

C. RAY DAVENPORT
Commissioner of Labor and Industry

THE GOODYEAR TIRE & RUBBER COMPANY
Inspection Number 1260476

PRE-CITATION SETTLEMENT AGREEMENT

THIS AGREEMENT is entered into by the Commonwealth of Virginia, Commissioner of Labor and Industry (Commissioner), The Goodyear Tire & Rubber Company (Goodyear) and the United Steelworkers (United Steelworkers).

WHEREAS, on or about September 18, 2017, the Commissioner opened an inspection of the Goodyear's worksite in Danville, Virginia for inspection number 1260476;

WHEREAS, Goodyear has filed a notice of contest of all abatement dates contained in inspection number 1260476 for the violations and penalties affirmed in this agreement (see Attachment A), as provided by § 40.1-49.4 of the Code of Virginia; and

WHEREAS, the parties want to reach a pre-citation settlement on this case in a way that will further, protect and promote the safety and health of the employees of Goodyear and avoid the time and expense of litigation;

NOW, THEREFORE, the parties agree to the following:

TERMS AND CONDITIONS OF PRE-CITATION SETTLEMENT AGREEMENT

1. The parties agree that the provisions of this agreement are intended solely for the safety, health and welfare of Goodyear Danville's employees and the benefits thereof shall not run to any other person not a party to this agreement; nor shall any third party have any right of action for breach of any provision of this agreement, unless otherwise specifically provided for herein.
2. The violations and penalties for inspection number 1260476 as listed in Attachment A are affirmed. The total penalties for inspection number 1260476 are \$185,000. Goodyear has contested all abatement dates for inspection number 1260476.
3. Goodyear shall pay the sum of \$85,000.00 to the Commonwealth within thirty days of the final order date. The check or money order will be made payable to the "Treasurer of Virginia," with the VOSH inspection number 1260476 noted on the payment. The remaining affirmed penalty amount of \$100,000.00 may be retained by Goodyear for the uses specified in paragraphs 4 and 5 ("Retained Penalties"). Any unspent monies of the Retained Penalties will be paid to the Commonwealth within five

years and thirty days from the final order date, unless otherwise agreed to by the parties in writing.

4. The Parties agree that Goodyear's use of the \$100,000 in Retained Penalties will be dedicated to assuring, verifying and certifying abatement of violations for inspection number 1260476. Goodyear agrees to submit to the Commissioner, Local 831 and the United Steelworkers International Health, Safety and Environment Director a yearly report detailing abatement-related expenses and an outstanding balance for the Retained Penalties.

5. The Parties agree that Goodyear will use a portion of the \$100,000 Retained Penalties to provide an OSHA 30 Hour Training Course with an emphasis on Lockout/Tagout to a jointly agreed upon list of Goodyear Danville employees, supervisors and managers within seventy-five (75) days of the final order date.

6. The Parties agree that the following procedures will be followed for abatement of all affirmed violations:

a. The requirements contained in the Virginia Occupational Safety and Health (VOSH) Abatement Verification regulation at 16VAC25-60-307 shall apply to verification and certification of abatement.

b. Unless an affirmed violation was previously acknowledged by the Commissioner in one of the issued citations covered by this agreement as abated at the time of inspection, Goodyear shall assure abatement of all affirmed violations by the abatement period specified in the respective citation; or in accordance with the procedure established in paragraph 6.f. below; or Goodyear shall submit a petition for Extension of Abatement Time in accordance with 16VAC25-60-320.

c. The Parties agree that should Goodyear choose to submit a petition for Extension of Abatement Time on any violation affirmed in this agreement, it shall do so in accordance with the procedures contained in 16VAC25-60-320, or as modified by agreement of the parties in paragraph 6.f. below.

d. For a period of 90 calendar days after the effective date, that is, entry of agreed order by Danville Circuit Court Judge, of this agreement or, as provided in 16VAC25-60-320.A, while an extension of abatement is in effect, the Commissioner will not seek to cite Goodyear for failure to abate the violation in question.

e. As provided in 16VAC25-60-320.G-I, Goodyear and the United Steelworkers are afforded the opportunity to appeal abatement decisions of the Commissioner in accordance with Va. Code §2.2-4019 and 2.2-4012 of the Virginia Administrative Process Act (APA).

f. The parties agree that the following procedures may be used by Goodyear to address abatement of violations affirmed under this agreement for Serious Citation 1, Item 1, Repeat Citation 2, Items 1a and 2:

i. Within 10 calendar days of the effective date of this agreement, Goodyear and the United Steelworkers will categorize all equipment assigned an equipment-specific placard into three categories. This will be accomplished by applying occupational risk assessment principles. Each piece of equipment shall be assigned to either Category 1 (requiring implementation of a specific compliance aid such as a checklist, permit, or similar aid within 40 calendar days of the effective date of this agreement); Category 2 (requiring implementation of a specific compliance aid such as a checklist, permit, or similar aid within 70 calendar days of the effective date of this agreement); or Category 3 (equipment where the current placard is deemed sufficient for use without a specific compliance aid.)

ii. Goodyear agrees that for any Category 1 or 2 equipment that is not implemented by the end of the respective implementation time period (40 days or 70 days), it will submit an Extension of Abatement request to the Commissioner in accordance with the requirements of 16VAC25-60-320.

e. The parties agree that Goodyear will provide in regular intervals from the final order date progress reports on abatement verification and certification meeting the requirements of 16VAC25-60-307 for each such violation/instance abated since the prior progress report. The documentation shall be provided to:

Lee Willis
VOSH Southwest Regional Safety Director
Virginia Department of Labor and Industry
Brammer Village
3013 Peters Creek Road
Roanoke, VA 24019

7. The Commissioner reserves the right to make final decisions concerning the adequacy of abatement documentation provided in accordance with 16VAC25-60-307.

8. Goodyear agrees to consent for VOSH to conduct one or more monitoring inspections within 6 months of the final order date to assure completion of abatement of all affirmed violations.

9. The violations and penalties as affirmed in this agreement, and any new obligations contained in this agreement, are a final order of the Commissioner of Labor and Industry.

10. As further consideration for the modification of the terms of the original citation, Goodyear waives its right to contest for violations and penalties affirmed by this agreement, as well as the remaining terms contained in this agreement. Goodyear has contested all abatement dates for inspection number 1260476.

11. Pursuant to *Virginia Administrative Code* § 16VAC 25-60-40(1), Goodyear shall post a copy of this agreement for ten (10) consecutive days in a conspicuous location where notices to employees generally are posted.

12. Goodyear represents that it is entering into this agreement of settlement in the spirit of conciliation and cooperation in an effort to avoid litigation. This agreement shall not be construed as an admission by Goodyear of civil or criminal liability for any violation or penalty alleged by the Commissioner. By entering into this agreement, Goodyear does not admit the truth of any alleged facts, any of the characterization of Goodyear's alleged conduct or any conclusions set forth in the citation(s) issued in this matter. Neither this agreement nor Goodyear's consent to entry of a final order of the Commissioner pursuant to this agreement shall constitute an admission by Goodyear of violation of the Virginia Occupational Safety and Health (VOSH) laws, regulations or standards promulgated thereunder. Goodyear is entering into this agreement without any prejudice to its right to assert in any subsequent action or proceeding that any future existing conditions identical or similar to those alleged in the original citation do not violate the VOSH laws, regulations or standards promulgated thereunder.

13. Pursuant to Va. Code §40.1-51.3:2, the fact of an issuance of a citation, the voluntary payment of a civil penalty by a party or the judicial assessment of a civil penalty under Chapter 3 of Title 40.1 of the Code of Virginia shall not be admissible in evidence in the trial of any action to recover for personal injury or property damage sustained by any party, in which it is alleged that an employer acted in violation of or failed to act in accordance with any provision of Chapter 3 of Title 40.1, or any state or federal occupational safety and health law, standard or regulation. This agreement may be used for future enforcement proceedings and enforcement actions pursuant to Title 40.1 of the Code of Virginia.

[Remainder of page left intentionally blank - signature pages and attachments to follow]

THE GOODYEAR TIRE & RUBBER COMPANY

By: Daniel J. Young
Agent

3-15-2018
Date

UNITED STEELWORKERS

By: Thomas Conway
Agent

3/13/30.F
Date

UNITED STEELWORKERS LOCAL 831

By: Alvin Barber

3/14/18
Date

**C. RAY DAVENPORT
COMMISSIONER OF LABOR AND INDUSTRY**

By: C. Ray Davenport
Commissioner

3/15/18
Date

ATTACHMENT A

Inspection Number 1260476

Serious Citation 1, Item 1:

1910.147(d)5)(i), following the application of lockout or tagout devices to energy isolating devices, the employer failed to ensure that all potentially hazardous stored or residual energy was relieved, disconnected, restrained, and otherwise rendered safe.

