

**FILED**

MAY - 9 2022

NC Occupational & Safety  
Review Commission

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

<b>COMMISSIONER OF LABOR FOR</b>	)	<b>DOCKET NO: 2019 - 6082</b>
<b>THE STATE OF NORTH CAROLINA</b>	)	
	)	<b>INSPECTION</b>
	)	<b>NO: 318128758</b>
<b>Complainant,</b>	)	
	)	<b>CSHO ID: Z7445</b>
<b>v.</b>	)	
	)	
<b>SANDERSON FARMS, INC.,</b>	)	<b>DECISION AND ORDER</b>
<b>(PROCESSING DIVISION)</b>	)	
<b>and its successors</b>	)	
<b>Respondent.</b>	)	
	)	

*Appearances:*

Melissa H. Taylor, Special Deputy Attorney General, North Carolina Department of Justice, Raleigh, North Carolina

For Complainant

Travis W. Vance, Esq., Fisher & Phillips LLP, Charlotte, North Carolina

For Respondent

*Before:* R. Joyce Garrett – North Carolina Administrative Law Judge

## DECISION AND ORDER

### I. PROCEDURAL HISTORY<sup>1</sup>

Pursuant to a Notice of Hearing filed June 7, 2021, an evidentiary hearing was held via “LifeSize” video conferencing platform<sup>2</sup> on July 12, and 13, 2021 as continued to August 11, 12, and 13, 2021; due to health issues of a witness for Complainant the hearing, pursuant to Motions on August 25, 2021 and October 22, 2021, had to be further continued. Accordingly, pursuant to an additional Notice of Hearing filed January 7, 2022 the hearing was continued on February 8 and 9, 2022.

Both Complainant and Respondent presented opening statements.

At the Hearing the following witnesses were called to testify by Complainant: (1) John Hammonds; (2) Kristoffer McGill; (3) Chris Eavenson; (4) Billy Pitts; (5) Paul Smith; (6) Roosevelt Kelly; (7) Compliance Safety and Health Officer Julie Martin<sup>3</sup>; (8) District X Supervisor Lafayette Atkinson; and (9) Melvin Newsom.

The following witnesses were called to testify by Respondent: (1) District X Supervisor Lafayette Atkinson; (2) Chris Eavenson; and (3) Dr. David Brani.

At the close of Complainant’s case, Respondent moved for a directed verdict, which motion was objected to by Complainant. Respondent’s motion was denied.

At the close of Respondent’s case, the parties presented closing arguments; the parties also moved to be allowed to present post-hearing briefs, which motion was granted, with briefs being due April 22, 2022. Subsequently on April 19, 2022 the parties jointly agreed to waive the submission of post-hearing briefs.

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<sup>1</sup> The Hearing was conducted via Lifesize video conferencing; the audio and video were recorded through Lifesize and referred to as the “Recording”; the Recording is the official record of the Hearing. A transcript was prepared.

<sup>2</sup> Respondent filed Respondent’s Motion for In-Person Trial dated June 21, 2021, which motion was objected to through Complainant’s Response To Respondent’s Motion For In-Person Hearing dated June 28, 2021. An Order Denying Respondent’s Motion For In-Person Trial dated June 29, 2021 was filed by the undersigned stating in part: “Numerous remote hearings have been held successfully by the Review Commission. The Lee House where an in-person hearing would be conducted is not yet open to the public due to Covid 19 and the virus variants.”

<sup>3</sup> CHOS Martin completed her direct examination during the hearing dates of August 11, 12, and 13, 2021. However due to various health issues CSHO Martin was not able to further testify and could not be cross-examined by Respondent. The parties agreed/stipulated that CSHO Martin’s testimony will be stricken in its entirety from the record, as well as evidence introduced as part of her testimony. The parties further agreed/stipulated that District X Supervisor Lafayette Atkinson would testify in lieu of CSHO Martin. The detailed specifics of the agreements/stipulations of the parties concerning this matter are set forth in the parties January 26, 2022 Joint Stipulation Regarding Witness Testimony marked as Court Exhibit 1, and the Order Striking Witness Testimony and the Order Adopting Joint Stipulation Regarding Witness Testimony filed in this case.

