

NOV 12 2024

NC OSH Review Commission

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

COMMISSIONER OF LABOR FOR)	DOCKET NO: 2023 - 6520
THE STATE OF NORTH CAROLINA)	
)	INSPECTION
)	NO: 318246014
Complainant,)	
)	CSHO ID: F6087
v.)	
)	
PCS PHOSPHATE COMPANY, INC.,)	<u>CONSENT ORDER</u>
and its successors)	
Respondent.)	

THIS CAUSE coming on pursuant to the Notice of Pre-Hearing Conference (“Hearing Notice”) on October 31, 2024, at 10 a.m., via Lifesize teleconferencing platform. During the October 31, 2024, hearing, the matter was continued until November 12, 2024, at 10 a.m. to allow the parties additional time to complete settlement discussions to determine if an agreement between the parties could be reached. An agreement has been reached. Jonathan D. Jones, Assistant Attorney General, North Carolina Department of Justice, appeared for Complainant. Michael D. McKnight, Attorney with Ogletree, Deakins, Nash, Smoak & Stewart, P.C., Raleigh, North Carolina, appeared for Respondent for both the October 31, 2024 hearing and the November 12, 2024 hearing.

Pursuant to the Hearing Notice a pre-hearing conference (the “Hearing”) was held for the purpose of considering matters which would simplify the issues and expedite the proceedings in the above referenced case including considering such matters that may be necessary or advisable for the completion of the case, and if possible, to reach a resolution without the necessity of further hearing. No affected employee of Respondent attended to have a say in, or participate as a party in, the Hearing.

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) requested that the Stipulations and Motions be make 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”), including making inspections and issuing citations and other pleadings, and brings this action pursuant to N.C.G.S. §§95-133 et seq.

2. Pursuant to N.C.G.S. §95-135 the Review Commission has jurisdiction over the parties and the subject matter of this action.

3. Respondent is a Delaware corporation, which was authorized to do business in North Carolina on April 5, 1982. It is active and current in North Carolina and maintains a place of business in Aurora, North Carolina. Respondent is a phosphate fertilizer manufacturer. Respondent is an "employer" within the meaning of N.C.G.S. Section 95-127(11); 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 June 10, 2022, and June 28, 2022, Occupational Safety and Health Compliance Officer Grant Quiller, employed by the North Carolina Department of Labor, conducted an inspection of Respondent's worksite located at 1530 NC-306, Aurora, North Carolina, pursuant to a referral (the "Inspection"). The worksite was a multi-employer work site.

5. As a result of the Inspection, on November 30, 2022, Complainant issued the following Citation and Notification of Penalty (herein 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 1910.132(a)	Immediately Upon Receipt	\$ 14,502.00

6. Respondent submitted a timely Notice of Contest, dated January 23, 2023. On or about February 23, 2023, Complainant received "Employer's/Respondent's Statement of Position" which requested that formal pleadings be served. The Complaint was filed April 13, 2023, and Respondent's Answer and Affirmative Defenses to Complaint was filed June 1, 2023.

7. 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").

8. Complainant and Respondent have no objection, either procedural or otherwise, to this Hearing, both parties consent to the conduct of this Hearing by the Undersigned, and to entry of this Consent Order. Complainant and Respondent confirm that there has been no employee objection in this matter to the reasonableness of any abatement period.

9. 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 time.

10. 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.

11. The parties agree that upon granting of Complainant's Motion that the proposed penalty for the Item has been calculated in accordance with the standard Field Operations Manual procedure and that, as amended pursuant to Complainant's Motion, the proposed penalty has been derived in consideration of the standard mitigating factors and specific factors applicable to Respondent.

12. Respondent agrees to pay the penalty of \$14,502.00 assessed in this matter within 30 days of the date of this Consent Order.

In the event Respondent does not pay the penalty as stated above, all unpaid amounts shall become immediately due and payable, and the 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 institutes 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. 318246014) and mailed to North Carolina Department of Labor Financial Services Division, ATTN: Collections Division, 1101 Mail Service Center, Raleigh, North Carolina 27699-1101. Credit card payment may also be arranged.

13. 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 Final Order.

14. Complainant and Respondent agree that provided the respective Motion of each party is granted:

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 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;

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 as amended or a waiver of any defense, 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;

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.

MOTIONS

Complainant moved to do the following (“Complainant’s Motion”):

- a) Regarding Citation 01, Item 001 to change the cited standard to 29 CFR 1910.132(c).
- b) Reclassify Citation 01, Item 01 from Serious to Non-Serious but maintain the penalty of \$14,502.00;
- c) Rewrite the SAVE and AVD to state as follows:

29 CFR 1910.132(c): Personal protective equipment was not of safe design and construction for the work to be performed:

- a. Anhydrous Hydrogen Fluoride Plant # 2 – where, on or about June 7, 2022, diluted hydrofluoric acid unexpectedly dripped from a flange that was being repaired in the plant and the personal protective equipment for the employees performing the work did not include chemical neck guards and chemical resistant jackets to protect them from potential chemical burns.

Respondent did not object to Complainant’s Motion.

Respondent requested 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 as amended pursuant to Complainant’s Motion set forth above.

Complainant did 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.

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. Respondent is an “employer” within the meaning of N.C.G.S. §95-127(11); Respondent’s employees referred to in the Complaint are “employees” within the meaning of N.C.G.S. §95-127(10).
3. This Court has jurisdiction over the parties and the subject matter of this Hearing.
4. Respondent is subject to the provisions of the Act and jurisdiction of the Safety and Health Review Commission of North Carolina.

Based on the foregoing Findings of Fact and Conclusions of law, **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. That Respondent shall meet the requirements of Stipulation 12 as set out above; and
4. That the parties shall comply with the terms and conditions set forth in the Stipulations and in this Consent Order.

Effective the 12th day of November, 2024.

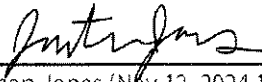
SO ORDERED

R. Joyce Garrett
R. Joyce Garrett (Nov 12, 2024 19:15 EST)

R. Joyce Garrett
Hearing Examiner

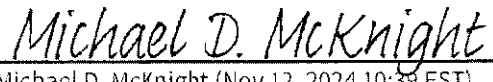
CONSENTED TO:

JOSHUA H. STEIN, Attorney General



Jonathan Jones (Nov 12, 2024 10:40 EST)

Jonathan D. Jones
Assistant Attorney General
North Carolina Department of Justice
P.O. Box 629/Labor Section
Raleigh, NC 27602
Tel. 919-716-0049
Email: jdjones@ncdoj.gov
Counsel for Complainant



Michael D. McKnight (Nov 12, 2024 10:39 EST)

Michael D. McKnight
Ogletree, Deakins, Nash
Smoak & Stewart P.C.
8529 Six Forks Road, Forum IV, Suite 600
Raleigh, NC 27615
Tel. 919-787-9700
Email: michael.mcknight@ogletree.com
Counsel for Respondent

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 a copy of the same in the United States Mail, by certified mail, return receipt requested, postage prepaid at Raleigh, North Carolina, and upon:

**JONATHAN D. JONES
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 15 DAY OF November 2024.

**PAUL E. SMITH
CHAIRMAN**



**Karissa B. Sluss
Docket Administrator
NC Occupational Safety &
Health Review Commission
1101 Mail Service Center
Raleigh, NC 27699-1101
TEL.: (984) 389-4132
NCOSHRC@oshrc.labor.nc.gov**