

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

**FILED**

JAN 5 2024

NC OSH Review Commission

COMMISSIONER OF LABOR OF THE )  
STATE OF NORTH CAROLINA )  
 )  
COMPLAINANT, )  
 )  
v. )  
 )  
REPUBLIC REFRIGERATION )  
INCORPORATED and its successors )  
 )  
RESPONDENT. )  
\_\_\_\_\_ )

**ORDER**

**OSHANC NO. 2020-6295**

**THIS MATTER** was before the undersigned for hearing via the Lifesize video conference platform on November 8, 2023, beginning at 10:00 am.

The complainant is represented by Rory Agan, Special Deputy Attorney General; the respondent is represented by Greg C. Ahlum of Johnston Allison & Hord.

Based on the evidence, consisting of testimony and admitted documents, in the hearing on the merits on these citation items, and consideration of the post-hearing submittals of the parties, the undersigned makes the following

**FINDINGS OF FACTS**

1. The complainant as the Commissioner of Labor is charged by law with compliance with and enforcement of the provisions of the Occupational Safety and Health Act of North Carolina (“the Act”).
2. The respondent is a North Carolina corporation which is authorized to do business in North Carolina.
3. Pursuant to N. C. Gen. Stat. § 95-135, the Review Commission has jurisdiction over the parties and subject matter to this action.
4. The respondent is an “employer” within the meaning of N. C. Gen. Stat. §95-127(10); all of respondent’s employees referred to in the hearing are “employees” within the meaning of N. C. Gen. Stat. § 95-127(9).
5. The complainant’s OSHA staff conducted a fatality inspection on January 10, 2020 of the Lineage Logistics, LLC freezer warehouse facility located at 3776 Taylorsville Highway, Statesville, North Carolina.

6. The inspection resulted from a release of anhydrous ammonia on January 10, 2020 at that facility, which was undergoing a major expansion and update of the freezers.

7. Lineage Logistics, LLC, the owner of the facility, had hired Primus Builders, LLC as its general contractor for this work. Primus Builders was used by Lineage Logistics for this type of work at its facilities around the country.

8. Primus Builders subcontracted different tasks involved with this project to different subcontractors. One of those was a company related to Primus Builders, named P3 Advantage, Inc., which was responsible for demolition of the wall panels in the existing blast freezers that were being updated or replaced.

9. Primus Builders subcontracted with Innovative Contracting Group for ice demolition and removal of the product racks from the blast freezers that were being updated or replaced. Innovative Contracting Group in turn subcontracted some of its work to AGG Constructing.

10. Primus Builders subcontracted the refrigeration changes to the facility to the respondent. However, the scope of respondent's work was limited under a written contract with Primus Builders. It did not include either Process Safety Management (PSM) or removal of ice. It did include installing new refrigeration equipment and controls in the new freezer units and removing the evaporators from four old blast freezers. None of its work overlapped with the work of the other subcontractors on this project.

11. The ammonia release on January 10, 2020 was caused by an employee of Primus Builders, Anthony Lamattina, puncturing an evaporator coil in old blast freezer #9 with either a crowbar or claw hammer while he was attempting to remove accumulated ice from the evaporator coils. The anhydrous ammonia was immediately released into his face causing his death. This occurred at approximately 1:00 pm on January 10, 2020.

12. Mr. Lamattina's supervisor, Carson Brandon Drawdy, who was with him on the scissor lift some 30 feet in the air while working on this ice removal, was injured by the ammonia and by jumping from the lift, but survived.

13. There were other workers on the ground in that area of the facility, removing ice, racking and pieces of the walls of the blast freezer. There is a video of the cloud of ammonia that had been released and these workers evacuating the area as a result.

14. Mr. Grant Quiller was the DOL compliance safety and health officer assigned to this matter. He arrived at the Lineage Logistics facility approximately 4 hours after the ammonia release occurred. He conducted the subsequent fatality inspection involving the facility, the owner and the contractors working on this project.

