

**BEFORE THE NORTH CAROLINA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
RALEIGH, NORTH CAROLINA**



COMMISSIONER OF LABOR FOR)	DOCKET NO: 2015 - 5722
THE STATE OF NORTH CAROLINA)	
)	INSPECTION
Complainant,)	NO: 317945376
)	
)	CSHO ID: H9336
)	
v.)	
TYSON MEXICAN ORIGINAL, INC)	
and its successors)	<u>FINAL ORDER</u>
)	
)	
Respondent.)	

THIS CAUSE coming on pursuant to the Order of Pre-Hearing Conference (“Hearing Order”) at 10:00 A.M. on November 15, 2016. Melissa Taylor, Assistant Attorney General appeared by teleconference as counsel for the Complainant. Mark A. Lies, II, Attorney at Law, Seyfarth Shaw appeared by teleconference for the Respondent.

Pursuant to the Hearing Order a pre-hearing conference (the “Hearing”) was held on November 15, 2016, continued to December 12, 2016 and subsequently to December 29, 2016, for the purpose of considering matters which would simplify the issues and expedite the proceedings in the above referenced case. No affected employee of Respondent, or its representative, attended to have a say in, or participate as a party in, the Hearing. At the Hearing Complainant and Respondent notified the Undersigned that the parties wish to agree upon certain stipulations (“Stipulations”) and to make certain motions (“Motions”).

This Hearing was not an evidentiary hearing and the specific facts and circumstances relevant to the Inspection (hereinafter defined) and the Original Citation (hereinafter defined) were not introduced of record, and such facts and circumstances are not included in the

Stipulations hereinafter set forth. Based on the Original Citation and Respondent's Notice of Contest, it appears that no injuries were sustained.

As a result of this Hearing, 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 (hereinafter "the Act"). The Review Commission has jurisdiction over the parties and the subject matter to this action.
2. Respondent is a foreign corporation which was authorized under the laws of the State of North Carolina on January 29, 1999 to do business in North Carolina. The status of Respondent is classified by the North Carolina Department of the Secretary of State as "Current – Active"; Respondent maintains a place of business in Sanford, North Carolina. Respondent 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. During the period of 1/29/2015 – 5/1/2015 John Jaskolka, an Occupational Safety and Health Officer with the North Carolina Department of Labor, conducted an inspection (the "Inspection") of Respondent's worksite located at 800 East Main Street, Sanford, North Carolina
4. As a result of the Inspection, on July 20, 2015, Complainant issued Citation 01 and Citation 02 as shown on Schedule 1 attached hereto (Citation 01 and Citation 02 are collectively 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.
9. Respondent agrees that Respondent shall continue to use its best efforts to comply with the requirements of the Act.

10. 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 Final Order.

11. Complainant and Respondent agree that provided the respective Motions of each party are granted there are no other issues 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 made solely for the purpose of resolving this matter economically and amicably without further 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.

MOTIONS

Complainant moved to do the following ("Complainant's Motion"):

*** amend Citation 01 Item 001 by deleting the instance described in "B-facility" in its entirety ["instant (b)] and each and every reference thereto in every portion of Item 001; deletion of instance (b) is for settlement purposes and is not an admission that the instance was improperly cited;**

*** amend Citation 01 by deleting the penalty for Item 003 and by grouping Item 003 with Items 002a and 002b; grouped Items 002a, 002b and 003 shall have a total penalty as grouped of \$6,300.00;**

*** amend Citation 01 by grouping Item 4 and Item 5 with a single penalty of \$3,250.00;**

*** amend Citation 02 Item 001 by deleting the penalty;**

the amendments set forth in this motion result in a total penalty due of \$15,850.00; except as set forth in this motion, the Original Citation shall remain unmodified or amended; the penalty of \$15,850.00 shall be paid by Respondent within ten (10) days following the date of this Order; payment is to be by check payable to North Carolina Department of Labor, OSHA

Division (identifying Inspection No. 317945376) and mailed to Budget-Collections, North Carolina Department of Labor, 1101 Mail Service Center, Raleigh, North Carolina 27699-1101.

Respondent did not object to Complainant's Motion.

Respondent confirmed that the violations alleged in the Original Citation as amended have been abated except with respect to Citation 01 Item 001 for which abatement shall be as follows:

(1) Reimelt room - abatement will consist of installing vents to the exterior wall. Respondent shall take all feasible steps to install a compliant combustible dust collection system and will keep Complainant fully informed of its actions and the expected action dates as it enters into a contract for the purchase, installation, and operation of the system. Respondent shall complete the installation of vents to the exterior wall no later than June 1, 2017. In the event this deadline is not able to be met by Respondent, Respondent shall request an extension of time to complete the abatement by submitting a "Petition for Modification of Abatement Date" no later than 30 days prior to June 1, 2017. Respondent shall provide Complainant written updates every thirty (30) days regarding the progress of the abatement. (i.e. - approval date of the abatement, contracting date, installation date, etc.)

