

No. 14-1437; Citation No. 962510 (SOUTH BELOIT)

CITATION ITEM & STANDARD & PENALTY	AMENDED ITEM AND PENALTY
Serious 1-1: 29 C.F.R. § 1910.146(k)(1) \$7,000	Other than Serious \$7,000
Willful 2-1: 29 C.F.R. § 1910.146(c)(1) \$70,000	Grouped with 2-2 and 2-4 \$70,000
Willful 2-2: 29 C.F.R. § 1910.146(c)(2) \$70,000	Grouped with 2-1 n/a
Willful 2-3a: 29 C.F.R. § 1910.146(d)(3) \$70,000	Unchanged \$70,000
Willful 2-3b: 29 C.F.R. § 1910.147(c)(4)(i) Grouped item	Unchanged
Willful 2-3c: 29 C.F.R. § 1910.147(d)(2) Grouped item	Unchanged
Willful 2-3d: 29 C.F.R. § 1910.147(d)(3) Grouped item	Unchanged
Willful 2-3e: 29 C.F.R. § 1910.147(d)(4)(i) Grouped item	Unchanged
Willful 2-4: 29 C.F.R. § 1910.146(e)(1) \$70,000	Grouped with 2-1 and 2-2 n/a
Willful 2-5: 29 C.F.R. § 1910.146(g)(1) \$70,000	Unchanged \$70,000

Willful 2-6: 29 C.F.R. § 1910.146(c)(6)(i) \$70,000	Unchanged \$70,000
Willful 2-7a: 29 C.F.R. § 1910.147(c)(7)(i) \$70,000	Unchanged \$70,000
Willful 2-7b: 29 C.F.R. § 1910.147(c)(7)(i)(A) Grouped	Unchanged
Total Penalty	\$357,000

No. 15-0605; Citation No. 996298 (PEORIA)

CITATION ITEM & STANDARD & PENALTY	AMENDED ITEM AND PENALTY
Serious 1-1a: 29 CFR 1910.146(d)(1) \$5,500	Unchanged \$5,500
Serious 1-1b: 29 CFR 1910.146(d)(2) Grouped	Unchanged n/a
Serious 1-2: 29 CFR 1910.146(g)(2)(i) \$5,500	Serious, grouped with 1-3 \$5,500
Serous 1-3: 29 CFR 1910.146(h)(2) \$5,500	Grouped with 1-2 n/a
Willful 2-1: 29 CFR 1910.146(c)(2) \$60,500	Willful, grouped with 2-3 \$55,000
Willful 2-2a: 29 CFR 1910.146(d)(3)(i) \$60,500	Unchanged \$55,000
Willful 2-2b:	Unchanged

29 CFR 1910.146(d)(3)(iv) Grouped	
Willful 2-2c: 29 CFR 1910.146(d)(3)(vi) Grouped	Unchanged
Willful 2-2d: 29 CFR 1910.146(d)(4)(i) Grouped	Unchanged
Willful 2-2e: 29 CFR 1910.146(d)(4)(ii) Grouped	Unchanged
Willful 2-2f: 29 CFR 1910.146(d)(5)(i) Grouped	Unchanged
Willful 2-2g: 29 CFR 1910.146(d)(5)(ii) Grouped	Unchanged
Willful 2-3: 29 CFR 1910.146(e)(1) \$60,500	Grouped with 2-1 n/a
Total penalty	\$121,000

No. 15-523; Citation No. 996673 (ROCKFORD)

CITATION ITEM & STANDARD & PENALTY	AMENDED ITEM AND PENALTY
Serious 1-1: 29 C.F.R. § 1910.23(a)(5) \$7,000	Withdraw citation n/a
Serious 1-2: 29 C.F.R. § 1910.23(c)(1) \$7,000	Other than Serious \$7,000
Serious 1-3a: 29 C.F.R. § 1910.24(e)	Other than Serious

\$5,500	\$7,000
Serious 1-3b: 29 C.F.R. § 1910.24(f)	Still grouped with 1-3(a)
Grouped	n/a
Serious 1-4: 29 C.F.R. § 1910.37(a)(3)	Unchanged.
\$4,400	\$7,000
Serious 1-5: 29 C.F.R. § 1910.147(c)(4)(i)	Serious, grouped with 1-6a and b
\$7,000	\$7,000
Serious 1-6a: 29 C.F.R. § 1910.147(d)(3)	Grouped with 1-5
\$7,000	n/a
Serious 1-6b: 29 C.F.R. § 1910.147(d)(4)(i)	Grouped with 1-5
Grouped	n/a
Willful 2-1: 29 C.F.R. § 1910.147(c)(6)(i)	Serious
\$70,000	\$7,000
Willful 2-2: 29 C.F.R. § 1910.147(d)(6)	Serious
\$60,500	\$7,000
Total Penalty	\$42,000
Total Penalty for Three Matters	\$520,000

II

Respondent hereby withdraws its Notices of Contest to the Citations and Notifications of Penalty, as amended herein.

