

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SECRETARY OF LABOR,
UNITED STATES DEPARTMENT OF LABOR,
Complainant,

OSHRC DOCKET
NO. 12-1137

v.

ADAMS THERMAL SYSTEMS, INC.,
Respondent.

OSHA INSPECTION NO. 108985

STIPULATION AND SETTLEMENT AGREEMENT

The Secretary of Labor, United States Department of Labor, hereinafter referred to as the "Secretary," and Adams Thermal Systems, Inc., hereinafter referred to as "Respondent," stipulate and agree as follows:

1. These proceedings arise under the Occupational Safety and Health Act of 1970, 29 U.S.C. §651, et seq., and involve Respondent's contests of citations and proposed civil penalties issued on April 26, 2012 in conjunction with OSHA Inspection No. 108985.

2. Respondent hereby withdraws its notice of contest to the Citations and the proposed penalties of \$210,000 and agrees to pay the penalties in full.

3. In support of its withdrawal of its notice of contest, Respondent states the following:

(a) The abatement of all items of Citation 1 has been accomplished, and Respondent agrees that the date of this Agreement shall be the final abatement date for said items. By September 30, 2013, Respondent shall deliver a Certification of Corrective Actions with supporting documentation to Area Director, Bismarck Area Office of the Occupational Safety and Health Administration, stating that abatement has been completed, the date(s) and

method(s) of abatement, and that affected employees and their representatives have been informed of the abatement in compliance with all applicable abatement verification provisions of 29 C.F.R. § 1903.19.

(b) In addition to (a), above, Respondent agrees this Citation is being settled as part of a global settlement that includes (i) the captioned case, (ii) a criminal referral related to the captioned case, and (iii) separate cases, Adams Thermal Systems, Inc., OSHRC Docket Nos. 12-1758 and 12-1759. Respondent has agreed to the additional settlement terms set forth in paragraph 4(c) of the Stipulation and Settlement Agreement in Adams Thermal Systems, Inc., OSHRC Docket Nos. 12-1758 and 12-1759. In addition, Respondent agrees to the following settlement terms:

(1) Within 30 days of the execution of this Agreement, Respondent shall increase the size of its safety and health department so that it includes an on duty safety technician for each shift.

(2) Within 30 days of the execution of this Agreement, Respondent shall increase the size of its training department so that it includes an on duty training technician for each shift.

(3) Respondent shall organize its safety and health department so that its head shall report directly to the Respondent's CEO.

(4) Respondent's head of safety and health shall oversee, review, develop and implement a company-wide safety and health program. The development and implementation of the safety and health program shall be completed within 180 days of the execution of this Agreement.

(5) Within 30 days of the execution of this Agreement, Respondent shall implement a policy in which managerial pay is, in part, based upon the results of safety suggestions and safety audits. Respondent shall provide OSHA a copy of this policy.

(6) Within 30 days of the execution of this Agreement, Respondent shall implement a policy in which employees may earn bonuses for making safety suggestions and reporting safety issues. Respondent shall provide OSHA a copy of this policy.

(7) Within 30 days of the execution of this Agreement, Respondent shall create a safety committee for each shift. The safety committee shall be made up of management and non-management employees.

(8) Within 60 days of the execution of this Agreement, Respondent shall retain the services of a qualified third-party to audit the abatement and settlement terms of this Agreement. The third-party shall be acceptable to OSHA. The audit shall be completed and a final report with recommendations delivered to Respondent within 210 days of the execution of this Agreement. Respondent shall address the recommendations from the audit within 300 days of the execution of this Agreement. The audit report and responsive actions shall be submitted to OSHA no later than 10 days after completion of the audit recommendations.

(9) For a period of three years from the execution of this Agreement, Respondent shall report quarterly in writing to the OSHA Bismarck Area Director providing (i) status of abatement and other settlement actions; (ii) a summary of the safety measures taken over the quarter; and (iii) a listing of recordable work related injuries and illnesses.

(10) Respondent has had a third-party perform a safety assessment for the machine called the Matrix. Respondent shall immediately provide a copy of the safety assessment to OSHA and shall promptly implement the recommendations of the safety

assessment. Within 60 days of the execution of this agreement, Respondent shall have the third-party who performed the assessment determine whether Respondent has properly implemented the recommendations contained in the assessment. The results of the third-party's determination shall be provided to OSHA within 10 days of the determination.

(11) Respondent shall prohibit its employees from being inside the Matrix's barrier guards while the machine is operating. It shall also prohibit its employees from being inside the Matrix's barrier guards unless the machine is properly locked and tagged out. Respondent shall prohibit live troubleshooting on the Matrix.

(12) Respondent shall take the following steps to protect employees from hazards associated with the Matrix: (i) it shall use floor scanners to disable the Matrix if someone sets foot within the barrier guards; (ii) it shall install within the barrier guards, additional guards to prevent employees from coming into contact with points of operation hazards, nip points, moving and rotating parts, and other pinch, crush, and amputation hazards; (iii) it shall install two-hand controls; (iv) it shall install additional light curtains and interlocks; (v) it shall put in place standalone safety controls.

(13) Respondent shall provide training to its employees involved in using, operating, servicing, or maintaining the Matrix, in the procedures, dangers, and hazards associated with the Matrix.

