

FILED

DEC -9 2022

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

COMMISSIONER OF LABOR OF THE	)	DOCKET NO.: OSHANC 2020-6311
STATE OF NORTH CAROLINA	)	INSPECTION NUMBER: 318188141
	)	CSHO ID: A6044
COMPLAINANT,)	
	)	<u>STIPULATION AND</u>
v.	)	<u>NOTICE OF</u>
	)	<u>SETTLEMENT</u>
WEEKS MARINE, INC.)	
<i>and its successors</i>)	
)	
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

- Respondent is a corporation duly organized and existing under the laws of the State of New Jersey. During 2020, Respondent maintained a worksite in Topsail Beach, North Carolina.
- Between January 27, 2020 and July 6, 2020, Compliance Safety and Health Officer Howard Laurie, an Occupational Safety and Health Officer with the North Carolina Department of Labor, conducted an inspection of Respondent's worksite located at Drum Avenue and Ocean Boulevard in Topsail Beach, North Carolina.
- As a result of the inspection, on July 7, 2020, Complainant issued the following Citation items:

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)	8/21/2020	\$5,000.00
2	29 CFR 1926.20(b)(2)	7/15/2020	\$4,000.00
3	29 CFR 1926.21(b)(2)	7/31/2020	\$5,000.00
4	29 CFR 1926.600(a)(6)(i)	Immediate	\$4,000.00

- The Respondent submitted a timely Notice of Contest, dated August 5, 2020.

5. 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 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").

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

- a. Delete Citation 1, Items 1-3 and delete all associated penalties;
- b. Reclassify Citation 1, Item 4 as a non-serious citation;
- c. Change the standard for Citation 1, Item 4 to 29 C.F.R. 1926.600(a)(6)(iv) and rewrite the Alleged Violation Description (AVD) to:

29 C.F.R. 1926.600(a)(6)(iv): A person shall be designated to observe clearance of the equipment and give timely warning for all operations where it is difficult for the operator to maintain the desired clearance by visual means.

a) Materials Delivery Site – no timely warning was given by a designated person when a Caterpillar 966K wheel loader, serial # CAT0966KTTFS91123, was travelling with a load within approximately 9.33 feet of a 120/240 VAC overhead insulated service line.

- d. Change penalty of Citation 1, Item 4 as amended to \$7,000.00.

3. Respondent agrees to the following:

- a. Commit to Implementing the Standard Operating Procedure related to offloading Pipe attached hereto as Exhibit 1; and
 - b. Implement the Overhead Utility Hazard Checklist attached hereto as Exhibit 2.
 - c. Nothing in this Stipulation and Notice of Settlement shall prevent Respondent from modifying the SOP or checklist described in this paragraph but, to the extent that Respondent modifies these documents in the future, it will continue to ensure that its policies provide equivalent or greater protections to employees consistent with industry best practices.
4. Respondent agrees to continue with its present safety program, including conducting periodic meetings with employees. Respondent agrees that all employees who make suggestions or complaints shall have the same protection provided employees under Article 21, Chapter 95 of the North Carolina General Statutes.
5. 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.
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. 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.

7. Upon approval of this Stipulation and Notice of Settlement by the Hearing Examiner, the Respondent agrees to pay the new proposed penalty of \$7000.00 within ten (10) days following the receipt of the Order approving the Stipulation and Notice of Settlement.

8. Respondent agrees that by signing this Stipulation and Notice of Settlement and upon approval of said Stipulation and Notice of Settlement by the Hearing Examiner, its Notice of Contest is withdrawn as a matter of law.

9. 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.

NOTICE OF FILING
BY WAY OF ELECTRONIC MEANS

Under current safety measures taken in light of the COVID 19 pandemic, it is difficult to gather original signatures on a single document. Accordingly, the parties have agreed that all documents filed with the Review Commission related to this settlement may be filed through electronic means, in accordance with the Review Commission's temporary submission process with original hard copies to follow as soon as it is possible to do so.

This the day of **Dec 5, 2022** , .

APPROVED BY:

Lafayette Atkinson

Lafayette Atkinson
District Supervisor
Occupational Safety and Health Division

JOSHUA H. STEIN
Attorney General

Rory Agan

Rory Agan (Dec 5, 2022 11:14 EST)

Rory Agan
Special Deputy Attorney General
North Carolina Department of Justice
Post Office Box 629/Labor Section
Raleigh, NC 27602-0629

Telephone No. (919) 716-6680

ATTORNEYS FOR COMPLAINANT

Michael D. McKnight

Michael D. McKnight (Dec 5, 2022 11:26 EST)

Michael McKnight
Shareholder
Ogletree Deakins
8529 Six Forks Road, Forum IV, Suite 600
Raleigh, North Carolina 27615

Telephone No. (919) 789-3159

ATTORNEY 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 2020-6311
	)	INSPECTION NUMBER: 318188141
COMPLAINANT,	)	CSHO ID: A6044
)	
v.)	
	)	<u>CONSENT ORDER</u>
WEEKS MARINE, INC.)	
<i>and its successors</i>)	
)	
RESPONDENT.)	

