

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

FILED

JAN 5 2026

COMMISSIONER OF LABOR OF THE  
STATE OF NORTH CAROLINA

NC OSH Review Commission

COMPLAINANT,

ORDER

v.

CONCRETE SUPPLY, LLC  
and its successors

OSHANC NO. 2024-6646

RESPONDENT.

THIS MATTER was before the undersigned for hearing via the Lifesize video conference platform on November 12, 2025, beginning at 10:00 am.

The complainant is represented by Jonathan D. Jones, Assistant Attorney General; the respondent is represented by Fredrick M. Thurman, Jr. of Shumaker, Loop & Kendrick, LLP.

Based on the evidence, consisting of testimony and admitted documents, in the hearing on the merits on these citation items, and consideration of the post-hearing submittals of the parties, the undersigned makes the following

**FINDINGS OF FACTS**

1. The complainant as the Commissioner of Labor is charged by law with compliance with and enforcement of the provisions of the Occupational Safety and Health Act of North Carolina ("the Act").

2. The respondent is a North Carolina limited liability company which is authorized to do business in North Carolina and maintains an office in Charlotte, North Carolina.

3. Pursuant to N. C. Gen. Stat. § 95-135, the Review Commission has jurisdiction over the parties and subject matter of this action.

4. The respondent is an “employer” within the meaning of N. C. Gen. Stat. §95-127(10); all of respondent’s employees referred to in the hearing are “employees” within the meaning of N. C. Gen. Stat. § 95-127(9).

5. During the period between September 21, 2023 and November 3, 2023, Compliance Safety and Health Officer Jeff Johson and officer-in-training Maya Cromuel, employees of the North Carolina Department of Labor, inspected respondent’s concrete plant located at 123 Haney Way, Mooresville, North Carolina (“the site”).

6. The compliance officers properly entered the site and properly conducted the inspection pursuant to a report of a fatality received by the North Carolina Department of Labor, Occupational Safety and Health Division complaint desk. Respondent’s safety director Jerry Jones made the report on September 19, 2023, the same day that the fatality occurred.

7. On September 21, 2023, the compliance officers presented credentials to respondent and initiated a partial scope inspection.

8. Mr. Tony Hunt, operations manager for respondent, and Mr. Jones consented to the inspection and accompanied the compliance officers during the walkaround portion of the inspection.

9. At the time of the inspection, the site was a multi-employer site. Respondent was the business owner and contracted with a third-party service company, James River Equipment, to provide preventative maintenance on the company’s vehicles and heavy equipment and as needed service calls. All service calls are scheduled through the plant to ensure a Concrete Supply employee is onsite to allow access to the equipment for the James River Equipment employee conducting the service. The respondent’s maintenance employees performed some routine and some emergency maintenance on the plant, which would happen two to three times per week.

10. On October 2, 2023 and November 3, 2023, the compliance officers returned to the site to take additional measurements of the accident area.

11. On March 18, 2024, as a result of the inspection, complainant issued a serious citation with one item and a non-serious citation with one item.

12. The serious citation item alleged a violation of 29 CFR 1910.28(b)(1)(i) with reference to two different walking platforms in respondent’s plant, with a penalty of \$14,062.50.

13. The non-serious citation item alleged a violation of 29 CFR 1910.29(k)(1)(ii) with no penalty. The respondent initially contested both items, but at the hearing it only contested the serious citation item.

14. Citation 01, Item 001, alleging a violation of 29 CFR 1910.28(b)(1)(i), provided that the employer did not ensure each employee on a walking-working surface with an unprotected side or edge that is four feet (1.2 meters) or more above a lower level was

protected from falling by one or more of the following: guardrail systems, safety net systems, or personal fall protection systems.

15. The respondent maintained two elevated platforms in its plant that were used for maintenance activities. Both of these platforms had a guardrail system surrounding each platform except for a small area next to each of the ladders used to access the platform.

16. The complainant introduced into evidence pictures of the area that it claimed was unprotected, but because of the structural members of the plant supporting the platforms, there is a question of whether an employee could fall through either of those areas to the lower platform or the ground, which in that area was a concrete floor.

17. The first platform was six feet, eight inches above the concrete floor; the second platform was sixteen feet, six inches above the concrete floor.

