

**UNITED STATES OF AMERICA  
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**

SECRETARY OF LABOR,

Complainant,

v.

C. I. THORNBURG CO., INC.,

Respondent.

OSHRC DOCKET NO. 01-1715

Appearances:

M. Yusuf M. Mohamed, Esq.  
Office of the Solicitor  
U.S. Department of Labor  
Arlington, VA  
For the Complainant.

Douglas J. Suter, Esq.  
Isaac, Brant, Ledman & Teetor, LLP.,  
Columbus, OH.  
For the Respondent

Before: Judge Covette Rooney

***DECISION AND ORDER***

***I Jurisdiction, Background, and Procedural History***

This proceeding is before the Occupational Safety and Health Review Commission pursuant to Section 10(c) the Occupational Safety and Health Act of 1979 (29 U.S.C. §651, *et seq.*)(“the Act”). Respondent, C. I. Thornburg Co., Inc., at all times relevant to this action maintained at a workplace at the Kenova Water Treatment Plant, Kenova, WV., where it was engaged in pipe work. Respondent admits that it is an employer engaged in a business affecting commerce and is subject to the requirements of the Act.

From June 26, 2001 to June 27, 2001, the Occupational Safety and Health Administration conducted an inspection at the subject workplace. As a result of this inspection, on August 16, 2001, Respondent was issued one citation alleging serious violations of the Act, with a proposed total penalty in the amount of \$5,250.00, and one citation alleging a willful

violation of the Act with a proposed total penalty in the amount of \$ 38,500.00. By timely Notice of Contest, Respondent brought this proceeding before the Review Commission. The case came to be heard on May 7, 2002, in Charleston, WV.

***II Discussion***

At the commencement of the hearing, counsel for the Complainant on behalf of all parties informed the undersigned that in accordance with Review Commission Rule 100, 29 C.F.R. §2200.100, a settlement had been reached in the instant matter. Counsel for Complainant read the settlement into the record at the proceeding.

***III Order***

The terms of the settlement have been reduced to writing and have been submitted. (See attached Motion for Settlement). The terms of the settlement meet the requirements of Review Commission Rule 100(b), 29 C.F.R. §100(b). Accordingly, the settlement is approved under 5 U.S.C. §554(c)(1) and Review Commission Rule 100. The terms of the stipulated settlement are incorporated herein, in their entirety, by reference to this order.

SO ORDERED.

/s/

Covette Rooney  
Judge, OSHRC

Dated: June 24, 2002  
Washington, D.C.

**OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION  
WASHINGTON, DC**

**ELAINE CHAO,**  
Secretary of Labor,  
United States Department of Labor (OSHA),  
Petitioner

Docket No. 01-1715

v.

**C. I. THORNBURG CO., INC.,**  
Respondent.

**STIPULATION OF SETTLEMENT**

The parties hereto, in order to resolve this case amicably without the necessity of further litigation, hereby agree and stipulate as follows:

1. Citation Number 1, Item Numbers 1a and 1b shall remain as serious violations, and the total proposed penalty for Citation Number 1, Item Numbers 1a and 1b shall be \$1750.00.

2. Citation Number 1, Item Number 2 shall remain as a serious violation, and the total proposed penalty for Citation Number 1, Item Number 2 shall be \$1750.00.

3. Citation Number 1, Item Number 3 shall remain a serious violation, and the total proposed penalty for Citation Number 1, Item Number 3 shall be \$1750.00.

4. Citation Number 2, Item Number 1 shall be amended to an unclassified violation, and the total proposed penalty for Citation Number 2, Item Number 1 shall be \$20,000.00.

5. Respondent hereby moves the Commission for an Order allowing it to withdraw its Notice of Contest to the Citations and Notification of Penalty as amended. In support thereof, Respondent represents:

A. That the total penalty of \$25,250.00 shall be paid within thirty (30) days

after this Stipulation of Settlement becomes a final order of the Review Commission;

- B. that complete abatement of the conditions noted in the Citations as amended has been accomplished, and that Respondent agrees to submit an abatement certification letter stating how abatement was accomplished;
- C. that Respondent has posted its Notice of Contest;
- D. that a copy of this Stipulation of Settlement was posted in accordance with the requirements of 29 C.F.R. §§ 2200.100(c) and 2200.7(g) so as to provide notice to all affected employees at Respondent's facility located at 4034 Altizer Avenue, Huntington, WV 25705 on May 31, 2002.
- E. that Respondent agrees to continue to comply with the applicable provisions of the Occupational Safety and Health Act of 1970, and the applicable safety and health standards promulgated pursuant to the Act.

6. The Citations and Notification of Penalty as amended shall become a final Order of the Commission and the parties consent to the entry of the attached Consent Order Entering Settlement.

7. Each party hereby agrees to bear its own attorneys' fees, costs, and other expenses incurred by such party in connection with any stage of this proceeding including, but not limited to, attorneys' fees and costs which may be available under the Equal Access to Justice Act, as amended.

8. Except for proceedings under the Act, none of the foregoing agreements, statements, findings and actions taken by Respondent shall be deemed an admission of the allegations

contained within the citations and proposal for penalty. The parties understand and acknowledge that the legal standards and procedures involved in these administrative proceedings are not necessarily the same as those involved in civil litigation outside of the Act, and agree that the agreements, statements, findings and actions taken herein are made solely for the purpose of compromising and settling this administrative matter, and may not be used in any judicial or administrative forum for any other purpose whatsoever, except for proceedings under the Act. It is specifically understood by the Respondent and OSHA that the compromise and settlement of this matter is not intended to constitute an admission of civil liability or responsibility of any kind in any civil personal injury or wrongful death action; and such civil liability or responsibility is specifically denied by Respondent.

/s/

Douglas J. Suter  
Issac, Brant, Ledman & Teetor, LLP  
The Midland Building  
250 East Broad Street  
Columbus, OH 43215-3742

Eugene Scalia  
Solicitor of Labor

Catherine Oliver Murphy  
Regional Solicitor

Douglas N. White  
Associate Regional Solicitor

s/

M. Yusuf M. Mohamed  
Attorney

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CONSENT ORDER ENTERING SETTLEMENT

The parties advise that all matters in dispute have been amicably resolved and agree to entry of the Order set forth below. It is therefore ORDERED that:

1. The attached Stipulation of Settlement has been entered into by the parties and the terms thereof are incorporated into this Order.

2. The citation items and proposed penalties are affirmed, modified or vacated in accordance with the Stipulation of Settlement.

3. The total penalty associated with the affirmed citation items amounts to \$25,250.00.

/s/

Covette Rooney

Judge, OSHRC