

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

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R. ALEXANDER ACOSTA, SUCCESSOR TO  
THOMAS E. PEREZ, SECRETARY OF LABOR,  
UNITED STATES DEPARTMENT OF LABOR,

Complainant,

v.

SUNFIELD, INC.,

Respondent.

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OSHRC Docket Nos.  
16-1205, 16-1206, 16-1208

Inspection Nos.  
1128049, 1132110 &  
1117773

**STIPULATION AND SETTLEMENT AGREEMENT**

In full settlement and disposition of the issues in this proceeding, it is hereby stipulated and agreed by and between Complainant, R. Alexander Acosta, Secretary of Labor, United States Department of Labor (the "Secretary"), and Respondent, Sunfield, Inc. ("Sunfield"), that:

**I. SCOPE AND INTENT OF AGREEMENT**

A. The Secretary, through the Occupational Safety and Health Administration ("OSHA"), and Respondent, Sunfield, submit the following Stipulation and Settlement Agreement ("Agreement") pursuant to Rule 2200.100 of the Occupational Safety and Health Review Commission ("Commission") Rules of Procedure.

B. This Agreement constitutes a full and complete settlement of the above-captioned contested citations (collectively, "Citations"), proposed penalties, and abatement dates at issue, and disposes of all issues in the above-captioned cases.

C. Sunfield hereby agrees to withdraw its Notices of Contest in the above-captioned OSHRC matters.

D. The Parties agree to the entry of Final Orders – consistent with the terms of this Agreement—in each of the above-captioned OSHRC matters.

## II. AMENDMENT OF THE CITATIONS AND PAYMENT OF PENALTIES

A. In full and final settlement of the Citations, the Parties agree to the following:

1. Citation Items: All Citation items shall be affirmed and/or amended as set forth in the attached Exhibit 1. The Citations are amended by this Agreement to include the full terms of this Agreement, including the abatement actions and dates stated herein.

2. Agreed penalties: The total agreed penalties for all affirmed Citations is Two Million Five Hundred Thousand and 00/100 dollars (\$2,500,000).

3. Penalty payment: Sunfield shall pay the sum of One Million and 00/100 dollars (\$1,000,000.00). This amount shall be paid by Sunfield in a six-year payment plan, with quarterly payments made each year in February, May, August, and November. Payments shall be made in accordance with the schedule below. Payments shall be made by check, made payable to “U.S. Department of Labor – OSHA,” and sent to the Columbus, Ohio OSHA Area Office on the following schedule:

May 15<sup>th</sup> , 2018, 2019, 2020, 2021,2022, 2023

August 15<sup>th</sup>, 2018, 2019, 2020, 2021, 2022, 2023

November 15<sup>th</sup>, 2018, 2019, 2020, 2021, 2022, 2023

February 15<sup>th</sup> , 2019, 2020, 2021, 2022, 2024

4. Penalties Held in Abeyance: One Million Five Hundred Thousand and 00/100 dollars (\$1,500,000.00) in penalties is to be held in abeyance ("Suspended Penalties"). The Suspended Penalties will be released after a period of one year from the Effective Date of this Agreement unless, within that period, OSHA notifies Sunfield by e-mail of the agency's determination that Sunfield has violated one or more of the standards referenced in the per-instance ("egregious") citations issued in OSHRC Docket Numbers 16-1205 and 16-1208 or has failed to comply with Sections III through XI of this Agreement (the "Conditions"). If, within one year of the Effective Date of this Agreement, OSHA notifies Sunfield of such a violation or failure to comply, the Suspended Penalties in the amount of One Million Five Hundred Thousand and 00/100 dollars (\$1,500,000.00) shall be immediately due and payable to OSHA unless Sunfield complies with the dispute resolution procedures set forth in Section XVI (E) below. For dispute resolution purposes, OSHA's e-mail notification of a violation or failure to comply under this Section II (A)(4) shall constitute the Initial Notice under Section XVI (E). If the parties fail to reach an agreement pursuant to Section XVI(E), the Suspended Penalties shall be due and payable at the conclusion of the Negotiation Period (as defined in Section XVI(E)). For purposes of dispute resolution under this Section II(A)(4), OSHA shall not be required to offer Sunfield any opportunity to cure its violation or failure to comply after the Negotiation Period unless the parties reach an agreement otherwise.

