

UNITED STATES OF AMERICA

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

EUGENE SCALIA,¹ Secretary of Labor,
United States Department of Labor,

Complainant,

v.

ARCHER DANIELS MIDLAND COMPANY,

Respondent.

OSHRC Docket No. 19-0795

Inspection No. 1359803

STIPULATION AND SETTLEMENT AGREEMENT

Complainant, Eugene Scalia, Secretary of Labor, United States Department of Labor, and Respondent, Archer Daniels Midland Company, pursuant to Rule 100 of this Commission hereby agree and stipulate to the full settlement of this matter as follows:

I

1. Citation 1, Item 1a of the Citation and Notification of Penalty remains a “Serious” violation of 29 C.F.R. 1910.272(m)(1)(i) with the following amended alleged violation description:

On November 9, 2018, the employer failed to fully document its procedures to inspect safety control equipment on the Rail Receiving Leg.

Complainant deletes the remaining instances in Citation 1, Item 1a. Complainant hereby amends the proposed penalty of Citation 1, Item 1a to \$9,000.

¹ By operation of law, Eugene Scalia is substituted *sub nom.* for former Secretary of Labor R. Alexander Acosta. *See* Fed. R. Civ. P. 25(d).

2. Complainant hereby amends the Citation and Notification of Penalty by deleting Citation 1, Item 1b.

3. The parties agree that the amount of such proposed penalty, as amended, is appropriate and reflects due consideration of the size of the business of the Respondent, the gravity of the violation alleged, the good faith of the Respondent, and the history of previous violations, if any, as required by § 17(j) of the Act.

II

Respondent has no objection to the Complainant amending the Citation and Notification of Penalty as set forth in paragraph I above.

III

Respondent hereby withdraws its Notice of Contest to the Citation and Notification of Penalty, as amended herein. Respondent makes the following representations and assurances to complainant:

A. The condition alleged in the Citation and Notification of Penalty, as amended herein, has been abated.

B. To the best of Respondent's knowledge and belief, Respondent is currently complying, and in the future will in good faith continue to comply, with the provisions of the Act, and applicable standards promulgated pursuant thereto.

C. Respondent will pay the total proposed penalty of **\$9,000** due within thirty (30) days of the date of execution of this Stipulation and Settlement Agreement. The payment shall be made by check made payable to **“U.S. Department of Labor – OSHA”** and mailed to **U.S. Department of Labor, Occupational Safety and Health Administration, Peoria Area Office, 1320 West Commerce Drive, Suite 800, Peoria, Illinois 61615.**

D. Respondent agrees to the following:

1. Within 90 days of the date of execution of this Stipulation and Settlement Agreement, Respondent agrees to implement measures to ensure timely completion of internally required preventative maintenance on mechanical equipment, safety control equipment inspections and lubrication tasks on bucket elevators/legs associated with the grain elevator operations at the facility.

2. Within 90 days of the date of execution of this Stipulation and Settlement Agreement, Respondent agrees to document procedures for inspecting safety control equipment associated with bucket elevators/legs associated with the grain elevator operations at the facility and incorporate provisions for the documentation of such inspections within their electronic maintenance management system. The procedure for inspection of the safety control equipment on those bucket elevators will be consistent with the manufacturer's recommendations in terms of the nature and frequency of the task.

3. Within 120 days of the date of execution of this Stipulation and Settlement Agreement, the employer will transmit written confirmation to the Area Office that the above-described enhancements have been completed.

E. The Citation and Notification of Penalty is deemed amended to include the full terms of this Agreement, including all measures described herein, all agreements as to actions to be taken by Respondent, and all implementation dates described herein as abatement of the affirmed citation.

IV

Based on the aforesaid assurances and representations by Respondent, Complainant has no objection to the withdrawal of the Notice of Contest.

V

Except for these proceedings, and matters arising out of these proceedings, and any other subsequent OSHA proceedings between the parties, none of the foregoing agreements, statements, findings, and actions taken by Respondent shall be deemed an admission by the Respondent of the allegations contained within the Citation and Notification of Penalty and the Complaint. The agreements, statements, findings, and actions taken herein are made for the purpose of compromising and settling this matter amicably, and they shall not be used for any other purpose whatsoever, except as herein stated.

