

3. Respondent is an "employer" within the meaning of N.C.G.S. §95-127(11) with "employees" within the meaning of N.C.G.S. §95-127(10).
4. Prior to and on March 8, 2022, Respondent was engaged in constructing a new interchange bridge at or near the intersection of Interstate 95 (I-95) and Sunset Avenue in Rocky Mount, North Carolina (hereafter referred to as "Respondent's worksite").
5. Complainant is an agency of the State of North Carolina charged by law with the administration and enforcement of the provisions of the North Carolina Occupational Safety and Health Act.
6. During the period on and between March 8, 2022 and August 24, 2022, the North Carolina Department of Labor Occupational Safety and Health Division ("NCDOL-OSH") conducted an inspection of Respondent's worksite.
7. As a result of the inspection, on August 24, 2022, Complainant issued the following Serious citation carrying the following proposed abatement date and penalty:

CITATION NUMBER ONE (Serious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1	NCGS 95-129(1)	Immediately upon receipt	\$6,300.00
2	29 CFR 1926.21(b)(2)	Immediately upon receipt	<u>\$6,300.00</u>

TOTAL: \$12,600.00

8. Respondent submitted a timely Notice of Contest, dated October 3, 2022.
9. On January 18, 2024, the Review Commission issued a Notice of Hearing in this matter.
10. Respondent confirms that Respondent has posted the Notice of Hearing in Respondent's workplace in at least one location where all affected employees had an opportunity to read

it, and informed these employees of their right to participate as a party in this matter prior to commencement of the hearing.

11. Neither party has any objection, procedural or otherwise, to this Hearing.
12. Neither party has received notice that any employee intends to participate in this matter as a party, nor has the Commission received any document from an employee indicating such intent.
13. The parties have mutually agreed to resolve the Citation upon the following terms, and seek the undersigned's approval of the same:

- a. Respondent confirms that the violations alleged in the original Citation and Notification of Penalty have been abated and agrees to provide documentation to that effect on the OSHA 2D abatement certification form that accompanied the original citation mailing along with providing supporting documentation addressing the abatement action to include policy revisions and training documentation within sixty (60) days of the Consent Order, mailed to:

North Carolina Department of Labor
Occupational Safety and Health Division
ATTN: District 5 Compliance Supervisor
4964 University Parkway, Suite 202
Winston-Salem, NC 27106

- b. Respondent agrees to continue its best efforts to comply with the requirements of the Occupational Safety and Health Act of North Carolina (hereinafter referred to as "the Act").
- c. Complainant agrees to make the following amendments to the Citation item:
 - i. Delete Citation One, Item 1;
 - ii. Reclassify Citation One, Item 2 from Serious to Non-Serious; and

- iii. Amend the penalty associated with Citation One, Item 2 from \$6,300.00 to \$12,600.00.
- d. Without admitting any allegations of the Citation and Notification of Penalty, or waiving any defense to the Citation, Respondent withdraws its Notice of Contest and agrees to:
 - i. Continue to develop and modify work practices during pile driving operations to ensure that employees are not working under the suspended load, hammer, leads or piling, and are staying away from the area around the point where the piling enters the ground due to the potential struck-by hazards that could result from fasteners, plates, and other parts could loosen and fall from the pile driver (hereafter referred to as "the fall zone");
 - ii. Conduct annual, monthly, weekly, and daily inspections of Respondent's pile driver(s) in accordance with the manufacturer's maintenance schedules for use of Respondent's pile driver(s) and agrees to continue to review supplemental and (or) updated maintenance schedules from the manufacturer of Respondent's pile driver(s) and make adjustments as appropriate; at a minimum, Respondent agrees to conduct an inspection of the hammer(s), including inspecting for cracks in the hammer components including the components within the helmet of the pile driver (e.g. hammer cushion and striker plate) monthly while a pile driver is in use on a pile driving project and in between every pile driving project (i.e. prior to commencing pile driving operations at another worksite); Respondent further agrees at a minimum to conduct daily visual inspections of the anvil

dampener for obvious wear and defect and replace as needed, as well as checking the positioning of the striker plate relative to the top of the cushion bowl which should only have two to two and a half inches in the cushion bowl on the top of the drive cap base, if over half an inch and (or) if cracks are identified, then work must stop until the cushion set can be changed;