Pursuant to Rule .0601 of the Rules of Procedure of The North Carolina Safety and Health Review Commission (the "Commission Rules"), after hearing and carefully considering all the evidence and the arguments of counsel, the Court issues this Decision and Order as its findings of fact and conclusions of law.

## II. INITIAL JOINT STIPULATIONS

Complainant and Respondent, at the beginning of the Hearing, agreed upon and stipulated to the following ("Initial Joint Stipulations"):

- (1) the Hearing in this matter shall be conducted via the video conferencing platform known as "Lifesize";
- (2) the presence of a court reporter during the Hearing is waived;
- (3) the Hearing's audio and video will be recorded through Lifesize (the "Recording");
- (4) the Recording will be the official record of the Hearing;
- (5) the Recording will be made available to all counsel after the Hearing concludes (the Host will send a link to the Recording as soon as is practicable after the Hearing concludes);
- (6) the Administrative Law Judge shall control when the Hearing is on and off the record;
- (7) the Hearing will be deemed to have taken place in Raleigh, North Carolina;
- (8) Respondent is a Mississippi corporation that does business in North Carolina;
- (9) Respondent is in the business of producing, processing, marketing, and distributing fresh and frozen chicken and other prepared food items;
- (10) Respondent operates a processing facility located at 2076 NC Hwy 20 West, St. Pauls, North Carolina (which is referred to as the "Worksite");
- (11) The North Carolina Department of Labor conducted an inspection of the Worksite on June 15, 2018 through December 13, 2018; Compliance Safety and Health Officer Julie Martin conducted the inspection for the North Carolina Department of Labor;
- (12) The inspection arose out of an accident that occurred at approximately 2 a.m. at the Worksite on June 14, 2018;
- (13) The North Carolina Occupational Safety and Health Review Commission has jurisdiction over this action; and
- (14) Respondent is a covered employer under the NC Occupational Safety and Health Act.

### III. THE CITATION AND NOTIFICATION OF PENALTY

#### SUMMARY OF CITATION

Complainant issued to Respondent a 3 item citation, one item having two subparts (the "Citation") alleging serious violations of the Occupational Safety and Health Act of North Carolina, Article 16, Chapter 95 of the General Statutes of North Carolina ("Act") with a total proposed penalty of \$16,600.

#### Citation 01 – Type of Violation: Serious

Item Number	Standard	Abatement Date	Penalty
Grouped			
001a	29 CFR 1910.147(c)(4)(i)	Immediately Upon Receipt	\$6,300.00
001b	29 CFR 1910.147(f)(3)(ii)	Immediately Upon Receipt	0.00
002	29 CFR 1910.147(c)(5)(ii)(D)	Immediately Upon Receipt	\$6,300.00
003	29 CFR 1910.212(a)(1)	Immediately Upon Receipt	\$4,000.00

#### SPECIFIC ITEMS IN CITATION

##### A. Citation 01, Item 001a and Citation 01, Item 001b – Type: Serious

Complainant alleged a serious violation of the Act in Citation 01, Item 001a and Citation 01 Item 001b as follows:

The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for injury or illness.

##### Citation 01, Item 001a

29 CFR 1910.147(c)(4)(i): Procedures were not developed, documented and utilized for the control of potentially hazardous energy when employees were engaged in the activities covered by this section:

- a) facility, Picking Room – where 3<sup>rd</sup> shift sanitation workers cleaned equipment to include Quill Puller #2 (Equipment #: A2-18, Marel Stork, PIT 2000, data plate not visible) without utilizing the equipment specific lockout procedure. On or about June 14, 2018, this condition resulted in the amputation of three fingers from an employee's left hand.