### **III. ABATEMENT AND CERTIFICATION**

A. Sunfield has abated or will abate each of the affirmed violations within thirty (30) days after this Agreement becomes a Final Order Sunfield has or shall provide verification and certification of abatement as required by 29 C.F.R. §1903.19.

B. The parties agree that adherence to the revised die change procedure, attached as Exhibit 2, constitutes abatement of the conditions cited in OSHRC Docket Numbers 16-1205 and 16-1208 under 29 C.F.R. § 1910.147.

C. Sunfield agrees that within thirty (30) days of the date this Agreement becomes a Final Order it will develop and maintain an effective program for ensuring and documenting that all installed light curtains and interlocks are functioning properly prior to each shift. Sunfield will use a testing rod to test light curtains at the beginning of each shift. Sunfield will visually inspect interlocks at the beginning of each shift to assure that each is intact and that there is no evidence that it has been tampered with. In addition, Sunfield will conduct a monthly test of each interlock. Sunfield further agrees that at least seven (7) days prior to the first meeting of the parties as described in Section IX herein, it will provide to OSHA the details of the program and all policies and practices implemented to ensure the continued effectiveness of such program. Sunfield further agrees that at least seven (7) days prior to each subsequent meeting of the parties as described in Section IX herein, it will provide updated documentation of the ongoing program.

D. Sunfield further agrees that within thirty (30) days of the date this Agreement becomes a Final Order it will develop and maintain an effective program for ensuring and documenting that each stroke position indicator continues to accurately measure the gap when the ram is raised to remove the die. Sunfield further agrees that

at least seven (7) days prior to the first meeting of the parties as described in Section IX herein, it will provide to OSHA the details of the program and all policies and practices implemented to ensure the continued effectiveness of such program. Sunfield further agrees that at least seven (7) days prior to each subsequent meeting of the parties, as described in Section IX herein, it will provide updated documentation of the ongoing program.

E. Sunfield must notify employees of abatement activities in accordance with 29 C.F.R. §1903.19(g).

F. Any dispute between OSHA and Sunfield with respect to the implementation of the abatement measures noted in Paragraphs A-D shall be resolved pursuant to Paragraph XVI(E) of this Agreement.

#### **IV. SAFETY AND HEALTH EMPLOYEES**

Sunfield shall employ a full-time safety and health manager on one shift and a safety and health coordinator on the other shift, whose primary responsibility is safety and health and who has the authority to correct safety and health hazards.

#### **V. SAFETY AND HEALTH AUDITS**

##### **A. Free Third-Party Consultative Service**

1. Sunfield will request the services of a free third-party consultative service to complete a safety and health audit of the entire Sunfield Hebron, Ohio facility (the Employer's facility) within one (1) year of the date the Agreement becomes a Final Order.
2. At each meeting of the parties as described in Paragraph IX herein, Sunfield will provide to OSHA an update of the status of the free

consultation until such time as the complete safety and health audit has been completed.

**B. Monthly Self-Audits**

Within 30 days of the date this Agreement becomes a Final Order, Sunfield will conduct monthly self-audits to evaluate employee use of company equipment to determine whether employees are following specific safety instructions to avoid potential hazards and/or to determine whether hazards associated with the equipment are discovered/identified. Sunfield shall summarize, in writing, whether safety or health hazards are discovered during the self-audits and include, (a) corrective action implemented; and, (b) the nature of any hazards identified (*i.e.*, training deficiencies; guarding deficiencies; lockout/tagout (“LOTO”)).

1. Monthly self-audits shall be conducted on LOTO, die changes, service and maintenance, and cleaning, and to verify that the light curtains, interlocks, and other safety-related control devices are functioning properly and there is no evidence that they have been bypassed, temporarily or permanently circumvented and/or blocked.
2. Monthly self-audits will be documented and provided to OSHA at least seven days prior to each meeting between the parties as described in Section IX herein.

