

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

**COMMISSIONER OF LABOR OF THE)
STATE OF NORTH CAROLINA,)
COMPLAINANT,)
v.)
NC DOT SAFETY & RISK MGMT -)
EQUIPMENT SHOP - CATAWBA)
and its successors,)
RESPONDENT.)**

**DOCKET NO: 2023-6535
INSPECTION NO: 318255486
CSHO ID: G2933**

FILED

OCT 31 2024

NC OSH Review Commission

DECISION AND FINAL ORDER

THIS MATTER was duly noticed and came on for hearing before the undersigned on July 9, 2024, via the Lifesize video platform. The Complainant, Commissioner of Labor of the State of North Carolina (“Complainant”), was represented by Assistant Attorney General Jonathan D. Jones. Respondent was represented by Special Deputy Attorney General Colin Justice and Assistant Attorney General Miranda Holley.

STIPULATIONS

Prior to the hearing the parties submitted a joint prehearing report which included the stipulated facts listed in Appendix A, attached hereto.

WITNESSESS

For the Complainant: Mr. Benjamin Teal, Compliance Safety & Health Officer, N.C.
Department of Labor.

For the Respondent: Mr. Charles Tallent, Equipment Shop Manager, N.C. Department of
Transportation
Mr. Brian Leonhardt, Safety Engineer, N.C. Department of Transportation

EXHIBITS

The following exhibits were admitted into evidence at the hearing:

| | | |
|----------------------|------------------------|--|
| For the Complainant: | Complainant Exhibit #1 | Inspection Report, including photos |
| | Complainant Exhibit #2 | Photo Img 3095 |
| | Complainant Exhibit #3 | Photo Img 3090 |
| | Complainant Exhibit #4 | Photo Img 3091 |
| | Complainant Exhibit #5 | Photo Img 3092 |
| | Complainant Exhibit #6 | Photo Img 3077 |
| For the Respondent: | Respondent Exhibit #2 | Photo Img 2466 |
| | Respondent Exhibit #3 | Photo of Mack Truck on Omer Lift (zoomed out) |
| | Respondent Exhibit #4 | Photo 20221212_132317.jpg |
| | Respondent Exhibit #5 | Photo 20221212_142008.jpg |
| | Respondent Exhibit #9 | Photo Img_3095.jpg |
| | Respondent Exhibit #11 | Merriam-Webster Dictionary Definition: Pit |
| | Respondent Exhibit #12 | American Heritage Dictionary Definition: Pit |
| | Respondent Exhibit #13 | Collins English-Italian Dictionary, Italian Translation of Pit |
| | Respondent Exhibit #14 | Email Chain re: Pit Cover Plates |

DECISION

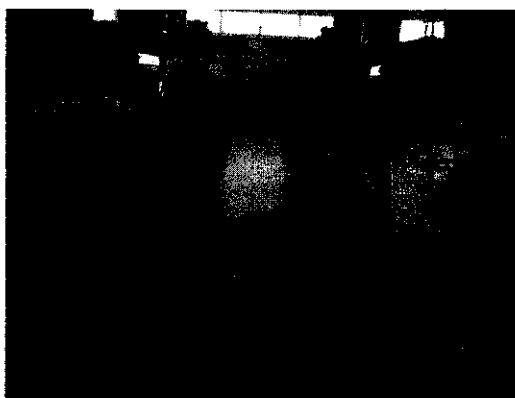
BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, judicially noticed information pursuant to N.C. Gen. Stat. §8C-1-201 and the entire record in this proceeding, the Undersigned makes Findings of Fact and Conclusions of Law. In making the Findings of Fact, the undersigned has weighed all the evidence and assessed the credibility of the witnesses. The undersigned had the ability to see and hear the testifying witnesses and to review the exhibits submitted. The undersigned has taken into account the appropriate factors for judging credibility of witnesses, including but not limited to the demeanor of the witness and any interests, biases, or any prejudice the witness may have. Further, the undersigned has carefully considered the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case. Based upon the foregoing, the Undersigned makes the following:

FINDINGS OF FACT

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. N.C. Gen. Stat. § 95-126 et seq. ("the Act"). Stip. #2.