III

Respondent makes the following representations and assurances to Complainant:

a. Respondent states, and Complainant acknowledges, that the conditions alleged in all three Citations and Notifications of Penalty, as amended, have been abated except for the following:

- i. Citation 2, Item 1 in Case No. 14-1437; Citation No. 962510 (South Beloit).
- ii. Citation 2, Item 2 in Case No. 14-1437; Citation No. 962510 (South Beloit).
- iii. Citation 2, Item 3b in Case No. 14-1437; Citation No. 962510 (South Beloit).
- iv. Citation 1, Item 5 in Case No. No. 15-523; Citation No. 996673 (Rockford).

Respondent states that the Citation Items identified in i. thru 1v. above will be abated on or before February 8, 2016. Complainant further acknowledges that, except for the Citation Items identified in i. thru 1v. above, Respondent has provided abatement verification for all affirmed citations to the respective Area Offices.

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

c. Respondent consents to OSHA conducting warrantless inspections at Respondent's facilities in South Beloit, Rockford and Peoria until Respondent has paid all penalties due to OSHA in full in accordance with the payment plan set forth in paragraph III(h).

d. Respondent will retain an independent third-party consultant qualified by training, education and experience to conduct an audit of Respondent's Lock Out/Tag Out ("LOTO") and Permit Required Confined Spaces ("PRCS") programs, policies and procedures at the three facilities located in South Beloit, Rockford and Peoria, Illinois. Respondent will provide the Area Director of the North Aurora Area Office with the curriculum vitae of the proposed third-party consultant within 30 days of the date the Stipulation and Settlement Agreement becomes a final order of the Occupational Safety and Health Review Commission, after which OSHA will have ten (10) calendar days by which to notify Respondent of any objections to the proposed consultant. If OSHA objects and its objections are not addressed to the agency's satisfaction, Respondent shall continue the search until it locates a person to whom OSHA does not object. That person and his/or her firm shall be retained by Respondent promptly following the expiration of the (10) day period without objection. The independent audit shall be conducted within 90 days of the retention of the third-party consultant. If the third-party consultant finds that improvements of the programs, policies and procedures are necessary, the third-party consultant will submit all findings to John Menne, Vice President, for appropriate revisions. Respondent agrees to provide copies of the audit report, as well as any revisions to Respondent's programs, policies and procedures to Jacob Scott, Area Director, U.S. Department of Labor—OSHA 365 Smoke Tree Plaza, North Aurora, IL 60542 ("Area Office") within 10 calendar days of the completion of the audit. Any recommendations by the third-party consultant shall not relieve Respondent of its duty to comply with the OSH Act and the regulations thereunder.

e. Within 90 days of the date the Stipulation and Settlement Agreement becomes a final order of the Occupational Safety and Health Review Commission, Respondent agrees to implement company-wide a new hire safety and health orientation training that covers the hazards, including Lock-Out/Tag-Out and Permit Required Confined Space entry, that are specific to the employee's work environment. The new hire orientation shall be at least 8 hours in length, and shall be provided to new employees and temporary employees. Respondent will provide documentation which includes a checklist of topics covered by the training, as well as a roster of training attendees, to Area Director Jacob Scott at the address set forth in paragraph (d) above within 30 days of the implementation of such training.

f. Within 90 days of the date the Stipulation and Settlement Agreement becomes a final order of the Occupational Safety and Health Review Commission, Respondent agrees to organize an internal safety and health committee at the three facilities located in South Beloit, Rockford and Peoria, Illinois which will be comprised of both management representatives and hourly employees, consistent with the requirements of the National Labor Relations Act. The committee will meet no less than quarterly for the first 12 months following the date the Stipulation and Settlement Agreement becomes a final order of the Occupational Safety and Health Review Commission. Respondent will provide minutes from the quarterly meetings held during the first year at South Beloit, Rockford and Peoria to Area Director Jacob Scott at the address set forth in paragraph (d) above. Minutes will be provided by the first day of the month following the date of the meeting.