15. Mr. Quiller determined that Lineage Logistics as the owner, operator and employer at the facility, is legally responsible under the OSHA standards for PSM, which includes the development and implementation of safe work practices for purging ammonia from the evaporator coils in the old blast freezers that were being removed.

16. Primus Builders as the general contractor for the project was the “controlling, exposing and correcting employer” under the OSHA standards. It scheduled and coordinated all work on the project and instructed the contractors as to when to perform their work.

17. Lineage Logistics received 10 OSHA citations as a result of Mr. Quiller’s inspection, including for a violation of 29 CFR 1910.119(f)(4) for failure to develop and implement safe work practices for purging ammonia from the evaporator coils in the blast freezers in their facility. Lineage Logistics acknowledged and stipulated to all 10 citation violations.

18. Mr. Stephan Shaub with Webber Smith and Associates was tendered by the respondent as an expert witness on refrigeration systems and ammonia. Webber Smith is a refrigeration design and industrial refrigeration consulting firm. Mr. Shaub has 43 years of experience in the ammonia and refrigeration consulting and design industry and has worked for Webber Smith since 1979. He was also on the Board of Directors for the Refrigeration Engineers and Technicians Association (RETA) and served as president of RETA.

19. Mr. Shaub inspected blast freezer #9 on February 14, 2020 after the fatality but before any cleanup operations and presumably before anything had been changed in blast freezer #9 since the fatality.

20. Mr. Shaub testified that in order to evacuate ammonia from evaporator coils, heat must be applied directly to the evaporator coils to bring the ammonia to a boil. There is no other way to safely evacuate ammonia from the coils.

21. Prior to January 10, 2020, the above procedure had been used to safely purge the ammonia from old blast freezers ##7 and 8.

22. Mr. Shaub further testified that in order to safely evacuate the ammonia from the evaporator coils in blast freezers ##9 and 10, the walls and insulated metal panels around the evaporator coils first had to be removed. The racking also had to be removed from around the evaporator coils. In addition, any ice buildup on the floor had to be removed. This demolition would allow safe access to the evaporator coils so that the heat could be applied to the coils to boil the ammonia and purge it from the coils.

23. All such demolition work was controlled by Primus Builders and performed by P3 Advantage or Innovative Contracting.

24. On December 28, 2019, Lineage Logistics and Primus Builders directed Mr. Darry Begley, an employee of respondent, to begin taking blast freezers ##9 and 10 off-line.

25. Apparently, in the industry taking the freezers “off-line” means disconnecting the computer controls from the unit. It does not mean purging the ammonia.

26. Approximately two days after the direction to Mr. Begley that respondent could take blast freezers ##9 and 10 off-line, Lineage Logistics directed that these two blast freezers remain on line, because it needed more freezer space to store chicken for its

customers because the new blast freezers were not yet ready to be used. On December 30, 2019, blast freezers ##9 and 10 were put back on line.

27. As of January 7, 2020, the Primus Builders daily report showed that blast freezer #9 was still being used to store chicken.

28. Temperature logs for blast freezers ##9 and 10 were provided to the complainant by Lineage Logistics for the relevant time period. These logs showed that the two freezers were put back on line and operating as refrigeration units on December 30, 2019 and that blast freezer #9 was still operating as a refrigeration unit up to about 1:00 PM on January 10, 2020 when Mr. Don Meredith, an employee of respondent hit the e-stop button in the control room upon learning of the ammonia leak.

29. Ammonia is not purged from the evaporator coils of a refrigeration unit while the unit is still in use and operating for refrigeration. It also cannot be safely purged until the walls, insulated metal panels and racking has been removed from around the evaporator coils.

30. As of January 10, 2020, the ammonia had not been removed from the evaporator coils in blast freezers ##9 and 10 and apparently no one from the respondent had ever told anyone that the ammonia had been removed from those two freezers. Mr. Quiller acknowledged this in his testimony at the hearing.

