

motions (“Motions”). Complainant and Respondent request that the Stipulations and Motions be made part of the Hearing record and that the Undersigned issue a Final Order. The Stipulations and Motions are as follows:

STIPULATIONS

1. The Complainant as Commissioner of Labor of the State of North Carolina is charged by law with compliance with and enforcement of the provisions of the Occupational Safety and Health Act of North Carolina, Article 16, Chapter 95 of the General Statutes of North Carolina (hereinafter “the Act”). The Review Commission has jurisdiction over the parties and the subject matter to this action.
2. Respondent is a North Carolina corporation, duly organized and existing under the laws of the State of North Carolina, which does business in the State of North Carolina and maintains a place of business in Bladenboro, North Carolina. Respondent is in the business of tobacco farming and is an “employer” within the meaning of N.C.G.S. Section 95-127(10); all of Respondent’s employees referred to in this matter are “employees” within the meaning of N.C.G.S. Section 95-127(9).
3. An Occupational Safety and Health Compliance Officer with the North Carolina Department of Labor conducted an inspection of Respondent’s worksite located in North Carolina (the “Inspection”).
4. As a result of the Inspection, Complainant timely issued a citation consisting of three items, each classified as ‘non-serious’; Items 1 and 2 both pertained to field sanitation; Item 3 pertained to Respondent’s hazardous communication; a proposed penalty of \$900 was assessed with respect to Item 1; a proposed penalty of \$450 was assessed with respect to Item 2; Item 3 was without proposed penalty (such citation herein referred to as the “Original Citation”).
5. Respondent submitted a timely Notice of Contest.
6. A Hearing in this matter was scheduled pursuant to the Rules of Procedure of the Safety and Health Review Commission of North Carolina (the “Rules”).
7. Neither party has any objection, procedural or otherwise, to this Hearing.
8. Respondent posted the Original Citation and the Hearing Order as required by the Rules. Neither Complainant nor Respondent have received notification from any affected employee that such employee, or its representative, wishes to have a say in, or participate as a party in, this matter, or has any objections in connection with this matter including without limitation objection to the reasonableness of any abatement period.
9. Respondent confirms that the violations alleged in the Original Citation, Items 1, 2 and 3 have been abated.

10. The parties agree that upon granting of Complainant's Motion the penalty for each Item designated in the Original Citation as amended pursuant to Complainant's Motion has been calculated in accordance with the standard Field Operations Manual procedure and giving consideration by Complainant to standard mitigating factors.

11. Respondent agrees

* to pay the total penalty assessed in this matter of \$900 within 10 business days of the date of this Final Order.

Payment of the penalty is to be made by check or money order made payable to NC Department of Labor, OSHA Division and should include the inspection number (317720944). Payment should be sent directly to the Department of Labor, addressed to Jack Brinson, Budget Division, and 4 West Edenton Street, Raleigh, North Carolina 27602.

12. The parties agree to bear their own fees, costs and other expenses, including attorney's fees if any, that have been incurred in connection with any stage of these proceedings up to and including the filing of this Order.

13. Complainant and Respondent agree that provided the respective Motions of each party are granted there are no other matters that remain to be decided, and that other than a ruling with respect to the Motions no outstanding issues remain to be resolved by an evidentiary hearing of this matter. The parties agree that this Final Order is a full and final resolution of the claims set out in the underlying Original Citation, as amended pursuant to Complainant's Motion. The parties further agree that (i) the modification of any portion of the Original Citation by Complainant shall not be deemed to be an admission by Complainant that any such portion was alleged without merit, and (ii) none of the foregoing agreements, statements, stipulations and actions taken by Respondent shall be deemed an admission by the Respondent of any of the allegations contained in the Original Citation as amended or waiver of defenses; provided however that in any subsequent proceeding with respect to matters covered by this Final Order brought directly under the Act by Complainant, this Final Order shall have the full force and effect of a final order. The agreements, statements, stipulations and actions herein by Complainant and by Respondent are solely for the purpose of resolving this matter economically and amicably without litigation and shall not be used for any other purpose except for proceedings and matters arising under the Act and Article 21, Chapter 95 of the North Carolina General Statutes. Complainant agrees that provided Respondent complies with the terms of this Final Order it will not issue a 'repeat violation' to Respondent based on: (1) if there are only 5 individuals doing hand labor and there is more than 1 gallon of cooled water per hand laborer with a maximum of 5 hours left of labor for the day; (2) there not being adequate breaks between start time and lunch time and between afternoon return to work time and the end of the day if laborers are allowed to take as long a break at any time as they want, provided a van with functional air conditioning is available if they choose to take a break where it is cool; (3) there not being adequate single use drinking cups available for farm labor workers if there are no more than 5 workers and there are at least 50 individual paper drinking cups of suitable size available in the van which pulls the trailer with the drinking water; (4) there not being a written hazardous communication program if Respondent is then using the written hazardous communication

program which Respondent is using as of this date (provided such written program has been updated as required based on changed conditions considered hazardous).