2. Respondent North Carolina Department of Transportation Division 12 Equipment - Catawba County is a division of an agency of the State of North Carolina organized and existing under the laws of the State of North Carolina. Stip. #3.
3. Respondent is an employer within the meaning of N.C. Gen. Stat. §95-127(11) and its employees are employees within the meaning of N.C. Gen. Stat. §95-127(1). Stip. #4.
4. Respondent's facility at 1300 Prison Camp Road, Newton, North Carolina ("worksite") provides vehicle maintenance for North Carolina state agencies. It is an approximately 12,600 square foot automotive shop that contains three service bays and three automotive lifts for performing vehicle maintenance. Stip. #5; Compl. Ex. 1, pp 30; 64.
5. On November 9, 2022, Compliance Safety and Health Officer ("CSHO") Benjamin Teal, employed by the North Carolina Department of Labor, with the consent of Respondent's Safety Engineer Brian Leonhardt, inspected Respondent's worksite. Stip. #5, #6.
6. At the time of the inspection, Respondent utilized an OMER vehicle lift in its equipment shop that was installed into a recessed storage area in the shop floor. Stip. #10.
7. The inspection was initiated because the agency's "DART" rate¹ was deemed high. The rate was elevated when an employee fell and injured an ankle while working at the OMER vehicle lift in March 2020. The employee's extended absence from the workplace was due, in part, to the injury having occurred during COVID, resulting in the employee's inability to get timely physical therapy for the injury. Teal Test. 13:20; 1:09:07. Leonhardt Test. 2:30:06.
8. When the OMER lift is in the down position, it is flush with the shop floor. When the OMER lift is in the up position, there is a recess in the shop floor that measures sixteen inches in depth at its lowest point. Stip. #11, #12. Compl. Ex. #4; Teal Test. 24:21.
9. In order to perform maintenance on vehicles, a vehicle is driven onto the lift in the down position. The OMER lift is raised and employees enter the center "island" from the rear of the shop and work underneath the raised vehicle. Teal Test. 18:02 - 18:40.
10. Complainant's Exhibit #2 is a fair and accurate depiction of the walking-working surface which employees use when performing repairs or other automotive services on state vehicles.

¹ The Days Away, Restricted or Transferred rate ("DART") is a safety metric use by OSHA based upon the number of recordable injuries and illnesses that resulted in employee days away from work, restricted activities, and/or transfers.



Compl. Ex. #2

11. The OMER lift is used for repairing and/or servicing vehicles one to two times a week for a duration of approximately one to two hours. Teal Test. 29:17.
12. When employees are repairing and/or servicing vehicles they work within ten feet of the recessed area. Teal Test. 34:08.
13. At least three employees are potentially exposed to the hazard of the recessed area. There was no evidence that any employees other than those assigned to service vehicles were exposed to any hazard by the service pit. Teal Test. 42:45; Tallent Test. 1:56:52 (when the lift is being used the doors to the shop are rolled down and locked).
14. Respondent's employees described "the most dangerous part of" their job as the walking-working surface underneath the OMER lift, referring specifically to the depressed floor surface created when the lift is elevated. Teal Test. 27:54 - 29:15.
15. The employee who was injured in March 2020 slipped and fell into the recessed area. Leonhardt Test. 2:18:24.
16. Respondent's Safety Engineer Brian Leonhardt and Respondent's Equipment Shop Manager Charles Tallent acknowledged that the recessed floor created by using the OMER lift was a workplace hazard but contended they were unable to find a physical solution that did not create a greater hazard than the open pit. Teal Test. 30:20; 43:05.
17. CSHO Teal requested information from Respondent regarding the training provided to employees who worked within ten feet of the open recessed area. Teal Test. 34:27
18. During the opening conference, Mr. Leonhardt provided the CSHO with a list of all the training provided to facility employees. Training relative to walking-working surfaces that would be in compliance with 29 CFR 1910.30 was not listed. The CSHO followed up with an e-mail asking if §1910.30 training had been completed. A response e-mail was sent to the CSHO from Safety Officer Chuck Arrowood stating that the walking working surfaces training would be provided in the future. Compl. Ex. #1 pp 71; 136.