31. There was no evidence presented that there was a leak or a hole in the ceiling of blast freezer #9 or in the roof above blast freezer #9.

32. Apparently, as early as April, 2019 Lineage Logistics was made aware of a heavy ice buildup covering the evaporator coils in blast freezer #9, and was told that that ice would need to be removed. Lineage Logistics did not inform respondent of this ice buildup covering the evaporator coils in blast freezer #9.

33. At no time on January 10, 2020, nor any time prior to January 10, 2020 did any of respondent's employees perform any work inside blast freezer #9 or on any of its equipment or piping.

34. Any work required to isolate or purge the ammonia from the old blast freezers would take place on the roof of the Lineage Logistics facility. It was not until the ammonia needed to be purged from the evaporator coils that respondent's employees would begin working inside a blast freezer, such as blast freezer #9, to apply heat to the exposed evaporator coils.

35. The way to properly remove ice from evaporator coils is to use a torch or heat gun to apply heat directly to the coils. It is not a safe practice to try to remove ice from evaporator coils by using a crowbar or claw hammer.

36. After they had removed the walls and insulated panels from around the evaporator coils contained in blast freezer #9, Messrs. Lamattina and Drawdy discovered the heavy ice buildup on the evaporator coils in blast freezer #9.

37. Apparently, one of the employees of Innovative Contracting Group, working on the ground underneath Messrs. Lamattina and Drawdy, who were in the scissor lift up at the coils, instructed them to remove the ice from the evaporator coils in blast freezer #9. This information was in a sworn statement by Mr. Drawdy. He also stated that the Innovative employee who directed them had dark skin or was African-American.

38. The respondent did not have any dark skin or African-American employees working for it on the Lineage Logistics project at any time, including January 10, 2020.

39. Mr. Quiller obtained a witness statement from Innovative employee Adeniyi Okunlola, which statement was written by Mr. Quiller, in which Mr. Okunlola states that an employee of respondent told Messrs. Lamattina and Drawdy to remove the ice from the evaporator coils of blast freezer #9. This statement goes against the weight of the evidence which indicates that such a statement was not made by a Republic Refrigeration employee.

40. Mr. Drawdy was asked under oath in a deposition in a lawsuit which arose from this fatality incident if he knew that there was still ammonia in the coils of blast freezer #9 at the time that he and Mr. Lamattina were removing ice from the coils, and he said that both he and Mr. Lamattina were aware that the ammonia was still in those evaporators coils while they were removing the ice.

41. On January 8, 2020, two days before this accident, a jobsite meeting occurred involving manager Tyler Price from Lineage Logistics, superintendent Brad Roberts from Primus Builders, representatives of the panel and racking subcontractors and respondent. In that meeting, it was discussed that no date had been set for purging the ammonia from blast freezers ##9 and 10. It was also determined that blast freezer #10 would be removed before blast freezer #9.

42. There were minutes or notes from this January 8, 2020 meeting and those were sent to the complainant by the respondent after the inspection, but it did not appear at the hearing that Mr. Quiller was aware of these minutes or of the discussion at that January 8, 2020 meeting.

43. From drug tests administered to Mr. Lamattina and Mr. Drawdy after this incident, it appeared that both men had THC in their systems.

44. For some reason, Primus Builders had at least 4 different superintendents on the Lineage Logistics project in a 16-day time period from December 26, 2019 through January 10, 2020. The last superintendent's first full day on the job as superintendent was the date of the accident, January 10, 2020.

45. It does not appear from the evidence that respondent had anything to do with the events leading up to this accident or with the cause of it.

46. The training respondent provided to its employees including, without limitation, refrigeration training, ammonia awareness training, refrigeration technician training, how to properly and safely isolate and purge ammonia from a refrigeration unit, and work safety, was extensive.

47. Mr. Shaub testified about the training associated with RETA and RETA's certifications, including purging ammonia from refrigeration units.

48. Mr. Darry Begley was respondent's employee in charge of and who would be performing the work to isolate and purge the anhydrous ammonia from the evaporator coils located within the four old blast cells ## 7, 8, 9 and 10.

49. Prior to beginning work on the project, Mr. Begley reviewed the piping and instrument drawings for the Lineage Logistics facility associated with the old blast freezers including blast freezer # 9.

50. Although Mr. Begley informed Mr. Quiller during his interview and in the presence of Mr. Teeter that he reviewed the piping and instrument drawings for the Lineage Logistics facility prior to performing any work, Mr. Quiller did not include this in his report of the investigation.

51. Mr. Begley received forty hours of RETA training at Lanier Technical College in 2016 with regard to industrial refrigeration. This training consisted of both class room training and training in a refrigeration lab located on the campus of Lanier Technical College. This training also included how to purge ammonia from refrigeration systems. Mr. Begley passed the RETA exam and received his RETA certification in 2016.

52. Mr. Begley received additional RETA training again in 2017. Mr. Begley attended another 40-hour RETA training class at Lanier Technical College in 2017. Mr. Begley again passed the RETA certification exam in 2017. At the time Mr. Begley was performing work including safely isolating and purging anhydrous ammonia from evaporators within old blast freezers ## 7 and 8 at the Lineage facility, he was RETA trained and RETA certified. Mr. Bagley also received ammonia awareness safety training on December 27, 2017 and passed an ammonia safety test. In 2017, Mr. Begley completed the safety training requirements of the hazardous materials 40-hour course and received the certification. Mr. Begley attended and received an OSHA 10-hour construction safety and health certification in April, 2018.

53. For over 20 years, respondent has conducted annual safety and training meetings for its service technicians, superintendents and project managers during a four-day period. These annual safety and training meetings include ammonia awareness, process safety management, respirator and respirator fit testing, and a multitude of other refrigeration and safety topics. Mr. Begley routinely attended these annual safety and training classes, including those conducted by respondent in April, 2018 and again in April, 2019.

54. Don Meredith has been employed by Republic Refrigeration for over 20 years. As a refrigeration technician, Mr. Meredith received refrigeration, ammonia awareness, and safety training from respondent. Mr. Meredith has been trained annually over the last 20 years with regard to anhydrous ammonia and has been certified as demonstrating competency in handling and working around anhydrous ammonia. Mr. Meredith completed a four-hour ammonia awareness course that complies with OSHA regulations in July of 2000, an eight-hour course in December of 2001, an eight-hour course in December, 2003

and another ammonia awareness class in 2008. He went through additional training for anhydrous ammonia and operating procedures and he received those certifications in 2013, 2015, and again in 2016. Mr. Meredith attended respondent's annual four-day refrigeration and safety training classes for twenty-years including in 2018 and 2019. Mr. Meredith took and passed numerous refrigeration and anhydrous ammonia tests. Mr. Meredith was a member of RETA. Mr. Meredith received his 30-hour OSHA safety certification in construction safety and health in 2014. Mr. Meredith is duly registered and licensed in the business of refrigeration contracting in the State of North Carolina, in the Commonwealth of Massachusetts, and in the State of Connecticut.

55. Mr. Jesus "Chuy" Sanchez was respondent's superintendent on the Lineage Logistics project. He was not engaged in or in charge of the isolation or purging of ammonia from the evaporators within the old blast freezers of the Lineage Logistics facility. This work was performed by and the responsibility of Mr. Begley who was RETA trained and certified. Mr. Sanchez received his 10-hour occupational safety training for the construction industry in 2016. Prior to that, he received 10-hour OSHA training for construction safety and health in 2013. Like Mr. Meredith and Mr. Begley, Mr. Sanchez also received continuous training in anhydrous ammonia awareness. He received ammonia awareness certifications for successfully completing ammonia awareness training in 2013, 2015, and 2016. Like Mr. Meredith and Mr. Begley, Mr. Sanchez also attended respondent's annual four-day safety and training sessions in refrigeration, ammonia awareness, process safety management, and safety in the refrigeration industry including, without limitation, the annual training sessions conducted by respondent in 2018 and 2019.

