

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

FILED
 NOV 22 2022

COMMISSIONER OF LABOR OF THE)
 STATE OF NORTH CAROLINA)
)
 COMPLAINANT,)
)
 v.)
)
 PACTIV, LLC, and its successors)
)
 RESPONDENT.)

NC OSH Review Commission

CONSENT ORDER

OSHANC 2020-6294
 INSPECTION NO: 318192788
 CSHO ID: N4078

This cause came on for a virtual Hearing on the Lifesize platform before the undersigned Mary Ann Leon, Administrative Law Judge, for the North Carolina Occupational Safety and Health Review Commission, on November 14, 2022, at 10:00 a.m. The parties announced that they had settled the case pursuant to the terms recorded below. Stacey A. Phipps, Assistant Attorney General, North Carolina Department of Justice, appeared on behalf of the Complainant, and Daniel Birnbaum, Seyfarth Shaw LLP, appeared on behalf of the Respondent. No affected employee of Respondents, or its representative, attended to have a say in or participate in, the Hearing.

At the time of the Hearing, the parties agreed upon and consented to the following:

STIPULATIONS

1. Respondent is a corporation duly organized and existing under the laws of the State of North Carolina. Respondent maintains a place of business in Mooresville, North Carolina.
2. During the period between March 18, 2020 and May 13, 2020, Michael Hayward, an Occupational Safety and Health Officer with the North Carolina Department of Labor, conducted an inspection of Respondent's worksite located at 314 Mooresville Road, Mooresville, North Carolina.
3. This was a partial scope inspection.
4. As a result of the inspection, on June 3, 2020, Complainant issued the following Citation:

CITATION NUMBER ONE (Serious)

<u>Item</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001	29 CFR 1910.132(a)	6/11/20	\$7,000.00
002	29 CFR 1910.147(c)(4)(i)	6/29/20	\$7,000.00
			\$14,000.00

5. The Respondent submitted a timely Notice of Contest, dated July 6, 2020.
6. No formal pleadings were requested or required in this matter.
7. Complainant and Respondent have no objection, either procedural or otherwise, to this hearing and both parties consent to the conduct of this hearing by the undersigned and to the entry of this order.
8. Complainant and Respondent waive the presence of a court reporter and the making of a transcript of the hearing.
9. 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 Order.
10. Complainant and Respondent agree that provided the respective motions of each party are granted, there are no other matters that remain to be decided, and that other than a ruling with respect to the motions, there are no outstanding issues to be resolved by an evidentiary hearing of this matter. The parties agree that this Consent Order is a full and final resolution of the claims set out in the underlying Original Citation, as amended pursuant to Complainant's Motion. The parties further agree that (i) 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 and (ii) none of the agreements, statements, stipulations and actions taken by Respondent shall be deemed an admission by Respondent of any of the allegations contained in the original citation as amended or as a waiver of defenses; provided, however, that in any subsequent proceeding with respect to matters covered by this Order brought directly under the Occupational Safety and Health Act of North Carolina (hereinafter referred to as the Act) by Complainant, this consent order shall have the full force and effect of a final order. The agreements, statements, stipulations and actions herein by Complainant and Respondent are solely for the purpose of resolving this matter economically and amicably without litigation and shall not be used for any other purpose except for proceedings and matters arising under the Act and Article 21, Chapter 95 of the North Carolina General Statutes.
11. Respondent agrees to continue to use its best efforts to comply with the requirements of the Act.

MOTIONS

1. Complainant moved to make the following amendments to the Original Citation (Complainant's Motion):
 - a. Amend the AVD language for Citation 001, Item 1 to the following: "On March 16, 2020, the personal protective equipment that was provided by the employer did not fully protect an employee from an exposure to an unexpected amount of hot water while refilling an extruder cooling water tank on Line S-123."
 - b. Delete Citation 1, Item 002.

