

UNITED STATES OF AMERICA

OCCUPATIONAL SAFETY & HEALTH REVIEW COMMISSION

SECRETARY OF LABOR,

Complainant,

v.

U.S. NONWOVENS CORP.,

Respondent.

OSHRC DOCKET NO. 19-1200

STIPULATED SETTLEMENT AGREEMENT

Based upon the following recital, the Complainant and the Respondent herein agree to the following as a conclusion of this matter:

1) The Complainant hereby amends the citations and complaint as follows:

(i) Citation 1, Item 3 is amended from a violation of 1910.147(c)(4)(i) to a

violation of 1910.219(b)(3) to read as follows:

29 C.F.R. 1910.219(b)(3): The employer did not ensure that tail rods or extension piston rods were guarded in accordance with paragraphs (m) and (o) of this section, or by a guardrail on sides and end, with a clearance of not less than fifteen (15) nor more than twenty (20) inches when rod is fully extended:

a) Workplace, 105 Enjay Blvd, production floor – Employees working at the Pack Line Filling and Sealing “Autotubber” Machine, Model PXG-4, Serial #PL700456, were exposed to amputation hazards from moving parts; on or about 1/30/2019.

(ii) Citation 1, Item 4 is amended to read as follows:

29 C.F.R. 1910.147(c)(7)(i): The employer did not provide adequate training to ensure the purpose and function of the energy control program was understood by employees:

a) Workplace, 85 Nikon Ct., Hauppauge, NY- The employer did not provide instruction on the purpose and use of the energy control

procedures for ~~employees authorized clearing jams of nonwoven material from moving parts of the Tiel 3 machine~~ **affected employees working in proximity to the Tiel 3 machine**; on or about 1/25/19.

b) Workplace, 105 Emjay Blvd., Hauppauge, NY – The employer did not provide instruction on the purpose and use of the energy control procedure for affected employees working in proximity to the Pack Line “Autotubber” machine; on or about 2/27/19.

(iii) Citation 1, Item 7 is reclassified from a serious violation to an other-than-serious violation.

(iv) Citation 2, Item 3 is grouped with Citation 1, Item 5 and reclassified from a repeat, other-than-serious violation to a serious violation.

(v) Instance (a) of Citation 2, Item 4 is vacated.

(vi) Instance (b) of Citation 2, Item 4 is reclassified from a repeat, serious violation to a serious violation.

(vii) Citation 3, Item 2 is withdrawn.

2) The Secretary also amends the notification(s) of proposed penalties set forth in the citation and complaint to amend the total proposed penalty to \$200,000, to be apportioned as follows:

Citation & Item	Original Proposed Penalty	Amended Proposed Penalty
Citation 1, Item 1	\$8,335	\$5,000
Citation 1, Item 2	\$8,335	\$5,000
Citation 1, Item 3	\$10,419	\$2,700
Citation 1, Item 4	\$13,260	\$9,400
Citation 1, Item 5	\$10,419	\$7,000
Citation 1, Item 6	\$8,335	\$5,000

Citation 1, Item 7	\$10,419	\$7,000
Citation 1, Item 8	\$10,419	\$7,000
Citation 1, Item 9	\$14,586	\$10,000
Citation 2, Item 1	\$47,460	\$37,700
Citation 2, Item 2	\$66,300	\$47,000
Citation 2, Item 3	\$378	\$0 (grouped with Citation 1, Item 5)
Citation 2, Item 4	\$66,300	\$50,000
Citation 3, Item 1	\$10,419	\$7,000
Citation 3, Item 2	\$2,085	(Withdrawn)
Citation 3, Item 3	\$1,169	\$200
Citation 3, Item 4	\$0	\$0
Total:	\$287,212	\$200,00

3) Respondent affirmatively states that:

(i) It will comply in the future with the Occupational Safety and Health Act.

(ii) All violations alleged in the citations and complaint will be abated within 30 days of execution of this agreement, unless otherwise agreed to herein and Respondent will provide abatement certification and documentation as required by 29 C.F.R. 1903.19.