Date by Which Violation Must be Abated: 21 Days From the Final Order Date

Final Penalty: \$12,471.00

The following serious violations are combined for purposes of citation issuance, penalty assessment, abatement date, and settlement:

Serious Citation 1, Item 2a:

1910.147(c)(9), affected employees were not notified by the employer or authorized employee of the application and removal of lockout devices or tagout devices.

Serious Citation 1, Item 2b:

1910.147(e)(2)(i), the work area was not checked to ensure that all employees had been safely positioned or removed.

Serious Citation 1, Item 2c:

1910.147(e)(2)(ii), after lockout or tagout devices had been removed and before a machine or equipment was started, affected employees were not notified that the lockout or tagout device(s) had been removed.

Date by Which Violation Must be Abated: 21 Days From the Final Order Date

Final Penalty for Combined Serious Violation 1, Items 2a, 2b and 2c: \$12,471.00

Repeat Citation 2, Items 1 and 2, are combined for purposes of citation issuance, penalty assessment, abatement date, and settlement, and renumbered as Repeat Citation Items 1a and 1b:

Repeat Citation 2, Item 1a:

1910.147(c)(4)(i), written LOTO procedures were not developed, documented and utilized.

- a. Banbury #2 procedures were not developed.
- b. Secondary energy source procedures were not consistently utilized.
- c. Alternative procedures were not developed, documented and utilized.
- d. Old labels/identifiers of disconnects referenced in LOTO procedures remained in place, which could cause confusion during LOTO and restart.

NOTE: Goodyear Tire & Rubber Company was previously cited for a substantially similar violation of this Virginia Occupational Safety and Health (VOSH) regulation 1910.147(c)(4)(i), which was contained in VOSH inspection number 1143317, citation number 2, item number 2 and was affirmed as a final order of the Commissioner on February 9, 2017, with respect to a workplace located at 1901 Goodyear Boulevard, Danville, VA, 24541.

Date by Which Combined Repeat Citation 2, Items 1a and 1b Must be Abated:
21 Days From the Final Order Date

Final Penalty Combined for Combined Repeat Citation 2, Items 1a and 1b: \$97,703.00

Repeat Citation 2, Item 1b:

1910.147(d)(6), Prior to starting work on machines or equipment that have been locked out or tagged out, the authorized employee did not verify that isolation and deenergization of the machine or equipment had been accomplished.

NOTE: Goodyear Tire & Rubber Company was previously cited for a substantially similar violation of this Virginia Occupational Safety and Health (VOSH) regulation 1910.147(d)(6), which was contained in VOSH inspection number 1143317, citation number 1, item number 31 and was affirmed as a final order of the Commissioner on February 9, 2017, with respect to a workplace located at 1901 Goodyear Boulevard, Danville, VA, 24541.

Repeat Citation 2, Item 3 is renumbered as Repeat Citation Item 2:

1910.147(c)(7)(i), training provided by the employer did not ensure that the purpose and function of the energy control program were understood by employees and that the knowledge and skills required for the safe application, usage, and removal of the energy controls was acquired by employees.

- a. Banbury #2 training had not been provided on procedures that were in draft form.
- b. Training on secondary energy source procedures was not understood by employees.
- c. Training on stored energy source procedures was not understood by employees.
- d. Training on alternative procedures was not provided.
- e. Training on notification of affected employees was not understood by employees.
- f. Training on verification of isolation and deenergization of machinery and equipment was not understood by employees.

NOTE: Goodyear Tire & Rubber Company was previously cited for a substantially similar violation of this Virginia Occupational Safety and Health (VOSH) regulation 1910.147(c)(7)(i), which was contained in VOSH inspection number 1172502, citation number 1, item number 7 and was affirmed as a final order of the Commissioner on February 9, 2017, with respect to a workplace located at 1901 Goodyear Boulevard, Danville, VA, 24541.

Date by Which Violation Must be Abated: 21 Days From the Final Order Date

Final Penalty: \$62,355.00

Total for Inspection Number 1260476: \$185,000.00