- c. Transfer the proposed penalty in the amount of \$7,000.00 from Citation 1, Item 002 and add it to the \$7,000.00 penalty for Citation 1, Item 001, to retain a total penalty of \$14,000.00.
2. Respondent did not object to Complainant's motion and confirmed the following:
Respondent agrees to:
 - a. Continue with its present safety program, including conducting periodic meetings with employees. During such meetings, employees will be able to communicate safety suggestions or complaints to their supervisor who will forward the information to Respondent's safety spokesperson. Respondent agrees to meet regularly with its employees to discuss safety issues and receive safety suggestions or complaints from employees. Respondent's safety spokesperson shall also make recommendations regarding safety to supervisors who will then present such information to employees at the periodic meetings. Respondent agrees that all employees who make suggestions or complaints to the Committee, shall have the same protection provided employees under Article 21, Chapter 95 of the North Carolina General Statutes.
 - b. Enhance standard work instructions to enhance the PPE worn by employees and document the proper procedures for refilling the water tank to minimize employee exposure.
 - c. Conduct retraining regarding the incident with operators and maintenance employees.
 - d. Revise safety training to ensure employees are trained on the specific standard operating procedure and enhanced PPE requirements.
 - e. Implement a refresher training course two times a year on the topic.
3. Respondent requested that upon the granting of Complainant's Motion that the undersigned consider the following Motion:
 - a. Withdraw its Notice of Contest to the Original Citation and to the citation as amended as set forth above.
4. Complainant did not object to Respondent's Motion.

FINDINGS OF FACT

Based on the Stipulations at the time of the Hearing and the record, the undersigned makes the following Findings of Fact:

1. This Court has jurisdiction over the parties to this action and over the subject matter.
2. Respondent is subject to the provisions of the Act and jurisdiction of the North Carolina Safety and Health Review Commission.
3. Complainant, Commissioner of Labor of the State of North Carolina, is an agency of the State of North Carolina charged with the administration and enforcement of the revisions of the Act.
4. Neither party has any objection, procedural or otherwise, to this Hearing.
5. The stipulations are incorporated by reference as Findings of Fact to the extent necessary to give effect to the provisions of this Order.
6. The parties agree that the validity of this Order shall not be affected by the fact that they are consenting signatures of the parties may be executed in multiple counterparts or that they are electronically applied and communicated to the Court.

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. That Complainant's Motion is hereby GRANTED; and
2. That Respondent's Motion is hereby GRANTED;
3. Respondent shall pay the sum of \$14,000.00 assessed in this matter by check, payable to North Carolina Department of Labor, OSHA Division (Identifying Inspection No. 318192788) 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.

Nov 18, 2022

This the ____ day of November, 2022.

Mary-Ann Leon

Mary-Ann Leon (Nov 18, 2022 16:51 EST)

Mary Ann Leon
Hearing Examiner

BY CONSENT:

JOSHUA H. STEIN
Attorney General

Stacey A. Phipps
Stacey A. Phipps
Special Deputy Attorney General
North Carolina Department of Justice
Post Office Box 629/Labor Section
Raleigh, NC 27602-0629
Telephone No. 919-716-6680
sphipp@ncdoj.gov

Digitally signed by Stacey A. Phipps
DN: OU=NCDOJ/Atty General, O=Labor Section
CN=Stacey A. Phipps, E=sphipp@ncdoj.gov
Reason: I legally binding signature
Location: 1
Date: 2022.11.14 09:25:52-05:00
Foxit PDF Editor Version: 11.2.3

Jeff Lehe

11/17/2022

Jeff Lehe
Pactiv, LLC
Plant Manager
314 Mooresville Road
Mooresville NC 28115
(704) 660-6600

ATTORNEYS FOR COMPLAINANT

RESPONDENT

CERTIFICATE OF SERVICE

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

JEFF LEHE
PACTIV, LLC
PLANT MANAGER
314 MOORESVILLE RD.
MOORESVILLE, NC 28115

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 22 DAY OF November, 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