

BEFORE THE NORTH CAROLINA OCCUPATIONAL SAFETY AND HEALTH

REVIEW COMMISSION

RALEIGH, NORTH CAROLINA

SEP 8 2017

NC Occupational & Safety

Review Commission

COMMISSIONER OF LABOR FOR  
THE STATE OF NORTH CAROLINA

Complainant,

v.

MOUNTAIRE FARMS OF NC CORP.  
and its successors

Respondent.

DOCKET NO: 2016 - 5841

INSPECTION NO: 18031614

CSHO ID: I0931

FINAL ORDER

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 August 29, 2017, at 10 A.M. pursuant to a Notice of Hearing. Larissa S. Williamson, Special Deputy Attorney General, North Carolina Department of Justice, appeared by teleconference for Complainant. Attorney Tressi L. Cordaro and Attorney Ted N. Kazaglis of Jackson & Lewis P.C. 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 Delaware corporation which was authorized to do business in North Carolina on October 7, 1985, and is active and current under the laws of the State of North Carolina. Respondent maintains a place of business in Lumber Bridge, North Carolina.
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. Between January 26, 2016 and June 27, 2016, Chris Moore, an Occupational Safety and Health Officer with the North Carolina Department of Labor, conducted an inspection of Respondent's worksite located at 17269 NC Hwy 71 North in Lumber Bridge, North Carolina.

5. As a result of the inspection, on June 29, 2016, Complainant issued the following Citations and Notification of Penalty (collectively herein referred to as the "Original Citation"):

**CITATION 01 (Serious)**

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001a	29 CFR 1910.146(d)(3)(iv)	Immediately Corrected	\$3750.00
001b	29 CFR 1910.146(d)(5)(i)	Immediately Corrected	Grouped
001c	29 CFR 1910.146(d)(5)(ii)	Immediately	Grouped
001d	29 CFR 1910.146(d)(6)	Immediately	Grouped
001e	29 CFR 1910.146(e)(1)	Immediately Corrected	Grouped

**CITATION 02 (NonSerious)**

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001	29 CFR 1910.1026(l)(2)(i)(A)	July 26, 2016	\$1125.00

6. The Respondent submitted a timely Notice of Contest, dated August 25, 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 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.

### MOTIONS

Complainant moved to make the following amendments to the Original Citation (“Complainant’s Motion”):

- a) **Delete Citation 01, Item 001a;**
- b) **Delete Citation 01, Item 001b;**
- c) **Delete Citation 01, Item 001c;**
- d) **Delete Citation 01, Item 001d;**
- e) **Reclassify Citation 01, Item 001e as non-serious with \$500.00 penalty; and**
- f) **Delete Citation 02, Item 001 with its associated penalty;**

**except as set forth in this motion, the Original Citation shall remain unmodified or amended and Respondent shall pay the proposed penalty of \$ 500.00 within ten (10) days following the date of this Final Order (payment is to be by check payable to North Carolina Department of Labor, OSHA Division (identifying Inspection No.318031614) 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;
- Respondent agrees to:
  1. continue to use its best efforts to comply with the requirements of the Act;
  2. comply with the requirements of 29 CFR 1910.146 for all spaces identified as permit required confined spaces;
  3. consistent with 29 CFR 1910.146, ensure that all employee entry into permit required confined spaces are properly documented and provide such documentation to NCDOL upon request;
  4. consistent with 29 CFR 1910.146, frequently review its permit program for permit required confined spaces to ensure that its employees adhere to the requirements;
  5. train and/or retrain its employees regarding the hazards associated with entering its permit required confined spaces within 60 days of the date of this Final Order; and
  6. Train and/or retrain its employees on the Chromium VI standard and include such training in its orientation program within 60 days of the date of this Final Order.

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 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.

OSHANC 2016-5841

**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 \$500.00 in the manner set forth in Complainant's Motion.

This 29th day of August, 2017.

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R. Joyce Garrett  
Administrative Law Judge

**CONSENTED TO:**

**For Complainant**



Larissa S. Williamson, Special Deputy Attorney General  
North Carolina Department of Justice

**For Respondent**

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Tressi L. Cordaro, Attorney at Law  
Jackson & Lewis P.C.

**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 \$500.00 in the manner set forth in Complainant's Motion.

This 29th day of August, 2017.

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R. Joyce Garrett  
Administrative Law Judge

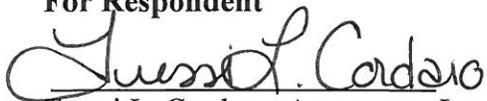
**CONSENTED TO:**

**For Complainant**

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Larissa S. Williamson, Special Deputy Attorney General  
North Carolina Department of Justice

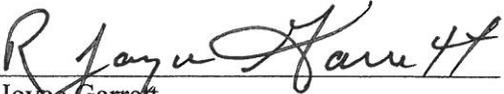
**For Respondent**

  
Tressi L. Cordaro, Attorney at Law  
Jackson & Lewis P.C.

**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 \$500.00 in the manner set forth in Complainant's Motion.

This 29th day of August, 2017.

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

**CONSENTED TO:**

**For Complainant**

\_\_\_\_\_  
Larissa S. Williamson, Special Deputy Attorney General  
North Carolina Department of Justice

**For Respondent**

\_\_\_\_\_  
Tressi L. Cordaro, Attorney at Law  
Jackson & Lewis P.C.

**CERTIFICATE OF SERVICE**

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

TRESSI L. CORDARO  
JACKSON LEWIS  
10701 PARKRIDGE BLVD  
SUITE 300  
RESTON, VA 20191

LARISSA S. WILLIAMSON  
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 8 DAY OF September 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  
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