requires that Flame-Resistant Clothing be worn “when performing any task in an atmosphere where intentional or unintentional gas releases may exist,” including any gas leak investigation regardless of whether the investigation is occurring indoors or outdoors. In addition to Flame-Resistant Clothing, additional PPE must be worn when responding to situations involving gas-filled structures under the Gas-Filled Structures Emergency Response SOP;
- (c) Continue to follow Dominion’s SOP for Leak and Odor Complaints, published on January 29, 2021, when responding to indoor leak and odor complaints where gas concentration readings are below the threshold to be covered by the Gas-Filled Structures Emergency Response SOP. This SOP requires employees conducting leak investigations to follow the Gas-Filled Structures Emergency Response SOP if it is determined during the leak investigation that the gas concentration readings have increased and require the leak to be classified under that SOP;
- (d) Continue to train all employees who may respond to incidents involving gas-filled structures on the above SOPs and train all new hires on such procedures;
- (e) Nothing in this Stipulation and Notice of Settlement shall prevent Dominion from modifying any of the SOPs described in this paragraph but to the extent that Dominion modifies any of the above SOPs in the future, it will continue to ensure that its policies provide protections to employees by implementing industry best practices such as the guidelines contained in the Gas Filled Occupancies – Emergency Response whitepaper published by the American Gas Association; and
- (f) Waive its rights under the Occupational Safety and Health Act of North Carolina, N.C.G.S. § 95-126 to -155, to contest any citation item(s), penalty(ies), or abatement

date(s) listed on the NCOSHA-2 before the Safety and Health Review Board of North Carolina and/or any other tribunal.

4. 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 Stipulation and Notice of Settlement.

5. The parties agree that this Stipulation and Notice of Settlement is a full and final settlement of the claims set out in the underlying Citation and Notification of Penalty, and none of the foregoing agreements, statements, stipulations and actions taken by the Respondent shall be deemed an admission by the Respondent of any of the allegations contained in the Citation and Notification of Penalty or waiver of defenses; provided, however, that in any subsequent proceeding with respect to matters covered by this Stipulation and Notice of Settlement brought directly under the Act by Complainant, this Agreement shall have the full force and effect of a final order. The agreements, statements, stipulations and actions herein are made solely for the purpose of settling 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 Occupational Safety and Health Act and Article 21, Chapter 95 of the North Carolina General Statutes.

6. The parties agree that there are no other matters that remain to be decided, and there has been no employee objection to the reasonableness of any abatement period.

WHEREFORE, the parties to this action hereby respectfully request approval of this Stipulation and Notice of Settlement.

This the 19th day of October, 2022.

APPROVED BY:

**Nicole H.
Brown**

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Nicole H. Brown
Date: 2022.10.20
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Nicole Brown
District Supervisor
Occupational Safety and Health Division

JOSHUA H. STEIN
Attorney General

**Stacey A
Phipps**

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my legally binding signature
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ATTORNEYS FOR COMPLAINANT

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FOR RESPONDENT

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

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

COMPLAINANT,

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**PSNC ENERGY DBA DOMINION
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RESPONDENT.

) **DOCKET NO.: OSHANC 2019-6211**
) **INSPECTION NUMBER: 318163409**
) **CSHO ID: F1857**

) **CONSENT ORDER**

) **FILED**

) **NOV 4 2022**

) **NC OSH Review Commission**

This cause comes on before the undersigned Hearing Examiner (the Court) and being heard upon consent of the parties hereto, upon consideration of the Stipulation and Notice of Settlement submitted by the parties (the Agreement), the Court makes the following:

FINDINGS OF FACT

1. That the Agreement is reasonable and supported by the underlying facts.
2. That no outstanding issues remain to be resolved by a hearing of this matter.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties to this action and over the subject matter.
2. That the Agreement is consistent with the purpose and objectives of the Occupational Safety and Health Act of North Carolina (The Act), and complies with Rule .0701 of the Rules of Procedure of the North Carolina Occupational Safety and Health Review Commission.

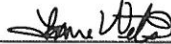
NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

1. That the Agreement is approved;

2. That both parties are hereby required to comply with the terms and conditions stipulated in the agreement.

This the ____ day of October, 2022.

Nov 3, 2022



Laura Wetsch (Nov 3, 2022 10:04 EDT)

LAURA WETSCH
Hearing Examiner

BY CONSENT:

JOSHUA H. STEIN
Attorney General

**Stacey A
Phipps**

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FOR RESPONDENT

CERTIFICATE OF SERVICE

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

MICHAEL D. MCKNIGHT
OGLETREE DEAKINS
FORUM IV
8529 SIX FORKS RD.
SUITE 600
RALEIGH, NC 27615

STACEY A. PHIPPS
NC DEPARTMENT OF JUSTICE
LABOR SECTION
PO BOX 629
RALEIGH NC 27602

By depositing a copy of 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 email to carla.rose@labor.nc.gov.

THIS THE 4 DAY OF November, 2022.



Karissa B. Sluss
Docket and Office Administrator
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