MOTIONS

Complainant moved to do the following (“Complainant’s Motion”):

***amend the Original Citation by reducing pro-rata the penalty for Items 1 and 2 such that the total penalty for Items 1 and 2 shall be \$900;**

except as set forth in this motion, the Original Citation shall remain unmodified or amended.

Respondent did not object to Complainant’s Motion.

Respondent requested that upon the granting of Complainant’s Motion that the Undersigned consider the following motion by the Respondent (“Respondent’s Motion”), and Respondent confirmed that the violations alleged in the Original Citation as amended have been abated:

***to withdraw Respondent’s Notice of Contest to the Original Citation as amended pursuant to Complainant’s Motion set forth above.**

Complainant did not object to Respondent’s Motion.

FINDINGS OF FACT

Based on the Stipulations at the time of the Hearing and the record, the Undersigned makes the following Findings of Fact:

1. This Court has jurisdiction over the parties and the subject matter of this Hearing.
2. Respondent is subject to the provisions of the Act and jurisdiction of the Safety and Health Review Commission of North Carolina.
3. Neither party has any procedural objection to this Hearing.
4. Complainant, Commissioner of Labor of the State of North Carolina, is an agency of the State of North Carolina charged with the administration and enforcement of the provisions of the Act”).
5. The Stipulations are incorporated by reference as Findings of Fact to the extent necessary to give effect to the provisions of this Order.


CONCLUSIONS OF LAW

The foregoing Findings of Fact are incorporated by reference as Conclusions of Law to the extent necessary to give effect to the provisions of this Order.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

1. That Complainant's Motion is hereby **GRANTED**; and
2. That Respondent's Motion is hereby **GRANTED**.

This the 22 day of January, 2015


R. Joyce Garrett
Administrative Law Judge

CONSENTED TO:

**Jill F. Cramer, Assistant Attorney General
Attorney for Complainant**

**Andy Jackson, Attorney At Law
Attorney for Respondent**

Edwards Farms Inc
2014 - 5633

CONCLUSIONS OF LAW

The foregoing Findings of Fact are incorporated by reference as Conclusions of Law to the extent necessary to give effect to the provisions of this Order.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

1. That Complainant's Motion is hereby **GRANTED**; and
2. That Respondent's Motion is hereby **GRANTED**.

This the 22 day of January, 2015

R. Joyce Garrett
Administrative Law Judge

CONSENTED TO:

**Jill F. Cramer, Assistant Attorney General
Attorney for Complainant**



**Andy Jackson, Attorney At Law
Attorney for Respondent**

CONCLUSIONS OF LAW

The foregoing Findings of Fact are incorporated by reference as Conclusions of Law to the extent necessary to give effect to the provisions of this Order.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

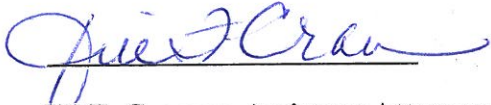
1. That Complainant's Motion is hereby **GRANTED**; and
2. That Respondent's Motion is hereby **GRANTED**.

This the 22 day of January, 2015

R. Joyce Garrett

Administrative Law Judge

CONSENTED TO:



**Jill F. Cramer, Assistant Attorney General
Attorney for Complainant**

**Andy Jackson, Attorney At Law
Attorney for Respondent**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this date served a copy of the foregoing FINAL ORDER upon:

ANDREW M JACKSON
LAW OFFICES OF ANDREW M JACKSON
PO BOX 27
CLINTON NC 28329-0027

JILL CRAMER
NC DEPARTMENT OF JUSTICE
LABOR SECTION
PO BOX 629
RALEIGH NC 27602-0629

by depositing a copy of the same in the United States Mail, Certified Mail, postage prepaid, at Raleigh, North Carolina, and upon:

NC DEPARTMENT OF LABOR
LEGAL AFFAIRS DIVISION
1101 MAIL SERVICE CENTER
RALEIGH NC 27699-1101

by depositing a copy of the same in the NCDOL Interoffice Mail.

THIS THE 28th DAY OF January 2015.

OSCAR A. KELLER, JR.
CHAIRMAN



Nancy D. Swaney
Docket and Office Administrator
NC Occupational Safety & Health Review Commission
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Raleigh, NC 27699-1101
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