**C.** Any dispute between OSHA and Sunfield with respect to the implementation of corrective actions taken as a result of the audits described in Section V shall be resolved pursuant to Paragraph XVI(E) of this Agreement.

## **VI. TRAINING**

All permanent and temporary employees who are assigned to work in the plant and exposed to safety or health hazards shall receive safety and health training. Any training developed by the third party consultant (pursuant to Section VII herein), including affected employee LOTO training, will be conducted prior to performing any work or work-related activities in Sunfield's facilities for all employees as applicable to their assigned work or positions transferred to.

## **VII. THIRD-PARTY CONSULTANTS**

Sunfield has retained third-party safety consultants for LOTO and Power Press training and for conducting a comprehensive press guarding and lockout/tagout assessment.

### **A. Lock-out/Tag-out**

1. Sunfield will use a third-party safety consultant to develop and implement machine-specific lock-out/tag-out procedures for all machines.
2. Procedures will be developed and implemented within thirty (30) days of the date this Agreement becomes a Final Order of the Commission and will be made available to OSHA upon request.

### **B. Power Press**

1. Within thirty (30) days of the date this Agreement becomes a Final Order of the Commission, Sunfield will engage the services of a third-party safety consultant to develop power press training for operators, maintenance, task/procedures, supervisor training, and train-the-trainer classes for future training lead by Sunfield.

**C. Press Guarding Assessment**

1. Sunfield will use a third-party safety consultant to conduct a comprehensive press guarding assessment.
2. The third-party consultant shall prepare a report of its assessment and make recommendations of its findings to Sunfield.
3. Sunfield shall provide a copy of the third-party consultant's report and recommendations to the OSHA Columbus Area Director within thirty (30) days after the Agreement becomes a Final Order of the Review Commission.
4. At least seven (7) days prior to each meeting of the parties as described in Section IX herein, Sunfield will provide to OSHA a report on the status of the actions taken to implement any recommendation of the third-party consultant. In the event of a difference of opinion between Sunfield and the third party consultant regarding any recommendation made by the third-party consultant, Sunfield will consult with OSHA to review and discuss the recommendation. Any dispute between OSHA and Sunfield with respect to the implementation of the third-party consultant's recommendations shall be resolved pursuant to Paragraph XVI(E) of this Agreement.

**VIII. PROGRESS DEMONSTRATION, MONITORING, AND INSPECTION**

Sunfield agrees to allow OSHA access to its facilities without requiring OSHA to obtain a warrant to the extent that OSHA seeks to conduct an inspection based upon an



employee complaint to OSHA, limited to the scope of the complaint; to conduct an inspection pursuant to a Local, Regional, or National Emphasis Program where Sunfield has been identified for inspection pursuant to the protocols of the Program; or to verify abatement of the affirmed citation items as set forth in Exhibit 1 or compliance with this Agreement.

#### **IX. MEETINGS WITH OSHA**

A. Within 30 days of the date this Agreement becomes a Final Order the parties will conduct meetings on-site at Sunfield's facility to discuss the status of compliance and Sunfield's implementation of this Agreement on the following schedule:

1. Year One – meetings shall be held quarterly
2. Year Two-Three – meetings shall be held twice per year

B. Meeting participants shall include the following:

1. OSHA
  - a. Columbus Area Director or designee
  - b. Other OSHA representative(s) as designated by the Regional Administrator or Area Director
2. Sunfield
  - a. Plant Manager
  - b. Safety Director
  - c. Maintenance Manager or Supervisor
  - d. Employee from each of the three main work areas (press, weld and inspection). These employees may submit any safety-related issues or concerns at the meetings.
  - e. A representative from the temporary agency will be invited.

**X. SAFETY STAND DOWN**

Within sixty (60) days of the date the Agreement becomes a Final Order of the Review Commission, Sunfield will meet with all permanent and temporary employees to discuss the terms of the Agreement and to discuss the steps Sunfield is taking to ensure compliance with the terms of this Agreement and all applicable safety standards.

**XI. NO RETALIATION**

Sunfield shall not retaliate or discriminate against any employee for, or otherwise engage in practices or implement policies that deter employees from, participating in any activities described in this Agreement, including reporting health and safety concerns.