56. All of the training documents presented during the hearing were furnished by respondent to the complainant. However, Mr. Quiller acknowledged that he received so many documents from so many different parties during his investigation that he was not able to review all documentation. He did not recall whether he reviewed all of respondent's training documentation.

57. Mr. Teeter testified that Republic Refrigeration has spent millions of dollars over the years training its employees.

58. Lineage Logistics as owner of the facility provided a contractor safety orientation to the contractors and subcontractors on site including respondent. This orientation specifically provided in section 14(e), "Do not perform any work on service or process piping until the particular system has been drained, isolated, purged and/or rendered inert". Respondent did not and never did perform work on service or process piping that had not been drained, isolate, purged and/or rendered inert. As of January 10, 2020, the only evaporator units respondent worked on were in blast freezer ## 7 and 8, and only after they were purged of ammonia and decommissioned. At the time respondent took down the evaporator units in blast freezer ## 7 and 8, it removed ice from the top of the purged evaporator unit in blast freezer # 7 and not from the coils as the coils were not covered in ice. It did not appear from the evidence that respondent violated any Lineage Logistics contractor safety orientation provisions.

59. The first citation against respondent is for the failure to train its employees to safely perform his/her job. Respondent did not have the obligation or responsibility to train

the employees of the general contractor Primus Builders or the other subcontractors to safely perform their jobs.

60. The January 10, 2020 ammonia leak at the Lineage Logistics facility is not a result of a lack of training on the part of respondent's employees. Instead, it is a lack of communication, supervision, training, and coordination by the general contractor Primus Builders of its employees, including Mr. Drawdy and Mr. Lamattina and its demolition subcontractors.

61. Under 29 CFR 1910.119 (the OSHA regulation dealing with Process Safety Management ("PSM") of hazardous chemicals), there is a clear distinction between the employer/owner of the facility containing the hazardous chemicals on the one hand, and the contractors/subcontractors performing renovation work within the employer/owner's facility on the other hand.

62. The regulation refers to "contractors" as contractors who perform maintenance or repair, turn around, major renovations or specialty work within the employer's facility. 29 CFR 1910.119 (h)(1). The employer under the PSM regulations is the owner of the facility containing the hazardous chemicals. In this case, Lineage Logistics was the employer under the PSM standard and Primus Builders and its subcontractors, including respondent are the "contractors".

63. This distinction between the owner/employer of the facility containing the hazardous chemicals and the contractors performing services or renovation work for the owner within the owner's facility was expressly acknowledged by Mr. Quiller in his testimony.

64. This distinction was further established by the fact that complainant cited Lineage Logistics for violating 29 CFR 1910.119(f)(4) for failing to "develop and implement safe work practices such as but not limited to, purging the evaporator unit's ammonia lines, prior to demolition of the nearby insulated metal paneling walls by Primus Builders' employees. This citation was stipulated to and accepted by Lineage Logistics. Respondent was not cited under 29 CFR 1910.119(f)(4).

65. The standards dealing with hazardous waste clean-up operations and emergency response plans are set forth in 29 CFR 1926.65. The standard under which complainant cited respondent, 29 CFR 1926.65, deals with hazardous waste clean-up operations, not PSM or situations, as in this case, where a contractor or subcontractor is performing major renovation work inside an owner/employer's facility containing hazardous chemicals. Since this situation involves renovation work inside a facility that uses a hazardous chemical and it is not a hazardous waste clean-up operation, the standards under 29 CFR 1926.65 do not apply.

66. Even if these standards under 29 CFR 1926.65 were applicable to the Lineage Logistic project and this situation, these hazardous waste operation standards likewise make a distinction between the "employer" (the owner of the facility) and "contractors and subcontractors" who perform hazardous waste operations/clean-up work within the owner/employer's facility.



