

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

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

COMPLAINANT,

v.

**UMA, Geotechnical Construction, Inc.
*and its successors***

RESPONDENT.

) **DOCKET NO.: OSHANC 2020-6282**
) **INSPECTION NUMBER: 318191533**
) **CSHO ID: A1049**

ORDER
FILED

AUG 31 2022

THIS CAUSE came on for hearing and was heard before the undersigned, Richard M. Koch, Hearing Examiner for the North Carolina Occupational Safety and Health Review Commission, August 31, 2022 at 10:00 a.m., via the Lifesize teleconferencing platform, pursuant to a Notice of Hearing. Sage A. Boyd, Assistant Attorney General, North Carolina Department of Justice, appeared for Complainant. Jay M. Wilkerson, Attorney with CONNER GWYN SCHENCK, PLLC, appeared for 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. The Complainant as Commissioner of Labor of the State of North Carolina is charged by law with compliance and enforcement of the provisions of the Occupational Safety and Health Act of North Carolina, Article 16, Chapter 95, of the General Statutes of North Carolina (hereinafter "the Act").
2. The Review Commission has jurisdiction over the parties and the subject matter of this action.
3. Respondent in this matter is UMA, Geotechnical Construction, Inc. Respondent is an active and current North Carolina corporation, authorized to do business in the State of North Carolina on October 1, 2004. Respondent maintains a place of business in Colfax, North Carolina. Respondent is an "employer" within the meaning of N.C.G.S. § 95-127(11); and maintains "employees" within the meaning of N.C.G.S. § 95-127(10). Respondent is in the business of construction.
4. On March 9, 2020, Mr. Brian Kemppainen, Compliance Safety and Health Officer (CSHO) with the Occupational Safety and Health Division ("OSH Division") of the North Carolina Department of Labor (NCDOL), conducted an inspection of the Respondent's

work site at I-40 and I-77 Interchange, Statesville, North Carolina (in Iredell County) pursuant to an accident referral.

5. As a result of the inspection, Complainant issued the following citations carrying the following proposed abatement dates and penalties on April 15, 2020:

CITATION NUMBER ONE (Serious)

<u>Item No</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1	N.C.G.S. 95-129(1)	5/11/2020	\$3,000.00
2	29 CFR 1926.20(b)(4)	5/11/2020	\$3,000.00

6. The Respondent submitted a timely Notice of Contest, dated May 12, 2020.
7. A hearing in this matter was scheduled pursuant to the Rules of Procedure of the Occupational Safety and Health Review Commission of North Carolina ("the Rules").
8. Complainant and Respondent waived the making of a transcript of the proceeding before the undersigned, and neither objected, either procedurally or otherwise, to this Hearing and the entry of this Order.
9. Respondent posted the original citation and the Hearing Order as required by the Rules. Neither Complainant nor Respondent has received notification from any affected employee that such employee, or his or her representative, wishes to have a say in, or participate as a party in, this matter, or has any objections in connection with this matter, including without limitation objection to the reasonableness of any abatement period.
10. The parties agree to bear their own attorney's fees (if any), 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.
11. Provided the respective Motions below of each party are granted, Complainant and Respondent agree that:
 - (a) there are no other matters that remain to be decided, and that other than a ruling with respect to the Motions, no outstanding issues remain to be resolved by an evidentiary hearing of this matter;
 - (b) this Order is a full and final resolution of the claim set out in the underlying Original Citation;
 - (c) 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;

(d) none of the agreements, statements, stipulations and actions taken by Respondent shall be deemed an admission by the Respondent of any of the allegations contained in the Original Citation or as a waiver of defense, provided however, that in any subsequent proceeding with respect to matters covered by this Order brought directly under the Act by Complainant, this Order shall have the full force and effect of a final order;

(e) the agreements, statements, stipulations and actions herein by Complainant and by Respondent are solely for the purpose of resolving this matter economically and amicably without further litigation and shall not be used for any other purposes except for proceedings and matters arising under the Act and Article 21, Chapter 95 of the North Carolina General Statutes;

(f) the penalty for each item designated in the Original Citation has been calculated in accordance with the standard Field Operations Manual procedure giving consideration by Complainant to standard mitigating factors and to specific factors applicable to Respondent; and

(g) there has been no employee objection to the reasonableness of any abatement period.

