

**BEFORE THE OCCUPATIONAL SAFETY AND HEALTH
REVIEW COMMISSION OF NORTH CAROLINA**

FILED

MAY 12 2026

NC OSH Review Commission

COMMISSIONER OF LABOR OF
THE STATE OF NORTH CAROLINA,

COMPLAINANT - RESPONDENT,

v.

DOCKET NO. OSHANC 2023-6535
OSHA INSPECTION NO. 318255486

NC DOT SAFETY & RISK MGMT-
EQUIPMENT SHOP - CATAWBA
and its successors

ORDER OF THE COMMISSIONERS

RESPONDENT - PETITIONER.

DECISION OF THE REVIEW COMMISSION

This appeal was heard at or about 11:00 A.M. on the 22nd day of August 2025, in the OAK courtroom at 422 N Blount Street Raleigh, North Carolina, by Paul E. Smith, Chairman, William Rowe, and Terrence Dewberry, members of the North Carolina Occupational Safety and Health Review Commission.

APPEARANCES

Complainant: Jonathan D. Jones, Assistant Attorney General: North Carolina
Department of Justice, Raleigh, North Carolina

Respondent: Colin Justice, Special Deputy Attorney General, Miranda Holley Assistant
Attorney General: North Carolina Department of Justice, Raleigh, North
Carolina

The undersigned have reviewed the prior Order based upon the record of the proceedings before the Hearing Examiner and the briefs and arguments of the parties.

The Commission AFFIRMS the Order of Hearing Examiner Mary-Ann Leon.

ISSUES PRESENTED

WHETHER 29 CFR 1910.28(B) APPLIES TO THE AUTOMOTIVE LIFT AREA IN QUESTION?

SAFETY STANDARDS AND/OR STATUTES AT ISSUE

29 CFR 1910.28(b)(8)(i) The employer did not limit access within 6 feet (1.8 m) of the edge of a repair pit, service pit, or assembly pit that was less than 10 feet (3m) deep to authorized employees trained in accordance with 29 CFR 1910.30

29 CFR 1910.28(b)(8)(ii) The employer did not use floor markings, warning line and stanchions, or a combination of floor markings and warning lines for a repair pit, service pit, or assembly pit that was less than 10 feet (3 m) deep.

29 CFR 1910.28(b)(8)(iii) The employer did not post readily visible caution signs that met the requirements of 29 CFR 1910.145 and stated "Caution-Open Pit".

FINDINGS OF FACT

1. Complainant is charged with enforcement of the provisions of the Occupational Safety and Health Act of North Carolina (OSHANC or Act), N.C. Gen. Stat. §§ 95-126 et seq.
2. Respondent is an employer within the meaning of N.C. Gen. Stat § 95-127(10) and is subject to the provisions of OSHANC (N.C. Gen. Stat § 95-128).
3. The undersigned have jurisdiction over this case pursuant to N.C. Gen Stat. § 95-125.
4. On July 9, 2024, a remote hearing was held before the Honorable Mary-Ann Leon.
5. On October 31, 2024, Hearing Examiner Leon filed an Order finding that the provisions of 29 CFR 1910.28(b)(8)(i)(ii)(iii) had been violated and issued a penalty of \$2,250.00.
6. On November 27, 2024, Respondent timely petitioned the Review Board for a review of the decision of the Hearing Examiner, which was granted.

7. The oral arguments were heard by the full Commission on August 22, 2025.
8. The Review Commission adopts the Hearing Examiner's findings of facts.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Commission concludes as a matter of law as follows:

1. The foregoing Findings of Fact are incorporated as conclusions of law to the extent necessary to give effect to the provisions of this Order.
2. The Commission has jurisdiction of this cause, and the parties are properly before this Commission.
3. The Respondent is an employer within the meaning of N.C. Gen. Stat § 95-127 and is subject to the Act. N.C. Gen. Stat § 95-128.
4. The Complainant met its burden of proving by substantial evidence that the Respondent committed a violation of 29 CFR 1910.28(b)(8)(i)(ii)(iii).
5. The Commission AFFIRMS the Order of Hearing Examiner Leon.