19. As depicted in Complainant's Exhibit #2, there were no contrasting markings around the open area nor any barriers. Teal Test. 34:40; Tallent Test. 2:04:30..
20. At the time of the inspection, there were no caution signs in the vicinity of the OMER lift that stated "Caution - Open Pit." Stip. #15.
21. The OMER lift had florescent lights which automatically turned on when the lift was four inches off the ground. Tallent Test. 1:59:44
22. There were no feasible engineering alterations that would have eliminated the hazard by covering the open pit while employees were working. Teal Test. 1:01:50 - 1:05:40 (looking at Respondent's Exhibit #14 and agreeing that the manufacturer's proposed coverings would not be suitable for the OMER lift in Respondent's shop). Leonhardt Test. 2:19:53 (spoke with the vendor who sold Respondent the lift to see if there was a manufacturer's remedy. There was none. Also considered a toe board which was deemed to present a greater tripping hazard.)
23. As a result of the inspection initiated on November 9, 2022, Complainant issued one Nonserious Citation to Respondent on January 12, 2023, including the following items and carrying the following proposed abatement dates and penalties:

| ITEM NO. | STANDARD | ABATE DATE | PENALTY |
|-----------------------------------|---------------------------|------------------------|-------------|
| CITATION ONE (Nonserious) | | | |
| 001a | 29 CFR 1910.28(b)(8)(i) | Corr during inspection | \$ 2,250.00 |
| 001b | 29 CFR 1910.28(b)(8)(ii) | Corr during inspection | \$0.00 |
| 001c | 29 CFR 1910.28(b)(8)(iii) | Corr during inspection | \$0.00 |

Stip. #7, #8.

24. For 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, as appropriate: Employer's Good Faith. Teal Test. 43:55 - 59:20.
25. Respondent filed a Notice of Contest dated March 3, 2023, to contest the Citation number. Compl. Ex. 1 pp. 4-15.

CONCLUSIONS OF LAW

1. To the extent that the foregoing Findings of Fact contain conclusions of law, or that these Conclusions of Law are findings of fact, they are intended to be considered without regard to their given labels. *Charlotte v. Heath*, 226 N.C. 750, 755, 40 S.E.2d 600, 604 (1946); *Peters v. Pennington*, 210 N.C. App. 1, 15, 707 S.E.2d 724, 735 (2011). *Warren v. Dep't of Crime Control*, 221 N.C. App. 376, 377, 726 S.E.2d 920, 923, *disc. rev. den.*, 366 N.C. 408, 735 S.E.2d 175 (2012). 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 Review Commission has jurisdiction over the parties and the subject matter pursuant to N.C. Gen. Stat. § 95-135. Stip. #1.
3. In order to establish that Respondent committed a nonserious violation of an OSHA Standard, the Complainant must prove that: (1) the cited standard applies; (2) the alleged standard was violated; (3) employees were exposed to the cited violation; (4) the employer had actual or constructive knowledge of the violation. *N&N Contractors, Inc. v. OSHRC*, 255 F.3d 122, 125-26 (4th Cir. 2001).
4. Complainant must establish each element by the preponderance of the evidence. *Commission Rule .0514(a)*.
5. Standard 29 CFR §1910.28(b)(8) states:

Repair pits, service pits, and assembly pits less than 10 feet in depth. The use of a fall protection system is not required for a repair pit, service pit, or assembly pit that is less than 10 feet (3 m) deep, provided the employer:

(i) Limits access within 6 feet (1.8 m) of the edge of the pit to authorized employees trained in accordance with § 1910.30;

(ii) Applies floor markings at least 6 feet (1.8 m) from the edge of the pit in colors that contrast with the surrounding area; or places a warning line at least 6 feet (1.8 m) from the edge of the pit as well as stanchions that are capable of resisting, without tipping over, a force of at least 16 pounds (71 N) applied horizontally against the stanchion at a height of 30 inches (76 cm); or places a combination of floor markings and warning lines at least 6 feet (1.8 m) from the edge of the pit. When two or more pits in a common area are not more than 15 feet (4.5m) apart, the employer may comply by placing contrasting floor markings at least 6 feet (1.8 m) from the pit edge around the entire area of the pits; and

(iii) Posts readily visible caution signs that meet the requirements of § 1910.145 and state "Caution — Open Pit."

6. The relevant OSHA regulations on Walking-Working Surfaces (29 CFR 1910.21 through 29 CFR 1910.30) do not specifically define "pit," "repair pit," "service pit," or "assembly pit." Stip. #18.
7. However, based upon the application of well-established principles of statutory construction, 29 CFR §1910.28(b)(8) is applicable to the recessed floor created by using the OMER lift.

a) Interpretation of ambiguous terms in a statute or regulation must be guided by the legislative and/or regulatory intention. *State ex. re. Utils. Comm'n v. Stein*, 375 N.C. 870, 911, 851 S.E.2d 237, 263-64 (2020) ("the cardinal principle of statutory construction is that the words of the statute must be given the meaning which will carry out the intent of the Legislature" and that the legislative intent must be found from the language of the act, its legislative history and the circumstances surrounding its adoption which throw light upon the evil sought to be remedied." Internal quotation marks omitted: Citing *Milk Commission v. Food Stores*, 270 N.C. 323, 332-33, 154 S.E.2d 548, 555 (1967)).

