

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

COMMISSIONER OF LABOR FOR
THE STATE OF NORTH CAROLINA

COMPLAINANT,

v.

SOUTHERN INVESTMENTS, LLC.
and its successors

RESPONDENT.

DOCKET NO.: OSHANC 2013-5432

INSPECTION NO.: 316630227

CSHO ID.: Y3077

STIPULATION
AND NOTICE OF
SETTLEMENT

NOW COME the parties in the above-captioned action, pursuant to Rule .0701 of the Rules of Procedure adopted by the North Carolina Occupational Safety and Health Review Commission, and respectfully show unto the Hearing Examiner as follows:

FACTS

- Respondent is a corporation duly organized and existing under the laws of the State of North Carolina.
- On July 27, 2012, Lisa Rayborn, an Occupational Safety and Health Officer with the North Carolina Department of Labor, initiated an inspection of Respondent's worksite located in Reidsville, North Carolina.
- On December 19, 2012, as a result of the inspection, Complainant issued four citations, carrying the following proposed abatement dates and penalties:

CITATION NUMBER ONE (Willful Serious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1	29 CFR 1910.132(d)(1) – or in the alternative – 29 CFR 1910.132(d)(2)	1/15/13	\$28000.00
2	29 CFR 1910.147(c)(1)	2/5/13	\$28000.00

3	29 CFR 1910.178(p)(1)	2/5/13	\$28000.00
4	29 CFR 1910.212(a)(1)	12/28/12	\$28000.00
5	29 CFR 1910.212(a)(3)(ii)	12/28/12	\$28000.00
6	29 CFR 1910.303(b)(2)	12/28/12	\$28000.00
7	29 CFR 1910.305(b)(1)	12/28/12	\$28000.00
8	29 CFR 1910.305(g)(1)(iii)	12/28/12	\$28000.00
9	29 CFR 1910.1200(e)(1)	2/5/13	\$28000.00
10	29 CFR 1910.1200(f)(5)	2/5/13	\$28000.00
11	29 CFR 1910.1200(g)(8)	2/5/13	\$28000.00

CITATION NUMBER TWO (Willful Nonserious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1	29 CFR 1904.4(a)	1/15/13	\$20000.00
2	29 CFR 1910.157(c)(1)	12/28/12	\$20000.00
3	29 CFR 1910.157(e)(2)	12/28/12	\$20000.00
4	29 CFR 1910.157(e)(3)	12/28/12	\$20000.00
5	29 CFR 1910.157(g)(2)	1/15/13	\$20000.00

CITATION NUMBER THREE (Serious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1	29 CFR 1910.23(a)(8)(i)	12/28/12	\$1200.00
2	29 CFR 1910.23(c)(1)	12/28/12	\$2800.00
3	29 CFR 1910.27(e)(2)	12/28/12	\$1200.00
4	29 CFR 1910.37(a)(3)	12/28/12	\$2800.00
5	29 CFR 1910.132(a)	12/28/12	\$2800.00
	- or in the alternative -		
	N.C. Gen. Stat. § 95-129(1)		
6	29 CFR 1910.132(f)(1)	2/5/13	\$1200.00
7	29 CFR 1910.141(a)(3)(i)	12/28/12	\$2000.00
8a	29 CFR 1910.178(a)(6)	2/5/13	\$2000.00
8b	29 CFR 1910.178(q)(7)	12/28/12	(grouped)
9	29 CFR 1910.242(b)	12/28/12	\$1200.00
10	29 CFR 1910.305(e)(1)	12/28/12	\$2800.00
11	29 CFR 1910.303(g)(2)(i)	12/28/12	\$2800.00
12	29 CFR 1910.303(g)(2)(ii)	12/28/12	\$2800.00
13	29 CFR 1910.304(g)(5)	12/28/12	\$2000.00
14a	29 CFR 1910.1030(d)(3)(i)	12/28/12	\$2000.00
14b	29 CFR 1910.1030(d)(4)(ii)(A)	12/28/12	(grouped)
14c	29 CFR 1910.1030(d)(4)(iii)(C)	12/28/12	(grouped)
15	29 CFR 1910.1200(h)(1)	2/5/13	\$2800.00

