

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

NC OSH Review Commission

COMMISSIONER OF LABOR OF THE STATE OF NORTH CAROLINA,

Complainant,

-vs-

SEAGRAVES GRADING GROUP, INC., and its successors,

Respondent.

) DOCKET NO.: OSHANC 2020-6277
) INSPECTION NUMBER:318183803
) CSHO ID: H8087

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 corporation duly organized and existing under the laws of the State of North Carolina.
2. In November 2019, Respondent maintained an office in Rockwell, North Carolina.
3. On November 21, 2019, Compliance Safety and Health Officer Griselle Negron, an Occupational Safety and Health Officer with the North Carolina Department of Labor, conducted an inspection of Respondent's worksite near 11020 David Taylor Road in Charlotte, North Carolina.

4. As a result of the inspection, on February 28, 2020, Complainant issued the following Citation(s):

CITATION NUMBER ONE			
<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1	1926.501(b)(4)(i)	3/30/2020	\$1500.00
2	1926.651(j)(2)	3/30/2020	\$2800.00
3	1926.652(a)(1)	3/30/2020	\$2800.00

5. The Respondent submitted a timely Notice of Contest dated April 22, 2020.

6. 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 that the violations alleged in the Citation and Notification of Penalty, as amended below, 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").

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

- i. Reclassify Citation 1, Item 1 to non-serious while retaining the \$1500.00 penalty;
- ii. Rewrite the AVD of Citation 1, Item 1 to read "a) construction site, subcontractor's employees were exposed to a hole, a catch basin box without its cover, and exposed to a fall hazard of approximately 8 feet to the bottom of the concrete box."
- iii. Delete Citation 1, Items 2 and 3; and
- iv. Delete the penalty associated with Citation 1, Items 2 and 3.

c. Without admitting any allegations of the Citation and Notice of Penalty, or waiving any defense to the Citation, Respondent agrees to the following:

- i. The Employer will ensure the safety and health program addresses issues resulting from this inspection. This program will include written plans for fall protection, excavation and trenching, electrical,

personal protective equipment, heat stress, Hazard Communication, lifting and rigging loads, power tools and equipment and others as required by 29 CFR 1926.;

- ii. Conduct safety training, as necessary, to ensure that all employees are adequately and effectively trained in the recognition and control or avoidance of hazards associated with their work environment. Provisions will be made for periodic retraining as needed. This training will include but is not limited to: fall protection, electrical hazards, excavation and trenching, heat stress, power tools and equipment, lifting and rigging loads, and the use of personal protective equipment;
 - iii. Ensure that safety and health rules are enforced (by the employer) through regular, scheduled and unscheduled, worksite inspections and established, documented progressive disciplinary procedures. In addition, the Employer will document the worksite inspections and will maintain records of all worksite inspections and disciplinary actions associated with safety and health issues. These records will be provided to the OSH Division upon request; and
 - iv. Continue any present Safety Program, including conducting periodic safety meetings with employees at regular intervals. The Employer will conduct toolbox talks on at least a weekly basis with employees. The Employer will actively encourage all workers to participate in workplace safety activities. During such meetings, employees should be able to communicate safety suggestions or complaints to their supervisor.
- d. Each party agrees to bear its own attorney's fees, costs and other expenses that have been incurred in connection with these proceedings.
- e. 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. 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.

- f. Neither party has received any notification from any employee indicating an intent to participate in or attend the hearing in this matter.
7. The foregoing terms are reasonable and supported by the underlying facts.
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.
3. The Respondent shall pay the penalty of \$1500.00 within 45 days of this Consent Order.

This the _____ day of Mar 22, 2023, 2023.

Richard M. Koch

Richard M. Koch (Mar 22, 2023 10:45 EDT)

Richard Koch
Hearing Examiner

CONSENTED TO:

JOSHUA H. STEIN, Attorney General

Rory Agan

Rory Agan (Mar 22, 2023 10:35 EDT)

Rory Agan
Special Deputy Attorney General
North Carolina Department of Justice
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Counsel for Complainant

Michael D. McKnight

Michael D. McKnight (Mar 22, 2023 10:25 EDT)

Michael McKnight
Shareholder
Ogletree Deakins
8529 Six Forks Road, Suite 600
Raleigh, NC 27615
Tel. 919-789-3159
Email: Michael.mcknight@ogletree.com
Counsel 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:

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 24 DAY OF March 2023.



Karissa B. Sluss
Docket and Office Administrator
NC Occupational Safety & Health Review Commission
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