

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

COMMISSIONER OF LABOR OF THE)	DOCKET NO.: OSHANC 2020-6276
STATE OF NORTH CAROLINA,)	INSPECTION NUMBER: 318181922
)	CSHO ID: F5158
COMPLAINANT,)	
)	
v.)	
)	<u>STIPULATION AND</u>
)	<u>NOTICE OF SETTLEMENT</u>
WASTE PRO OF NORTH CAROLINA,)	
INC.,)	
)	
RESPONDENT.)	

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:

FACTS

1. Respondent is a domestic corporation, duly organized and existing under the laws of North Carolina. It is active and current and maintains a place of business in North Carolina.
2. Respondent collects and transports household and business waste and recyclables.
3. Respondent is an "employer" within the meaning of N.C.G.S. §95-127(11).; the individuals referred to in this Stipulation and Notice of Settlement identified as having job titles with Respondent are "employees" within the meaning of N.C.G.S. §95-127(10).
4. On October 31, 2019, at approximately 8:12 a.m., Respondent reported a fatal injury that resulted from an accident occurring on October 30, 2019, at approximately 3:07 p.m. where a helper was injured while riding on the rear step of one of Respondent's collection trucks.
5. The injured helper died in the local hospital approximately 4 ½ hours after being injured, at approximately 7:30 p.m. on October 30, 2019.

6. On October 31, 2019, George Calvery, Compliance Safety and Health Officer (CSHO), employed by the North Carolina Department of Labor, initiated an accident/fatality inspection at Respondent's business located at 138 Tavistock Road, Arden, North Carolina.

7. The fatality occurred at 468 Bee Tree Road in Swannanoa, North Carolina. This location is hereinafter referred to as "the site."

8. Division Manager Johnny Lea accompanied CSHO Calvery during his inspection of the collection truck and Respondent's place of business and, on November 1, 2019, Mr. Lea, Division Vice President Chip Gingles, and Director of Safety Romeo Vellutini accompanied CSHO Calvery to the site.

9. From the period October 31, 2019, through and including February 21, 2020, CSHO Calvery conducted his inspection and investigation of the fatality.

10. On February 21, 2020, Mr. Gingles reviewed and signed the OSHA 59 form.

11. As a result of the inspection, one **Willful Serious** citation with one item and one **NonSerious** citation with one item were issued on February 21, 2020, carrying the following proposed abatement dates and penalties:

CITATION NUMBER ONE (Willful Serious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001	95-129(1) (GDC)	immediately upon receipt	\$ 70,000.00

CITATION NUMBER TWO (NonSerious)

001	29 CFR 1904.39(a)(1)	corrected during inspection	\$ 5,000.00
TOTAL			\$ 75,000.00

12. For each 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 \$7,000.00 to calculate the Proposed Adjusted Penalty, as appropriate: 0% credit for size, 0% credit for good faith, and 0% credit for history. A penalty multiplier of 10 was applied, yielding a \$70,000.00 penalty for Citation One. No multiplier was applied for Citation Two, yielding a gravity-based penalty of \$5,000.00, with no adjustment factors.

13. Respondent submitted a Notice of Contest, dated April 9, 2020.
14. Thereafter, Complainant received "Employer's/Respondent's Statement of Position," dated May 22, 2020, which requested that formal pleadings be served.
15. A complaint and answer were timely filed.
16. 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 that the violations alleged in the Citation and Notification of Penalty, as amended, have been abated, and 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) Reclassify Citation 1, Item 1 from Willful Serious to Serious but retain the penalty as calculated at \$70,000.00.
 - (b) No changes shall be made to Citation Two, Item 1..
3. In consideration of this Agreement, the Employer agrees to:

(a) Continue to prioritize the transition to residential collection trucks that do not require a helper to ride on the back that was initiated with the start of Respondent's new contract with Buncombe County on January 1, 2020. Respondent has invested more than \$7.5 million to purchase new carts and collection trucks since this transition began. By December 31, 2022, at least 36% of Respondent's fleet in Buncombe County will consist of trucks that do not require a helper to ride on the back. These new collection trucks have been targeted to those routes where traffic, road conditions, and distance between stops are most challenging.

(b) Maintain an employee/position whose job duties include monitoring the 3rd eye camera system on its trucks.

(c) Maintain an employee/position whose job duties include conducting and documenting spot checks and field audits of driver and rider safety.

(d) Implement a plan to utilize 3rd eye and spot check data to discipline non-compliant employees.

(e) Post rider rules in breakrooms and post stickers in/on trucks.

(f) Train/retrain all drivers & riders on rider safety policy and document the same by June 30, 2023.

(g) 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. Upon approval of this Settlement by the Hearing Examiner, the Respondent agrees to pay the penalty of \$ 75,000.00 within ten (10) days of receipt of the Consent Order, by check, payable to North Carolina Department of Labor, OSHA Division (Identifying Inspection No. 318181922) and mailed to: Budget-Collections, North Carolina Department of Labor, 1101 Mail Service Center, Raleigh, North Carolina, 27699-1101. Credit card payment may also be arranged.

6. 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.

7. 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 9th day of August, 2022.

APPROVED BY:

**Kay
Knezevich**

Digitally signed by Kay
Knezevich
Date: 2022.08.09
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Kay Knezevich
District Supervisor
Occupational Safety and Health Division

JOSHUA H. STEIN

Attorney General

**Stacey A
Phipps**

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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,)	DOCKET NO.: OSHANC 2020-6276
)	INSPECTION NUMBER: 318181922
COMPLAINANT,)	CSHO ID: F5158
)	
v.)	
)	<u>CONSENT ORDER</u>
WASTE PRO OF NORTH CAROLINA, INC.,)	
)	
RESPONDENT.)	

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.

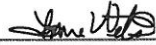
NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

1. That the Agreement is approved;
2. That both parties are hereby required to comply with the terms and conditions

stipulated in the agreement.

Aug 9, 2022

This the _____ day of August, 2022.


Laura Wetsch (Aug 9, 2022 13:12 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 ORDER upon:

MICHAEL D MCKNIGHT
OGLETREE DEAKINS
8529 SIX FORKS RD STE 600
RALEIGH NC 27615

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

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, 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 10 DAY OF August 2022.



Karissa B. Sluss
Docket and Office Administrator
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