CITATION NUMBER FOUR (Nonserious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1	29 CFR 1910.23(e)(1)	12/28/12	\$0
2	29 CFR 1910.134(c)(2)(i)	12/28/12	\$0
3	29 CFR 1910.303(g)(1)(i)	12/28/12	\$0
4	29 CFR 1910.303(g)(1)(ii)	12/28/12	\$600.00

4. The Respondent submitted a timely Notice of Contest dated February 18, 2013.
5. The parties having reached a Settlement Agreement now seek approval of said Agreement by the Hearing Examiner.

STIPULATIONS

Effective upon approval of this Stipulation and Notice of Settlement, the parties to this action hereby agree and stipulate to the following settlement of the matters at issue herein:

1. Respondent agrees that the violations alleged in the Citation and Notification of Penalty, as amended, have been abated through the closure of the business, and that many of the violations alleged were voluntarily abated and notice thereof given to Respondent prior to the closure of the business. Respondent represents that it does not intend to reopen this business at this or any other location in North Carolina now or in the future. Additionally, Respondent's owner, Mr. Donald Southern, hereby agrees that he will not own or have a management or supervisory role now or in the future involving a business whose primary focus is plastics recycling within the State of North Carolina.
2. Respondent agrees to withdraw its notice of contest.
3. The parties agree to bear their 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 Stipulation and Notice of Settlement.
4. The parties agree that this Stipulation and Notice of Settlement 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 - the same being specifically denied - 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 Stipulation and Notice of Settlement 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 Occupational Safety and Health Act.

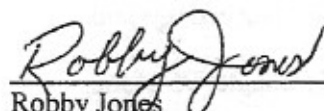
5. Complainant specifically acknowledges that it has not referred, does not intend to refer, and will not refer this matter for criminal prosecution to any appropriate authority.
6. Upon approval of this Stipulation and Notice of Settlement by the Hearing Examiner, the Respondent understands that it is liable for payment of the full penalty of \$441,000.00 within ten (10) days following the receipt of the Order approving the Stipulation and Notice of Settlement and that Complainant may file a judgment against it for non-payment of the penalty.
7. Complainant has been informed and believes that Respondent does not have the financial resources to pay the penalty in full. As long as the terms of this agreement are met by both Respondent and Mr. Southern, Complainant agrees that it will not attempt to recover any penalty or other amount from Mr. Southern personally or from any person or entity other than Respondent Southern Investments, LLC. Respondent agrees that by signing this Stipulation and Notice of Settlement and upon approval of said Stipulation and Notice of Settlement by the Hearing Examiner, its Notice of Contest is withdrawn as a matter of law.
8. The parties agree that there are no other matters that remain to be decided, and there has been no employee objection to the reasonableness of any abatement period.

9. Respondent shall post this Stipulation and Notice of Settlement in accordance with Rules .0107(e), .0107(f), .0107(h) and .0701(c) of the Rules of Procedure of the North Carolina Occupational Safety and Health Review Commission.

WHEREFORE, the parties to this action hereby respectfully request approval of this Stipulation and Notice of Settlement.

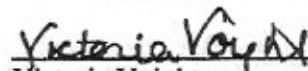
This the 27th day of March, 2014.

APPROVED BY:



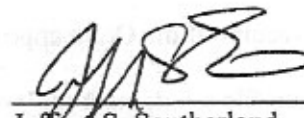
Robby Jones
Western District Bureau Chief
Occupational Safety and Health Division

ROY COOPER
Attorney General



Victoria Voight
Special Deputy Attorney General
North Carolina Department of Justice
Post Office Box 629/Labor Section
Raleigh, North Carolina 27602-0629
Telephone No. (919) 716-6680

ATTORNEYS FOR COMPLAINANT



Jeffrey S. Southerland
Tuggle Duggins
P.O. Box 2888
Greensboro, NC 27401
Telephone No. (336) 271-5251

ATTORNEY FOR RESPONDENT