(14) Respondent shall train its employees in the right of employees to report perceived unsafe work conditions and refuse to work under unsafe conditions until corrected.

(15) Respondent shall provide first responder training to each of its team leads within 180 days of the execution of this Agreement.

Nothing in this paragraph 3(c) shall be deemed to lessen or modify Respondent's duties and obligations under the Occupational Safety and Health Act or the standards and regulations promulgated thereunder.

4. Respondent asserts that its affected employees are not represented by an authorized employee representative, and, therefore, a copy of this Stipulation and Settlement Agreement will be posted at Respondent's workplace on September 5, 2013 at 47920 5th Street, Canton, SD 57013 where it may be viewed by its employees. The Agreement will remain posted until it becomes a final order of the Commission.

5. Respondent shall tender payment of the total penalty of \$210,000 to the Secretary's representative at the Bismarck Area Office of the Occupational Safety and Health Administration to be paid as follows: (i) within ten (10) working days of the execution of this Agreement, Respondent shall pay \$17,500; (ii) on October 1, 2013 and then on the first day of each successive month, for the next 10 months, Respondent shall make a payment of \$17,500. (The payments in (i) and (ii) are twelve equal payments totaling \$210,000.) Respondent's failure to make any payment when due shall cause the remaining balance to become immediately due and payable. Provided, however, the parties agree that the remaining balance will not become due, and the Secretary may not enforce the acceleration provisions of this paragraph, unless Respondent is more than 10 days late on any payment and the Secretary provides Respondent a reasonable opportunity to promptly cure such late payment. The parties agree that any unpaid balance under this agreement is a debt owing to the United States and is subject to the Debt Collection Act of 1982 (Public Law 97-365) and the Debt Collection Improvement Act of 1996, 31 U.S.C. §§ 3701-3719.

6. Respondent, in consideration for this settlement Agreement, further agrees that Complainant may enter its Canton facilities at reasonable times and under reasonable conditions to inspect the facts and circumstances underlying the Citations, which will become the final order of the Commission pursuant to this Agreement. Said inspection shall be for the purpose of determining Respondent's compliance with the abatement requirements and settlement terms covered by this Agreement. By consenting to entry as provided herein, Respondent waives its rights under Amendment IV of the Constitution of the United States to require an inspection warrant for the follow-up inspection of the item covered by this Agreement, but retains all its rights to require a warrant for the inspection of any matters not covered by this Agreement.

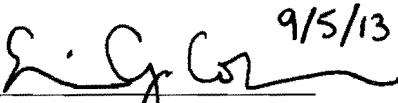
7. Respondent agrees that this Agreement, and the terms hereof, including the Citations, proposed penalties, and other settlement terms shall become a final order of the Commission and shall be enforceable under Section 11(b) of the Act. Respondent will not oppose the entry of such an order by the U.S. Court of Appeals, nor will it interpose any defense to such order alleging any infirmities concerning the Citation related to this inspection, or the terms of this Agreement. The Secretary agrees that if OSHA reaches a preliminary determination that Respondent may not be in compliance with this Agreement, OSHA shall first notify Respondent in writing directed to the attention of Eric Conn. Respondent will have 15 calendar days from receipt of OSHA's notification to provide a written response to Area Director, Bismarck Area Office of the Occupational Safety and Health Administration. Within 10 calendar days after OSHA's receipt of Respondent's written response, the parties will enter good faith discussions in an attempt to resolve the issue. If the parties are unable to resolve the issue within 10 calendar days of entering into such discussions, the Secretary shall proceed with any course of action the Secretary deems appropriate, including enforcement under 11(b) of the Act.

8. The Secretary and Respondent agree that based on the foregoing representations of Respondent, an order may be entered of record showing that Respondent has withdrawn its notice of contest and entering the citation and notification of proposed penalties, as amended herein, as a final order of the Commission.

9. Further, each party hereby agrees to bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding, including but not limited to, attorney's fees, costs, and other expenses which may be available under the Equal Access to Justice Act (5 U.S.C. § 504), as amended.

Dated this ____ day of _____, 2013.

EPSTEIN BECKER & GREEN

By  ^{9/5/13}
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NOTICE TO EMPLOYEES OR EMPLOYEE REPRESENTATIVE

The attached Stipulation and Settlement Agreement has been entered into by the parties hereto, and is being submitted to the Occupational Safety and Health Review Commission for entry as a final order. If you have any comments on the Stipulation and Settlement Agreement, you may submit them within ten days of service or posting of the stipulation to:

Judge John H. Schumacher
Occupational Safety and Health
Review Commission
U.S. Customs House
721 19th Street, Room 407
Denver, Colorado 80202-2517

A copy of such comments should also be sent to:

H. Alice Jacks
Associate Regional Solicitor
U.S. Department of Labor
Two Pershing Square Building
2300 Main Street, Suite 1020
Kansas City, Missouri 64108

Served and/or posted this ___ day of August, 2013.

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ORDER

The parties have filed a Stipulation and Settlement Agreement in the above-captioned matters. The content of that Stipulation and Settlement Agreement is incorporated by reference in this order.

The Stipulation and Settlement Agreement is hereby approved and shall be deemed an order of the Commission.

It is SO ORDERED.

JOHN H. SCHUMACHER
Judge, OSHRC

Dated: