

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

COMMISSIONER OF LABOR OF THE)	DOCKET NO.: OSHANC 2020-6312
STATE OF NORTH CAROLINA)	INSPECTION NUMBER: 318187119
)	CSHO ID: X3137
COMPLAINANT,)	
v.)	
)	
PRIMUS BUILDERS, INC.)	
<i>and its affiliates and successors</i>)	
)	
RESPONDENT.)	
_____)	

FILED

JAN 4 2023

NC OSH Review Commission

STIPULATION AND NOTICE OF SETTLEMENT

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:

FACTS¹

1. Complainant is an agency of the State of North Carolina charged with the administration and enforcement of the provisions of the Occupational Safety and Health Act of North Carolina (the "Act"), including making inspections and issuing citations and other pleadings.

2. Respondent, Primus Builders, Inc., is a Georgia corporation, which was authorized to do business in North Carolina on June 13, 2002. It is active and current and maintains a place of business in Woodstock, Georgia.

3. Respondent is a general construction contractor engaged in the business of

¹ The facts contained herein have been proffered by the Respondent, for the purposes of resolving the current matter and for no other purposes. The factual stipulations are not admissible in any other proceeding. While the Complainant has reason to believe the facts as stipulated, it neither confirms nor denies the factual allegations contained herein.

constructing buildings and other structures and managing or supervising subcontractors engaged in such construction work.

4. Respondent is an “employer” within the meaning of N.C.G.S. §95-127(11); all of the Respondent’s employees referred to in this Complaint are “employees” within the meaning of N.C.G.S. §95-127(10).

5. During the period between January 10 and January 16, 2020, Compliance Safety and Health Officer Grant Quiller (hereinafter “CSHO” or “Officer Quiller”), employed by the North Carolina Department of Labor, inspected Respondent’s worksite located at 3776 Taylorsville Hwy., Statesville, North Carolina, hereinafter referred to as “the site.” Officer Quiller properly entered onto Respondent’s site and properly conducted the inspection pursuant to an accident report.

6. Mr. Tom Watson, Quality Assurance and Safety Manager for the host employer, Lineage Logistics LLC, and Mr. Doug Weathers, Regional Environmental Health and Safety Manager for the host employer, Lineage Logistics LLC, consented to the inspection. Officer Quiller contacted Ms. Theresa Ciatto, Director of Safety for Respondent, and conducted an opening conference summarizing the purpose and scope of the inspection.

7. At the time of the inspection the site was a multi-employer site. Lineage Logistics LLC was the host employer and Respondent was contracted to install 6 new blast freezers and rearrange the racking in Warehouse 4 and demolish four (4) old blast freezers.

8. Respondent was neither an owner nor an operator with respect to the site.

9. Respondent was the general contractor for the construction project with overall responsibility for the construction worksite, including the responsibility for safety and health of all employees at the site. The following subcontractors were on site:

- a. Republic Refrigeration, Inc. was a subcontractor to the owner and was working on compressors and refrigeration units for Lineage Logistics;
 - b. Republic Refrigeration, Inc. was a subcontractor to the respondent and was the refrigeration sub-contractor for respondent on the project at Lineage Logistics;
 - c. P3 Advantage, Inc. is an affiliate of Primus Builders, that was removing insulated metal panels (“IMPs”) in Warehouse #4 on the relevant date;
 - d. Steel King, manufacturer and installer of steel racking systems worked under the direction of respondent (Steel King, in turn, sub-contracted their work to Superior Installation Services);
 - e. Baker Warehousing Services provided labor for the new product racking;
 - f. Innovative Contracting Group hired as subcontractor to demolish IMP walls, racking, remove ice and do demolition/installation of curbs and bollards (Innovative Contracting Group subcontracted out their labor to AGG Construction); and
 - g. Centimark Roofing was hired as roofing contractor to seal new and old penetrations in the roof.
10. The inspection of the accident at the location involved a rupture at old blast freezer #4.
 11. P3 Advantage employees were controlled by and took instruction from Primus Builders, Inc.’s superintendents – who were on site at the time.
 12. Primus Builders and P3 Advantage had the same management representative, and had the same business address.
 13. Four old blast freezers were being demolished and replaced with six new freezers

in a different area of warehouse #4.

14. The initial phase of the construction project was installation of and commissioning of new blast freezers and new compressors.

15. The second phase of the project included removal of racking, and the demolition of the old four blast freezers.

16. A blast freezer is made up of an ammonia evaporator with the four pipes feeding the system from an external tank of ammonia.

17. The pipes are a high-pressure liquid ammonia, a hot gas ammonia, a gas condensate return, and a suction pipe.

18. Two employees of P3 Advantage were doing demolition of insulated metal panels (“IMPs”) surrounding old blast freezer #9 while working from a scissor lift.

