

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

BEFORE THE OCCUPATIONAL HEALTH
AND SAFETY REVIEW BOARD

OFFICE OF OCCUPATIONAL SAFETY AND
HEALTH OF THE SOUTH CAROLINA
DEPARTMENT OF LABOR, LICENSING AND
REGULATION,

Complainant,

-vs-

CITY OF CHARLESTON,

Respondent.

SETTLEMENT AGREEMENT

PROTEST DOCKET NO. 011-08

WHEREAS, Complainant on September 20, 2007, issued to Respondent two (2) citations alleging four violations of the Occupational Safety and Health Regulations of the State of South Carolina; and

WHEREAS, a penalty was proposed in the amount of Nine Thousand Three Hundred Twenty Five (\$9,325.00) dollars for the alleged violations; and

WHEREAS, Respondent filed a timely Notice of Protest relating to the citations and proposed penalty in this matter; and

WHEREAS, Complainant and Respondent have negotiated the following stipulations and agreement in response to citations issued by Complainant arising out of the fire of June 18, 2007, in the City of Charleston. The specific objective of this stipulation and agreement is to resolve the enforcement issues between the City and OSHA, while enhancing the health and safety of firefighters in the City and throughout South Carolina. Both Complainant and Respondent recognize that the other has acted in good faith.

WHEREAS, Complainant recognizes that in response to the fire of June 18, 2007, the Respondent has demonstrated its good faith by undertaking an independent, comprehensive review of its Fire Department and of the overall state of fire protection services in the City (the "Post-Incident Assessment and Review"). This review is being conducted through a Fire Review Team comprised of

nationally recognized fire safety experts. The City has also demonstrated its good faith by cooperating fully and completely in the OSHA investigation related to the fire.

WHEREAS, it is the stated goal of the Respondent in undertaking the Post-Incident Assessment and Review: a) to bring the Charleston Fire Department to the highest level of safety for its firefighters, b) to implement standards, practices and procedures that go beyond those currently mandated by OSHA or standard practice in the field, and c) to set a new standard for firefighter safety in the State of South Carolina.

WHEREAS, in furtherance of the health and safety of firefighters throughout South Carolina and in furtherance of OSHA's mission of protecting employee safety, the City of Charleston offers to provide any reasonable assistance requested by Complainant or by other fire departments in incorporating the lessons learned from the Post-Incident Assessment and Review into the operating procedures of public fire service employers throughout the State.

WHEREAS, it is appropriate and within the prosecutorial discretion of the Complainant to amend the citations to recognize that the Respondent agrees to undertake an expanded abatement program arising out of the work and recommendations of the Fire Review Team and that this program significantly exceeds the scope of abatement required by these citations, and may, in significant respects, exceed the practices generally followed by other public fire service employers in South Carolina.

WHEREAS, Respondent has further demonstrated its good faith by agreeing to submit its plan for implementation of the recommendations of the Fire Review Team Phase 1 Report in writing to the OSH Compliance Manager, Department of Labor, Licensing & Regulation, PO Box 11329, Columbia, SC 29211, no later than 90 days after formulation of the recommendations for review and suggestions from the OSHA Compliance Manger to be made within forty-five (45) days after receipt of the same.

WHEREAS, Respondent has further demonstrated its good faith and commitment to enhanced employee safety and health by agreeing to document in writing to the OSHA Compliance Manager, Department of Labor, Licensing & Regulation, PO Box 11329, Columbia, SC 29211, its response to the recommendations of the Fire Review Team according to the following schedule:

- a. development and implementation of enhanced firefighter health and safety program under the supervision of newly formed Health and Safety Committee and Department Safety Officer

11/1/08

- b. development and implementation of policies for post-incident analysis and review and for implementation of lessons learned from those reviews. 5/1/08
- c. development and implementation of written policies for live fire training, fire fighting in extreme temperature environments, work rest cycles, and rehabilitation. 5/1/08
- d. development and implementation of program for preplanning response to classes of structures identified by the City as presenting special hazards (internal and external). The special hazards shall include but shall not be limited to pre-code construction (historic buildings), buildings below sea level, industrial contamination, metal truss roofs. 11/1/08
- e. to supplement implementation of the enhanced incident command system as indicated for abatement of Citation 2, Item I, by certification that:
 - (1) Minimum response to all structural fires has been increased to three engines and one ladder truck with the third engine designated as the Rapid Intervention Team. The second arriving Battalion Chief will be designated as Safety Officer and will take responsibility for employee safety at the scene. 12/1/07
 - (2) All firefighter employees have been trained on the enhanced incident command procedures according to their level of responsibility and that a program for periodic refresher training has been implemented 5/1/08
 - (3) Respondent has reviewed and revised its system for personnel accountability at the fire ground and has implemented indicated system improvements. 5/1/08
 - (4) Respondent has implemented plain talk procedures. 2/1/08
- f. certification of training for all recruits and firefighters hired during calendar year 2007, to show organized training equivalent to Firefighter 2 Level curriculum from the South Carolina Fire Academy. 11/1/08
- g. certification of a written plan to ensure that all City firefighters, regardless of date of hire will receive organized training to the level of Firefighter 2 Level curriculum from the South Carolina Fire Academy or equivalent training by a specified date. 11/1/08

- h. certification of refresher training for all active firefighters on use of personal protective equipment, including body protection, hand protection, foot and leg protection, head, eye and face protection, and respiratory protection (self-contained breathing apparatus).

