

FILED

MAY 24 2023

NC OSH Review Commission

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

COMMISSIONER OF LABOR OF THE  
STATE OF NORTH CAROLINA

COMPLAINANT,

v.

JOHNSON CONCRETE COMPANY  
*and its successors*

RESPONDENT.

) DOCKET NO.: OSHANC 2020-6267  
) INSPECTION NUMBER: 318188950  
) CSHO ID: N4078

CONSENT ORDER

The parties having appeared before the undersigned for a duly-noticed hearing, and having informed the undersigned hearing officer that they have reached a resolution of the citations issued in this matter, and the undersigned having reviewed the citations, the documents filed by the parties, and the representations of counsel, now pursuant to Rule .0507 of the Rules of Procedure adopted by the North Carolina Occupational Safety and Health Review Commissions, the undersigned makes the following:

FINDINGS OF FACT:

1. Respondent is a North Carolina corporation, duly organized and existing under the laws of the State of North Carolina, which is authorized to conduct and does business in the State of North Carolina and maintains a place of business in Salisbury, North Carolina.
2. On or about February 6, 2020, Compliance Safety and Health Officer (CSHO) Mike Hayward, employed by the North Carolina Department of Labor, inspected Respondent's worksite located at 106 Old Davidson Place NW in Concord, North Carolina, hereinafter referred to as "the site." CSHO Hayward properly entered onto Respondent's site and properly conducted the inspection pursuant to an accident report.

3. As a result of the inspection, on March 26, 2020, Complainant issued two citations with three total items, carrying the following proposed abatement dates and penalties:

**CITATION NUMBER ONE (Repeat-Serious)**

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1	29 CFR 1910.212(a)(1)	Immediate	\$11,200.00

**CITATION NUMBER TWO (Serious)**

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1	29 CFR 1910.22(c)	Immediate	\$2100.00
2	29 CFR 1910.219(f)(3)	Immediate	\$5600.00

4. The Respondent submitted a timely Notice of Contest dated April 02, 2020.

5. The parties have mutually agreed to resolve the Citation(s) upon the following terms, and seek the undersigned's approval of the same:

a. Respondent agrees to the following:

- i. Respondent shall 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"). Respondent shall continue to utilize its safety and health program.
- ii. Respondent states, without waiving any defenses to the citations as issued, that it has abated all cited issues. Respondent agrees further that it shall provide photographic or video proof of the abatements within 90 days of the signing of this Order.
- iii. Respondent shall conduct a facility-wide machine guarding audit to be performed within 90 days of the Order, and to address any issues

identified whether by guarding, lockout/tagout, or otherwise. The audit shall be provided to NCDOL during any subsequent inspection in the future at the worksite where it is requested.

iv. Respondent shall select a management official to attend safety and health training such as an OSHA-10 course or its equivalent within 120 days of the signing of this Order.

b. Complainant agrees to make the following amendments to the Citation items:

i. Reclassify Citation 1, Item 1 to Serious with a settlement amount of \$7,900.00.

ii. Reclassify Citation 2, Item 1 to Non-Serious and with a settlement amount of \$2,100.00.

iii. Delete Citation 2, Item 2 and its associated penalty,

c. Each party agrees to bear its own attorney's fees, costs and other expenses that have been incurred in connection with these proceedings.

d. The parties agree that this Consent Order is a full and final settlement of these 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. Respondent's agreement to accept any Citation in this Agreement under a particular standard shall not be deemed as an admission by Respondent that the cited standard applies to its operations for purposes of any other matter

- e. There are no other outstanding matters to be addressed in this proceeding.
  - f. Neither party has received any notification from any employee indicating an intent to participate in or attend the hearing in this matter.
6. The foregoing terms are reasonable and supported by the underlying facts.
  7. Upon approval of this Consent Order by the Hearing Examiner, the Respondent agrees to pay the settlement amount of \$10,000.00 within thirty (30) days following the receipt of the Consent Order.
  8. No outstanding issues remain to be resolved by a hearing of this matter.

Based on the foregoing, the undersigned makes the following

**CONCLUSIONS OF LAW**

1. This Court has jurisdiction over the parties and over the subject matter.
2. The parties' proposed resolution of this matter is consistent with the purpose and objectives of the Act.

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

1. The parties' agreement, as set out above, is approved.
2. The parties shall comply with the terms and conditions set out above.

This May 24, 2023

Richard M. Koch  
Richard M. Koch (May 24, 2023 14:52 EDT)

Richard Koch  
Hearing Examiner

CONSENTED TO:

JOSHUA H. STEIN, Attorney General

Rory Agan  
Rory Agan (May 24, 2023 14:49 EDT)

Rory Agan  
Special Deputy Attorney General  
North Carolina Department of Justice  
P.O. Box 629/Labor Section  
Raleigh, NC 27602-0629  
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*Counsel for Complainant*

Greg Ahlum  
Greg Ahlum (May 24, 2023 14:47 EDT)

Greg Ahlum  
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Tel. 704-998-2319  
Email: [gahlum@jahlaw.com](mailto:gahlum@jahlaw.com)  
*Counsel for Respondent*

CERTIFICATE OF SERVICE

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

GREG AHLUM  
JOHNSTON ALLISON HORD  
1065 E MOREHEAD ST  
CHARLOTTE NC 28204

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

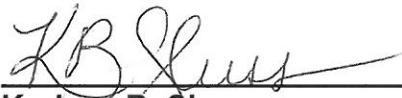
RORY AGAN  
NC DEPARTMENT OF JUSTICE  
LABOR SECTION  
PO BOX 629  
RALEIGH, NC 27602-0629

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  
carla.rose@labor.nc.gov

via email.

THIS THE 26 DAY OF May 2023.



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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  
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