

UNITED STATES OF AMERICA

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

R. ALEXANDER ACOSTA, Secretary of Labor, :
United States Department of Labor, :
Complainant, :
v. : OSHRC Docket Nos. 16-1804 and 17-0324
TOMRA NY Recycling, LLC, :
Respondent. :

STIPULATED SETTLEMENT

NICHOLAS C. GEALE
Acting Solicitor of Labor

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STIPULATED SETTLEMENT

I. Scope and Intent of Settlement Agreement

Complainant, Secretary of Labor, United States Department of Labor (“Complainant”), by and through his attorneys, and Respondent, TOMRA NY Recycling, LLC (“Respondent”), hereby stipulate and agree that:

1) On October 4, 2016 (Docket No. 16-1804) and January 27, 2017 (Docket No. 17-0324), Respondent was cited for alleged violations of the Occupational Safety and Health Act of 1970, 29 USC §§ 651, et seq., (“The Act”), and was issued Citations and Notifications of Proposed Penalties.

2) Respondent, an employer within the meaning of Section 3(5) of the Act, duly filed with a representative of Complainant notices of intent to contest the citations and proposed penalties. These notices were duly transmitted to the Occupational Safety and Health Review Commission (“Commission”) and it is agreed that jurisdiction of this proceeding is conferred upon said Commission by Section 10(c) of the Act.

3) Complainant has filed Complaints in each case herein stating with particularity the violations alleged, the penalties proposed and the issues in contest before the Commission.

4) Complainant and Respondent (“the Parties”) have agreed in this Corporate Settlement Agreement (“CSA”) to resolve in full and as described below all matters in the cases identified by the above-referenced docket numbers.

5) The Parties have also agreed to the OSHA Monitoring, Internal Corporate Monitoring, Safety and Health Program Review and Revision, and other terms described below, and that all such measures shall be applied on a corporate-wide basis to all of Respondent’s employees and facilities. The Covered Facilities are identified in the attached Appendix A.

II. Resolution and Amendment of Citation Items

1) The Secretary amends the citation and complaint in OSHRC Docket No. 16-1804 to amend citation 1, item 1b to read as follows:

29 C.F.R. § 1910.1030(c)(2)(i): The employer having employees with occupational exposure did not prepare an exposure determination.

a) Tomra of North America, Inc., Farmington, NY, on or about 4/4/16 and continuing until 10/4/2016: the employer did not prepare an exposure determination when employees who manually sort recyclable bottles and cans have occupational exposure to blood or other potentially infectious materials.

2) The Secretary amends the citation and complaint in OSHRC Docket No. 16-1804 to amend citation 1, item 3 to read as follows:

29 C.F.R. § 1910.1030(f)(2)(i): Hepatitis B vaccination was not made available within 10 working days of initial assignment to all employee(s) with occupational exposure.

a) Tomra of North America, Inc., Farmington, NY, on or about 4/4/16 and continuing until 10/4/2016: Employees who manually sort recyclable bottles and cans have the potential to come in contact with blood or other potentially infectious materials and have not been offered the Hepatitis B vaccine.

3) The Secretary amends the citation and complaint in OSHRC Docket No. 16-1804 to group citation 1, item 2 with citation 1, item 3.

4) The Secretary amends the citation and complaint in OSHRC Docket No. 17-0324 to amend citation 1, item 1a to read as follows:

29 CFR 1910.1030(c)(2)(i): the employer having employee(s) with occupational exposure did not prepare an exposure determination:

a) At 147 Falso Drive, Mattydale, NY., on or August 14, 2016: The employer did not prepare an exposure determination when employees who manually sort recyclable bottles and cans have occupational exposure to blood or other potentially infectious materials.

5) The Secretary amends the citation and complaint in OSHRC Docket No. 17-0324 to amend citation 1, item 1(c) as follows:

29 CFR 1910.1030(f)(2)(i): Hepatitis B vaccination was not made available within 10 working days of initial assignment to all employee(s) with occupational exposure:

a) At 147 Falso Drive, Mattydale, NY., on or about August 14, 2016: Employees with potential exposure to needle sticks while manually sorting recyclable bottles and cans were not offered the HEP B vaccination to protect against HEP B, HIV, and/or OPIM.

