

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

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

OSHRC DOCKET
NO. 12-0945

v.

BARTLETT GRAIN COMPANY, LP,
Respondent.

OSHA INSPECTION NO. 31603402

STIPULATION AND SETTLEMENT AGREEMENT

The Secretary of Labor, United States Department of Labor, hereinafter referred to as the "Secretary," and Bartlett Grain Company, LP, hereinafter referred to as "Respondent," stipulate and agree as follows:

I. SCOPE AND INTENT OF THE AGREEMENT

A. On April 12, 2012, an authorized representative of the Secretary issued Citation and Notification of Penalty to Respondent (the "Citation") for an alleged violation of Section 5(a)(2) of the Occupational Safety and Health Act of 1970, 29 U.S.C. §§ 651 *et seq.* (the "OSH Act").

B. Respondent, an employer within the meaning of Section 3(5) of the Act, filed with a representative of Complainant a timely notice of intent to contest the Citation and proposed penalties. This notice was duly transmitted to the Occupational Safety and Health Review Commission ("OSHRC") and it is agreed that jurisdiction over this proceeding is conferred upon the OSHRC by Section 10(c) of the Act.

C. Complainant and Respondent (collectively, the "Parties"), have agreed in this Settlement Agreement (the "Agreement") to resolve in full all matters in the case identified by the above-referenced docket number and any matters related to OSHA Inspection No. 31603402. Except as otherwise specified in Para IV. B. 8. and 14, this Agreement applies to all of Respondent's actively operating grain elevator facilities under federal OSHA jurisdiction.

II. RESOLUTION AND AMENDMENT OF THE CITATIONS

A. Based on a reevaluation of the evidence and a reconsideration of the statutory factors on which the proposed penalties are determined, the Secretary hereby amends Citation number 1 as follows:

Item	Proposed Penalties	Amended Penalties	Other Amendments
1	\$7,000	No change	Classification shall be changed from "serious" to "other-than-serious." The cited standard shall be changed to 29 CFR 1910.38(f). The description of the violation shall be changed to read as follows: 29 CFR 1910.38(f): The employer failed to review its emergency action plan with each employee covered by the plan (1) when the plan is developed or the employee is initially assigned to the job, (2) when the employee's responsibilities under the plan change, and (3) when the plan is changed."
2	\$7,000	No change	The description of violation shall be changed to read as follows: "An employee, who transferred from one of

			employer's facilities to the Atchison facility and was working in or near the grain elevator, was exposed to hazards associated with grain handling when he was not provided site-specific training prior to starting work at the Atchison facility in specific procedures and safety practices applicable to his job tasks. Classification remains "serious" as issued.
3	\$7,000	---	Withdrawn as part of settlement.
4	\$7,000	No change.	The SAV language is unchanged. The AVD language shall be changed to read as follows: "The employer did not provide information sufficient to contractors that perform work at the grain elevator about the new location of the muster area." Classification remains "serious" as issued.
5	\$7,000	---	Withdrawn as part of settlement.
6	\$7,000	No change	The SAV language is unchanged. The description of violation shall be changed to read as follows: Employees working in and near the grain elevator were exposed to hazards associated with grain handling due to not documenting a frequency for inspecting and/or clearing elevator leg magnets. Classification remains "serious" as issued.

7	\$7,000	--	Withdrawn as part of settlement; however, the subject of this violation will become an instance under Citation 1, Item 8.
8	\$7,000	No change	Classification shall be changed from "serious" to "other-than-serious." The SAV language is unchanged. The description of violation shall be changed to read as follows: "Employees working in and near the grain elevator were exposed to hazards associated with grain handling in that each certification record failed to contain the year of inspection, and employer did not document the basis for the frequencies set forth in the preventative maintenance schedule."

B. Based on a reevaluation of the evidence and a reconsideration of the statutory factors on which the proposed penalties are determined, the Secretary hereby amends Citation number 2 as follows:

Item	Proposed Penalties	Amended Penalties	Other Amendments
1	\$70,000	No change	Classification shall be changed from "willful" to "unclassified." The description of violation shall be changed to read as follows: "On or about October 27, 2011, employees were exposed to fall hazards while working on top of railcars located on the track nearest to the elevator structure and within the loading zone, to perform

			tasks such as prepping railcars for loading, closing and sealing railcar lids, and fumigating railcars, without utilizing fall protection. Employees were exposed to fall hazards of up to approximately fifteen (15) feet from the railcars to the ground below."
2	\$70,000	\$7,000	Classification shall be changed from "willful" to "other-than-serious." The description of violation shall be changed to read as follows: "Employees working in and near the grain elevator were exposed to hazards associated with grain handling in that the employer failed to adequately document that it had removed any fugitive grain dust accumulations whenever they exceeded 1/8 inch (.32 cm) at priority housekeeping areas, when employees failed to place their initials on housekeeping logs after completing housekeeping inspections and cleaning."
3	\$70,000	No change	Classification shall be changed from "willful" to "unclassified." The description of violation shall be changed to read as follows: "On or about October 15, 2011, employees working in and near the grain elevator were exposed to hazards associated with grain handling in that compressed air was used for cleaning inside the grain elevator

			without first obtaining a permit documenting that machinery that presented a potential ignition source was shut down or controlled.
4	\$70,000	---	Withdrawn as part of settlement.
5	\$70,000	---	Withdrawn as part of settlement.