**XII. COSTS**

Each party agrees to pay its own attorney's fees, costs, and other expenses incurred by such party in connection with any stage of the above-referenced proceeding including, but not limited to, attorney's fees.

**XIII. EFFECTIVE DATE AND TERM OF AGREEMENT**

The Effective Date of this Agreement is February 1, 2018. All provisions of this Agreement, with the exception of Section II(A)(3), which provides for a six-year payment plan, shall terminate three years after it becomes a Final Order of the Review Commission. Section II(A)(3) shall remain in effect until the final payment date of February 15, 2024, or until payment in full of One Million and 00/100 dollars (\$1,000,000) occurs, whichever comes first, at which time the Agreement shall terminate.

#### **XIV. DOCUMENT RETENTION**

All documents required to be created or maintained under the terms of this Agreement shall be retained for at least the term of this Agreement or longer, if required by the OSH Act or its regulations or if otherwise specified by this Agreement.

#### **XV. NOTICE AND COMMUNICATIONS**

A. Sunfield agrees that it will not refuse to provide to OSHA any final versions of reports or documents explicitly required by this Agreement on the grounds that such reports or documents are protected from disclosure by any privilege. Nor shall OSHA disclose such information to any third parties except other OSHA or Department of Labor personnel concerned with the enforcement of the OSH Act or, when relevant, in any proceeding under the Act, or otherwise required by law.

B. All notice and communications shall be to the following persons at the following addresses:

For OSHA:

Larry Johnson, Area Director  
Columbus OSHA Area Office  
200 North High Street, Room 620,  
Columbus, Ohio 43215

For Sunfield, Inc.:

Rudy Parr, Accounting and Administration Senior Manager  
James Hathaway, Safety Manager  
Sunfield, Inc.  
116 Enterprise Dr.  
Hebron, OH 43025

#### **XVI. ENFORCEMENT**

A. Sunfield agrees that it shall not oppose the entry of an order adopting this Agreement and the final amended citations by the Review Commission. Sunfield agrees

that all the terms of this Agreement shall be enforceable under Section 11(b) of the OSH Act, but nothing in this Agreement shall prohibit Sunfield from asserting any and all defenses, claims, causes of action, appeals, and other procedures and/or remedies available to it in response to any action or other proceeding brought by the Secretary of Labor and/or OSHA.

B. Failure to timely abate and/or certify abatement of the citation items as set forth in Exhibit 1 or complete the enhancements described herein is grounds for notice of failure to abate under Section 10 of the OSH Act, but nothing in this Agreement shall prohibit Sunfield from asserting any and all defenses, claims, causes of action, appeals, and other procedures and/or remedies available to it in response to any action or other proceeding brought by the Secretary of Labor and/or OSHA.

C. Nothing in this Agreement shall be interpreted or construed as limiting the Secretary's right to enforce provisions of the OSH Act, 29 U.S.C. §§651, *et seq.* nor any defense, claim, cause of action, appeal, or other procedure and/or remedy of Sunfield in response to any such enforcement proceedings.

D. If, during the three year period following the Effective Date of this Agreement, Sunfield is unable to abate any affirmed citation or to comply with any of the provisions and time schedules set forth in this Agreement, Sunfield shall notify OSHA in writing of the need for the extension and submit a written request for extension that describes the specific matter for which the extension is needed, the date by which Sunfield can comply, and the reason for the extension.

E. If, during the three year period following the Effective Date of this Agreement, OSHA reaches a preliminary determination that Sunfield is not in compliance with a provision of this Agreement, OSHA shall promptly notify Sunfield in

