

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

COMMISSIONER OF LABOR FOR THE STATE OF NORTH CAROLINA)	DOCKET NO: 2013 - 5539
)	
)	INSPECTION
)	NO: 317289502
Complainant,)	
)	CSHO ID: D4557
v.)	
TOAD TRAILERS LLC and its successors)	<u>FINAL ORDER</u>
Respondent.)	

THIS CAUSE coming on pursuant to the Order of Pre-Hearing Conference (“Hearing Order”) on March 10, 2015 at the Lee House, 2nd Floor Hearing Room, 422 North Blount Street, Raleigh, North Carolina at 10:30 a.m. Jill Cramer, Assistant Attorney General appeared as counsel for the Complainant, and Scott Ketron, Manager of Respondent, appeared 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 and that: the Inspector (hereinafter defined) alleged: (collectively referred to herein sometimes as “Citation 1”) Citation 1 Item 1a, a serious violation of 29 CFR 1910.134(a)(2) based on Respondent not establishing and maintaining the required respiratory protection program; Item 1b, a serious violation of 29 CFR

1910.1052(g)(3)(i) based on Respondent not providing employees the appropriate atmosphere-supplying respirator; Items 1a and 1b were grouped for penalty purposes with a penalty of \$1,500; Citation 1 Item 2, a serious violation of 29 CFR 1910.307(c)(2)(i) with a penalty of \$900 based on equipment not being approved for class of location, or for ignitable or combustible properties of the specific gas, vapor, dust or fiber present; Citation 1 Item 3a, a serious violation of 29 CFR 1910.1052(c)(2) based on employees being exposed to methylene chloride in excess of short term exposure limit; Item 3b, a serious violation of 29 CFR 1910.1052(d)(1)(i) based on Respondent not determining each employees exposure to methylene chloride; Items 3a and 3b were grouped for penalty purposes with a penalty of \$1,500; Citation 1 Item 4, a serious violation of 29 CFR 1910.1052(e)(1) with a penalty of \$1,500 based on Respondent not establishing a regulated area with respect to methylene chloride exposure; Citation 1 Item 5, a serious violation of 29 CFR 1910.1052(f)(1) with a penalty of \$1,500 based on the Respondent not instituting and maintaining the effectiveness of engineering controls and work practices to reduce employee exposure to methylene chloride; Citation 1 Item 6a, a serious violation of 29 CFR 1910.1052(h)(1) based on the Respondent not providing clean protective clothing and equipment resistant to methylene chloride; Item 6b, a serious violation of 29 CFR 1910.138(a) based on Respondent failing to provide hand protection; and Item 6c, a serious violation of 29 CFR 1910.132(d)(1)(i) based on Respondent not having employees use appropriate types of personal protective equipment; Items 6a, 6b and 6c were grouped for penalty purposes with a penalty of \$1,500; Citation 1 Item 7, a serious violation of 29 CFR 1910.1052(j)(1)(i) with a penalty of \$1,500 based on Respondent not making medical surveillance available for employees; Citation 1 Item 8, a serious violation of 29 CFR 1910.1052(l)(1) with a penalty of \$1,500 based on Respondent not providing information and training to employees; Citation 1 Item 9a, a serious violation of 29 CFR 1910.1200(e)(1) based on Respondent not developing, implementing and/or maintaining at the workplace a written hazardous communication program; Item 9b, a serious violation of 29 CFR 1910.1200(g)(8) based on Respondent not maintaining copies of the required material safety data sheets; and Item 9c, a serious violation of 29 CFR 1910.1200(h)(1) based on Respondent not providing employees with effective information and training on hazardous chemicals; Items 9a, 9b and 9c were grouped for penalty purposes with a penalty of \$1,500. Respondent denied all such allegations and objected to such penalties.

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

Toad Trailers LLC
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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. Respondent is a North Carolina limited liability company, designated ‘current-active’ under the laws of the State of North Carolina, which at the time of the Inspection conducted business in the State of North Carolina and maintained a place of business in Tabor City, 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 October 3, 2013, an Occupational Safety and Health Compliance Officer (“Inspector”) with the North Carolina Department of Labor conducted an inspection of Respondent’s worksite located at 1007A Pireway Road in Tabor City, North Carolina (the “Inspection”).
4. As a result of the Inspection, on November 7, 2013, Complainant issued Citation 1 as more specifically described previously herein (Citation 1 is sometimes referred to as the “Original Citation”).
5. Respondent submitted a timely Notice of Contest.
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 does not currently have an active manufacturing facility in North Carolina, and Respondent agrees that prior to opening a manufacturing facility in North Carolina it will contact Consultative Services Bureau of the OSH Division of the North Carolina Department of Labor and request appropriate consultative services.
10. The parties agree to bear their own fees, costs and other expenses, including attorney’s fees if any, that have been incurred in connection with any stage of these proceedings up to and including the filing of this Order.
11. Complainant and Respondent agree that provided the Complainant’s Motion and Respondent’s Motion are granted there are no other matters that remain to be decided, and that other than a ruling with respect to the Motion no outstanding issues remain to be resolved by an evidentiary hearing of this matter. The parties agree that this Final Order is a full and final resolution of the claims set out in the underlying Original Citation, as amended pursuant to Complainant’s Motion. The parties further agree that (i) the modification of any portion of the Original Citation by Complainant shall not be deemed to be an admission by Complainant that

any such portion was alleged without merit, and (ii) none of the foregoing agreements, statements, stipulations and actions taken by Respondent shall be deemed an admission by the Respondent of any of the allegations contained in the Original Citation as amended or waiver of defenses; provided however that in any subsequent proceeding with respect to matters covered by this Final Order brought directly under the Act by Complainant, this Final Order shall have the full force and effect of a final order. The agreements, statements, stipulations and actions herein by Complainant and by Respondent are solely for the purpose of resolving this matter economically and amicably without litigation and shall not be used for any other purpose except for proceedings and matters arising under the Act and Article 21, Chapter 95 of the North Carolina General Statutes.

MOTIONS

Complainant moved to do the following (“Complainant’s Motion”):

***withdraw Citation 1 Items 1 through 9 inclusive and all associated penalty.**

Respondent did not object to Complainant’s Motion.

Respondent requested that upon the granting of Complainant’s Motion that the Undersigned consider the following motion by the Respondent (“Respondent’s Motion”):

***to withdraw Respondent’s Notice of Contest.**

Complainant did not object to Respondent’s Motion.

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 10th day of March, 2015



R. Joyce Garrett

Administrative Law Judge

CONSENTED TO:



**Jill Cramer, Assistant Attorney General
Attorney for Complainant**



**Scott Ketron, Manager
Representative for Respondent**

CERTIFICATE OF SERVICE

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

SCOTTIE KETRON
TOAD TRAILERS LLC
9700 KINGS ROAD
MYRTLE BEACH, SC 29572

JILL CRAMER
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 11th DAY OF March 2015.

OSCAR A. KELLER, JR.
CHAIRMAN



Nancy D. Swaney
Docket and Office Administrator
NC Occupational Safety & Health Review Commission
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