C. The Citation and notification of proposed penalties are deemed amended. Further, the Citations are hereby amended to include the full terms of this Agreement, including the enhanced abatement terms in IV. B. 1 through 21.

III. WITHDRAWAL OF NOTICE OF CONTEST AND PAYMENT OF PENALTY

Respondent hereby withdraws its notice of contest to citations 1 and 2 and proposed penalties, as amended herein, and agrees to tender payment of the total penalty of \$182,000 to the Secretary's representative at the Wichita OSHA Area Office within 30 days of the date of this Stipulation and Settlement Agreement. 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.

IV. ABATEMENT AND ENHANCED ABATEMENT

In support of its withdrawal, Respondent agrees as follows:

A. That the abatement of items 1, 2, 4, 6, and 8 of Citation number 1 and items 1, 2, and 3 of Citation number 2 has been accomplished and the date of this Agreement shall be the final abatement date for said items. Respondent will

comply with all applicable abatement verification provisions of 29 C.F.R. §1903.19, including but not limited to, all certification, documentation, and posting requirements. Abatement certification shall be accomplished within 10 calendar days after the abatement date by mailing a letter to Lisa Gilpin, Acting Area Director, Wichita Area Office of the Occupational Safety and Health Administration, stating that abatement has been completed, the date and method of abatement, and that affected employees and their representatives have been informed of the abatement. Any required abatement documentation shall be submitted along with the abatement certification.

B. In addition to the above, Respondent agrees to the following enhanced abatement terms for the term of this Agreement, which shall run three (3) calendar years from the date of this Agreement:

1. Corporate-Wide Settlement. Unless otherwise specified herein, the enhanced abatement terms set forth in this section IV. B will be applied on a corporate-wide basis to all of Respondent's actively operating grain elevator facilities, as identified on Appendix A, attached.

2. Safety and Health Management System. Within 60 days of the Final Order Date of this Agreement, Respondent will review its Safety and Health System and make revisions as necessary to ensure it aligns with the core elements contained in OSHA's Recommended Practices for Safety and Health Programs, <https://www.osha.gov/shpguidelines/>. The review and revisions will, in turn, be reviewed by an independent third party for areas of enhancement and/or improvement. These reviews will

emphasize the role of safety and health in all actively operating grain elevator facilities by:

- (a) Addressing management commitment, employee involvement, hazard identification and control, training, and program review;
- (b) Maintaining a corporate safety manager position which reports directly to the President of Grain, and ensuring his responsibilities are limited to safety and health;
- (c) Providing that the Safety Manager has the independent authority to stop unsafe operations;
- (d) Requiring the Safety Manager to seek out and consider implementing best practices through industry involvement, e.g., National Feed and Grain Association (NGFA), and Grain Elevator and Processing Society (GEAPS);
- (e) Retaining a Safety and Health Assistant (2nd) reporting to the Safety Manager;
- (f) Scheduling and encouraging attendance at routine safety meetings;
- (g) Requiring safety and health training to be accomplished initially and annually thereafter.
- (h) Encouraging employee participation in the Company's safety program, such as by involving non-supervisory employees in safety training, some safety audits, implementing maintenance and housekeeping programs, and by encouraging employees to share

feedback to the Safety Department during annual employee safety interviews.

3. Third-party Consultation and Audit. Within 60 days of the Final Order Date of this Agreement, Respondent will identify to OSHA a qualified third-party with expertise in grain handling facilities and grain handling safety to conduct comprehensive safety and health audits. OSHA shall have 30 days from the day Respondent identifies the third-party auditor within which to raise reasonable objections about the selected third-party auditor. If those objections cannot be resolved, Respondent shall identify to OSHA another third-party auditor, about whom OSHA shall have 30 days to raise reasonable objections. When OSHA approves or does not raise objections about a selected auditor, Respondent shall engage the auditor to conduct comprehensive safety and health audits at all of its active operating grain elevator facilities, over the course of three years, using the following schedule: at least one-third of the facilities will be audited in the first year; the remainder of the facilities will be audited by no later than three years from the execution of this Agreement. Audits must include the following:

(a) An evaluation of the effectiveness of the electronic safety tracking system. The evaluation shall specifically assess the thoroughness and timeliness of data entered and associated follow-up actions required for training, housekeeping, preventative maintenance, and audit recommendations;

(b) Develop facility-specific audit recommendations, including interim abatements where permanent abatements may not be immediately implemented;

(c) The facility-specific audit recommendations must, at a minimum, comply with all applicable OSHA standards;

(d) An evaluation of effectiveness of Respondent's internal audit program;

(e) Respondent will ensure that audit recommendations are addressed as recommended or in an alternate but equally effective manner. Respondent will develop a facility-specific abatement plan to address audit recommendations that cannot be implemented immediately.

4. Sharing Audit Findings and Actions. Audit findings and recommendations from the Third-party Consultation and Audit set forth in Para. IV.B.3., facility-specific abatement plans, and resulting actions, will be shared with the Wichita OSHA Area Office for a period of 3 years from the date of this Agreement in conjunction with the Reporting under Para N.B.19. (Dates of audits, recommendations, and corrective actions must be included in the employer's electronic safety tracking system.)