b) It is clear from the rule-making process which produced the final rules codified in 29 CFR §1910.28(b)(8) that automotive repair pits and/or automotive services pits, such as the ones at issue in this case, were intended to be covered by this safety standard.

i) The purpose of the 2017 revisions to the general industry standards on walking-working surfaces was "to prevent and reduce workplace slips, trips, and falls, as well as other injuries and fatalities associated with walking-working surface hazards." 81 Fed. Reg. 82494 (Nov. 18, 2016).

ii) The general industry standards codified in 29 CFR 1910, subpart D (Walking-Working Surfaces) were intended to apply, *inter alia*, to "elevated work surfaces," without regard for how workers accessed such surfaces. *Id.*

iii) With respect to 29 CFR 1910.28(b)(8), in particular, OSHA explained:

Final paragraph (b)(8), like the proposed rule, adds a new provision addressing fall hazards associated with repair, service, and assembly pits that are less than 10 feet deep. ***Employers use these pits primarily to provide access to the underside of vehicles to perform work, such as vehicle maintenance.***

....

OSHA believes the final rule strikes an appropriate balance between protecting workers and ***ensuring that they can repair, service, or assemble vehicles***. The Agency believes that establishing well-marked areas (that is, floor markings or warning lines and stanchions, or both), along with posting caution signs, will be effective in warning authorized workers that they are about to enter a hazardous area, and other workers that they need to keep out of the area. In

addition, limiting access within six feet of pits to those workers who the employer specifically assigns or allows to be in the area, and who, as a result of training, recognize the applicable fall hazards, will keep worker exposure to these hazards to a minimum.

81 Fed. Reg. 82601 (Nov. 18, 2016). *Emphasis supplied.*

iv) OSHA considered and rejected any suggestion that a definition of "fall hazard" should be limited by height: "The risk of a fall or other harm exists at any height, including on the same level. That said, OSHA has established specific heights that trigger fall protection requirements in final § 1910.28. The final definition is adopted as proposed." 81 FR 82512 (Nov. 18, 2016).

8. Historically, automotive repair and service pits have been covered by OSHA regulations codified in the general industry safety standards for Walking-Working surfaces.

a) Prior to the 2017 revisions of 29 CFR 1910, subpart D (Walking-Working Surfaces), fall protection for automotive repair or service pits was enforced through the then-codified standard described at 29 CFR §1910.22(c) which required guard rails to "open pits." Specifically, the regulation required that "Covers and/or guardrails shall be provided to protect personnel from the hazards of open pits, tanks, vats, ditches, etc."

b) In 1975 and 1978 two different employers challenged the applicability of the standard to automotive servicing and repair operations.

i) In *Lee Way Motor Freight, Inc. v. Sec'y of Labor*, 511 F.2d 864 (10th Cir. 1975) the employer sought to distinguish the language in the regulation ("open pit") from their operation which they described as a "maintenance pit." The Court rejected the employer's argument noting that OSHA was entitled by its delegated authority to broadly apply the standard in order to effectuate the purpose of the Act.

... [T]he principal purpose to be served by adopting standards established under previous federal statutes as standards of the Act was to extend protection to many workers who had not been covered by previous [material handling and storage]standards"

Id., at 869.

ii) In *Greyhound Lines West v. Marshall*, 575 F.2d 759 (9th Cir. 1978) the employer argued that the standard should not apply because its bus maintenance pits were covered when buses were being serviced. First, the Court held that the automotive service pits were within the scope of walking-working surfaces being regulated by then then-existing regulations codified at 29 CFR §1910.22. *Id.* at 761. Second, with respect to the employer's argument that "open pit" could only mean a pit that was always open, the Court, relying on *Lee Way Motor Freight, Inc.*, stated, "We refuse to adopt such a restrictive construction of the regulation." *Id.* at 762.

