

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

FILED

OCT 16 2025

NC OSH Review Commission

**COMMISSIONER OF LABOR OF
THE STATE OF NORTH CAROLINA,**)

COMPLAINANT,)

v.)

ACE/AVANT CONCRETE CO., INC.)
and its successors,)
RESPONDENT.)

**OSHANC NOs: 2023-6573
INSPECTION NO.: 318260890
CSHO ID: A3277**

**ORDER ON RESPONDENT'S MOTION TO DETERMINE SUFFICIENCY OF
RESPONSES TO REQUESTS FOR ADMISSION**

This matter is before the Court on Respondent's Motion to determine the sufficiency of certain responses by Complainant to Respondent's second set of Requests for Admission. Respondent seeks an Order requiring the Complainant to amend certain responses. Respondent requested oral argument on its motion. Arguments were heard on October 8, 2025.

After reviewing the briefs of the parties, including exhibits attached thereto and relevant legal authority, the Court determines that:

- (1) The Court has the discretion to hear Respondent's motion.
- (2) The Rules of the North Carolina Occupational Safety & Health Review Commission only permit Requests for Admission directed to facts. Thus, those parts of Respondent's motion seeking amended responses to Requests that require the application of facts to law will not be considered by the Court.
- (3) Complainant's responses to Requests for Admission #6, #7, and, #8 do not fairly meet the substance of the request and Complainant is directed to serve amended answers. In particular, the Court finds that the current response is unclear as to what notes have been preserved and what notes have not been preserved. To fairly meet the substance of the Requests For Admission, Complainant must clearly state what parts of the Request are admitted and what parts are denied and if, because there are two sets of notes in this case, the response depends upon which set of notes is being referenced, then Complainant must make that clear.

(4) Complainant's objection to Request for Admission #9 is that the language "decades" creates ambiguity. Complainant's objection may be sustained if Respondent seeks to introduce the response as evidence in the hearing. However, Complainant is still obligated to make a reasonable inquiry regarding the substance of the request and to respond based upon its reasonable inquiry. Complainant must admit what its reasonable inquiry has determined to be true and may deny any other part of the request where its reasonable inquiry did not yield information sufficient to admit. Complainant is directed to amend its response to Request for Admission #9.

(5) Complainant does not need to amend its response to Request for Admission #22 since it is not clear whether the request seeks to authenticate a document or seeks an admission that Complainant made a statement that is captured in the referenced document. Respondent did not serve the document with its request, so it cannot ask Complainant to authenticate the document and Complainant's response is that it did not author the document, so it cannot admit to the veracity of any statement in the document.

(6) Requests for Admission #28, #29, #30, and #31 seek more details about what is purported to be in the document referenced in Request for Admission #22. Complainant is not required to amend its answers to those requests.

(7) The Court makes no determination regarding the sufficiency of the response to Request for Admission #12 as it is not clear whether the request is within the scope of the NC OSH Commission's rules.

(8) Requests for Admission #13, #14 make requests regarding facts and Complainant is directed to amend its responses to fairly meet the factual substance of the requests.

(9) To the extent that Request for Admission #15 seeks an admission regarding facts, Complainant is directed to amend its response to fairly meet the factual substance of the request.

(10) Complainant's amended responses are due no later than November 3, 2025. Respondent has until November 17, 2025 to file any motions regarding discovery. This order is not intended to limit either parties' rights to seek discovery in accordance with the rules of the Commission.

This the 16th day of October.

Mary-Ann Leon

Mary-Ann Leon
Hearing Examiner
maleon@leonlaw.org

CERTIFICATE OF SERVICE

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

TRAVIS W. VANCE
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THIS THE 16th DAY OF October 2025.

PAUL E. SMITH
CHAIRMAN

Karissa B. Sluss cys/bw

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