5. Electronic Safety System. Within 60 days of the Final Order Date of this Agreement, Respondent will update its electronic safety system to facilitate and track, at a minimum, the following:

(a) Safety Policies and procedures;

(b) Safety Training program;

(c) Housekeeping and tracking of cleaning operations with regular and frequent entry into the system of completed housekeeping check sheets;

(d) Preventive Maintenance procedures and actions for covered grain stream processing equipment;

(e) Employee notification to Respondent of hazards (excluding certain "quick fix" items, which are not included in the RCI system);

(f) Safety recommendations and correction actions (excluding certain "quick fix" items, which are not included in the RCI system);

(g) Safety audits, recommendations for correction, and corrective actions taken.

6. Housekeeping Program. Within 60 days of the Final Order Date of this Agreement, Respondent will update its housekeeping program and procedures including/detailing management accountability, frequency of activities, cleaning methods to be utilized or prohibited, and specific procedures for blow down operations.

7. Preventive Maintenance. Within 60 days of the Final Order Date of this Agreement, Respondent will update its Preventive Maintenance procedures and program including/detailing management accountability. The Preventive Maintenance Program will specifically address testing and when repairs are required, as well as Preventive Maintenance performance records and records retention.

8. Magnet Inspection Program. Within 60 days of the Final Order Date of this Agreement, Respondent will update its magnet inspection procedure for all facilities that have elevator leg magnets, including/detailing management accountability.

9. Emergency Action Plans. Within 60 days of the Final Order Date of this Agreement, Respondent will update its Emergency Action Plans (EAPs) at each actively operating grain elevator facility. EAPs must include and/or address:

- (a) Updated maps;
- (b) Employee accountability methodology, such as sign in logs;
- (c) Engineering controls;
- (d) Muster points.

10. Emergency Drills. Respondent will conduct at least one emergency drill annually at each actively operating grain elevator facility.

11. Enhanced Visitor Notice. Within 60 days of the Final Order Date of this Agreement, Respondent will update its "Notice to Visitors" program at all facilities (the "Red Book") to include updates as items change with contractors and unique hazards are identified.

12. Equipment Information Compilations. Within 60 days of the Final Order Date of this Agreement, Respondent will update its equipment information compilations (including equipment manuals where available) in electronic format for all facilities that would include

lubrication and maintenance schedules and dates of completion of preventative maintenance activities.

13. Grain Engulfment Hazards and Rescue. Respondent will provide their employees annual training on grain bin entry. And, continue their program of outreach, education and training on grain engulfment and rescue in the communities in which they operate. Respondent will acquire and maintain grain bin rescue tubes at all locations. Respondent will maintain its program of working with first responders on grain engulfment rescue, including donating rescue tubes and providing information and assistance as appropriate. In addition, for a three-year period, in the event Respondent becomes aware that a third party experiences a grain bin engulfment fatality at a location within 60 miles of one of Respondent's facilities, Respondent will offer grain bin rescue training to employees, first responders, interested individuals, such as farmers, and industry representatives at a nearby location within six months. Training will not exceed one event per year. Respondent will notify the OSHA, Wichita Area Office annually during the term of this Agreement of its activities in this area.

14. Electrical Equipment Evaluation. Within 60 days of the Final Order Date of this Agreement, Respondent will provide to OSHA an evaluation of the electrical hazard classifications and the electrical equipment throughout the Atchison, Kansas facility to ensure it meets the requirements of the location.

15. Choked Leg Training. During each calendar year, Respondent will provide refresher training and annually thereafter on the proper procedure for freeing choked elevator legs.

16. Installation and Modification Evaluations. For the term of this Agreement, before making significant new installations of or material modifications to grain stream processing equipment at grain elevators (projects valued at more than \$250,000), and before making significant new installations or material modifications to dust filter collectors at grain elevators (irrespective of cost), not to include minor projects or routine maintenance, repairs or replacements of equipment of like kind, quality and size, Respondent will consult with a qualified third party, who is knowledgeable of grain handling practices and applicable codes, to evaluate the design of the installation or modification for potential safety impacts.

17. Incident Investigation. Respondent will document and investigate all deflagrations and/explosions throughout all of the employer's grain facilities. Investigation findings will be shared with all actively operating grain elevator facilities and provided to OSHA for a period of 3 years.

18. Fall Protection. Within 60 days of the Final Order Date of this Agreement, Respondent will provide fall protection for workers exposed to falls from the tops of railcars contiguous to or inside a structure and within the loading zone, through installation of a platform, horizontal lifeline or rigid rail system, or other similar equipment. An affixed

overhead protection system will be installed and maintained at every one of Respondent's facilities where Respondent loads grain into railcars on any frequency, including country elevators where as few as one or two railcars may be loaded each year. Respondent will provide fall protection training to affected employees on an annual basis, which training shall address Respondent's policy for railcar work in inclement weather (including icy conditions, heavy rains, extreme winds, or lightning observed in the area) to either prohibit work on top of railcars or to require the work to be done in the loading zone with fall protection. Respondent will inform contractors about its fall protection policies.

19. Reporting. Respondent will provide quarterly reports to the OSHA Wichita Area Office for 3-year term of this Agreement of addressing the status compliance with all settlement provisions and concessions, including but not limited to:

- (a) Training;
- (b) Housekeeping;
- (c) Preventive maintenance;
- (d) Status of completing third party audits performed pursuant to Para. IV.B.3., and addressing facility-specific recommendations developed by the third-party auditor;
- (e) Implementation of enhanced abatements enumerated herein;

Nothing in this paragraph IV. B. 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.