VI

Respondent certifies that this Settlement Agreement has been given to employees represented by an authorized representative, by serving a copy on Russel Maulden by (check one) _____ first class mail, X personal delivery, on December 20, 2019 (date), in accordance with Rules 7 and 100 of the Commission Rules of Procedure. It is hereby further certified by Respondent that this Settlement Agreement has been served on employees, if any, not represented by an authorized employee representative, by posting this agreement in a place where the Citation is required to be posted on The Common Area Bulletin Board, in accordance with Rules 7 and 100 of the Commission's Rules of Procedure.

VII

This Agreement 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 to be issued by the Executive Secretary of the Commission.

VIII

Complainant and Respondent agree that an order should be entered which:

- A. Amends the Citation and Notification of Penalty, as set forth above.
- B. Allows respondent to withdraw its Notice of Contest to the Citation and

Notification of Penalty, as amended herein.

C. Affirms the Citation and Notification of Penalty, as amended, as a final and enforceable order of the Review Commission, and affirms the penalty in the amount proposed with no costs, fees or other expenses to be assessed or awarded to any of the parties in this litigation.

Respectfully submitted on this 20th day of December, 2019.

ARCHER DANIELS MIDLAND COMPANY

KATE S. O'SCANLAIN
Solicitor of Labor

CHRISTINE Z. HERI
Regional Solicitor

By Steven M. ... for ADM
Its Assoc. GC - Reg & Env Law

Jing Acosta
JING ACOSTA
Attorney

Attorneys for **EUGENE SCALIA**
Secretary of Labor, United States
Department of Labor, Complainant

NOTICE

Any party (including any authorized employee representative of affected employees and any affected employee not represented by an authorized representative) who has any objection to the entry of an order as set forth in this agreement, must communicate such objections within ten (10) days of the posting of this agreement to the Honorable Christopher D. Helms, Administrative Law Judge, Occupational Safety and Health Review Commission, 721 19th Street, Room 404, Denver, Colorado 80202-2517, with copies to attorneys for Complainant and Respondent.



United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1120 20th Street, N.W., Ninth Floor
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Phone: (202) 606-5400
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Secretary of Labor,
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Archer- Daniels- Midland Company

Respondent.

Region: 5

OSHRC Docket No. 19-0795

OSHA Inspection No. 1359803

Notice of Docketing of Administrative Law Judge's Decision

The Administrative Law Judge's Report in the above referenced case was docketed with the Commission on 02/05/2020. The decision of the Judge will become a final order of the Commission on 03/06/2020 unless a Commission member directs review of the decision on or before that date.

Any party desiring review of the Judge's decision by the Commission must file a petition for discretionary review. Any such petition must be received by the Executive Secretary on or before 02/25/2020 in order to permit sufficient time for its review. See Commission Rule 91, 29 C.F.R. 2200.91. All further pleadings or communications regarding this case shall be addressed to the Executive Secretary with a copy to the DOL Solicitor at the address below.

Executive Secretary
Occupational Safety and Health Review
Commission
1120 20th St., N.W., Suite 980
Washington, D.C. 20036-3419

Charles F. James, Counsel for Appellate Litigation
Heather R. Phillips, Counsel for Appellate Litigation
Office of the Solicitor, U.S. DOL
Room S4004
200 Constitution Avenue, N.W.
Washington, D.C. 20210

If directed for Review by the Commission, then the Counsel for Appellate Litigation will represent the Department of Labor. If you have questions, please contact the Executive Secretary's Office at (202) 606-5400.

John X. Cerveney
Executive Secretary

/s/

Sontia Myles, Legal Assistant

Date: 02/05/2020

This notice has been sent to:

Steven Murawski
Archer Daniels Midland Company
4666 Faries Parkway
Decatur, Illinois 62526

Christine Heri
Office of the Solicitor, U.S. DOL
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