- iii. The aforementioned inspections of the hammer shall be documented in writing and retained throughout the duration of the project, and shall be provided to NCDOL-OSH upon request;
- iv. Prior to commencing pile driving operations, ensure that a fall zone has been clearly established reasonably around the operating hammer and that employees involved in pile driving operations have been instructed prior to the commencement of work on the boundaries of the fall zone and further that those employees are instructed that all employees are prohibited from entering the fall zone while the pile driver is in operation, including when taking the blow count; and agrees to document such instruction that prohibits employees from entering the fall zone while the pile driver is in operation, including when taking the blow count, in writing including the date and manner in which such instruction was provided and the content of that instruction for Respondent's jobsites where pile driving operations are performed, all such documentation shall be retained for the duration of that project, and shall be provided to NCDOL-OSH upon request;
- v. Develop a written policy and communicate that policy to Respondent's employees that prohibits employees from entering the established fall zone

on each of Respondent's jobsite; this policy shall state that employees are prohibited from entering the established fall zone (the area around the point where the piling enters the ground) and in the event that it is necessary to enter this area, then employees must ensure that the pile driver is stopped and deenergized prior to employees entering the area;

- vi. Continue to modify the Respondent's process for taking the blow count or process used to determine that the pile has reached its required level of penetration into the ground to ensure that the employee(s) tasked with taking the blow count and (or) conducting measurements as part of that process is not positioned at the base of the pile while the pile driver is in operation; instead Respondent agrees to continue to develop methods that allow employees to take the blow count or process used to determine the pile has reached its required level of penetration into the ground from a distance away from the pile driver (not in the established fall zone) and actively engage with regulators in the industry to ensure that the criteria for pile driving operations is provided in manner that allows employees to perform job tasks without working under the suspended load, hammer, leads or piling, and the fall zone;
- vii. Instruct each employee in the recognition and avoidance of unsafe conditions including but not limited to struck-by hazards of ejected broken parts within the helmet of the hammer; and
- viii. Conduct regular audits of the components of Respondent's pile drivers, including hammer cushions and striker plates, as an additional check on

maintenance to ensure that the parts within the helmet of the hammers are maintained as appropriate and replaced as needed.

- e. Respondent agrees to pay the total penalty of **\$12,600.00** within thirty (30) days of this Consent Order.
- f. Each party agrees to bear its 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 Consent Order.
- g. The parties agree that this Consent Order 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 Consent Order 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.
- h. Neither party is aware of outstanding matters to be resolved by a hearing of this matter.

14. No outstanding issues remain to be resolved by a hearing of this matter.

Based on the foregoing, the undersigned makes the following


CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties and the subject matter.
2. The parties' proposed resolution of this matter is consistent with the purpose and objectives of the Act.

NOW THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

1. The parties' agreement, as set out above, is approved.
2. The parties shall comply with the terms and conditions set out above.
3. The Respondent shall pay the penalty of **\$12,600.00** within **thirty (30) days** of this Consent Order.

This the Mar 5, 2024




Laura Wetsch (Mar 5, 2024 10:37 EST)

LAURA J. WETSCH
Hearing Examiner


CONSENTED TO:

JOSHUA H. STEIN
Attorney General



Sage A. Boyd (Mar 5, 2024 10:36 EST)
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ATTORNEYS FOR COMPLAINANT



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ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

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

ANNA LUCAS
PO BOX 9
LEMON SPRINGS, NC 28355

SAGE BOYD
NC DEPARTMENT OF JUSTICE
LABOR SECTION
PO BOX 629
RALEIGH NC 27602

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 6 DAY OF March, 2024.



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