

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

NC OSH Review Commission

COMMISSIONER OF LABOR OF THE)	DOCKET NO.: OSHANC 2022-6440
STATE OF NORTH CAROLINA)	INSPECTION NUMBER: 318232238
)	CSHO ID: V2079
COMPLAINANT,)	
)	
v.)	
)	<u>CONSENT ORDER</u>
)	
SOUTHEAST CONNECTIONS, LLC,)	
<i>and its successors</i>)	
RESPONDENT.)	

THIS CAUSE came on for pre-hearing conference and was heard before the undersigned, Laura J. Wetsch, Hearing Examiner for the North Carolina Occupational Safety and Health Review Commission ("Review Commission"), August 29, 2023 at 10 a.m., via the Lifesize teleconferencing platform, pursuant to a Notice of Hearing. Jonathan D. Jones, Assistant Attorney General, North Carolina Department of Justice appeared for Complainant. H. Bernard Tisdale III of Jackson Lewis P.C. 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, Southeast Connections, LLC. is a North Carolina corporation, which does business in the State of North Carolina, and maintains a place of business in Kernersville, North Carolina. Respondent was first authorized to do business in North Carolina on September 8, 2006. Respondent is in the business of installing gas pipelines. 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).
4. On or between November 9, 2021 and December 9, 2021, Compliance Safety and Health Officer Warren Lutz, employed by the North Carolina Department of Labor, inspected

the Respondent's worksite located southwest of the intersection of Meadowlark Drive and Meadowlark Court, Winston Salem, North Carolina pursuant to the North Carolina Department of Labor's Construction Special Emphasis Program.

As a result of the inspection, Complainant issued the following citation carrying the following proposed abatement date and penalty on January 12, 2022:

CITATION NUMBER ONE (Serious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1	29 C.F.R. § 1926.652(b)	Corrected During Inspection	\$4,900.00

6. The Respondent timely submitted a Notice of Contest, dated March 3, 2022.

7. A hearing in this matter was scheduled pursuant to the Rules of Procedure of the Review Commission ("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 Notice of Hearing 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. Respondent confirms the violations alleged in the Original Citation have been abated.

11. 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.

12. Provided the respective Motions below of each party are granted, Complainant and Respondent agree:

- (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 any 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.

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

14. Respondent further agrees to the following:

- (a) Respondent shall improve and maintain an effective and comprehensive safety and health program. Specifically, as part of its safety and health program, the Respondent will utilize its electronic job safety analysis (JSA) process in North Carolina, which sends electronic notifications to its local management and safety departments any time a job hazard analysis (JHA) notes that a trench deeper than five (5) feet is involved, and requires that the project manager provide documentation of the type of benching, sloping or shoring that is going to be used. Records of the JHAs will be made available to North Carolina Department of Labor (NCDOL) personnel upon request for a period of one year after the effective date of this Consent Order.
- (b) Within 120 days of signing this agreement, Respondent shall conduct training on the application of Respondent's soil classification policy for all employees responsible for overseeing trenching operations in North Carolina. This training will be documented and records of the training made available to NCDOL personnel upon request for a period of one year after the effective date of this Consent Order.

15. Respondent agrees to pay the proposed total penalty of **\$3,675.00 within twenty (20) days of this Order**. Payment is to be by check payable to North Carolina Department of Labor, OSH Division (Identifying Inspection No. **318232238**) and mailed to North Carolina Department of Labor Financial Services Division, ATTN: Collections Division, 1101 Mail Service Center, Raleigh, North Carolina, 27699-1101.

MOTIONS

1. In consideration of the foregoing, and subject to the Respondent's withdrawal of its Notice of Contest to the Original Citation, Complainant moves to make the following amendments to the Original Citation ("Complainant's Motion"):

- (a) Reclassify Citation One, Item 1 from Serious to Nonserious; and
- (b) Decrease the penalty on Citation One, Item 1 from \$4,900.00 to \$3,675.00.

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

Respondent does not object to Complainant's Motion and agrees it will not contest the Amended Citation.

2. In consideration of the foregoing, and without admitting any allegations of the Citation and Notice of Penalty, Respondent gives notice that it withdraws its Notice of Contest to the Original Citation.

Complainant does not object to Respondent's withdrawal of its Notice of Contest to the Original Citation.

FINDINGS OF FACT

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

- 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 Review Commission.
- 3. The Review Commission has jurisdiction over the parties and the subject matter of this action.
- 4. Neither party has any objection, procedural or otherwise, to entry of this Consent Order.

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

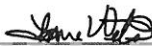
1. The foregoing Findings of Fact are incorporated by reference as Conclusions of Law to the extent necessary to give effect to the provisions of this Order.

2. The foregoing terms are reasonable and supported by the underlying facts, and are consistent with the purpose and objectives of the Act.

NOW THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

1. The Complainant's Motion is hereby **GRANTED**.
2. The parties shall comply with the foregoing terms.
3. Respondent shall pay the penalty of **\$3,675.00** in the manner set forth herein.


This Sep 15, 2023.



Laura Wetsch (Sep 15, 2023 11:03 EDT)
Laura J. Wetsch, Hearing Examiner


CONSENTED TO:

JOSHUA H. STEIN
Attorney General




Jonathan Jones (Sep 13, 2023 14:21 EDT)
Jonathan D. Jones
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ATTORNEYS FOR COMPLAINANT



Kyle Ormsby (Sep 13, 2023 10:36 CDT)
Kyle Ormsby, President
Southeast Connections, LLC



H. Bernard Tisdale III
Jackson Lewis, P.C.
Suite 1550
200 South College Street
Charlotte, North Carolina 28202
Telephone No. 864.346.3737
Bernard.Tisdale@jacksonlewis.com

ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

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

H. BERNARD TISDALE III
JACKSON LEWIS PC STE 1550
200 SOUTH COLLEGE ST
CHARLOTTE NC 28202

By depositing a copy of same in the United States Mail, Certified Mail, return receipt requested, at Raleigh, North Carolina, and upon:

JONATHAN D JONES
NC DEPARTMENT OF JUSTICE
LABOR SECTION
P O BOX 629
RALEIGH, NC 27602-0629

By depositing a copy of 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

By email.

THIS THE 18 DAY OF September 2023.



Karissa B. Sluss
Docket and Office Administrator
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