

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

**COMMISSIONER OF LABOR FOR
THE STATE OF NORTH CAROLINA**

Complainant,

v.

**MASTEC UTILITIES SERVICES, LLC.,
and its successors**

Respondent.

) **DOCKET NO: 2022-6477**
) **INSPECTION NO: 318240546**
) **CSHO ID: N1113**

) **CONSENT ORDER**

FILED

SEP 26 2024

NC OSH Review Commission

THIS CAUSE came on pursuant to the Order of Pre-Hearing Conference (“Hearing Notice”) on September 24, 2024 at 10 a.m. and by motion was continued to September 26, 2024 at 4:00 p.m. Rory Agan, Special Deputy Attorney General, North Carolina Department of Justice, Raleigh, North Carolina, appeared as counsel for the Complainant; Alana Genderson and Mathew McKenna, with Morgan Lewis & Bockius, Washington, D.C., appeared as counsel for Respondent.

At the Hearing, Complainant and Respondent (i) notified the Undersigned that the parties agree upon certain stipulations (“Stipulations”) and wish to make certain motions (“Motions”), and (ii) request that the Stipulations and Motions be made part of the Hearing record and that a Consent Order be issued. The Stipulations and Motions are as follows.

STIPULATIONS

1. The Complainant as Commissioner of Labor of the State of North Carolina is charged by law with compliance with 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”). The Review Commission has jurisdiction over the parties and the subject matter to this action.
2. Respondent is a limited liability company, duly organized, which does business in the State of North Carolina and maintains a place of business in Wilmington, North Carolina. Respondent is in the business of electric utility services.
3. Respondent is an “employer” within the meaning of N.C.G.S. Section 95-127(11); all of Respondent’s employees referred to in this matter are “employees” within the meaning of N.C.G.S. Section 95-127(10).

4. During the period between March 23, 2022 and May 18, 2022, Compliance Safety and Health Officer Deane Mills, employed by the North Carolina Department of Labor, conducted an inspection of Respondent's worksite located in the vicinity of Fertilizer Road and Old NC in Delco, North Carolina (the "Inspection"). The Inspection was conducted pursuant to an accident referral. CSHO Mills presented credentials and initiated the Inspection; Mr. Kevin Hall, Director of Safety & Training for Respondent, consented to the Inspection.

5. As a result of the Inspection, on June 30, 2022, Complainant issued the following Citation and Notification of Penalty (herein collectively referred to as the "Original Citation"):

CITATION 01 (SERIOUS)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001	29 CFR 1926.959(d)(1)	Immediate	\$2,500.00
002	29 CFR 1926.959(d)(2)	7/27/2022	\$5,000.00

6. Respondent submitted a timely Notice of Contest dated July 6, 2022.

7. On or about August 9, 2022, Complainant received "Employer's/Respondent's Statement of Position" which requested that formal pleadings be served. The Complaint and The Answer were both timely served and filed.

8. The Hearing in this matter was scheduled pursuant to the Rules of Procedure of the Safety and Health Review Commission of North Carolina (the "Rules").

9. Complainant and Respondent waived the making of a transcript of this proceeding before the Undersigned, and neither objected, either procedurally or otherwise, to this Hearing and/or to entry of this Order.

10. Respondent posted the Original Citation and the Hearing Notice as required by the Rules. Neither Complainant nor Respondent have received notification from any affected employee that such employee, or its 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.

11. Respondent confirms that the violations alleged in the Original Citation as amended pursuant to Complainant's Motion have been abated. Complainant confirms that no additional documentation of abatement is required by Complainant.

12. Complainant represents, and Respondent does not dispute, that the penalty for each Item designated in the Original Citation as amended pursuant to Complainant's Motion has been calculated in accordance with the standard Field Operations Manual procedure, and that the new proposed penalty for each Item designated in the Original Citation as amended pursuant to Complainant's Motion has been derived giving consideration of the standard mitigating factors and specific factors applicable to Respondent.