9. Similar to the employers in *Lee Way Motor Freight, Inc.* and *Greyhound Lines West*, the Respondent in the instant case encourages the Court to distinguish the opening created by use of the OMER lift from the term "pit" used in 29 CFR 1910.28(b)(8). Respondent urges the Court to define "pit" as "a hole large enough for a person to fit inside it and/or perform work inside of it." Resp. Post-hearing Br., p 16. Respondent's construction is based upon dictionary definitions that include examples such as an "orchestra pit" or a "stock trading pit." *Id.* Respondent's position is unavailing because it ignores important contextual modifiers.

a) "[W]ords and phrases of a statute may not be interpreted out of context, but . . . as a composite whole so as to harmonize with [the] other statutory provisions and effectuate legislative intent." *Town of LaGrange v. Cnty. of Lenoir*, 292 N.C. App. 99,107, 897 S.E.2d 121,127 (2024) Citing *Duke Power Co. v. City of High Point*, 69 N.C. App. 378, 387, 317 S.E.2d 701, 706 (1984).

b) First, the regulation is contained within the general industry standards for walking-working surfaces. Within this context, OSHA's concern is with walking-working surfaces of all kinds and the slip, trip, and fall hazards to which employees may be exposed. Exceptions to the general industry standards are delineated within the regulations.

i) "OSHA is revising and updating its general industry standards on walking-working surfaces to prevent and reduce workplace slips, trips, and falls, as well as other injuries and fatalities associated with walking-working surface hazards." 81 Fed. Reg. 82494 (Nov. 18, 2016).

ii) "This subpart [D] applies to all general industry workplaces. It covers all walking-working surfaces unless specifically excluded by an individual section of this subpart." 29 CFR 1910.21 (a). The exclusions to §1910.28 are delineated in 29 CFR §1910.28(a)(2). There is no exclusion that remotely suggests that the recesses created by use of the OMER lift would be excluded from the cited safety standard at issue here.

iii) "Walking-working surface means any horizontal or vertical surface on or through which an employee walks, works, or gains access to a work area or workplace location." 29 CFR 1910.21 (b). The "island" created by the use of the OMER lift is a walking-working surface.

iv) Furthermore, "fall protection" used within the context of these regulations contemplates protection from falling into the recess created by use of the OMER lift. "Fall protection means any equipment, device, or system that prevents an employee from falling *from an elevation* or mitigates the effect of such a fall." 29 CFR 1910.21(b). *Emphasis supplied.* As noted previously, except in deciding what kind of protection is required, OSHA intended to include fall hazards from any elevation in the standards delineated in §1910.28. 81 FR 82512 (Nov. 18, 2016) ("The risk of a fall or other harm exists at any height, including on the same level").

c) Second, by modifying the word "pit" with the words "service," "repair," and "assembly" OSHA has chosen to include those pit openings that exist because of the type of work being performed. OSHA did not choose words that would have described whether an employee is inside the opening as opposed to being near the edge of the opening. *Lunsford v. Mills*, 367 N.C. 618, 623, 766 S.E.2d 297 (2014) ("Thus, in effectuating legislative intent, it is our duty to give effect to the words actually used in a statute and not to delete words used or to insert words not used"). There is no authority for the position that OSHA intended to address only those fall hazards from openings used in a specified way.

10. Although the Court is not required to defer to the Complainant's interpretation of its own regulation, Complainant's interpretation is reasonable.

a) The plain language of the regulation does not require that its application be limited to pits into which employees descend in order to do their work.

b) Furthermore, the clear intention expressed by OSHA is for §1910.28 to apply to Walking-Working Surfaces used by employees engaged in the repair or servicing of vehicles which must be accessed from underneath the vehicles. 81 Fed. Reg. 82601 (Nov. 18, 2016).

c) Finally, there is historical application of a predecessor standard to the same type of work, even where the pits in question are not always open but sometimes covered as a result of the work.

d) Taking these factors together, deference to the Complainant's interpretation of its regulation is appropriate. *Total Renal Care of N.C., LLC v. N.C. Dep't of Health & Hum. Servs.*, 171 N.C. App. 734, 740, 776 S.E.2d 81, 85 (2005) (the weight given to an agency's interpretation of its regulations depends upon "the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.")

11. Complainant has met its burden to prove that the cited standards applied to the conditions observed at the worksite on the day of the inspection.

12. Complainant has met its burden to prove that the standards cited were violated. The evidence presented at the hearing established that the employer did not provide training for affected employees consistent with the requirements of 29 CFR §1910.30, as required by 29 CFR §1910.28(b)(8)(i). The employer did not have contrasting markings at least six feet from the opening of the pit as required by 29 CFR §1910.28(b)(8)(ii). The employer also did not have readily visible caution signs that meet the requirements of § 1910.145 and state "Caution — Open Pit" as required by 29 CFR §1910.28(b)(8)(iii). Findings of Fact ("FOF") #17-#20.