writing via email, with a copy sent by regular mail. Such notice shall contain the following subject: NOTIFICATION OF NON-COMPLIANCE/ FAILURE-TO-ABATE (the "Initial Notice"). The Initial Notice shall articulate all bases for OSHA's preliminary determination with sufficient specificity for Sunfield to evaluate and respond to the Initial Notice. Sunfield will have fifteen (15) business days to provide a written response to OSHA's Initial Notice. If OSHA is not satisfied with Sunfield's response, it will notify Sunfield in writing (by email or regular mail) within fifteen (15) business days of receipt of Sunfield's response and provide Sunfield with a detailed explanation as to why the response does not resolve OSHA's concerns (the "Final Notice"). Immediately after Sunfield has received OSHA's Final Notice, OSHA and Sunfield shall engage in good faith negotiations, including, at a minimum, one (1) in-person meeting at the OSHA Area Office with the Office Area Director (or designee) and Sunfield's management representative(s) to resolve the matter. If necessary, OSHA will send a representative to the relevant site to allow OSHA and Sunfield to better understand each other's concerns. The time period for this good faith attempt to resolve the matter (the "Negotiation Period") shall last no longer than thirty (30) business days following Sunfield's receipt of OSHA's Final Notice. The parties may extend the Negotiation Period by mutual written consent to ensure full discussion of the issues.

If needed, Sunfield will be provided a reasonable abatement period to comply. If, by the expiration of the reasonable abatement period, the Employer reports and documents full abatement of the hazard, or otherwise provides a satisfactory response, no citation shall be issued and OSHA shall not take any other enforcement action related to the hazard.

If after the Negotiation Period, Sunfield fails to make a good faith effort to cure the non-compliance, OSHA may take any appropriate enforcement action under the Act. Nothing in this Agreement shall limit Sunfield's defenses or arguments provided under relevant law in an action for Failure-to-Abate or Non-Compliance.

#### **XVII. NON-ADMISSION**

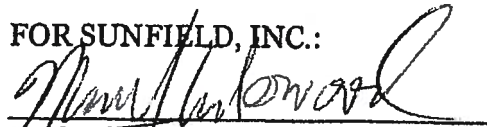
Neither this Agreement nor Sunfield's consent to entry of a Final Order by the OSHRC pursuant to this Agreement constitutes an admission by Sunfield of violations of the OSH Act, regulations, or standards promulgated thereunder, or the allegations contained in the Citations. The agreements, statements, findings, and actions taken herein are made for the purpose of compromising and settling this matter economically and amicably, and they shall not be used for any other purpose whatsoever, except for subsequent proceedings arising directly under the Occupational Safety and Health Act of 1970.

#### **XVIII. POSTING**

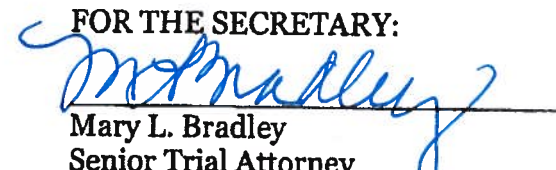
Respondent certifies that a copy of this Settlement Agreement will be posted on this 19<sup>th</sup> day of January 2018 in accordance with Rules 7 and 100 of the Rules of Procedure of the Occupational Safety and Health Review Commission and in a manner that will afford notice to affected employees.

DATED: January 18, 2018

FOR SUNFIELD, INC.:

  
Michael J. Underwood  
Jourdan D. Day  
Attorneys for Respondent  
Porter Wright Morris & Arthur LLP

FOR THE SECRETARY:

  
Mary L. Bradley  
Senior Trial Attorney  
Attorney for Complainant  
U.S. Department of Labor

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Cleveland, Ohio 44199**

**OF COUNSEL:**

**Kate S. O'Scannlain  
Solicitor of Labor**

**Christine Z. Heri  
Regional Solicitor**

**Benjamin T. Chinni  
Associate Regional Solicitor**

**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 should communicate such objections within ten (10) days of the posting of this Agreement to:

Honorable Carol A. Baumerich  
Occupational Safety and Health  
Review Commission  
1120 20th Street, N.W.  
Suite 990  
Washington, D.C. 20036

A copy of said objection should also be sent to:

Mary L. Bradley, Esq.  
U. S. Department of Labor  
881 Federal Office Building  
1240 East 9<sup>th</sup> Street  
Cleveland, OH 44199

and

Michael Underwood, Esq.  
Jourdan D. Day  
Porter Wright Morris & Arthur LLP  
41 S. High Street – Suites 2800-3200  
Columbus, OH 43215