V. NOTICE TO EMPLOYEES AND POSTING

Respondent asserts that its affected employees are not represented by authorized employee representative, and therefore, a copy of this Stipulation and Settlement Agreement will be posted at all of Respondent's workplaces identified on Appendix A on December 19, 2017, where it may be viewed by its employees. The Agreement will remain posted until it becomes a Final Order of the Commission.

VI. ENFORCEMENT OF AGREEMENT UNDER §10(b) AND §11(b) OF ACT

Respondent understands and agrees that the Secretary, at his discretion, may enforce the terms of this Agreement under either or both §10(b) and §11(b) of the Act to the same extent as if these terms, abatement measures, and enhanced abatement terms has been set forth from the outset in the Citations and Notification of Penalties issued in this matter.

A. The Secretary may enforce Respondent's failure to abate or to comply with any of the enhanced abatement terms contained in section IV. B under §10(b) of the Act.

B. This Agreement, and the terms hereof, including the Citations, proposed penalties, as amended, and other settlement terms shall become a final order of the Commission and shall be enforceable under §11(b) of the Act. Respondent will not unreasonably 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 Citations related to this inspection, or the terms of this

Agreement.

C. For the period of this Agreement and before the Secretary seeks enforcement under either §10(b) or §11(b), OSHA must reach a preliminary determination that Respondent may not be in compliance with the terms of this Agreement. After reaching that determination, OSHA shall first notify Respondent in writing directed to the attention of Eric J. Conn, Conn Maciel Carey LLP, 5335 Wisconsin Ave NW, Suite 660, Washington D.C. 20015; email: econn@connmaciel.com. Respondent will have 15 calendar days from receipt of OSHA's notification to provide a written response to the Area Director, Wichita 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 begin good faith discussions in an attempt to resolve the issue. If the parties are unable to resolve the issue within 30 calendar days of entering into such discussions, the Secretary shall proceed with any course of action the Secretary deems appropriate, including enforcement under §10(b) and §11(b) of the Act.

VII. ACCESS TO EMPLOYER'S WORKSITES

Respondent, in consideration for this settlement Agreement, further agrees that the Secretary may enter its worksites listed on Appendix A, 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, and Respondent's compliance with the terms of this Agreement for a period of 3 years following the execution of this Agreement. Said inspections 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 items and terms covered by this Agreement, but retains all its rights to require a warrant for the inspection of any matters not covered by this Agreement.

VIII. NON-ADMISSION

Except for subsequent proceedings under the Act, Respondent's execution of this Settlement Agreement, the payment of any penalty, the taking of any proposed actions set forth herein, and any order of the Occupational Safety and Health Review Commission entered pursuant to this Settlement Agreement shall not be construed in any way that Respondent violated the Act or any standard promulgated thereunder. Respondent's agreement to take any of the proposed actions set forth herein, its payment of any proposed penalty, its execution of this Stipulation of Settlement, and any pleadings filed by either party in this action shall not be deemed to be admissions by Respondent of any fault or liability or that Respondent caused or contributed to the injury, illness or death of any person or damage to any property in any claim or proceeding which now exists or may arise by any person, agency, or entity provided however, that nothing in the Agreement shall affect the entry of the Final Order in this case or the utilization and introduction of the Final Order in subsequent proceedings under the Act.

IX. WITHDRAWAL OF NOTICE OF CONTEST

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.

X. FEES AND 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, 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.

XI. NOTICE AND COMMUNICATION

Any notice provided by a Party pursuant to this Agreement, including any report that is required to be filed with a Party, shall be in writing and delivered by certified mail, email, or other verifiable delivery method to the following persons (or to the current incumbent of the position) at the addresses identified below.

A. If to Complainant:

Lisa Gilpin
Acting Area Director
Wichita Area Office - OSHA/DOL
100 North Broadway, Room 470
Wichita, KS 67202
gilpin.lisa@dol.gov

B. If to Respondent:

Eric J. Conn
Conn Maciel Carey LLP
5335 Wisconsin Ave., NW, Suite 660
Washington, DC 20015
econn@connmaciel.com

Any such notice shall be deemed provided on the date that the notice is emailed or confirmed to have been delivered by the United States mail or equivalent parcel delivery service. Each Party shall immediately notify the other Parties of any

change in the name or address to whom notice is to be sent pursuant to this Section.

XII. CONSTRUCTION

The headings in this Agreement are for convenience and are not intended to affect construction or interpretation.

Dated this 15th day of December, 2017.

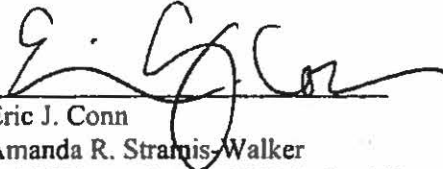
Nicholas C. Geale
Acting Solicitor of Labor

Christine Z. Heri
Regional Solicitor

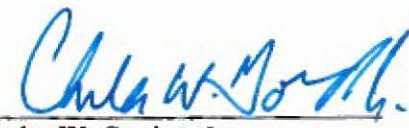
CONN MACIEL CAREY LLP

H. Alice Jacks
Associate Regional Solicitor

By


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U.S. Department of Labor

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 Patrick B. Augustine
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 19th day of December, 2017.

APPENDIX A

EVALUATING EMPLOYERS FOR A CORPORATE-WIDE SETTLEMENT AGREEMENT –

Bartlett Grain Company

I. Industry: ☒ General Industry ☐ Maritime ☐ Construction ☐ Agriculture

II. Agreement Initiator: ☒ OSHA or ☒ Employer

This agreement was initiated jointly between OSHA and the employer (Bartlett Grain Company).

III. Other Open Inspections Activity:

☒ No

☐ Yes (briefly explain):

IV. Inspection History (inspections and standards cited):

Bartlett Grain Company LP has had 18 inspections since 2008. Six of these inspections resulted in the issuance of violations. Two inspections, 810641 and 316034339 resulted in no inspection due to “process not active” and “other” respectively. Inspection history and standards cited as follows:

Inspection #1206978, Walsh, CO, opened 02/01/2017, Planned, Safety, closed 03/14/2017 with no violations.

Inspection #1125192, Eads, CO, opened 02/08/2016, Planned, Safety, closed 02/08/16 with no violations.

Inspection #1082624, Haswell, CO, opened 08/05/2015, Planned, Safety, closed 09/30/2015 with no violations.

Inspection #987590, Moscow, KS, opened 07/30/2014, Complaint, Health, closed 08/01/2014 with no violations.

Inspection #956400, Towner, CO, opened 01/15/2014, Planned, Safety, closed 02/03/2014 with no violations.

Inspection #812741, Walsh, CO, opened 01/03/2013, Planned, Safety, closed 03/22/2013 with no violations.

Inspection #810641, Haswell, CO, opened 01/02/2013, Planned, Safety, No Inspection/Process Not Active, closed 01/02/2013 with no violations.

Inspection #316858752, Council Bluffs, IA, opened 12/03/2012, Complaint, Health, closed 04/09/2014. Two Serious violations (Grouped) for 1910.219(d)(1) and 1910.219(e)(1)(i) were deleted in Formal Settlement.

Inspection #532418, Eads, CO, opened 06/18/2012, Planned, Safety, closed 12/04/2012. One Serious violation cited as 5(a)(1) was issued and deleted in Informal Settlement Agreement.

Inspection #449236, Wichita, KS, opened 05/29/2012, Referral, Safety, closed 08/14/12 with no violations.

Inspection #316036417, Wichita, KS, opened 01/26/2012, Complaint, Health, Two Serious violations were issued for 1910.134(c)(1) and 1910.134(f)(2). One item, 1910.134(f)(2) was affirmed as a final order as other than serious through a Formal Settlement Agreement, closed 04/29/2013

Inspection #316036086, Wichita, KS, opened 01/19/2012, Complaint, Safety, Five Serious violations were issued for 1910.212(a)(3)(ii), 1910.272(m)(1)(i), 1910.272(m)(1)(ii), 1910.272(m)(3), and 1910.304(g)(5). Two items, 1910.212(a)(3)(ii) and 1910.304(g)(5), were affirmed as a final order through a Formal Settlement Agreement, closed 04/29/2013.

Inspection # 316034032, Atchison, KS, opened 10/30/2011, Six Fatalities, Safety, Eight Serious and five Willful violations were issued. The serious violations issued related to: 1910.272(d), 1910.272(e)(1)(ii), 1910.272(i)(1), 1910.272(i)(2), 1910.272(j)(1), 1910.272(m)(1)(i), 1910.272(m)(1)(ii), and 1910.272(m)(3). The Willful violations issued related to: 1910.132(d)(1)(i), 1910.272(j)(2)(ii), 1910.272(j)(3), 1910.272(q)(1), and 1910.307(c)(2)(i). This activity is currently under contest.

Inspection #316034339, Atchison, KS, opened 10/30/2011, Un-programmed Related, Health, No inspection/Other, closed with no violations.

Inspection #77084, Haswell, CO, opened 05/26/2011, Planned, Safety, closed 05/27/2011 with no violations.

Inspection #110486735, Walsh, CO, opened 5/18/2010, Planned, Safety, Five Serious violations were issued as a result of this activity related to: Section 5(a)(1) of the OSH Act, 1910.23(c)(1), 1910.23(d)(1)(i), 1910.219(c)(2)(i), 1910.219(d)(1), 1910.219(e)(3)(i), 1910.272(n)(1), and 1910.307(b). One serious item and three other than serious violations were affirmed as a final order through a formal settlement agreement. The serious violation was related to Section

5(a)(1) of the OSH Act. The three other than serious violations were related to: 1910.23(d)(1)(i), 1910.219(c)(2)(i), and 1910.307(b).

Inspection #312805443, Wichita, KS, opened 12/04/2009, Planned, Health, closed 12/10/2009 with no violations.

Inspection #311788558, Moscow, KS, opened 05/08/2008, Planned, Health, closed 06/17/2008 with no violations.

V. Scope of Agreement:

- ☒ National CSA
☐ Regional CSA (all worksites located within a single Region)

VI. Corporate-Wide Settlement Agreement Justification:

Entering into this agreement will ensure the protection of Bartlett Grain employees at 20 locations, as opposed to only those at the Atchison, Kansas facility where the incident occurred.

Region 7, in communication with Region 5, 6, and 8, will work with RSOL and the NO DEP on developing, implementing and monitoring the CSA. The Acting Area Director and the ARA-EP will be involved in the development and monitoring of the settlement agreement items. CSHOs will be involved in conducting any monitoring or follow-up inspections.

Estimated duration of the agreement is three years.

VII. Size (total # of employees Corporate-Wide):

- ☐ 10 – 100
☐ 101 – 200
☐ 201 – 300
☒ > 301

VIII. Total Number of Employer Sites to be Covered by the Agreement:

- ☐ 2 – 10
☒ 11 – 50
☐ > 51

IX. Authorized Employee Representatives at Initiating Inspection Worksites and Other Worksites Likely to be Affected by the Settlement:

n/a

X. OSHA Regions and Number of Employer Sites Affected by Agreement:

Bartlett Grain Company has facilities in:

Atchison, Kansas (Region 7)
Boise City, Oklahoma (Region 6)
Carrollton, Missouri (Region 7)
Eads, Colorado (Region 8)
Great Bend, Kansas (Region 7)
Haswell, Colorado (Region 8)
Healy, Kansas (Region 7)
South Jacksonville, Illinois (Region 5)
Kansas City-River Rail, Kansas (Region 7)
Kansas City-Fairfax, Kansas (Region 7)
Kansas City-KCT, Missouri (Region 7)
Levant, Kansas (Region 7)
Moscow, Kansas (Region 7)
Scott City, Kansas (Region 7)
St. Joseph, Missouri (Region 7)
Stella, Nebraska (Region 7)
Towner, Colorado (Region 8)
Waverly, Missouri (Region 7)
Wichita, Kansas (Region 7)
Yuma, Colorado (Region 8)

XI. Number of OSHA Area Offices Affected:

This agreement affects Eight Area Offices:

Englewood Area Office – Colorado
Denver Area Office – Colorado
Wichita Area Office – Kansas
Kansas City Area Office – Missouri
Omaha Area Office - Nebraska
Oklahoma City Area Office – Oklahoma
Peoria Area Office – Illinois

XII. Does the employer have any VPP sites?

☒ No

☐ Yes (briefly explain):

XIII. Strategic Plan Initiatives Targeted by the Agreement:

Region V- Directive Number CPL 04-00 (LEP 017), Local Emphasis Program for Grain Handling Facilities (All Region V Area Offices) (Hazards addressed by this program include, but are not limited to: falls, electrocution, engulfment, auger entanglement, struck-by, and combustible dust explosions)

Region VI – Directive Number CPL2 02-00-028, Regional Emphasis Program for Grain Handling Facilities (Region VI Area and District Offices) (Hazards addressed by this program include but are not limited to: fires and explosions from grain dust accumulation, suffocation from engulfment and entrapment in grain bins, falls from heights and crushing injuries and amputations from grain handling equipment)

Region VII – Directive Number CPL 2-14-010C Grain Handling Industry Local Emphasis Program (LEP), St. Louis Area Office (Hazards addressed by this program include, but are not limited to: falls, electrocution, engulfment, auger entanglement, struck-by, and combustible dust explosions/fire, noise, confined spaces, and machine guarding)

Region VII – Directive Number CPL 2-13-001E, Grain Handling Industry Local Emphasis Program (LEP), Omaha Area Office (Hazards addressed by this program include but are not limited to: fall, auger entanglement, combustible dust explosion/fire, electrical, engulfment, and struck-by hazards)

Region VII – Directive Number CPL 02-11-03F, Local Emphasis Program (LEP) for Grain Handling Facilities, Wichita Area Office (Hazards addressed by this program include, but are not limited to: engulfment hazards, fire/explosion hazards created by combustible dust, noise, confined space, machine guarding, and falls.

Region VIII – Directive Number 17-04 (CPL 04-01) Regional Emphasis Program for Grain Handling Facilities (Billings, Bismarck, Sioux Falls, Denver, and Englewood Area Offices) (Hazards addressed by this program include, but are not limited to: suffocations, falls, fires and explosions from combustible dust, electrocutions, and injuries from improperly guarded machinery)

XIV. Hazards/Deficiencies to be Addressed by Agreement:

Hazards posed by the grain handling industry such as, electrical, combustible dust, fire and explosion hazards while working in and around grain elevator structures; engulfment, asphyxiation and amputations hazards when entering into and working inside grain bin structures; fall hazards when working from the top of rolling stock/railroad cars during loading operations; struck by hazards when working around moving machinery and equipment.

XV. Additional Safety and Health Program Enhancements for Consideration:

Respondent agrees to the following enhanced abatement terms:

