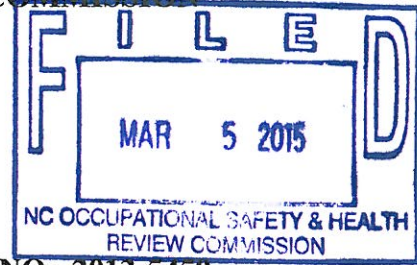


**BEFORE THE NORTH CAROLINA  
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION  
RALEIGH, NORTH CAROLINA**



<b>COMMISSIONER OF LABOR FOR</b>	)	<b>DOCKET NO: 2013-5459</b>
<b>THE STATE OF NORTH CAROLINA</b>	)	
	)	<b>INSPECTION</b>
	)	<b>NO: 316779370</b>
<b>Complainant,</b>	)	
	)	<b>CSHO ID: D4557</b>
<b>v.</b>	)	
<b>LOWE'S HOME CENTERS, INC.</b>	)	
<b>Store # 682</b>	)	<b><u>FINAL ORDER</u></b>
<b>and its successors</b>	)	
	)	
<b>Respondent.</b>	)	

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**THIS CAUSE** coming on pursuant to the Order of Pre-Hearing Conference (“Hearing Order”) at 10:30 A.M. on March 3, 2015. Larissa Williamson, Special Deputy Attorney General appeared by teleconference as counsel for the Complainant. Susan F. Wiltsie, Attorney at Law, Hunton & Williams LLP appeared by teleconference for the Respondent.

Pursuant to the Hearing Order a pre-hearing conference (the “Hearing”) was held for the purpose of considering matters which would simplify the issues and expedite the proceedings in the above referenced case. No affected employee of Respondent, or its representative, attended to have a say in, or participate as a party in, the Hearing. At the Hearing Complainant and Respondent notified the Undersigned that the parties wish to agree upon certain stipulations (“Stipulations”) and to make certain motions (“Motions”).

This Hearing was not an evidentiary hearing and the specific facts and circumstances relevant to the Inspection (hereinafter defined) and the Original Citation (hereinafter defined) were not introduced of record, and such facts and circumstances are not included in the Stipulations hereinafter set forth. Based on the Original Citation and Respondent’s Notice of Contest, it appears that no injuries were sustained.

As a result of this Hearing, Complainant and Respondent request that the Stipulations and Motions be made part of the Hearing record and that the Undersigned issue a Final Order. The Stipulations and Motions are as follows:

**STIPULATIONS**

1. The Complainant as Commissioner of Labor of the State of North Carolina is charged by law with compliance with and enforcement of the provisions of the Occupational Safety and Health Act of North Carolina, Article 16, Chapter 95 of the General Statutes of North Carolina (hereinafter “the Act”). The Review Commission has jurisdiction over the parties and the subject matter to this action.
2. During the time in which the inspection was conducted and the Original Citation was issued, Respondent was a corporation duly organized and existing under the laws of the State of North Carolina. In November 2013, Respondent was converted to Lowe’s Home Centers, LLC, duly organized and existing under the laws of the State of North Carolina. Respondent maintains a place of business in Southport, North Carolina. Respondent is an “employer” within the meaning of N.C.G.S. Section 95-127(10); all of Respondent’s employees referred to in this matter are “employees” within the meaning of N.C.G.S. Section 95-127(9).
3. On March 25, 2013, Tim Juneau, an Occupational Safety and Health Officer with the North Carolina Department of Labor, conducted an inspection (the “Inspection”) of Respondent's worksite located at 5084 Southport Supply Road in Southport, North Carolina (“Southport facility”).
4. As a result of the Inspection, on April 10, 2013, Complainant issued the following Citations (Citation One and Citation Two are collectively referred to as the “Original Citation”):

**CITATION ONE (Serious)**

<b><u>Item No.</u></b>	<b><u>Standard</u></b>	<b><u>Abatement Date</u></b>	<b><u>Penalty</u></b>
1a	29 CFR 1910.136(a)	April 15, 2013	\$3500.00
1b	29 CFR 1910.132(d)(1)(i)	April 15, 2013	Grouped

**CITATION TWO (Nonserious)**

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1	29 CFR 1910.37(b)(4)	Immediately Abated	\$0.00
2	29 CFR 1910.303(g)(1)(ii)	Immediately Abated	\$0.00

5. Respondent submitted a timely Notice of Contest dated March 25, 2013.

6. A Hearing in this matter was scheduled pursuant to the Rules of Procedure of the Safety and Health Review Commission of North Carolina (the "Rules").

7. Neither party has any objection, procedural or otherwise, to this Hearing.

8. Respondent posted the Original Citation and the Hearing Order as required by the Rules. Neither Complainant nor Respondent have received notification from any affected employee that such employee, or its representative, wishes to have a say in, or participate as a party in, this matter, or has any objections in connection with this matter.

9. Respondent agrees to do the following:

a) Conduct a Hazard Assessment of its Southport facility to determine the existence of any falling and/or rolling object hazards; Conduct regular personal protection equipment (PPE) inspections in departments of Respondent's Southport facility where there may be a higher risk of falling and/or rolling objects that could result in foot injuries such as, but not limited to, lumber, loading, and shipping departments to ensure that employees are not utilizing defective or worn PPE.

b) Provide appropriate foot PPE to employees, in the event that such hazard assessment determines the existence of hazards resulting from falling and/or rolling objects;

c) Provide metatarsal foot guards for those employees working in the Respondent's Southport facility who request foot protection;

d) Provide metatarsal foot guards or similar foot protection to those employees in the Respondent's Southport facility whose job tasks Respondent determines necessitates such protection;

e) Train and/or retrain employees regarding the risks associated with falling and rolling objects. Such training/retraining shall include: proper lifting methods, proper use of requisite PPE, and spotter/escort requirements;

**FINDINGS OF FACT**

Based on the Stipulations at the time of the Hearing and the record, the Undersigned makes the following Findings of Fact:

1. This Court has jurisdiction over the parties and the subject matter of this Hearing.
2. Respondent is subject to the provisions of the Act and jurisdiction of the Safety and Health Review Commission of North Carolina.
3. Neither party has any procedural objection to this Hearing.
4. Complainant, Commissioner of Labor of the State of North Carolina, 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, Article 16, Chapter 95 of the General Statutes of North Carolina (hereinafter "the Act").
5. The Stipulations are incorporated by reference as Findings of Fact to the extent necessary to give effect to the provisions of this Order.


**CONCLUSIONS OF LAW**

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.

**NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:**

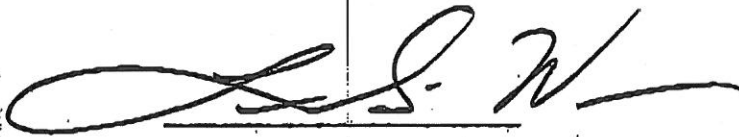
1. That Complainant's Motion is hereby **GRANTED**; and
2. That Respondent's Motion is hereby **GRANTED**.

This the 3rd day of March, 2015

  
\_\_\_\_\_  
R. Joyce Garrett  
Administrative Law Judge

Lowe's Home Centers Inc. - Store #682  
2013-5459

**CONSENTED TO:**



**Larissa S. Williamson, Special Deputy Attorney General  
Attorney for Complainant**

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**Susan F. Wiltsie, Attorney at Law, Hunton & Williams LLP and  
Melissa A. Romano, Attorney at Law, Hunton & Williams LLP  
Attorney for Respondent**

Lowe's Home Centers Inc. – Store #682  
2013-5459

**CONSENTED TO:**

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Larissa S. Williamson, Special Deputy Attorney General  
Attorney for Complainant

Handwritten signature of Susan F. Wiltsie in cursive, with the initials "SW" in parentheses at the end.

Susan F. Wiltsie, Attorney at Law, Hunton & Williams LLP and  
Melissa A. Romanzo, Attorney at Law, Hunton & Williams LLP  
| Attorney for Respondent

CERTIFICATE OF SERVICE

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

SUSAN F. WILTSIE  
HUNTON & WILLIAMS LLP  
2200 PENNSYLVANIA AVENUE NW  
WASHINGTON, DC 20037

MELISSA A. ROMANZO  
HUNTON & WILLIAMS LLP  
BANK OF AMERICA PLAZA  
SUITE 3500  
101 SOUTH TRYON STREET  
CHARLOTTE, NC 28280

LARISSA WILLIAMSON  
NC DEPARTMENT OF JUSTICE  
LABOR SECTION  
PO BOX 629  
RALEIGH, NC 27602-0629

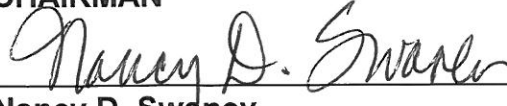
by depositing a copy of the same in the United States Mail, Certified Mail, postage prepaid, at Raleigh, North Carolina, and upon:

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

by depositing a copy of the same in the NCDOL Interoffice Mail.

THIS THE 6<sup>th</sup> DAY OF March 2015.

OSCAR A. KELLER, JR.  
CHAIRMAN

  
\_\_\_\_\_  
Nancy D. Swaney  
Docket and Office Administrator  
NC Occupational Safety & Health Review Commission  
1101 Mail Service Center  
Raleigh, NC 27699-1101  
TEL.: (919) 733-3589  
FAX: (919) 733-3020