



# S.C. Occupational Health and Safety Review Board

Post Office Box 11824 • Columbia, SC 29211 • (803) 896-4339

December 31, 2007

Belton T. Zeigler, Esquire  
Haynsworth Sinkler Boyd, PA  
Post Office Box 11889  
Columbia, South Carolina 29211

Re: **CITY OF CHARLESTON (Site: 1807 Savannah Highway, Charleston, SC 29407)**  
**Protest Docket No. 011-08**

Dear Mr. Zeigler:

Enclosed is a copy of the Settlement Agreement and subsequent Order in the above matter for your record.

If you have questions, please give me a call at 803/896-4684.

Sincerely,

A handwritten signature in cursive script that reads "Joan R. Wilkie".

Joan R. Wilkie

Administrative Law Clerk

Enclosure

cc: James G. Padgett, III, OHS Review Board Member  
SCDLLR, Office of General Counsel  
SCDLLR, Division of Labor, OSHA Compliance

STATE OF SOUTH CAROLINA ) BEFORE THE OCCUPATIONAL HEALTH  
 ) AND SAFETY REVIEW BOARD  
COUNTY OF RICHLAND )

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

Complainant, )

-vs- )

CITY OF CHARLESTON, )

Respondent. )

ORDER

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PROTEST DOCKET NO. 011-08

THIS MATTER comes before me pursuant to Section 41-15-600, Code of Laws of South Carolina, 1976, as amended, to review a proposed settlement entered into between the parties on the 29<sup>th</sup> day of November, 2007.

This matter arose as a result of the issuance of two (2) citations by the South Carolina Department of Labor, Licensing and Regulation on September 20, 2007, charging the Respondent with four (4) serious violations of various Occupational Safety and Health Standards for which a penalty was proposed in the aggregate amount of Nine Thousand Three Hundred Twenty Five (\$9,325.00) dollars. The Respondent filed a timely Notice of Protest contesting the issued citations and proposed penalty in this matter.

Subsequently, on November 29, 2007, the parties executed a Settlement Agreement, a copy of which is attached hereto and incorporated herein, but not merged into this Order.

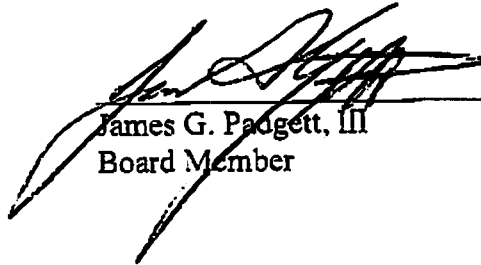
From the Certificate of Posting submitted with the Settlement Agreement, and signed by the Respondent, it appears that the proposed Settlement Agreement was posted in accordance with the Rules and Regulations of the Occupational Health and Safety Review Board, Sections 127-1-1, et. seq., South Carolina Rules and Regulations on the 3<sup>rd</sup> day of December, 2007. More than fifteen (15) days have elapsed since the posting of the Settlement Agreement and no affected employees have either voiced any objection to the proposed Settlement Agreement or attempted to claim party status in this matter.

Having carefully reviewed the citations, the Respondent's Notice of Protest, and the

Settlement Agreement incorporated herein, I am persuaded that the proposed settlement is reasonable and is consistent with the provisions and objectives of the South Carolina Occupational Safety and Health Act. and

IT IS THEREFORE ORDERED, that the Settlement Agreement be affirmed.

AND IT IS SO ORDERED.



James G. Padgett, III  
Board Member

Dated at Greenwood, South Carolina  
this 18 day of December, 2007

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 Manager 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:

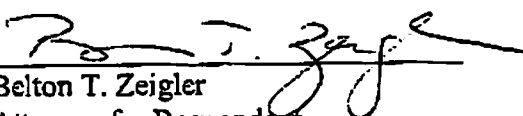
1. Complainant moves to amend Citation 1, Items 1 through 3, to allege a single grouped violation of S.C.R.R. 71-1-1910.156 as follows:
  - A. Failed to enforce requirements for body protection of at least three fire fighters involved in interior structural fire fighting at 1807 Savannah Highway, on 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. Dantzi  
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

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 )

AFFIDAVIT OF SERVICE

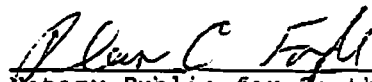
PROTEST DOCKET NO. 011-08

PERSONALLY appeared before me, Joan R. Wilkie who being duly sworn, states that she is the Administrative Law Clerk for the South Carolina Occupational Health and Safety Review Board, and that on the 31<sup>st</sup> day of December, 2007, she served an ORDER on the Complainant by hand delivering the same to: South Carolina Department of Labor, Licensing and Regulation, 110 Centerview Drive, Columbia, SC 29210.

  
Joan R. Wilkie  
OHSRB Administrative Law Clerk

SWORN to and subscribed before me this

31 day of DECEMBER, 2007.

  
Notary Public for South Carolina

My Commission Expires: 9-11-2011

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

BEFORE THE OCCUPATIONAL HEALTH  
AND SAFETY REVIEW BOARD

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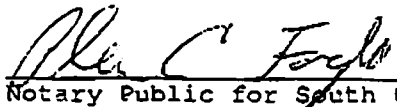
PROTEST DOCKET NO. 011-08

PERSONALLY appeared before me, Joan R. Wilkie, who being duly sworn, states that she is the Administrative Law Clerk for the South Carolina Occupational Health and Safety Review Board, and that on the 31<sup>st</sup> day of December, 2007 she served a copy of the ORDER herein on the Respondent by depositing the same in the United States Mail, postage prepaid, and addressed to: Belton T. Zeigler, Esquire, Haynsworth Sinkler Boyd, PA, Post Office Box 11889, Columbia, South Carolina 29211.

  
Joan R. Wilkie  
OHSRB Administrative Law Clerk

SWORN to and subscribed before me this

31 day of DECEMBER, 2007.

  
Notary Public for South Carolina

My Commission Expires: 9-7-2016