67. Under 29 CFR 1926.65(b)(1)(iv), it is the “employer” owner of the facility who shall inform those contractors/subcontractors it retains to perform services or work in hazardous waste operations within its facility of the site emergency response procedures. The standard goes on to require that the written safety and health program shall be made available by the employer (owner of the facility, Lineage Logistics) to any contractor (Primus Builders) or subcontractor (respondent) who will be involved with the hazardous waste operations. 29 CFR 1926.65(b)(1)(v).

68. When a contractor/subcontractor is performing hazardous waste operations within an employer’s facility, it is the owner/employer of the facility who is responsible for the emergency response plan and not the contractor or subcontractor. A contractor or subcontractor who goes into an employer/customer/ owner’s facility containing hazardous chemicals has no way of creating, preparing or writing an emergency response plan for that facility. Such a requirement makes no realistic sense for a contractor, since a contractor/subcontractor has no way of knowing the critical plant operations of or the emergency escape routes throughout the owner’s facility.

69. When writing and issuing the emergency responder citation to respondent, complainant not only cited a regulation that deals with hazardous waste clean-up operations but it also omitted a part of the inapplicable regulation it cited. The citation under which respondent was cited for not having an emergency response plan, 29 CFR 1926.65(q)(1) specifically provides that: “...employers who evacuate their employees from the danger area when an emergency occurs, and who do not permit any of their employees to assist in handling the emergency are exempt from the requirements of this paragraph if they provide an emergency action plan in accordance with 1926.35 of this part”.

70. In order to have an employee emergency action plan under 29 CFR 1926.35, the plan must include emergency escape procedures and emergency escape routes for the facility. 29 CFR 1926.35(b)(1). The emergency action plan must also set forth in writing procedures to be followed by the facility owner’s employees who remain to operate critical plant operations before they evacuate the facility. 29 CFR 1926.35(b)(2).

71. The employer/owner of the facility Lineage Logistics is responsible for and is required to make available to the contractors/subcontractors involved with hazardous chemicals or waste operations in its facility a written safety and health program including the emergency action plan. 29 CFR 1926.65(b)(1)(v). Lineage Logistics provided such an emergency action plan to Primus Builders and Republic Refrigeration as is evidenced by the fact that Lineage Logistics was not cited for either failure to have an emergency action plan or for failure to provide such an emergency action plan to its visiting contractors and subcontractors. 29 CFR 1926.65(b)(1)(iv) specifically states that an employer (Lineage Logistics in this case) who retains a contractor’s (Primus Builders) or subcontractor’s (respondent) services for work in hazardous operations shall inform those contractors and subcontractors of the site emergency response procedures.

72. If respondent is required to have an emergency response plan for its renovation work on the Lineage Logistics’ facility, then every contractor, subcontractor, and vendor who sends any employee to a facility that has hazardous chemicals on site must have

an emergency response plan for that facility even though they do not know and have no control over the facility or the hazardous chemicals contained and used therein. Every contractor, subcontractor and vendor would have to write an emergency action plan containing emergency exit routes and operational procedures for those performing critical operations within the facility every time they visited the facility. Innovative did not receive any citations, AGG did not receive any citations, Centimark Roofing did not receive any citations and Steel King did not receive any citations, as a result of Mr. Quiller's investigation.

73. Even if respondent was required to have an emergency action plan for its work within the Lineage Logistics' facility, respondent did not engage in "emergency response or responding to an emergencies" as defined by 29 CFR 1926.65(b). Under the regulation, "emergency response" or "responding to emergencies" is defined as a response effort by employees from outside the immediate release area to an uncontrolled release of the hazardous substance.