18. On September 19, 2023, respondent's employee Richard Salay, a plant maintenance technician who was 63 years old, was preparing to perform maintenance on a concrete hopper. Specifically, Mr. Salay was to replace a proximity switch from the upper platform in the plant.

19. There are still photographs from the respondent's camera system showing Mr. Salay apparently climbing up the first platform ladder to the first platform, and then attempting to go to the second platform, but no other evidence to establish what caused him to fall or exactly where he was when he fell. It is known that he did not complete his task of installing the proximity switch.

20. He was found on the concrete floor to the left of the ladder leading to the first platform. This caused the respondent to believe he had had a medical condition, not related to a fall. From the report of the medical examiner and the opinion of Iredell County EMS personnel on the scene, it was determined that the cause of Mr. Salay's death was a fall from some undetermined height. The autopsy report, dated September 24, 2023, stated that Mr. Salay's cause of death was acute intracranial injury with subdural and subarachnoid hemorrhage due to blunt force trauma of the head and neck with skull and cervical spine fractures.

21. The unprotected areas of the two platforms as determined by the complainant were to the right of the ladders, so given where Mr. Salay was found dead it does not appear that he fell through either of those two openings.

22. It appears that Mr. Salay did have a fall protection harness available to him, and it was left to him to determine if he needed it. He was not wearing the harness at the time of his death. The respondent also had a rope and bucket available to bring tools up to laddered platforms. The complainant's pictures do not show Mr. Salay using the rope and bucket for the installation of the proximity switch, but there was no evidence that the rope and bucket were needed for that maintenance job.

23. From all the evidence, it does not appear that anyone knows what caused Mr. Salay to fall or exactly from where he fell. He could have been on one of the ladders, which do not necessarily require that an employee be tied off while using the ladder.

24. The respondent had a detailed written safety program and had monthly safety meetings with employees, which covered fall protection. It was not able to produce records of attendance at these meetings because the records had been lost.

25. The respondent was not cited for any violations of the Act relating to its safety program.

26. The respondent in its brief argues that the affirmative defense of isolated employee misconduct should apply, but there is no evidence that Mr. Salay violated a company safety rule or that he violated a standard of the Act, so there is no reason to impugn his reputation posthumously.

27. The adjusted penalty for Citation 01, Item 001 was calculated pursuant to the complainant's Field Operations Manual.

28. The complainant has the burden of proof with reference to this citation item, and the weight of the evidence adduced at the hearing did not carry this burden. It seems that there is a question about whether a hazard existed, whether any employees were exposed to a hazard, or whether the hazard as it may have existed created the possibility of an accident that was apparent to the respondent.

Based on the foregoing Findings of Fact, the undersigned makes the following

#### CONCLUSIONS OF LAW

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 respondent is subject to the provisions of the Act.

3. There is insufficient evidence to support a violation of the standard in Citation 01, Item 001.

4. The respondent has not contested the non-serious violation of 29 CFR 1910.29(k)(l)(ii) as contained in Citation 02, Item 001.

5. It appears to the undersigned that Citation 01, Item 001 was a serious violation chasing a fatality.

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Based on the foregoing Findings of Fact and Conclusions of Law, **IT IS ORDERED, ADJUDGED AND DECREED** as follows:

1. Citation 01, Item 001, an alleged serious violation of 29 CFR 1910.28(b)(1)(i), is dismissed.
2. Citation 02, Item 001, an alleged non-serious violation of 29 CFR 1910.29(k)(1)(ii), is affirmed with no penalty.
3. Each party shall bear its own costs and attorney's fees.

This 5<sup>th</sup> day of January, 2026.

Richard M. Koch  
RICHARD M. KOCH  
HEARING EXAMINER

CERTIFICATE OF SERVICE

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

FREDERICK M. THURMAN, JR.  
SHUMAKER, LOOP & KENDRICK  
fthurman@shumaker.com

JONATHAN D. JONES  
NC DEPARTMENT OF JUSTICE  
djones@ncdoj.gov

NC DEPARTMENT OF LABOR  
LEGAL AFFAIRS DIVISION

via email.

THIS THE 16 DAY OF January 2026.

PAUL E. SMITH  
CHAIRMAN

KB Sluss

Karissa B. Sluss  
Docket Administrator  
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Health Review Commission  
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