g. Within 90 days of the date the Stipulation and Settlement Agreement becomes a final order of the Occupational Safety and Health Review Commission, Respondent

will develop a procedure for the three facilities located in South Beloit, Rockford and Peoria, Illinois to provide monthly verification to the corporate office of compliance with Respondent's Lock-Out/Tag-Out and the Permit Required Confined Space policies and procedures. This verification will include, at a minimum, photographs and/or videos demonstrating that lock-out/tag-out has been appropriately conducted during maintenance activity (if applicable that month), and that confined space entry procedures have been appropriately conducted in accordance with OSHA's regulations (if applicable that month). Each site will provide this verification to John Menne, Vice President, at least once per month for a period of 6 consecutive months. Each plant location's verification demonstration submitted to Mr. Menne shall consist of at least one lock-out/tag-out event and at least one confined space entry. At the end of the 6 month period, these records will be maintained by Respondent of a period of one year, and will be made available to OSHA upon request.

h. Respondent shall forward to Complainant a check totaling \$104,000.00 within seven (7) days of the date the Stipulation and Settlement Agreement becomes a final order of the Occupational Safety and Health Review Commission. The payment shall be made payable to "Department of Labor – OSHA" and shall be mailed to Jacob Scott, Area Director, U.S. Department of Labor—OSHA 365 Smoke Tree Plaza, North Aurora, IL 60542. The Respondent shall make eight (8) consecutive quarterly payments starting 90 days after the first payment of \$104,000, following the payment process specified in the preceding sentence. Each quarterly payment will be for \$52,000, for a total payment of \$520,000. Should Respondent fail to pay any of the installment payments described herein on or before the dates set forth, the entire amount of the balance remaining shall become due and payable immediately by

Respondent together with post-judgment interest as calculated under 28 U.S.C. §1961 with no further notice or demand required by Complainant to Respondent.

IV

The parties agree that the Stipulations and Settlement Agreement and the citations, as amended herein, shall constitute a final order of the Occupational Safety and Health Review Commission, and that failure to comply with the Stipulation and Settlement Agreement, including the measures contained in Paragraph III (a) through (h) is grounds for notice of failure to abate under Section 10 of the OSH Act.

V

Neither this settlement agreement nor Respondent's withdrawal of its notice of contest pursuant to this agreement constitutes any admission by Respondent of a violation thereunder. The parties agree that the settlement agreement is not intended to be or shall be deemed an admission in any proceeding or litigation, except for subsequent civil proceedings between the parties brought under the Occupational Safety and Health Act. Respondent is entering into said agreement without any prejudice to its rights to raise any defense or argument in any future or pending cases before the Occupational Safety and Health Review Commission. Respondent retains the right to assert in any subsequent action or proceeding that any future existing conditions identical or similar to those alleged in the original citations or the citations as amended do not violate the Occupational Safety and Health Act or any standard promulgated thereunder. By entering into this agreement, Respondent does not admit the truth of any alleged facts, any of the characterizations of Respondent's alleged conduct or any of the conclusions set forth in the citations or amended citations issued in this matter.

VI

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

VII

Respondent certifies that there are no authorized employee representatives at Respondent's Rockford and South Beloit facilities. At Respondent's Peoria facility, employees are represented by Great Plains Laborer's District Council & Laborer's International Union of North America Local 165 AFL CIO. It is hereby further certified by Respondent that this Settlement Agreement will be served on employees, by posting this agreement within three (3) days of the date on which all Parties have executed the Agreement, in a place where the citation is required to be posted, in accordance with Rules 7 and 100 of the Commission's Rules of Procedure.

VIII

The Parties agree that an order should be entered which:

- a.** Amends the Citations and Notifications of Penalty, as set forth above.
- b.** Allows Respondent to withdraw its Notice of Contest to all three Citations and Notifications of Penalty, as amended herein.
- c.** Affirms the Citations and Notifications of Penalty, as amended, as a final and enforceable order of the Occupational Safety and Health Review Commission, and affirms the penalty in the amount proposed with no costs, fees or other expenses to be assessed or awarded to either of the Parties in this litigation.

Date: December 7, 2015

Respectfully submitted,

**BEHR IRON & STEEL, INC. and BEHR
PEORIA, INC.**

By: /s/ Bradley S. Hiles

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U.S. DEPARTMENT OF LABOR

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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 Brian A. Duncan, Judge, Occupational Safety and Health Review Commission, U.S. Custom House, 721 19th St., Suite 407, Denver, Colorado 80202-2500, with copies to attorneys for Complainant and Respondent.