74. Mr. Teeter testified that the respirators respondent provides to its employees are negative pressure respirators and not positive pressure or air supplied respirators since the employees are instructed not to engage in emergency response. The negative pressure respirators are used by respondent's employees when they are performing work activities where ammonia exposure is less than 300 parts per million (ppm). Mr. Teeter testified that respondent does not provide its employees with air supplied respirators since respondent and its employees do not engage in emergency response, do not enter IDLH atmospheric conditions, and do not work in areas in which ammonia exposure is greater than 300 ppm.

75. Anhydrous ammonia can be smelled by a human at approximately 5 ppm. Mr. Teeter and Mr. Shaub testified to this. Mr. Quiller testified that he did not know the exact parts per million at which humans smell ammonia, but he did testify that it was extremely low and somewhere around 5 ppm.

76. The permissible exposure limit under OSHA standards at which an employee can work and be exposed to anhydrous ammonia for 8 continuous hours without any type of respirator or mask is 50 ppm. Both Mr. Teeter and Mr. Quiller testified to this. Mr. Quiller actually looked up the permissible exposure limit for anhydrous ammonia under the OSHA standards during his testimony. Mr. Teeter testified that although 50 ppm was the permissible exposure level for anhydrous ammonia under the OSHA standards, he would never allow his employees to work under such conditions without wearing a negative pressure respirator.

77. The Immediately Dangerous to Life or Health (IDLH) level for anhydrous ammonia is 300 ppm.

78. When ammonia reaches 25 ppm in the engine room of the Lineage Logistics facility, an alarm will sound in the engine room. No alarm sounded in the engine room on January 10, 2020, the day of the leak. As such, the ammonia concentration in the engine room was known by respondent's employees to be less than 25 ppm.

79. When Mr. Meredith was in the engine room before leaving for the dock, the engine room panel showed an ammonia reading of 30 ppm on the dock. The ammonia concentration on the dock was known by respondent's employees to be 30 ppm.

80. When Mr. Meredith was in the engine room, the engine room panel showed an ammonia reading of 100 ppm in the freezer area. Mr. Meredith hit the emergency stop button in the engine room, which immediately shut down the refrigeration systems for blast freezers ## 9 and 10. He did not go from outside the immediate release area into the immediate release area. He did put on his negative pressure respirator before leaving for the dock. While on the dock, Mr. Meredith did not see a leak or cloud, did not hear a leak or feel ammonia on his body. He did open the door of the freezer, but when he saw the cloud, he immediately closed the door and went to the muster point.

81. When Mr. Lamattina beat on the evaporator coils containing ammonia with a crowbar and claw hammer puncturing the coil, Mr. Begley was outside the building and remained outside at all times after the ammonia release.

82. Mr. Quiller has no personal knowledge of where Mr. Begley was at the time of the puncture and ammonia release, nor of any of Mr. Begley's actions on January 10, 2020.

83. Mr. Begley did not go back inside the building on January 10, 2020 after the ammonia release and he did not go to the roof. His witness statement to complainant does not state he went back inside the building or that he walked up the outside steps to the roof at any time after the ammonia release on January 10, 2020.

84. Mr. Sanchez did go outside the freezer area to the outside roof after Mr. Lamattina punctured the coil and released the ammonia from the closed system. As testified by Mr. Quiller, and confirmed by Mr. Teeter, Mr. Sanchez was in the freezer area in blast freezer # 7 when the ammonia release occurred in blast freezer # 9.

85. Mr. Sanchez went from the immediate release area of the freezer, away from the freezer and outside the freezer to the engine room where the control panel was located. From the engine room located inside the building, Mr. Sanchez went outside the building, climbed the stairs outside the building, away from the freezer area and onto the roof where Mr. Sanchez closed the suction valve. He then walked down the outside steps and went on the command center area on the ground.

86. At no time did Mr. Sanchez smell or detect ammonia while outside the building or on top of the roof. Mr. Bowman of Lineage Logistic does not indicate in his witness statement that he smelled any ammonia while on the roof with Mr. Sanchez. Thus, the ammonia concentration outside on the roof was must have been less than 5 ppm.