(2) DLT room - abatement will consist of installing a wet air scrubber. Respondent shall take all feasible steps to install a compliant combustible dust collection system and will keep Complainant fully informed of its actions and the expected action dates as it enters into a contract for the purchase, installation, and operation of the system. Respondent shall complete the installation of wet air scrubber no later than June 1, 2017. In the event this deadline is not able to be met by Respondent, Respondent shall request an extension of time to complete the abatement by submitting a "Petition for Modification of Abatement Date" no later than 30 days prior to June 1, 2017. Respondent shall provide Complainant written updates every thirty (30) days regarding the progress of the abatement. (i.e. - approval date of the abatement, contracting date, installation date, etc.);

(3) During the period while the above abatement actions are being taken, the Respondent will follow the following housekeeping measures:

a. Reimelt Room - Is cleaned daily by a Sanitation Team Member. The mezzanine and bottom floor levels are cleaned by using a brush to remove particulates off the walls and pipes. A broom then is used to sweep up the particulates from the upper and lower levels. A Reimelt Room operator feeds the bins each shift, stocks the ingredients and removes the bags. The operator also wipes down the bins and bag storage area.

b. The Receiving Hopper is located in the Reimelt room. It collects fugitive dust from the bins as they are filled. This equipment is used separately from the primary ingredient (Sugar & Salt) dust collector. The Receiving Hopper stores the residue in a cylinder shaped hopper at the bottom of the holding tank. The hopper is emptied once/shift in a 35 gallon barrel.

c. The DLT Room walls, conveyors, and equipment are washed down weekly with water and chemical detergents. It is swept daily by Team Members on each shift. Four primary seasonings are used in this room.

Respondent requested that upon the granting of Complainant's Motion that the Undersigned consider the following motion by the Respondent ("Respondent's Motion"):

***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 29th day of December, 2016.


R. Joyce Garrett
Administrative Law Judge

CONSENTED TO:

Complainant

Melissa Taylor, Assistant Attorney General
Attorney for Complainant

Respondent

_____ Name printed Title _____

and

Mark A Lies, II, Attorney at Law, Seyfarth Shaw LLP
Attorney for Respondent

Frederick T. Smith, Attorney at Law, Seyfarth Shaw LLP

Tyson Mexican Original, Inc
2015-5722

This the 12th day of December, 2016.

R. Joyce Garrett
Administrative Law Judge

CONSENTED TO:

Complainant

Melissa Taylor

Melissa Taylor, Assistant Attorney General
Attorney for Complainant

Respondent

Charles Starnes
Name printed

Title Assistant Attorney General

and

Mark A. Lies, II

Mark A. Lies, II, Attorney at Law, Seyfarth Shaw LLP
Attorney for Respondent

Frederick T. Smith

Frederick T. Smith

Frederick T. Smith, Attorney at Law, Seyfarth Shaw LLP

Schedule A

CITATION 01 (Serious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001	NCGS 95-129(1)	7/28/2015	\$6,300.00
Grouped			
002a	29 CFR 1910.146(d)(3)(i)	9/3/2015	\$6,300.00
002b	29 CFR 1910.146(f)(9)	9/3/2015	\$ 0.00
003	29 CFR 1910.146(g)(1)	8/13/2015	\$6,300.00
004	29 CFR 1910.178(c)(2)(vii)	7/28/2015	\$3,250.00
005	29 CFR 1910.307(c)	7/28/2015	\$3,250.00

CITATION 02 (NonSerious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001	29 CFR 1910.1026(d)(1)	7/28/2015	\$ 975.00

CERTIFICATE OF SERVICE

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

MARK A. LIES, II
SEYFARTH SHAW
131 S. DEARBORN ST.
SUITE 2400
CHICAGO, IL 60603

MELISSA H. TAYLOR
NC DEPARTMENT OF JUSTICE
LABOR SECTION
P O BOX 629
RALEIGH, NC 27602-0629

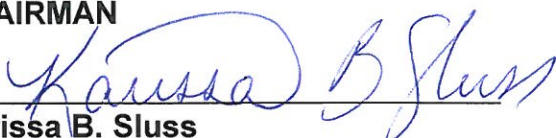
by depositing a copy of the same in the United States Mail, First Class;

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 6 DAY OF January 2017.

ARLENE K. EDWARDS
CHAIRMAN


Karissa B. Sluss
Docket and Office Administrator
NC Occupational Safety & Health Review Commission
1101 Mail Service Center
Raleigh, NC 27699-1101
TEL.: (919) 733-3589
FAX: (919) 733-3020