(iii) Within 60 days of execution of this agreement, Respondent will provide training on LOTO procedures and policies for production machinery, including but not limited to any and all Autotubber machines and Tiel machines, for all authorized employees at the facilities located at 105 Emjay Blvd and 85 Nicon Court.

(iv) It has adopted, or will adopt by the dates described below, the following measures at all of its facilities located in New York:

(a) Respondent will hire as soon as possible, but no later than September 1, 2020, an Employee Safety and Health (EHS) Director who shall be responsible for all safety and health issues at all facilities and will continue to retain an independent safety and health expert to oversee safety and health at all facilities until such time that the EHS Director position is filled.

(b) Respondent will spend at least \$50,000 in 2020 on safety and health related matters, beyond the required abatement measures set forth in this agreement, to include but not be limited to, the continued retention of a safety and health expert or EHS Director to assist with safety and health issues who will perform an assessment of machine guarding at all facilities in 2020. Respondent will implement each of the expert's recommendations or, for those recommendations that Respondent declines to implement, document the reasons why Respondent declines to do so, and make the document(s) available to OSHA upon request. Respondent will also retain an outside consultant and/or engineer to perform an inspection in 2020 at all facilities of the structural integrity of racks and Respondent's stacking policies, procedures, and implementation.

(c) Effective immediately upon execution of this agreement, Respondent will perform daily emergency exit inspections at each of its facilities, which will be recorded via a daily log at each facility, through January 31, 2022. Each plant manager or his/her designee will be responsible for maintaining the daily log which will be made available to OSHA upon request with reasonable promptness.

(d) Within 30 days of execution of this agreement, Respondent will prepare and distribute formal storage and stacking policies and procedures for each facility to all employees.

(e) Within 30 days of execution of this agreement, Respondent will establish, maintain, and notify employees of a toll-free number for employees to anonymously report safety concerns and suggestions. The notification to employees will include notice of employees' rights under Section 11(c) of the OSH Act.

(f) Within 30 days of execution of this agreement, Respondent will designate a manager or supervisor to perform a comprehensive inspection, including of fuel tanks, charging stations, and training certification for all operators, of all forklifts and the forklift program every six months. Respondent will document and maintain records of the results of the biannual inspections for three years after the date of each inspection.

(g) Within 90 days of execution of this agreement, and annually thereafter, Respondent will review its LOTO program and procedures, and perform updates, modifications or changes as appropriate to ensure the program and procedures are compliant and effective, as required by regulation.

(h) Within 30 days of execution of this agreement, Respondent will establish a labor-management safety committee to oversee safety and health policies at all facilities, including review of Respondent's storage and stacking policies and procedures, and review of Respondent's responses to any safety concerns and suggestions reported through Respondent's toll-free number. The committee will meet at least quarterly, and will make recommendations as appropriate to Respondent's officers.

(i) Respondent agrees to warrantless entry for OSHA to all facilities for one year from the execution of this agreement.

(j) Within 30 days of execution of this agreement, Respondent will identify all Tiel machines at all of its facilities and ensure that the rotating shaft point of operation hazard cited in instance (b) of Citation 2, Item 4 is guarded adequately on each Tiel machine.

4) If Respondent is unable to meet any of the due dates or other requirements of 3(iii)(a) through (k) Respondent may submit a timely Petition for Modification of Abatement, with sufficient justification for the requested modification, and OSHA will give fair consideration to such Petitions based on the reasonableness and justification for the request.

5) The citations in this matter are deemed amended to include the abatement measures described in paragraph 3, which measures are hereby incorporated as terms and abatement conditions of this Stipulated Settlement.

6) Respondent will pay the amended proposed penalty of \$200,000 within 14 days of executing this Stipulated Settlement by forwarding a check made payable to "Occupational Safety and Health-Labor" in that amount to 1400 Old Country Road, Suite 208, Westbury, NY 11590 or via pay.gov.


7) Each party hereby agrees to bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding.

8) Respondent withdraws its notice of contest in this matter, and agrees that the citations, penalties, and abatement measures (as set forth and amended herein by this Stipulated Settlement) shall become a final order of the Commission on the same date that the Order Terminating Proceeding becomes a final order, as set forth in the Notice of Docketing issued by the Executive Secretary of the Commission.

9) None of the foregoing agreements, statements, stipulations and actions taken by respondent shall be deemed an admission by respondent of the allegations contained within the citations, notifications of penalty and the complaint herein. The agreements, statements, stipulations, findings and actions taken herein are made for the purpose of settling this matter amicably and they shall not be used for any purpose, except for proceedings and matters arising under the Occupational Safety and Health Act. By entering into this agreement, respondent does not admit that the conditions cited were the cause proximate or otherwise of any accident, personal injury, illness, damages, or incident which may have occurred.

Date: MAY 5, 2020

EXECUTED BY:



NAME: KEITH MARCIANO

TITLE: CHIEF FINANCIAL OFFICER

On behalf of Respondent,



NAME: Molly J. Theobald
Trial Attorney
U.S. Department of Labor,
TITLE: Office of the Solicitor

On behalf of Complainant,

Secretary of Labor.

RESPONDENT'S CERTIFICATIONS FOR POSTING AND SERVICE

1. POSTING

Respondent certifies that on the following date: May 5, 2020, a copy of this Stipulated Settlement was posted where affected employees may see it, and will remain posted for at least 14 days thereafter.

2. AUTHORIZED EMPLOYEE REPRESENTATIVE(S)?

(Mark "X" next to Option 1 OR Option 2 as appropriate)

Option 1

Respondent certifies that there is no authorized employee representative for the employees affected by the action which is the subject of this Stipulated Settlement.

OR

Option 2

Respondent certifies that there is one or more authorized employee representatives for the employees affected by the action which is the subject of this Stipulated Settlement. The names and addresses of the authorized employee representative(s) are as follows:

3. SERVICE ON AUTHORIZED EMPLOYEE REPRESENTATIVE(S)

Respondent certifies that this Stipulated Settlement was served on the authorized employee representative(s) of the affected employees on the following date:

_____, by the following method(s) of service (i.e. first-class mail, overnight delivery, personal delivery): _____.

CERTIFIED BY : *Dawn Costa*
Dawn Costa, Director of EHS



United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
 1120 20th Street, N.W., Ninth Floor
 Washington, DC 20036-3457

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JOINT NOTIFICATION OF FULL SETTLEMENT

The parties respectfully notify the Court that the parties have fully settled the above captioned case and have executed a formal settlement agreement.

CERTIFICATION OF CITATION ITEMS FULLY SETTLED

The parties certify that all citation items in this case have been fully settled. All settled citation items are set forth, on a separate row, in the following chart. Commission Rule 100(b)(1)(i).¹

Citation No.	Item No.	Resolution: Settled / Withdrawn
1	1	Settled
1	2	Settled
1	3	Settled
1	4	Settled
1	5	Settled
1	6	Settled

¹ OSHRC's new Rules of Procedure were effective June 10, 2019 and all references contained herein refer to these revised Rules. Rules of Procedure, 84 Fed. Reg. 14554 (April 10, 2019) (to be codified at 29 C.F.R. pt. 2200). (<https://www.federalregister.gov/documents/2019/04/10/2019-06581/rules-of-procedure>).

1	7	Settled
1	8	Settled
1	9	Settled
2	1	Settled
2	2	Settled
2	3	Settled
2	4	Settled
3	1	Settled
3	2	Withdrawn
3	3	Settled
3	4	Settled

CERTIFICATION OF POSTING

The parties certify that the executed settlement agreement was posted to provide notice to the affected employees.² Commission Rules 7(g); 100(b)(1)(ii); 100(c). The parties certify that the settlement agreement was posted at a location prescribed by Commission Rule 7(g) on the following date: May 5, 2020.

The settlement agreement shall remain posted for fourteen (14) days.