12. Respondent agrees to continue its best efforts to comply with the requirements of the Act.

13. Respondent further agrees to complete the following by **January 6, 2023**:

(a) Conduct safety training of Respondent's drill rig operators which includes OSHA 10-hour class in construction and specific training for drill rig operators in the safe operation of the drilling rigs including recognition and avoidance of the hazards encountered when working near existing embankments;

(b) Train all drill rig operators in the safe operation of each drill rig and will verify, in writing, that the employee can competently and safely operate the equipment before the employee is assigned to operate that equipment; and

(c) Train all drill rig operators on the procedures and steps to take when conducting tasks such as repair and maintenance to ensure employees know when and how to de-energize the drill rig.

MOTIONS

1. Complainant moves to make the following amendments to the Original Citation ("Complainant's Motion"):

(a) Delete Citation One, Items 1 and 2, and delete the penalties associated therewith.

Except as expressly set forth above in Complainant's Motion, the Original Citation shall remain unmodified or amended.

Respondent did not object to Complainant's Motion.

2. Respondent requested that, upon the granting of Complainant's Motion, the Undersigned consider its Motion to Withdraw Respondent's Notice of Contest to the Original Citation.

Complainant did not object to Respondent's Motion.

FINDINGS OF FACT

Based on the stipulations at the time of the Hearing and as memorialized herein, the Undersigned makes the following:

1. Complainant, Commissioner of Labor of the State of North Carolina, is an agency of the State charged by law with and enforcement of the provisions of the Act.
2. Respondent is subject to the provisions of the Act and jurisdiction of the Safety and Health Review Commission of North Carolina.
3. This Court has jurisdiction over the parties and the subject matter of this action.
4. Neither party has any objection, procedural or otherwise, to this Hearing Conference.
5. The stipulations are incorporated by reference as Findings of Fact to the extent necessary to give effect to the provisions of this Order.

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. The Complainant's Motion is hereby **GRANTED**; and
2. The Respondent's Motion is hereby **GRANTED**.

This the 31st day of August, 2022.

Richard Koch

Richard Koch (Aug 31, 2022 10:30 EDT)

RICHARD M. KOCH
Hearing Examiner

CONSENTED TO:

JOSHUA H. STEIN
Attorney General

Sage A. Boyd

Sage A. Boyd (Aug 31, 2022 09:37 EDT)

Sage A. Boyd
Assistant Attorney General
North Carolina Department of Justice
P O Box 629/Labor Section
Raleigh, NC 27602-0629
sboyd@ncdoj.gov
Telephone No. (919) 716-6680

ATTORNEYS FOR COMPLAINANT

Jay M. Wilkerson

Jay M. Wilkerson (Aug 31, 2022 09:35 EDT)

Jay M. Wilkerson
Partner
CONNER GWYN SCHENCK PLLC
P O Box 30933
Raleigh, NC 27622
jwilkerson@cgspllc.com
Telephone No. (919) 208-2344

ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

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

JAY M. WILKERSON
CONNER GWYN SCHENCK PLLC
PO BOX 30933
RALEIGH, NC 27622

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

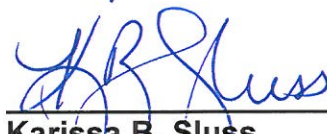
SAGE A. BOYD
NC DEPARTMENT OF JUSTICE
LABOR SECTION
PO BOX 629
RALEIGH, NC 27602-0629

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 2 DAY OF September 2022.



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
NCOSHRC@labor.nc.gov

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Attorney General

Sage A. Boyd

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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 2 DAY OF September 2022.



Karissa B. Sluss
Docket and Office Administrator
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Raleigh, NC 27699-1101
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