

OSHANC 2016-5803

BEFORE THE NORTH CAROLINA OCCUPATIONAL SAFETY AND HEALTH

**FILED**

REVIEW COMMISSION

APR 26 2017

RALEIGH, NORTH CAROLINA

NC Occupational & Safety  
Review Commission

COMMISSIONER OF LABOR FOR )  
THE STATE OF NORTH CAROLINA )

DOCKET NO.: OSHANC 2016-5803

COMPLAINANT, )

INSPECTION NO.: 318024122

v. )

CSHO ID.: D4557

SMITHFIELD FARMLAND CORP. )  
*and its successors* )

ORDER

RESPONDENT. )

THIS CAUSE came on for hearing and was heard before the undersigned R. Joyce Garrett, Administrative Law Judge for the North Carolina Occupational Safety and Health Review Commission, on April 19, 2017, at 10:30 A.M. pursuant to a Notice of Hearing. Melissa H. Taylor, Assistant Attorney General, North Carolina Department of Justice, appeared by teleconference for Complainant. Attorney Susan F. Wiltsie and Attorney Melissa A. Romanzo of Hunton & Williams LLP, appeared by teleconference for the Respondent. No affected employee of Respondent, or its representative, attended to have a say in, or participate as a party in, the Hearing.

At the time of the Hearing the parties agreed upon and consented to the following Stipulations.

STIPULATIONS

1. Respondent and Complainant waive the presence of a court reporter at the Hearing and the making of a transcript of the Hearing.
2. Respondent is a foreign corporation, authorized to do business in North Carolina on October 22, 1981, and is active and current. Respondent maintains a place of business in Clinton, North Carolina.

*BW*

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3. Complainant and Respondent have no objection, either procedural or otherwise, to this Hearing and both parties consent to the conduct of this Hearing by the Undersigned and to entry of this Order.

4. During the period of October 8, 2015 and February 16, 2016, Tim Juneau, an Occupational Safety and Health Officer with the North Carolina Department of Labor, conducted an inspection of Respondent's worksite located at 424 E. Railroad St., Clinton, North Carolina.

5. As a result of the inspection, on March 30, 2016, Complainant issued the following Citations (herein referred to collectively as the "Original Citation"):

**CITATION 01 (Repeat Serious)**

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001	29 CFR 1910.119(n)	5/16/2016	\$14,000.00
002	29 CFR 1910.120(q)(3)(iv)	4/25/2016	\$10,000.00
003	29 CFR 1910.212(a)(1)	4/7/2016	\$ 6,000.00
004	29 CFR 1910.335(a)(1)(i)	4/25/2016	\$10,000.00

**CITATION 02 (Serious)**

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001	29 CFR 1910.119(j)(4)(iii)	4/25/2016	\$ 7,000.00
002	29 CFR 1910.119(j)(4)(iv)	4/7/2016	\$ 3,750.00
003	29 CFR 1910.119(j)(5)	4/7/2016	\$ 3,750.00
004	29 CFR 1910.134(g)(1)(i)(A)	4/7/2016	\$ 7,000.00
005	29 CFR 1910.147(c)(4)(i)	5/16/2016	\$ 7,000.00
006	29 CFR 1910.332(b)(1)	4/25/2016	\$ 3,750.00
007	29 CFR 1910.146(f)(7)	5/16/2016	\$ 7,000.00
008	29 CFR 1910.1200(h)(1)	4/25/2016	\$ 7,000.00

6. The Respondent submitted a timely Notice of Contest dated May 10, 2016.

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

8. Complainant and Respondent agree that provided the respective Motions of each party are granted (a) 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; (b) this Order is a full and final resolution of the claims set out in the underlying Original Citation, as amended pursuant to Complainant's Motion; (c) the modification of any portion of the Original Citation by Complainant shall not be deemed to be an

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admission by Complainant that any such portion was alleged without merit, (d) none of the 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 Order brought directly under the Occupational Safety and Health Act of North Carolina (hereinafter referred to as the "Act") by Complainant, this Order shall have the full force and effect of a final order; and (e) 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; (f) 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 and to specific factors applicable to Respondent; and (g) there has been no employee objection to the reasonableness of any abatement period.