5/1/08

WHEREAS, the Respondent specifically does not admit the truth of any alleged facts, any of the characterizations of Respondent's alleged conduct, or any of the conclusions set forth in the citations issued in this matter. Nothing in this Agreement pertains to any equipment or practice other than specifically cited or referenced on the face of the Agreement. Further, neither this Agreement, the underlying citations, nor any order by the Occupational Health and Safety Review Board pursuant to this Agreement shall be offered, disclosed, used, or admitted into evidence in any proceedings, whether civil or administrative now pending or hereinafter initiated, except such proceedings as may hereinafter be initiated by the Division of Occupational Safety and Health of the South Carolina Department of Labor, Licensing and Regulation in enforcement of this Agreement; and

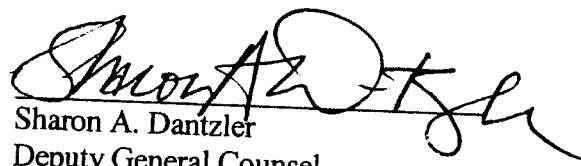
WHEREAS, by issuing these citations, the Complainant has made no representations or determinations concerning the probable cause of any injury or death to any person involved in the June 18, 2007 fire.

NOW THEREFORE, it is mutually agreed and stipulated by Complainant and Respondent as follows:

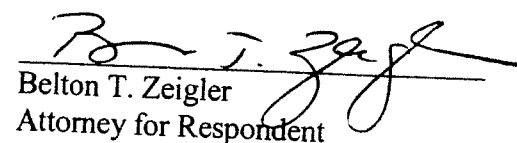
1. Complainant moves to amend Citation 1, Items 1 through 3, to allege a single grouped violation of S.C.R.R. 71-1-1910.156 as follows:
 - A. Failed to enforce requirements for body protection of at least three fire fighters involved in interior structural fire fighting at 1807 Savannah Highway, on or about June 18, 2007. The nine firefighters who perished in the fire are not among the three or more firefighters noted in this violation.
 - B. Failed to enforce requirements for wearing self-contained breathing apparatus by at least three fire fighters involved in fire fighting at 1807 Savannah Highway, on or about June 18, 2007. The nine firefighters who perished in the fire are not among the three firefighters noted in this violation.
2. Respondent represents that all conditions giving rise to Citation 1, as amended, have been corrected and abated, as evidenced by the attached DOSH-C-15, and will remain corrected and abated.

3. Complainant moves to amend Citation 2, Item 1, to allege an unclassified violation of S.C.R.R. 71-112A as follows: Employer knew or should have known that its written incident command system does not directly address those emergency response situations which do not include a HAZMAT incident. A feasible and useful means of abatement is incorporation of the health and safety related components of nationally recognized incident command system into the written policies of the Respondent and implementation of the system department-wide.
4. Respondent represents that all conditions giving rise to Citation 2 will be corrected on or before February 1, 2008, and will remain corrected and abated.
5. Complainant moves to amend the Penalty for Citations 1 and 2 from Nine Thousand Three Hundred Twenty Five (\$9,325.00) dollars to Three Thousand One Hundred Sixty (\$3,160.00) dollars.
6. Respondent agrees to file quarterly updates with the Complainant until the last due date listed above has passed or until completion of the abatement steps itemized above.
7. Respondent agrees to remit the penalty of Three Thousand One Hundred Sixty (\$3,160.00) dollars herein to the Finance Division, South Carolina Department of Labor, Licensing and Regulation, penalty being due no later than thirty (30) days from the date Respondent's receipt of the Order of the Occupational Health and Safety Review Board.
8. Respondent moves to withdraw its Notice of Protest and Complainant withdraws all matters related to the citations that are not specifically included in this Agreement.

29 November, 2007


Sharon A. Dantzler
Deputy General Counsel
Attorney for Complainant
SC Dept. of Labor, Licensing and Regulation
PO Box 11329
Columbia, SC 29211

November 29, 2007


Belton T. Zeigler
Attorney for Respondent
Haynsworth Sinkler Boyd, PA
PO Box 11889
Columbia, SC 29211

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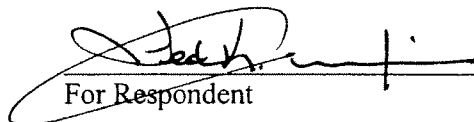
CITY OF CHARLESTON,

Respondent.

CERTIFICATE OF POSTING

PROTEST DOCKET NO. 011-08

I hereby certify that notice of this Settlement Agreement in the above-captioned case has been served upon all affected employees as set out by the rules of the Occupational Health and Safety Review Board, Sections 127-1.1, *et. seq.*, South Carolina Rules and Regulations, by posting a copy thereof in a prominent location where it will be readily observable by all affected employees on this 3RD day of DECEMBER, 2007.


For Respondent