This cause comes on to be heard 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.

This the _____ day of Dec 5, 2022, 2022.



Laura Wetsch (Dec 5, 2022 16:03 EST)

Laura Wetsch
Hearing Examiner

BY CONSENT:

JOSHUA H. STEIN
Attorney General



Rory Agan (Dec 5, 2022 11:14 EST)

Rory Agan
Special Deputy Attorney General
North Carolina Department of Justice
Post Office Box 629/Labor Section
Raleigh, NC 27602-0629

Telephone No. (919) 716-6680

ATTORNEYS FOR COMPLAINANT



Michael D. McKnight (Dec 5, 2022 11:26 EST)

Michael McKnight
Shareholder
Ogletree Deakins
8529 Six Forks Road, Forum IV, Suite 600
Raleigh, North Carolina 27615

Telephone No. (919) 789-3159

ATTORNEY FOR RESPONDENT



Document #	Title: Loading and Unloading Pipe from Trucks	Print Date: 2-13-2020
Revision # 1.0	Prepared By: Billy Burrow	Date Prepared: 2-13-2020
Effective Date: TBD	Reviewed By:	Date Reviewed:

Standard Operating Procedure

Loading and Unloading pipe from trucks

Policy: Efforts will be made to ensure that Employees are safe and out of the way when loading and unloading all types of dredge pipe.

Procedure: Employees will use Take 5 to assess the hazards prior to the job and follow the steps below. Radio communications will be used during all loading and unloading operations.

Unloading pipe from 18-Wheeler using a crane

1. Shipping & Receiving is to ensure that the Truck Driver does not remove any straps from the pipe until the truck gets to the unloading area.
2. Once the truck enters the unloading area, the unloading crew will ensure the truck is stopped on level ground as best as possible.
3. Unloading crew will put cones out for traffic and ensure someone directs traffic when it is safe to pass
4. Pre-safety meeting and trailer inspection is to be held with the unloading crew and the truck driver prior to unhooking any straps. Designated signal person will be selected.
5. Unloading crew will ensure that the truck has pipe stanchions in place or will install them prior to truck driver unhooking the straps.
6. Unloading crew will ensure that the proper size tag lines are installed on the hooks.
7. If trailer access is needed unloading crew will ensure that their boots are clean of mud when accessing the trailer. Use portable ladder, trailer ladder (if available) or the 18-wheeler to access the trailer.
8. Unloading crew will hook up the crane to the first pipe prior to truck driver unhooking straps
9. Crew will move to a safe area as the truck driver removes the trailer straps.
10. Once straps are released, leave them on the ground until all pipes have been removed from the trailer.
11. Prior to lifting the pipe, the operator will ensure the unloading area, which includes the area around the truck to where the pipe is stored, is clear of all crew and truck driver.
12. Once all pipes are removed the truck driver is cleared to pick up his straps and unloading crew will remove the Weeks Marine pipe stanchions, if they were used.

USE STOP WORK AUTHORITY IF YOU SEE AN UNSAFE ACT HAPPENING OR ABOUT TO HAPPEN.



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Effective Date: TBD	Reviewed By:	Date Reviewed:

Standard Operating Procedure

Loading pipe to 18-Wheeler using a crane

1. Once the truck enters the loading area, the loading crew will ensure the truck is stopped on level ground as best as possible.
2. Loading crew will put cones out for traffic and ensure someone directs traffic when it is safe to pass
3. Pre-safety meeting and trailer inspection is to be held with the loading crew and the truck driver prior to loading the pipe. Designated signal person will be selected.
4. Loading crew will ensure that the truck has pipe stanchions in place or will install Weeks Marine pipe stanchions prior to loading the pipe.
5. Loading crew will ensure that the proper size tag lines are installed on the hooks.
6. Loading crew will hook up the crane to the pipe and crew will move to a safe area.
7. If trailer access is needed the loading crew will ensure that their boots are clean of mud when accessing the trailer. Use portable ladder, trailer ladder (if available) or the 18-wheeler to access the trailer.
8. Prior to lifting the pipe, the operator will ensure the loading area, which includes the area around the truck to where the pipe is stored, is clear of all crew and truck driver.
9. Once all pipes are loaded on the truck, the driver is cleared to install a couple of his straps to secure the load and loading crew will remove the Weeks Marine pipe stanchions, if they were used.

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Standard Operating Procedure

Unloading pipe from 18-Wheeler using the vacuum lock system

1. Shipping & Receiving is to ensure that the Truck Driver does not remove any straps from the pipe until the truck gets to the unloading area.
2. Once the truck enters the unloading area, the unloading crew will ensure the truck is stopped on level ground as best as possible.
3. Unloading crew will put cones out for traffic and ensure someone directs traffic when it is safe to pass
4. Pre-safety meeting and trailer inspection is to be held with the unloading crew and the truck driver prior to unhooking any straps. Designated signal person will be selected.
5. Unloading crew will ensure that the truck has pipe stanchions in place or will install them prior to truck driver unhooking the straps.
6. If trailer access is needed unloading crew will ensure that their boots are clean of mud when accessing the trailer. Use portable ladder, trailer ladder (if available) or the 18-wheeler to access the trailer.
7. Unloading crew will assist the operator to line up the vacuum lock device on the first pipe prior to truck driver unhooking straps
8. Crew will move to a safe area as the truck driver removes the trailer straps.
9. Once straps are released, leave them on the ground until all pipes have been removed from the trailer.
10. Prior to lifting the pipe, the operator will ensure the unloading area, which includes the area around the truck to where the pipe is stored, is clear of all crew and truck driver.
11. Once all pipes are removed the truck driver is cleared to pick up his straps and unloading crew will remove the Weeks Marine pipe stanchions, if they were used.

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Standard Operating Procedure

Loading pipe to 18-Wheeler using the vacuum lock system

1. Once the truck enters the loading area, the loading crew will ensure the truck is stopped on level ground as best as possible.
2. Loading crew will put cones out for traffic and ensure someone directs traffic when it is safe to pass
3. Pre-safety meeting and trailer inspection is to be held with the loading crew and the truck driver prior to loading the pipe. Designated signal person will be selected.
4. Loading crew will ensure that the truck has pipe stanchions in place or will install Weeks Marine pipe stanchions prior to loading the pipe.
5. Loading crew will assist the operator to line up the vacuum lock device on the first pipe (if needed).
6. If trailer access is needed the loading crew will ensure that their boots are clean of mud when accessing the trailer. Use portable ladder, trailer ladder (if available) or the 18-wheeler to access the trailer.
7. Prior to lifting the pipe, the operator will ensure the loading area, which includes the area around the truck to where the pipe is stored, is clear of all crew and truck driver.
8. Once all pipes are loaded on the truck, the driver is cleared to install a couple of his straps to secure the load and loading crew will remove the Weeks Marine pipe stanchions, if they were used.

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Standard Operating Procedure

Unloading pipe from 18-Wheeler using a front-end loader

1. Shipping & Receiving is to ensure that the Truck Driver does not remove any straps from the pipe until the truck gets to the unloading area.
2. Once the truck enters the unloading area, the unloading crew will ensure the truck is stopped on level ground as best as possible.
3. Unloading crew will put cones out for traffic and ensure someone directs traffic when it is safe to pass
4. Pre-safety meeting and trailer inspection is to be held with the unloading crew and the truck driver prior to unhooking any straps. Designated signal person will be selected.
5. Unloading crew will ensure that the truck has pipe stanchions in place or will install them prior to truck driver unhooking the straps.
6. If trailer access is needed unloading crew will ensure that their boots are clean of mud when accessing the trailer. Use portable ladder, trailer ladder (if available) or the 18-wheeler to access the trailer.
7. Crew will move to a safe area as the truck driver removes the trailer straps.
8. Once straps are released, leave them on the ground until all pipes have been removed from the trailer.
9. Prior to lifting the pipe, the operator will ensure the unloading area, which includes the area around the truck to where the pipe is stored, is clear of all crew and truck driver.
10. Once unloading operations start unloading crew will ensure that no one goes around the trailer until all pipes have been removed, incase of pipe shifting during removal.
11. Once all pipes are removed the truck driver is cleared to pick up his straps and unloading crew will remove the Weeks Marine pipe stanchions, if they were used.

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Effective Date: TBD	Reviewed By:	Date Reviewed:

Standard Operating Procedure

Loading pipe to 18-Wheeler using a front-end loader

1. Once the truck enters the loading area, the loading crew will ensure the truck is stopped on level ground as best as possible.
2. Loading crew will put cones out for traffic and ensure someone directs traffic when it is safe to pass
3. Pre-safety meeting and trailer inspection is to be held with the loading crew and the truck driver prior to loading the pipe. Designated signal person will be selected.
4. Loading crew will ensure that the truck has pipe stanchions in place or will install Weeks Marine pipe stanchions prior to loading the pipe.
5. If trailer access is needed the loading crew will ensure that their boots are clean of mud when accessing the trailer. Use portable ladder, trailer ladder (if available) or the 18-wheeler to access the trailer.
6. Prior to lifting the pipe, the operator will ensure the loading area, which includes the area around the truck to where the pipe is stored, is clear of all crew and truck driver during the entire operations incase the pipe shifts during loading.
7. Once all pipes are loaded on the truck, the driver is cleared to install a couple of his straps to secure the load and loading crew will remove the Weeks Marine pipe stanchions, if they were used.

USE STOP WORK AUTHORITY IF YOU SEE AN UNSAFE ACT HAPPENING OR ABOUT TO HAPPEN.



Overhead Utility Hazard Checklist

This Over Utility Hazard Checklist must be completed by the Task Supervisor and reviewed/approved by a Project Superintendent and designated Safety Representative prior to the initial start of work when employees will be working around overhead power lines.

Job Location: _____ Job Number: _____

Task Supervisor: _____ Date: _____

Description of Overhead Utility Hazard: _____

Pre-Work Permit Checklist – The following items must be checked off as completed prior to starting work within 50' of any overhead utility hazard with Heavy Equipment & Vehicle.

Yes N/A

- | | | |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | Jobsite Survey conducted to identify all overhead power lines located in and/or around the jobsite. |
| <input type="checkbox"/> | <input type="checkbox"/> | Determine the distance of power lines to the work activity.
Enter Closest Distance to Overhead Utility from Work Area: _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | Determined line clearance distance. (For lines 50 kilovolts or less, operator must keep all parts of crane/equipment at least 10 feet away from power line. Higher voltage requires greater distance.) |
| <input type="checkbox"/> | <input type="checkbox"/> | Determine the amount of voltage carried through the power lines (kilovolts). |
| <input type="checkbox"/> | <input type="checkbox"/> | Notify the owner or operator of the power lines of our activities. |
| <input type="checkbox"/> | <input type="checkbox"/> | Operational Plan/Lifting Plan developed and reviewed by workforce. |
| <input type="checkbox"/> | <input type="checkbox"/> | Construction materials and equipment are not stored under or near power lines. |
| <input type="checkbox"/> | <input type="checkbox"/> | Utility company relocated power lines to a safe working distance. |
| <input type="checkbox"/> | <input type="checkbox"/> | Utility company de-energized and visibly grounded the power lines. |
| <input type="checkbox"/> | <input type="checkbox"/> | Physical barriers installed to prevent crane/equipment contact with power lines. |
| <input type="checkbox"/> | <input type="checkbox"/> | Flagged warning lines or "Tattle-Tails" installed to mark power line clearance distance. |
| <input type="checkbox"/> | <input type="checkbox"/> | An observer equipped with a horn/whistle used to warn crane/equipment operator of close distance to power lines. (Observer has no other responsibilities). |
| <input type="checkbox"/> | <input type="checkbox"/> | Non-conductive tools and ladders used. |
| <input type="checkbox"/> | <input type="checkbox"/> | Polypropylene tag lines used to provide better insulating properties. |



Other Related Concerns (describe fully): _____

Approval: _____ **Date:** _____
Superintendent's Signature

_____ **Date:** _____
Safety Representative's Signature

Approval Period Start: _____ *Approval Period End:* _____

Superintendent Initials: _____ *Safety Representatives Initials:* _____

Signatures/Names of Those Attending Review:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Note: If any attendees are employed by subcontractors, note the Name of Subcontractor behind the attendee's signature/name. THIS PERMIT MUST BE MAINTAINED IN THE PROJECT SITE FILES and also included in the project record via the document control process. The information must be reviewed and acknowledge by all new crew members. A new checklist must be completed and new approval must be granted when task area set-up or site conditions change. Approval is subject to termination by the approving Superintendent or Safety Representative when these conditions are violated.

Complete a Detail of Your Work Area Set-Up and Method of Controlling the Hazard

CERTIFICATE OF SERVICE

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

MICHAEL D. MCKNIGHT
OGLETREE DEAKINS
FORUM IV
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 9th DAY OF December 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