CERTIFICATION OF SERVICE

The parties certify that the executed settlement agreement was served on the authorized employee representative of the affected employees³ in a manner prescribed in Commission Rule 7(c) on the following date: N/A. Commission Rules 7(f); 100(b)(1)(ii); 100(c).

² In cases where *all* affected employees are represented by an authorized employee representative an alternative certification shall be included in the Joint Notification of Full Settlement, rather than the posting certification stated above. The alternative certification shall comply with Commission Rules 7(f); 100(b)(1)(ii); 100(c) and shall include the date of service.

³ If *all* affected employees are not represented by an authorized employee representative, an additional certification of posting shall be included in the Joint Notification of Full Settlement. Commission Rules 7(g); 100(b)(1)(ii); 100(c). The settlement agreement shall remain posted for fourteen (14) days.

The parties certify that the settlement agreement was posted at a location prescribed by Commission Rule 7(g) on the following date: May 5,2020.

CERTIFICATION REGARDING PARTY WHO HAS ELECTED PARTY STATUS

The parties certify that any party who has elected party status, under Commission Rule 20, has been afforded an opportunity to provide input on all matters pertaining to the settlement before the settlement agreement was finalized. Commission Rule 100(b)(1)(iii).

CERTIFICATION WHETHER SETTLEMENT INCLUDES PLEADING WITHDRAWAL, AND WHETHER THE WITHDRAWAL IS WITH PREJUDICE

In the following chart, the parties certify the status of any citations, notifications, notices, or petitions, withdrawn in the settlement agreement, and certify whether the withdrawal was with or without prejudice. Each citation item and notification of proposed penalty withdrawn is included, on a separate row, in the chart. Commission Rule 100(b)(1)(iv).

List of Pleadings Withdrawn	Withdrawal – With or Without Prejudice
Citation 3, Item 2	With prejudice
Notice of Contest	With Prejudice

ACKNOWLEDGEMENT THAT THE PARTIES HAVE NOT PROVIDED THE SETTLEMENT AGREEMENT WITH THIS JOINT NOTIFICATION.

The parties confirm that they have not incorporated the settlement agreement in, or append it to, this joint Notification of Settlement. *See* Commission Rule 100(b)(2).

DRAFT ORDER TERMINATING PROCEEDING.

The parties confirm that they have filed, for execution by the Judge, a draft Order Terminating Proceeding, acknowledging that the parties have resolved contested citation items and agreed to terminate the proceeding before the Commission, pursuant to Commission Rules 100(b)(3); 100(c).

Date: May 5, 2020

EXECUTED BY: *Dawn Costa*
Dawn Costa, Director of EHS



NAME: KEITH MARCHIANO

TITLE: CHIEF FINANCIAL OFFICER

On behalf of Respondent,



NAME: Molly J. Theobald
Trial Attorney

TITLE: U.S. Department of Labor,
Office of the Solicitor

On behalf of Complainant,

Secretary of Labor.



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ORDER TERMINATING PROCEEDING

The parties have filed a joint Notification of Settlement acknowledging that the parties have resolved all contested citation items and agreed to terminate the proceeding before the Commission in the above captioned case.

IT IS THEREFORE ORDERED that this proceeding is TERMINATED pursuant to Commission Rule 100(b)(3); 100(c).¹

This Order Terminating Proceeding shall become a final Order of the Commission thirty (30) days from the date of its docketing by the Executive Secretary, unless a Commission Member directs review of the order within that time. *See* 29 U.S.C. § 661(j); Commission Rule 90(f).

SO ORDERED.

Dated:
Washington, DC.

Judge, OSHRC

¹ OSHRC's new Rules of Procedure were effective June 10, 2019 and all references contained herein refer to these revised Rules. Rules of Procedure, 84 Fed. Reg. 14554 (April 10, 2019) (to be codified at 29 C.F.R. pt. 2200). (<https://www.federalregister.gov/documents/2019/04/10/2019-06581/rules-of-procedure>).