6) The Secretary hereby amends the proposed penalties set forth in the citations and complaints to reflect a total amended, combined penalty of \$16,479.00, to be apportioned as set forth below:

Citation No.	Item	Proposed Penalty	Amended Proposed Penalty
OSHRC Docket No. 16-1804			
1	1a	\$8908.00	\$4,453.00
1	1b	Grouped	Grouped
1	1c	Grouped	Grouped
1	2	\$8,908.00	\$8,908.00
1	3	\$8,908.00	Grouped
2	1	<i>Withdrawn</i>	<i>Withdrawn</i>
2	2	\$0.00	\$0.00
2	3	\$0.00	\$0.00
Total		\$26,724.00	\$13,361.00

Citation No.	Item	Proposed Penalty	Amended Proposed Penalty
OSHRC Docket No. 17-0324			
1	1a	\$6,236.00	\$3,118.00
1	1b	Grouped	Grouped
1	1c	Grouped	Grouped
1	1d	Grouped	Grouped
Total		\$6,236.00	\$3,118.00

7) Respondent affirmatively states that the specific violative conditions alleged in the above-referenced cases and covered by this CSA have been abated or will be abated by the abatement dates described below.

8) Respondent affirmatively certifies the following:

(a) Respondent will revise the Exposure Control Plan and Exposure Determination at each of Respondent's facilities in New York State to reflect that all employees, including temporary and leased employees, who manually sort recyclable bottles and cans have occupational exposure to BBP.

(b) Respondent will provide OSHA with the revised Exposure Control Plan and Exposure Determination for each of its facilities in New York State no later than **August 31, 2017**. The Exposure Control Plan and Exposure Determination for each facility will be forwarded to the Occupational Safety and Health Administration Office located at 3300 Vickery Road North Syracuse, New York 13212.

(c) Respondent agrees that by **September 30, 2017** and annually thereafter, it will ensure that all employees with occupational exposure at each of its facilities in New York participate in a training program in compliance with the requirements of 29 CFR 1910.1030(g)(2)(i). Respondent will coordinate the provision of this and future annual training with its staffing agencies by communicating to the staffing agencies when the training has been provided to Respondent's temporary or leased workers.

(d) Respondent will ensure that each employee with occupational exposure uses appropriate PPE, including puncture resistant gloves;

(e) Respondent will provide and make available the use of engineering controls, such as tongs, to employees with occupational exposure.

(f) By **August 31, 2017** Respondent will ensure that Hepatitis B vaccination is offered to all employees with occupational exposure in compliance with 1910.1030(f)(2)(i).

(g) Respondent will continue to comply with the Occupational Safety and Health Act and the regulations promulgated thereunder.

9) The Citations and Notifications of Penalties are deemed amended to include the full terms of this CSA, including all abatement measures, all agreements as to actions to be taken by Respondent, and all implementation dates, which are described in this CSA.

III. Internal Corporate Monitoring

- 1) By August 31, 2017, Respondent shall designate and provide to OSHA the name and contact information for a corporate officer or senior manager (the “Designated Official”) who will serve as OSHA’s point of contact throughout the term of this CSA for addressing questions or issues related to Respondent’s compliance with both the Act and the terms of the CSA. The Designated Official must have authority to issue directions, that, when followed, will bring Respondent into compliance with both the Act and the terms of the CSA. Respondent’s Designated Official will be Respondent’s point of contact for OSHA’s assessment of Respondent’s compliance with the Act and the terms of the CSA. Respondent shall notify OSHA in advance of any change in the Designated Official.
- 2) On at least a quarterly basis during the term of this CSA, the Designated Official shall oversee an internal inspection of Respondent’s four facilities to ensure ongoing compliance with the terms of this CSA.
- 3) Upon completion of each quarterly inspection of each facility, Respondent will record in writing in its records its compliance status in regard to each term of this CSA at each facility and, if relevant, any actions Respondent is taking to address problems and ensure ongoing and future compliance with the terms of the CSA. Respondent shall retain these records for the term of the CSA and provide them to OSHA upon request and within 10 business days of such request.

IV. OSHA Monitoring

Until this CSA’s Termination Date, Respondent shall permit OSHA to enter into and conduct monitoring inspections at its facilities covered by this CSA in Appendix A to verify compliance with the CSA. Respondent shall not require warrants for entry by OSHA, and shall

not require subpoenas for access to documents, witnesses, or other information related to compliance with this CSA. The scope of the OSHA monitoring inspections shall be limited to the verification of compliance with this CSA, unless other non-compliant conditions are observed in the plain view of an OSHA compliance officer during the verification visit. Nothing in this paragraph shall be construed as a waiver or limitation on OSHA's ability to enter and conduct an investigation in response to a complaint, referral or report of an accident.

OSHA will conduct a monitoring inspection at each facility covered by this agreement, to be conducted at six month intervals so that each facility is visited once over the duration of the CSA.

V. Effective Date and Term of CSA

This CSA shall become effective on the date it is fully executed (the "Effective Date") and shall terminate on the date that is 2 years after the Effective Date.