9. Respondent agrees to continue to use its best efforts to comply with the requirements of the Act.

### MOTIONS

Complainant moved to make the following amendments to the Original Citation ("Complainant's Motion"):

- (a) Citation 1, Item 1 is reclassified to Serious with a penalty of \$10,000.00;
- (b) Citation 1, Item 2 is reclassified to Serious with a penalty of \$8,000.00;
- (c) Citation 1, Item 3 is reclassified to Serious with a penalty of \$4,500.00 and the citation is amended so that the language of Citation 1, item 3, instance (a) is deleted;
- (d) Citation 1, Item 4 is deleted;
- (e) Citation 2, Item 1 remains as cited with a penalty of \$7,000;
- (f) Citation 2, Item 2 is reclassified to Nonserious with a penalty of \$2,500.00;
- (g) Citation 2, Item 3 penalty is reduced to \$2,437.50;
- (h) Citation 2, Item 4 is deleted;
- (i) Citation 2, Item 5 penalty is reduced to \$4,550.00;
- (j) Citation 2, Item 6 penalty is reduced to \$2,275.00

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(k) Citation 2, Item 7 penalty is reduced to \$4,550.00; and

(l) Citation 2, Item 8 penalty is reduced to \$4,550.00.

**Except as set forth in this motion, the Original Citation shall remain unmodified or amended and Respondent shall pay the new proposed penalty of \$50,362.50 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.318024122) 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 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 objection, procedural or otherwise, 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**. Respondent shall pay the penalty of **\$50,362.50** in the manner set forth in Complainant's Motion.

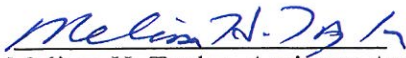
This 19<sup>th</sup> day of April, 2017.

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R. Joyce Garrett  
Administrative Law Judge

**CONSENTED TO:**

**For Complainant**



Melissa H. Taylor, Assistant Attorney General  
North Carolina Department of Justice

**For Respondent**

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Susan F. Wiltsie, Attorney At Law  
Hunton & Williams LLP

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Melissa A. Romano, Attorney at Law  
Hunton & Williams LLP

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**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**. Respondent shall pay the penalty of **\$50,362.50** in the manner set forth in Complainant's Motion.

This 19<sup>th</sup> day of April, 2017.

---

R. Joyce Garrett  
Administrative Law Judge

**CONSENTED TO:**

**For Complainant**

---

Melissa H. Taylor, Assistant Attorney General  
North Carolina Department of Justice

**For Respondent**

  
 Susan F. Wiltsie, Attorney At Law  
 Hunton & Williams LLP

  
 Melissa A. Romanzo, Attorney at Law  
 Hunton & Williams LLP



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 19<sup>th</sup> day of April, 2017.

  
\_\_\_\_\_  
R. Joyce Garrett  
Administrative Law Judge

**CONSENTED TO:**

**For Complainant**

\_\_\_\_\_  
Melissa H. Taylor, Assistant Attorney General  
North Carolina Department of Justice

**For Respondent**

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Susan F. Wiltsie, Attorney At Law  
Hunton & Williams LLP

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Melissa A. Romanzo, Attorney at Law  
Hunton & Williams LLP

CERTIFICATE OF SERVICE

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

SUSAN F. WILTSIE  
HUNTON & WILLIAMS  
2200 PENNSYLVANIA AVE. N.W.  
WASHINGTON, D.C. 20037-1701

MELISSA A. ROMANZO  
HUNTON & WILLIAMS  
101 S. TRYON ST.  
SUITE 3500  
CHARLOTTE, NC 28280

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 26 DAY OF April 2017.

ARLENE K. EDWARDS  
CHAIRMAN

  
Karissa B. Sluss

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