1. **Corporate-Wide Settlement.** Unless otherwise specified herein, the enhanced abatement terms set forth in this section IV. B will be applied on a corporate-wide basis to all of Respondent's actively operating grain elevator facilities, as identified on Appendix A, attached.
2. **Safety and Health Management System.** Within 60 days of the Final Order Date of this Agreement, Respondent will review its Safety and Health System and make revisions as necessary to ensure it aligns with the core elements contained in OSHA's Recommended Practices for Safety and Health Programs, <https://www.osha.gov/shpguidelines/>. The review and revisions will, in turn, be reviewed by an independent third party for areas of enhancement and/or improvement. These reviews will emphasize the role of safety and health in all actively operating grain elevator facilities by:
 - (a) Addressing management commitment, employee involvement, hazard identification and control, training, and program review;
 - (b) Maintaining a corporate safety manager position which reports directly to the President of Grain, and ensuring his responsibilities are limited to safety and health;
 - (c) Providing that the Safety Manager has the independent authority to stop unsafe operations;
 - (d) Requiring the Safety Manager to seek out and consider implementing best practices through industry involvement, e.g., National Feed and Grain Association (NGFA), and Grain Elevator and Processing Society (GEAPS);
 - (e) Retaining a Safety and Health Assistant (2nd) reporting to the Safety Manager;
 - (f) Scheduling and encouraging attendance at routine safety meetings;
 - (g) Requiring safety and health training to be accomplished initially and annually thereafter.
 - (h) Encouraging employee participation in the Company's safety program, such as by involving non-supervisory employees in safety training, some safety audits, implementing maintenance and housekeeping programs, and by encouraging employees to share feedback to the Safety Department during annual employee safety interviews.
3. **Third-party Consultation and Audit.** Within 60 days of the Final Order Date of this Agreement, Respondent will identify to OSHA a qualified third-party with expertise in grain handling facilities and grain handling safety to conduct comprehensive safety and health audits. OSHA shall have 30 days from the day Respondent identifies the third-party auditor within which to raise reasonable objections about the selected third-party auditor. If those objections cannot be resolved, Respondent shall identify to OSHA another third-party auditor, about whom OSHA shall have 30 days to raise reasonable objections. When OSHA

approves or does not raise objections about a selected auditor, Respondent shall engage the auditor to conduct comprehensive safety and health audits at all of its active operating grain elevator facilities, over the course of three years, using the following schedule: at least one-third of the facilities will be audited in the first year; the remainder of the facilities will be audited by no later than three years from the execution of this Agreement. Audits must include the following:

- (a) An evaluation of the effectiveness of the electronic safety tracking system. The evaluation shall specifically assess the thoroughness and timeliness of data entered and associated follow-up actions required for training, housekeeping, preventative maintenance, and audit recommendations;

- (b) Develop facility-specific audit recommendations, including interim abatements where permanent abatements may not be immediately implemented;

- (c) The facility-specific audit recommendations must, at a minimum, comply with all applicable OSHA standards;

- (d) An evaluation of effectiveness of Respondent's internal audit program;

- (e) Respondent will ensure that audit recommendations are addressed as recommended or in an alternate but equally effective manner. Respondent will develop a facility-specific abatement plan to address audit recommendations that cannot be implemented immediately.

4. **Sharing Audit Findings and Actions.** Audit findings and recommendations from the Third-party Consultation and Audit set forth in Para. IV.B.3., facility-specific abatement plans, and resulting actions, will be shared with the Wichita OSHA Area Office for a period of 3 years from the date of this Agreement in conjunction with the Reporting under Para N.B.19. (Dates of audits, recommendations, and corrective actions must be included in the employer's electronic safety tracking system.)

5. **Electronic Safety System.** Within 60 days of the Final Order Date of this Agreement, Respondent will update its electronic safety system to facilitate and track, at a minimum, the following:

- (a) Safety Policies and procedures;

- (b) Safety Training program;

- (c) Housekeeping and tracking of cleaning operations with regular and frequent entry into the system of completed housekeeping check sheets;

- (d) Preventive Maintenance procedures and actions for covered grain stream processing equipment;

- (e) Employee notification to Respondent of hazards (excluding certain "quick fix" items, which are not included in the RCI system);

- (f) Safety recommendations and correction actions (excluding certain "quick fix" items, which are not included in the RCI system);

- (g) Safety audits, recommendations for correction, and corrective actions taken.

6. **Housekeeping Program.** Within 60 days of the Final Order Date of this Agreement, Respondent will update its housekeeping program and procedures including/detailing management accountability, frequency of activities, cleaning methods to be utilized or prohibited, and specific procedures for blow down operations.
7. **Preventive Maintenance.** Within 60 days of the Final Order Date of this Agreement, Respondent will update its Preventive Maintenance procedures and program including/detailing management accountability. The Preventive Maintenance Program will specifically address testing and when repairs are required, as well as Preventive Maintenance performance records and records retention.
8. **Magnet Inspection Program.** Within 60 days of the Final Order Date of this Agreement, Respondent will update its magnet inspection procedure for all facilities that have elevator leg magnets, including/detailing management accountability.
9. **Emergency Action Plans.** Within 60 days of the Final Order Date of this Agreement, Respondent will update its Emergency Action Plans (EAPs) at each actively operating grain elevator facility. EAPs must include and/or address:
 - (a) Updated maps;
 - (b) Employee accountability methodology, such as sign in logs;
 - (c) Engineering controls;
 - (d) Muster points.
10. **Emergency Drills.** Respondent will conduct at least one emergency drill annually at each actively operating grain elevator facility.
11. **Enhanced Visitor Notice.** Within 60 days of the Final Order Date of this Agreement, Respondent will update its "Notice to Visitors" program at all facilities (the "Red Book") to include updates as items change with contractors and unique hazards are identified.
12. **Equipment Information Compilations.** Within 60 days of the Final Order Date of this Agreement, Respondent will update its equipment information compilations (including equipment manuals where available) in electronic format for all facilities that would include lubrication and maintenance schedules and dates of completion of preventative maintenance activities.
13. **Grain Engulfment Hazards and Rescue.** Respondent will provide their employees annual training on grain bin entry. And, continue their program of outreach, education and training on grain engulfment and rescue in the communities in which they operate. Respondent will acquire and maintain grain bin rescue tubes at all locations. Respondent will maintain its program of working with first responders on grain engulfment rescue, including donating rescue tubes and providing information and assistance as appropriate. In addition, for a three-year period, in the event Respondent becomes aware that a third party experiences a grain bin engulfment fatality at a location within 60 miles of one of Respondent's facilities, Respondent will offer grain bin rescue training to employees, first responders, interested individuals, such as farmers, and industry representatives at a nearby location within six months. Training will not exceed

one event per year. Respondent will notify the OSHA, Wichita Area Office annually during the term of this Agreement of its activities in this area.