19. Representatives of Respondent, Lineage Logistics and Republic Refrigeration noticed ice buildup around the evaporator coil on freezer #9. The two P3 Advantage employees on the scissor lift were directed to remove the ice buildup. One of the two employees attempted to remove the ice buildup with a crowbar and hammer.

20. An evaporator coil ruptured during the process of ice removal, causing the ammonia discharge.

21. The two employees of P3 Advantage, who were on the scissor lift at the time, were engulfed in the ammonia cloud.

22. One employee unclipped his fall protection and jumped to the ground.

23. That employee exited the building, removed his clothing, and others aided him into the outside emergency shower.

24. He was evacuated by ambulance to a nearby hospital.

25. The second employee of P3 Advantage, who had applied the crowbar and hammer for ice buildup removal, succumbed to the ammonia cloud and died.

26. The Primus Daily Report shows that on 1.4.2020, Lineage was still using Old Bast Cell #9 for purposes of blast-freezing product.

27. On 1.8.2020 P3 Advantage loaned its employees to Primus Builders for IMP demolition work.

28. On 1.10.2020 the P3 Advantage employees were doing demolition work on the IMPs when the accident occurred.

29. Unless otherwise noted below, all conditions described in these allegations existed at the time of Officer Quiller's inspection.

30. Complainant issued its citation on 6.19.2020, carrying the following proposed abatement dates and penalties:

CITATION NUMBER ONE (Serious)

<u>Item</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1	29 CFR 1910.119(h)(3)(i)	07/16/2020	\$4,900.00
2	29 CFR 1910.119(h)(3)(ii)	07/16/2020	\$4,200.00
3	29 CFR 1910.119(h)(3)(iv)	07/16/2020	\$4,900.00
4	29 CFR 1926.34(a)	07/16/2020	\$4,200.00
5	29 CFR 1926.850(e)	07/16/2020	\$4,900.00

31. For each of the alleged violations, the Complainant calculated the proposed penalties and proposed abatement dates according to the procedures set forth in the Complainant's North Carolina Operations Manual. Pursuant to Chapter VI, section B of the North Carolina Operations Manual, Complainant applied the following Adjustment Factors to the Gravity Based Penalty to calculate the Proposed Adjusted Penalty: 30% credit for size, 10% good faith, and 10% credit for history, for a total 50% maximum adjustment.

32. Respondent submitted a timely Notice of Contest, dated August 6, 2020.

33. On or about September 11, 2020, Complainant received "Employer's/Respondent's Statement of Position," which requested that formal pleadings be served.

34. On 10.15.2020, Complainant filed and served a formal Complaint.

35. On 12.14.2020, Respondent filed and served its Answer to the Complaint.

36. Prior to this matter being heard, the Parties hereto have reached a settlement agreement on the terms reflected herein.

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, 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. 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.
3. 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 facts, agreements, statements, stipulations and actions taken by the Respondent shall be deemed an admission by the Respondent, or its affiliates, 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.

4. Upon approval of this Stipulation and Notice of Settlement by the Hearing Examiner, the Respondent agrees to pay the penalty of **\$23,100.00 within ten (10) days** following the receipt of the Order approving the Stipulation and Notice of Settlement.
5. 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.
6. 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.

This the 4th day of January, 2023.

APPROVED BY:

Laura Crawford

Laura Crawford
District Supervisor
Occupational Safety and Health Division

JOSHUA H. STEIN
Attorney General

Rory Agan

Rory Agan (Jan 4, 2023 13:16 EST)

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ATTORNEYS FOR CLAIMANT

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William D. Dillon (Jan 4, 2023 12:41 EST)

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Benton L. Toups

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ATTORNEYS FOR RESPONDENT

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

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FILED
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NC OSH Review Commission

ORDER APPROVING STIPULATION AND NOTICE OF SETTLEMENT

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.
3. The Pre-Hearing Conference was filed November 22, 2022, was posted in accordance with the rules and no parties or other interested person appeared.

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 day of:

Jan 4, 2023

Richard M. Koch

Richard M. Koch (Jan 4, 2023 14:24 EST)

Richard Koch
Hearing Examiner

BY CONSENT:

JOSHUA H. STEIN
Attorney General

Rory Agan

Rory Agan (Jan 4, 2023 13:16 EST)

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ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

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

WILLIAM D. DILLON
TAYLOR ENGLISH DUMA, LLP
1600 PARKWOOD CIRCLE
SUITE 200
ATLANTA, GA 30339

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

BENTON L. TOUPS
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101 N. 3RD ST., SUITE 400
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RORY AGAN
NC DEPARTMENT OF JUSTICE
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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
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via email to carla.rose@labor.nc.gov.

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PS Form 3800, April 2015 S PSN 7530-02-000-9047 See Reverse for Instructions

January 2023.

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