13. **Respondent agrees:**

- a) For a period of one year from the date of this Order to continue the following safety programs:
 - a. Electrical skills assessment for new employees and employees prior to promotion;
 - b. Cardinal Electrical Safety Rules ("CESR") inspections on topics such as minimum approach distances and qualified observers;
 - c. Internal inspection program, to include jobsite safety observations, among other types of inspections; and
 - d. Utilize recently updated handbooks to train employees on electrical safety.
- b) If Respondent identifies new training or other methods to further increase safety beyond what is discussed in paragraph a) above, it may adopt such new program(s) at its discretion. No prior approval of any changes are required by NCDOL-OSH.
- c) Within six months of the date of this Order, Respondent will inform all of its North Carolina employees who work on or near electrical distribution lines that they must conduct a job briefing if or when a change in the scope of work occurs on a worksite in North Carolina.
- d) To pay the penalty assessed in this matter within 30 days of the date of this Order. In the event Respondent does not pay as agreed upon, Complainant retains the right to institute collection proceedings as allowed by law. Respondent agrees to pay attorney's fees to Complainant in the event that the Complainant has to institute collection proceedings to collect the debt.

Payment is to be by check payable to the North Carolina Department of Labor, OSHA Division (identifying Inspection No. 318240546) and mailed to North Carolina Department of Labor Financial Services Division, ATTN: Collections Division, 1101 Mail Service Center, Raleigh, North Carolina 27699-1101.

14. The parties agree to bear their own fees, costs and other expenses, including attorney's fees if any, that have been incurred in connection with any stage of these proceedings up to and including the filing of this Order.

15. 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 no outstanding issues remain 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 foregoing 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 as amended or waiver of defenses; provided however that in any subsequent proceeding with respect to matters covered by this Consent Order brought directly under 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 by 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.

MOTIONS

Complainant moves to do the following ("Complainant's Motion"):

- a) Delete Citation 1, Item 1 and associated penalty;
- b) Reclassify Citation 1, Item 2 to Non-Serious; and;
- c) Change the penalty of Citation 1, Item 2 to \$3500.00.

Except as set forth in this motion, the Original Citation shall remain unmodified or amended.

Respondent does not object to Complainant's Motion.

Respondent requests that upon the granting of Complainant's Motion that the Undersigned consider the following motion by the Respondent ("Respondent's Motion"):

- a) To withdraw Respondent's Notice of Contest to the Original Citation.

Complainant does 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. 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 provisions of the Act.
2. Respondent is subject to the provisions of the Act and jurisdiction of the Safety and Health Review Commission of North Carolina.
3. This Court has jurisdiction over the parties and the subject matter of this Hearing.
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. No affected employee of Respondent, or its representative, attended to have a say in, or participate as a party in, the Hearing.

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**;
2. That Respondent's Motion is hereby **GRANTED**;
3. **Respondent shall abide by the terms of paragraph 13 above and pay the penalty of \$3500.00 within 30 days of the date of this Order.**

This the 26th day of September, 2024.

Mary-Ann Leon
Mary-Ann Leon (Sep 26, 2024 15:37 CDT)

Mary-Ann Leon
Hearing Examiner

CONSENTED TO:

Rory Agan
Rory Agan (Sep 26, 2024 14:13 EDT)

**Rory Agan
Special Deputy Attorney General,
North Carolina Department of Justice,
Raleigh, North Carolina
Attorney for Complainant**

Mathew McKenna
Mathew McKenna (Sep 26, 2024 13:58 EDT)

**Matthew McKenna on behalf of
Alana Genderson, Partner
Morgan, Lewis & Bockius
Attorney for Respondent**

CERTIFICATE OF SERVICE

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

ALANA GENDERSON
MATHEW MCKENNA
MORGAN, LEWIS, & BOKIUS LLP
1111 PENNSYLVANIA AVE. NW
WASHINGTON, DC 20004-2541

By depositing a copy of the same in the United States Mail, by 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

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.

THIS THE 2 DAY OF October 2024.

PAUL E. SMITH
CHAIRMAN



Karissa B. Sluss
Docket Administrator
NC Occupational Safety &
Health Review Commission
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