

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

COMMISSIONER OF LABOR OF THE  
STATE OF NORTH CAROLINA

COMPLAINANT,

v.

J.O. FLOWE GRADING CO LLC  
*and its successors*

RESPONDENT.

DOCKET NO.: OSHANC 2024-6613  
INSPECTION NO.: 318275849  
CSHO ID: A2132

CONSENT  
ORDER

The parties having appeared before the undersigned for a duly-noticed hearing, and having informed the undersigned hearing officer that they have reached a resolution of the citation issued in this matter, and the undersigned having reviewed the citation, the documents filed by the parties, and the representations of counsel, now pursuant to Rule .0507 of the Rules of Procedure adopted by the North Carolina Occupational Safety and Health Review Commission, the undersigned makes the following:

**FINDINGS OF FACT**

1. Respondent is a corporation duly organized and existing under the laws of the State of North Carolina and maintains a place of business in Midland, North Carolina.
2. 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.
3. On October 26, 2023, Compliance Safety and Health Officer George Thrower, an Occupational Safety and Health Officer with the North Carolina Department of Labor,

inspected Respondent's worksite located at 522 Bluefield Rd., Mooresville, North Carolina.

4. As a result of the inspection, on December 20, 2023, Complainant issued the following citation carrying the following proposed abatement date and penalty:

**CITATION NUMBER ONE**

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1	29 CFR 1926.21(b)(2)	January 22, 2024	\$4,000.00

5. The Respondent submitted a timely Notice of Contest, dated January 9, 2024.
6. On September 20, 2024, the Commission issued a Notice of Hearing in this matter, and Respondent confirms that Respondent has posted the Notice 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 by sending a written request prior to commencement of the hearing to the Safety and Health Review Commission of North Carolina, 1101 Mail Service Center, Raleigh, NC 27699-1101.
7. Neither party has any objection, procedural or otherwise, to this Hearing.
8. 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.
9. 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 violation alleged in the Citation and Notification of Penalty has been abated and 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").

- b. Complainant agrees to make the following amendments to the Citation item:
  - i. Reclassify Citation 1, Item 1 from Serious to Nonserious;
  - ii. Reduce the penalty for Citation 1, Item 1 from \$4,000.00 to a \$2,600.00 settlement amount; and
  - iii. Citation 1 Item 1 subparagraph a will be revised and rewritten to state as follows: "a) job site, Bluefield Road – where employees performing temporary flagging duties in a traveled roadway had not received training in traffic control under MUTCD 2000 Section 6D.02."
- c. Respondent withdraws its Notice of Contest and agrees to:
  - i. On August 9, 2024, Respondent had a third-party safety consultant train each of its employees and other employees (51 employees in total) who may have temporary traffic control responsibilities in traffic control techniques and flagging. Respondent provided OSHNC the sign-in documentation confirming this traffic control training.
  - ii. By March 15, 2025, Respondent will ensure all of its field managers complete a ten-hour OSHA course. Most of this training will be completed during the winter months of January and February of 2025. Documentation of this training shall be maintained for one year and provided to OSHNC upon request.

- iii. Respondent will provide a statement to OSHNC confirming that it has a third-party independent safety consultant inspect its jobs on a weekly basis.
- iv. Respondent agrees to continue with its present safety program, including conducting periodic meetings with employees. During such meetings, employees will be able to communicate safety suggestions or complaints to their supervisor who will forward the information to Respondent. Respondent agrees to meet with its employees to discuss safety issues and receive safety suggestions or complaints from employees. Respondent agrees that all employees who make suggestions or complaints to the Committee, shall have the same protection provided employees under Article 21, Chapter 95 of the North Carolina General Statutes.
- d. 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.
- e. 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.

f. Neither party is aware of outstanding matters to be resolved by a hearing of this matter.

10. The foregoing terms are reasonable and supported by the underlying facts.

11. 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.

This 11/07/2024

Richard M. Koch

Richard M. Koch (Nov 7, 2024 13:56 EST)

**RICHARD KOCH**

Hearing Examiner

**CONSENTED TO:**

JOSHUA H. STEIN  
Attorney General

Madison Beveridge  
Madison Beveridge (Nov 7, 2024 13:54 EST)

Madison L. Beveridge  
Assistant Attorney General  
North Carolina Department of Justice  
Post Office Box 629/Labor Section  
Raleigh, North Carolina 27602-0629

Telephone No. (919) 716-6680  
mbeveridge@ncdoj.gov

ATTORNEY FOR COMPLAINANT

Greg Ahlum  
Greg Ahlum (Nov 7, 2024 13:52 EST)

Greg Ahlum  
Johnston Allison Hord  
1065 East Morehead Street  
Charlotte, North Carolina 28204

Telephone No. (704) 998-2319  
gahlum@jahlaw.com

ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

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

GREG C AHLUM  
JOHNSTON ALLISON HORD  
1605 E MOREHEAD ST  
CHARLOTTE NC 28204

MADISON L BEVERIDGE  
NC DEPARTMENT OF JUSTICE  
LABOR SECTION  
PO BOX 629  
RALEIGH NC 27602

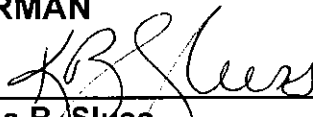
By depositing a copy of the same in the United States Mail, first class, postage prepaid at Raleigh, North Carolina, and upon:

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

via email.

THIS THE 8 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