87. According to Mr. Quiller and witness statements, two roofing subcontractors employed by Centimark Roofing were on the roof at the time of the ammonia release. They were on the roof when Mr. Sanchez went to the roof to close the suction valve. The two

roofers did not hear the alarm and they were unaware of an ammonia leak. Apparently, they could not smell any ammonia.

88. Mr. Quiller never walked up the outside stairs to the roof on the day of the accident. He never went to the roof and he did not take any ammonia readings on the roof. He did not see, taste, smell, hear, touch or take any reading that would suggest the outside roof was an IDLH atmospheric condition with an ammonia concentration of 300 ppm or greater.

89. There is no evidence whatsoever that the roof had an IDLH atmospheric condition with anhydrous ammonia of 300 ppm or greater. As a matter of fact, all the evidence establishes the roof outside and away from the immediate release freezer was not an IDLH condition and did not require a positive pressure air supplied respirator under the OSHA standards.

90. Sometime after the fire battalion commander set up the command center, the fire commander gave Mr. Meredith the okay and permission to go to the roof and check/close the suction valve.

91. There are no steps inside the building to access the roof and there is no way to access the roof from inside the building. The roof can only be accessed by a set of outside stairs located at the back of the building. Mr. Meredith put back on his 300 ppm negative pressure respirator, walked up the outside steps and went to the top of the roof confirming the suction valve had been closed. He then walked down the outside stairs to the ground.

92. There is no evidence that any employee of respondent was ever exposed to ammonia at any concentration levels that was even close to 300 ppm or to presenting an inhalation hazard or potential hazard.

93. It does not appear to the undersigned that the employees of respondent were attempting to act as emergency responders in this situation. They did attempt to use their training and knowledge of ammonia to do what they could to help control a release of ammonia that they did not cause.

94. Since respondent's employees were the ammonia experts on the job, it would have been inhuman for them not to do what they could to help control the release of ammonia that had occurred, without subjecting themselves to harm, which is what the evidence seems to show.

95. It appears to the undersigned that respondent was cited for these violations merely because it was the ammonia subcontractor on this project, and it seemed to the complainant that it needed to be cited for something because of the fatality, despite the fact that the owner and the general contractor were both cited by the complainant for multiple violations of the OSHA standards for their actions and inactions related to this incident and the respondent was not responsible for the ammonia leak and the fatality.

96. The complainant has the burden of proof with reference to these citation items, and the weight of the evidence adduced at the hearing did not carry this burden.

Based on the foregoing Findings of Fact, the undersigned makes the following

### CONCLUSIONS OF LAW

1. The foregoing Findings of Fact are incorporated as Conclusions of Law to the extent necessary to give effect to the provisions of this Order.
2. The respondent is subject to the provisions of the Act.
3. There is insufficient evidence to support a violation of the standard in Citation 1, Item 001.
4. There is insufficient evidence to support a violation of the standard in Citation 1, Item 002.
5. There is insufficient evidence to support a violation of the standard in Citation 1, Item 003.

Based on the foregoing Findings of Fact and Conclusions of Law, **IT IS ORDERED, ADJUDGED AND DECREED** as follows:

1. Citation 1, Item 001, an alleged serious violation of 29 CFR 1910.119(h)(3)(i), is dismissed.
2. Citation 1, Item 002, an alleged serious violation of 29 CFR 1926.65(q)(1), is dismissed.
3. Citation 1, Item 003, an alleged serious violation of 29 CFR 1926.65(q)(3)(iv), is dismissed.
4. Each party shall bear its own costs and attorney's fees.

This 5<sup>th</sup> day of January, 2024.



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**RICHARD M. KOCH**  
**HEARING EXAMINER**

CERTIFICATE OF SERVICE

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

GREG C AHLUM  
JOHNSTON ALLISON HORDE  
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 8 DAY OF January 2024.

  
\_\_\_\_\_  
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