VI. Penalties

Respondent will pay the amended proposed penalty of \$16,479.00 by forwarding a check made payable to "Occupational Safety and Health Administration" in that amount to the Occupational Safety and Health Administration Office located at 3300 Vickery Road, North Syracuse, New York, Attn: Katherine Wilde, Supervising Secretary.

VII. Service and Posting of CSA and Settlement Summary

Respondent certifies that on August 1, 2017 this stipulation will be posted where affected employees may see it.

VIII. Failure to Abate

The citations are hereby amended to include the terms of this CSA as required abatement of the underlying conditions referred to in the citation. Failure to comply with the terms above shall be a failure to abate the citation as written and amended.

IX. Costs

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

X. Miscellaneous

This stipulation may be signed in counterparts by the parties. A copy of a signature shall be as valid as an original. This stipulation cannot be amended unless a writing is signed by both parties reflecting the parts of this stipulation which are being amended.

X. No Alteration of Employee Rights

Nothing in this CSA alters in any manner the rights afforded employees under the Act.

DATED: July 20, 2017
New York, New York

NICHOLAS C. GEALE
Acting Solicitor of Labor

JEFFREY S. ROGOFF
Regional Solicitor

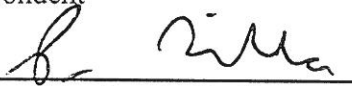
DIANE C. SHERMAN
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and Health

BY:



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Attorneys for
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Secretary of Labor

TOMRA NY Recycling, LLC
Respondent

BY: 

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Attorneys for Respondent

APPENDIX A

TOMRA NY RECYCLING, LLC COVERED FACILITIES

1. TOMRA NY Recycling, LLC
5923 Loomis Road
Farmington, NY 14425
2. TOMRA NY Recycling, LLC
31 Opus Blvd.
Rotterdam, NY 12306
3. TOMRA NY Recycling, LLC
3120 Shippers Blvd.
Vestal, NY 13850
4. TOMRA NY Recycling, LLC
147 Falso Dr.
Syracuse, NY 13211

CERTIFICATE OF SERVICE

I hereby certify that on July 21, 2017, I served a copy of the attached Stipulated Settlement on Mike Degano, the authorized employee representative at the following address:

Teamsters Local 294
890 Third Street
Albany, NY 12206

This service was accomplished by mailing the Stipulated Settlement to the representative at this last known address by postage pre-paid first class mail.

NAME: Thomas J. Powers

TITLE: Director, EHS

CERTIFICATE OF SERVICE

I hereby certify that on _____, I personally delivered a copy of the attached Stipulated Settlement to _____, the authorized employee representative at the following address:

NAME: _____

TITLE: _____

CERTIFICATION OF NONREPRESENTATION

I hereby certify that there is no authorized employee representative for the employees affected by the action which is the subject of the attached Stipulated Settlement.

NAME: _____

TITLE: _____

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ORDER APPROVING SETTLEMENT

Respondent in OSHRC Docket Nos. 16-1804 and 17-0324 by a letters dated October 26, 2016 and February 14, 2017 contested Citations issued to it by complainant on October 4, 2016 (Docket No. 16-1804) and January 27, 2017 (Docket No. 17-0324). In both letters, Respondent also contested the penalty proposed by complainant for the citation.

An executed Settlement Agreement has been received from the parties, and this Agreement addresses all matters at issue between the parties in this proceeding. The Agreement having been read and considered it is

ORDERED: (1) That the terms of the Settlement Agreement are approved and incorporated as part of this Order; and

(2) That this Order, pursuant to Section 12(j) of the Act, 29 U.S.C. § 661(j), will become the final order of the Commission at the expiration of 30 days from the date of docketing by the Executive Secretary, unless within that time a member of the Commission directs that it be reviewed.

Dated this _____ day of _____, 2017

SO ORDERED:

CAROL A. BAUMRICH
Judge, Occupational Safety
& Health Review Commission

CERTIFICATE OF SERVICE

I hereby certify that all parties to this matter have previously consented to electronic service, and have registered or will soon register as users on the OSHRC E-Filing System. On July 21, 2017 a copy of the attached Settlement Stipulation and Proposed Order was sent by email to the following:

Peter Lauricella, Esq.
Richard Burger, Esq.
Wilson Elser Moskowitz Edelman & Dicker LLP
18 Corporate Woods Boulevard Third Floor
Albany, NY 12211
518.320.3607
peter.lauricella@wilsonelser.com
richard.burger@wilsonelser.com
Attorneys for Respondent

DATED: July 21, 2017
New York, New York

BY: /s/ Molly J. Theobald
MOLLY J. THEOBALD
Attorney