DISCUSSION

The Department of Labor established, by substantial and competent evidence, that the cited standard applies, that employees were exposed, that the hazard created the possibility of an accident, and that the employer knew of the hazard. The hazard was a slip, trip, or fall into the recessed area under the OMER lift. The NCDOT employees that worked near the area of the OMER lift were exposed. The hazard created the possibility of injury. NCDOT supervisors knew of the condition. The depression under the OMER lift in use is 9 to 16 inches deep. The OMER lift is used to repair or service vehicles. Testimony showed that employees recognized the area in

question as a hazard and that two years before this inspection an employee had been injured there resulting in 187 days of missed work.


While the OSHA regulations on walking-working surfaces do not specifically define “pit”, the courts look to the plain meaning of the term first. State v. Doherty, 293 N.C. App. 685, 901 S.E.2d 442, 446-447 (2024). Interpretation of ambiguous terms in a statute or regulation must be guided by 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 (1976). The regulations in question are found within the general industry standard for walking-working surfaces. Within that context, OSHA is concerned with slip, trip, and fall hazards in all kinds of walking-working surfaces. There is no exception that would apply to the recess caused by use of the OMER lift. 29 CFR 1910.21(b) states that “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.” The recessed area created by use of the OMER lift is a walking-working surface.

Employees referred to the area under the OMER lift as a pit and the OMER company referred to it as a pit. The walking-working surface standards set forth in 29 CFR 1910.28(b)(8) cover various types of repair or service pits less than 10 feet deep that are often found in automotive maintenance facilities. The standard does not define “repair pits,” “service pits,” or “assembly pits” but based on the well-established principles of statutory construction, 29 CFR 1910.28(b)(8) is applicable to the area in question.

ORDER

For the reason stated herein, the Review Commission hereby **ORDERS** that the Hearing Examiner's October 31, 2024, Order in this case be, and hereby is, **AFFIRMED** to the extent that is it not inconsistent with this opinion. Respondent is ordered to pay the assessed penalty of \$2,250.00 within 30 days of the filing date of this Order.

This the 12th day of May 2026.

Signature: 
Terrence Dewberry (May 11, 2026 17:53:54 EDT)

Email: todewberry@aol.com

TERRENCE DEWBERRY, MEMBER

Signature: 
William D Rowe (May 11, 2026 21:35:58 EDT)

Email: billdrowe@gmail.com

WILLIAM D. ROWE, MEMBER

Chairman Paul E. Smith dissenting:

While this is a close case, I do not believe the depression under the OMER lift is a “service pit,” “repair pit,” or “assembly pit.” The depression exists as a consequence of the operation of a service lift and meets the dictionary definition of a “pit.” However, workers do not enter it to service or repair vehicles, and it does not otherwise facilitate workers’ ability to service or repair vehicles. As a result, I do not believe 29 CFR 1910.28(b)(8) applies. *See* 81 Fed. Reg. 82601 (Nov. 18, 2016) (“Employers use these pits primarily to provide access to the underside of vehicles to perform work, such as vehicle maintenance.”) I would reverse the decision of the hearing examiner, and therefore dissent.

In reaching this conclusion, I express no opinion as to the applicability of 29 CFR 1910.22 or 1910.28(b)(3).

This the 12th day of May 2026.

Signature: 
Paul E. Smith (May 12, 2026 10:51:24 EDT)

Email: psmith@pathlaw.com

PAUL E. SMITH, CHAIRMAN

CERTIFICATE OF SERVICE

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

COLIN JUSTICE
NC DEPARTMENT OF JUSTICE
TRANSPORTATION SECTION
cjustice@ncdoj.gov

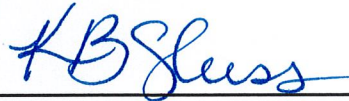
STACEY PHIPPS
NC DEPARTMENT OF JUSTICE
LABOR SECTION
sphipp@ncdoj.gov

NC DEPARTMENT OF LABOR
GENERAL COUNSEL'S OFFICE

By email and hand delivery.

THIS THE 12 DAY OF May 2026.

PAUL E. SMITH
CHAIRMAN



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Health Review Commission
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