

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

**COMMISSIONER OF LABOR FOR  
THE STATE OF NORTH CAROLINA**

**Complainant,**

**v.**

**VALLEY PROTEINS, INC.  
and its successors**

**Respondent.**

) **DOCKET NO: 2017 - 5893**

) **INSPECTION NO: 318087368**

) **CSHO ID: K0085**

**FILED  
JAN 10 2018**

**ORDER**

**NC Occupational & Safety  
Division Commission**

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 December 20, 2017, at 10 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 Thomas H. Davis, Jr. of Poyner Spruill, Raleigh, North Carolina, 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 which was authorized to do business in North Carolina on November 13, 1987; it is active and current and maintains a place of business in Fayetteville, 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. During the period between September 16, 2016 and March 16, 2017, Safety Compliance Officer Mark Rasdall and Safety Compliance Officer in training Marci Hanzal, employed by the North Carolina Department of Labor, conducted an inspection of Respondent's worksite located at 1309 Industrial Drive, Fayetteville, North Carolina, North Carolina.

5. As a result of the inspection, on March 16, 2017, Complainant issued the following Citation and Notification of Penalty (herein referred to as the "Original Citation"):

**CITATION 01 (Serious)**

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001	NCGS § 95-129(1)	Immediately upon receipt	\$7,000.00

6. The Respondent submitted a timely Notice of Contest, dated March 16, 2017.

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 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; and (f) 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. Respondent further agrees and confirms the following:

- all rolling stock of Respondent is currently compliant with DOT motor vehicle safety requirements; compliance will be demonstrated by the completion of the Driver's Vehicle Inspection Record (DVIR); a copy of the DVIR will be maintained on the vehicle.
- Respondent will maintain all of Respondent's rolling stock compliant with DOT motor vehicle safety requirements;
  - Respondent will amend its Driver's Vehicle Inspection Policy and Status Board document as follows:
    - Include ladders on the list of Driver Pre-trip Inspection list provided in paragraph 7 of page 3; and

- Include ladders on the list of Driver Post-trip inspection report list provided on page 4;
  - Respondent will also amend its DVIR to include ladders under the inspection checklist for trailers.
- Respondent will continue with its company-wide fall protection training which will specifically include requirements to use portable ladders or gantries in lieu of other fall protection where available;
- Respondent will post signage to prohibit any individuals needing access to the tops of trailers or other rolling stock at terminals from utilizing any form of fall protection other than portable ladders and/or gantries;
- Respondent will include dates, revision dates, and authorship of all JSA, SOPS, and any other developed policies and procedures;
- If a trailer or truck of Respondent is designed or comes with fixed ladders, Respondent will inspect those ladders to ensure they are not defective or damaged and are in compliance with the manufacturer's specifications; these inspections shall be conducted daily, shall be documented on the DVIR form, and shall be maintained on the truck/trailer;
- Respondent will modify the form for issuance of Fall Protection for Drivers to include:
  - The date the driver received training;
  - A space to be completed by the driver that the driver has or has not received the fall protection at the time of training;
  - If the employee did not receive the fall protection at the time of training, the form will indicate the date when the fall protection was issued which will be initialed by the employee;
  - A space will be provided so the employee can print and sign his/her name to the form and date the form; and
  - The form will indicate what type and model of fall protection was issued to the driver;
- Respondent agrees that Complainant will conduct a follow-up inspection to document compliance with the agreements made by Respondent in this Paragraph 9; Complainant agrees that the follow-up inspection will be conducted 6 months after the date this Order is filed with the North Carolina Occupational Safety and Health Review Commission.

### MOTIONS

Respondent moved to withdraw its Motion To Dismiss filed June 15, 2017 ("Respondent's Motion to Withdraw Motion to Dismiss"); Complainant did not object to Respondent's Motion to Withdraw Motion to Dismiss.

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

- a) Delete Citation 01 Item 001, and its associated penalty, in its entirety.

Respondent did not object to Complainant's Motion.

Respondent requested that upon the granting of Respondent's Motion to Withdraw Motion to Dismiss and 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.

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

1. That Respondent's Motion to Withdraw Motion to Dismiss is hereby **GRANTED**;

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

3. That Respondent's Motion is hereby **GRANTED**.

This 20<sup>th</sup> day of December, 2017.

---

R. Joyce Garrett  
Administrative Law Judge

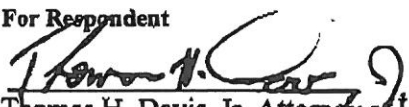
**CONSENTED TO:**

**For Complainant**

---

Melissa H. Taylor, Assistant Attorney General  
North Carolina Department of Justice  
North Carolina Bar Number: 19302

**For Respondent**

  
Thomas H. Davis, Jr. Attorney at Law  
Poyner Spruill  
North Carolina Bar Number: 7084

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

3. That Respondent's Motion is hereby **GRANTED**.

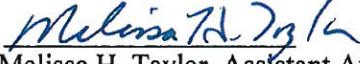
This 20<sup>th</sup> day of December, 2017.

---

R. Joyce Garrett  
Administrative Law Judge

**CONSENTED TO:**

**For Complainant**

  
Melissa H. Taylor, Assistant Attorney General  
North Carolina Department of Justice  
North Carolina Bar Number: 19302


**For Respondent**

---

Thomas H. Davis, Jr. Attorney at Law  
Poyner Spruill  
North Carolina Bar Number: 7084

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

This 20<sup>th</sup> day of December, 2017.

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

**CONSENTED TO:**

**For Complainant**

\_\_\_\_\_  
Melissa H. Taylor, Assistant Attorney General  
North Carolina Department of Justice  
North Carolina Bar Number: 19302

**For Respondent**

\_\_\_\_\_  
Thomas H. Davis, Jr. Attorney at Law  
Poyner Spruill  
North Carolina Bar Number: 7084

CERTIFICATE OF SERVICE

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

THOMAS H. DAVIS, JR.  
POYNER SPRUILL  
301 FAYETTEVILLE ST.  
RALEIGH, NC 27601

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 10<sup>th</sup> DAY OF January 2018.

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