14. **Electrical Equipment Evaluation.** Within 60 days of the Final Order Date of this Agreement, Respondent will provide to OSHA an evaluation of the electrical hazard classifications and the electrical equipment throughout the Atchison, Kansas facility to ensure it meets the requirements of the location.

15. **Choked Leg Training.** During each calendar year, Respondent will provide refresher training and annually thereafter on the proper procedure for freeing choked elevator legs.

16. **Installation and Modification Evaluations.** For the term of this Agreement, before making significant new installations of or material modifications to grain stream processing equipment at grain elevators (projects valued at more than \$250,000), and before making significant new installations or material modifications to dust filter collectors at grain elevators (irrespective of cost), not to include minor projects or routine maintenance, repairs or replacements of equipment of like kind, quality and size, Respondent will consult with a qualified third party, who is knowledgeable of grain handling practices and applicable codes, to evaluate the design of the installation or modification for potential safety impacts.

17. **Incident Investigation.** Respondent will document and investigate all deflagrations and/explosions throughout all of the employer's grain facilities. Investigation findings will be shared with all actively operating grain elevator facilities and provided to OSHA for a period of 3 years.

18. **Fall Protection.** Within 60 days of the Final Order Date of this Agreement, Respondent will provide fall protection for workers exposed to falls from the tops of railcars contiguous to or inside a structure and within the loading zone, through installation of a platform, horizontal lifeline or rigid rail system, or other similar equipment. An affixed overhead protection system will be installed and maintained at every one of Respondent's facilities where Respondent loads grain into railcars on any frequency, including country elevators where as few as one or two railcars may be loaded each year. Respondent will provide fall protection training to affected employees on an annual basis, which training shall address Respondent's policy for railcar work in inclement weather (including icy conditions, heavy rains, extreme winds, or lightning observed in the area) to either prohibit work on top of railcars or to require the work to be done in the loading zone with fall protection. Respondent will inform contractors about its fall protection policies.

19. **Reporting.** Respondent will provide quarterly reports to the OSHA Wichita Area Office for 3-year term of this Agreement of addressing the status compliance with all settlement provisions and concessions, including but not limited to:

- (a) Training;
- (b) Housekeeping;
- (c) Preventive maintenance;

(d) Status of completing third party audits performed pursuant to Para. IV.B.3., and addressing facility-specific recommendations developed by the third-party auditor;

(e) Implementation of enhanced abatements enumerated herein;

XV. Does the employer have a history of failing to submit abatement information in a timely manner?

A. ☐ Yes (explain):

B. ☒ No

This has not been identified in Region VII.

XVII. Recommendation for Regional Corporate-Wide Settlement Agreement:

Regional Office(s)

☒ Concur
☐ Concur with Comments
☐ Non-Concur

Regional Solicitors Office

☒ Concur
☐ Concur with Comments
☐ Non-Concur

XVIII. Approval of National Corporate-Wide Settlement Agreement (need concurrences from Regional OSHA and Solicitors Offices above):

National Office

☐ Concur
☐ Concur with Comments
☐ Non-Concur

National Solicitors Office

☐ Concur
☐ Concur with Comments
☐ Non-Concur

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

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

OSHRC DOCKET
NO. 12-0945

v.

BARTLETT GRAIN COMPANY, LP,
Respondent.

OSHA INSPECTION NO. 31603402

ORDER APPROVING STIPULATION AND SETTLEMENT AGREEMENT

The Commission has jurisdiction over the subject matter of the case and over the Parties by virtue of the filing of a timely *Notice of Contest*.

The *Stipulation and Settlement Agreement* ("*Agreement*") between the Parties has been considered. The *Agreement* has been served on all Parties and Authorized Employee Representatives and posted in the manner prescribed by Commission Rule 7(g).¹ Ten days have passed since service and posting and no objection to the *Agreement* has been filed.

The *Agreement* is *APPROVED* under 5 U.S.C. §554(c)(1) and Commission Rule 100(c) as in compliance with those sections. The terms of the *Agreement* are incorporated, in their entirety, by reference in this *ORDER*.

¹ Rules of Procedure of the Occupational Safety and Health Review Commission, 29 C.F.R. § 2200.1-.212, as amended, 55 Fed. Reg. 22780-4 (June 4, 1990)

The *ORDER* shall become final thirty (30) days from the date of its docketing by the Executive Secretary, unless review thereof is directed by a Commission Member within that time. 29 U.S.C. §661(j).

SO ORDERED.

PATRICK B. AUGUSTINE
Judge, OSHRC

Date: _____, 2017