13. Complainant has met its burden to show that employees were exposed to the cited violations. FOF #13.
14. Complainant has met its burden to show that the employer had actual knowledge of the violation. FOF #16.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby **ORDERED** that the Nonserious citation issued by the Complainant is **AFFIRMED** Respondent shall pay a penalty of \$2,250.00

Respondent's total penalty amount of **\$2,250** shall be paid within **30 days** of the entry of this ORDER.

This the 28th day of October 2024.

Mary-Ann Leon

Mary-Ann Leon
Hearing Examiner Presiding
maleon@leonlaw.org

APPENDIX A

PARTIES' STIPULATIONS

Prior to the hearing the parties submitted a joint prehearing report which included the following stipulated facts:

1. The North Carolina Occupational Safety and Health Review Commission has jurisdiction over the parties and subject matter of this action.
2. Complainant is an agency of the State of North Carolina charged with 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 under the Act.
3. Respondent, North Carolina Department of Transportation Division 12 Equipment – Catawba County, is a division of an agency of the State of a North Carolina, duly organized and existing under the laws of the State of North Carolina.
4. Respondent is an "employer" within the meaning of N.C.G.S. § 95-127(11) and its employees are "employees" within the meaning of N.C.G.S. § 95-127(1).
5. On November 9, 2022, Compliance Safety and Health Officer Ben Teal, employed by the North Carolina Department of Labor, inspected Respondent's worksite located at 1300 Prison Camp Road, Newton, North Carolina.
6. Mr. Brian Leonhardt, Safety Engineer for Respondent, consented to the inspection.
7. On January 12, 2023, Complainant issued a citation to Respondent, including the following items, proposed penalties and abatement dates:

CITATION NUMBER ONE (Nonserious)

| Item | Standard | Abatement Date | Penalty |
|-------------|--------------------------|-----------------------------|----------------|
| 001a | 29 CFR 1910.28(b)(8)(i) | Corrected During Inspection | \$2,250.00 |
| 001b | 29 CFR 1910.28(b)(8)(ii) | Corrected During Inspection | \$0.00 |
| 001c | 29 CFR 1910.28(b)(8)(ii) | Corrected During Inspection | \$0.00 |

8. The total penalties on Citation One are \$2,250.00.
9. Respondent submitted a Notice of Contest on March 7, 2023 and a Statement of Position on March 30, 2023.
10. At the time of the inspection, Respondent utilized an OMER vehicle lift in its equipment shop that was installed into a recessed storage area in the shop floor.

11. When the lift was in the down position, it lay flush with the shop floor.
12. When the lift was in the up position, the recess in the shop floor measured 16 inches in depth at its lowest point.
13. Respondent regularly serviced vehicles on the raised lift throughout the week.
14. At the time of the inspection, three employees consisting of a shop foreman and two shop technicians, worked in the equipment shop.
15. At the time of the inspection, there were no caution signs that state "Caution – Open Pit" in the vicinity of the OMER vehicle lift.
16. On March 3, 2020, a shop employee injured his ankle after falling.
17. US Department of Labor issued a Standard Interpretation dated November 19, 2014 which stated: "OSHA does not have any specific standards that apply to a user of automotive lifts."
18. The relevant OSHA regulations on Walking-Working Surfaces (29 CFR 1910.21 through 1910.30) do not define "pit", "repair pit", "service pit", or "assembly pit".

CERTIFICATE OF SERVICE

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

COLIN JUSTICE
MIRANDA HOLLEY
NC DEPARTMENT OF JUSTICE
TRANSPORTATION DIVISION
1505 MAIL SERVICE CENTER
RALEIGH NC 27699-1505

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

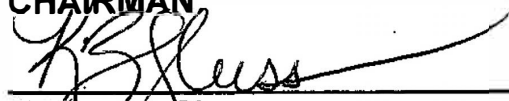
By depositing a copy of the same in the United States Mail, first class, postage prepaid at Raleigh, North Carolina, and upon:

NC DEPARTMENT OF LABOR
LEGAL AFFAIRS DIVISION
1101 MAIL SERVICE CENTER
RALEIGH, NC 27699-1101

via email.

THIS THE 1 DAY OF November 2024.

PAUL E. SMITH
CHAIRMAN



Karissa B. Sluss
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