Date By Which Violation Must Be Abated: Immediately Upon Receipt  
Proposed Penalty: \$6,300.00



**Citation 01, Item 001b**

29 CFR 1910.147(f)(3)(ii): Group lockout or tagout devices were not used in accordance with procedures required by 29 CFR 1910.147(c)(4) including, but not necessarily limited to, the specific requirements listed in 29 CFR 1910.147(f)(3)(ii)(A) through 29 CFR 1910.147(f)(3)(ii)(D):

a) facility, Master Control Room, Picking Room – where the employer allowed the sanitation workers to clean and sanitize the equipment on Line #2 to include, but not limited to Quill Puller #2 (Equipment #: A2-18, Marel Stork, PIT 2000, data plate not visible) and the employer did not document and utilize a group lockout/tagout procedure where each employee affixed a personal lockout device. In addition, the employer did not document and provide instruction on how the authorized employee was to ascertain the exposure status of each employee. On or about June 14, 2018, this condition resulted in the amputation of three fingers from an employee's left hand.

Date By Which Violation Must Be Abated: Immediately Upon Receipt  
Proposed Penalty: \$ 0.00

(Citation and Notification of Penalty at Pages 10 and 11, of 14)

**B. Citation 01, Item 002 – Type: Serious**

Complainant alleged a serious violation of the Act in Citation 01, Item 002 as follows:

29 CFR 1910.147(c)(5)(ii)(D): Lockout devices and tagout devices did not indicate the identity of the employee applying the devices(s)

a) facility, Master Control Room of Picking Room - where sanitation employees were cleaning line #2 and used locks for group lockout of the all line equipment to include Quill Puller #2 (Equipment #: A2-18, Marel Stork, PIT 2000, data plate not visible) which did not identify the employees applying the lockout devices. The locks identified during the inspection were either blank/without identification or defaced.

Date By Which Violation Must Be Abated: Immediately Upon Receipt  
Proposed Penalty: \$ 6,300.00

(Citation and Notification of Penalty at Page 12 of 14)

**C. Citation 01, Item 003 – Type: Serious**

Complainant alleged a serious violation of the Act in Citation 01, Item 003 as follows:

29 CFR 1910212.(a)(1): One or more methods of machine guarding was not provided to protect the operator and other employees in the machine area from hazards such as those created by point of operation, ingoing nip points, rotating parts, flying chips and sparks:

a) facility, Picking Room – where Quill Puller #2 (Equipment #: A2-18, Marel Stork, PIT 2000, data plate not visible) was not fully guarded in that the equipment was missing sides and rear guards to protect employees from the rotating pinions creating a caught-in hazard.

Date By Which Violation Must Be Abated: Immediately Upon Receipt  
Proposed Penalty: \$ 4,000.00

(Citation and Notification of Penalty at Page 13 of 14)

**IV SUMMARY BACKGROUND**

During the early morning hours of June 14, 2018, a worker on the sanitation shift at a poultry processing plant operated by Sanderson Farms, Inc. (Processing Division) suffered an amputation injury when his hand got caught in the moving parts of Quill Puller #2 he was scrubbing down. A compliance safety and health officer (CSHO) of the Occupational Safety and Health Administration investigated the incident and recommended that Sanderson Farms, Inc. (Processing Division), Respondent herein, be cited for safety violations. On December 14, 2018, the Commissioner of Labor of the State of North Carolina issued a Citation and Notification of Penalty to Respondent alleging a serious violation of four specific standards and proposed a total penalty of \$16,600. Respondent timely contested the Citation. The parties filed pre-hearing briefs. A hearing was held in this matter. The CSHO was not able to testify and Complainant offered the Case File (hereinafter defined) in lieu of her testimony.

Based on the Stipulations at the time of the Hearing, and on the testimony/evidence presented at the Hearing and considering the record and the pleadings/briefs/memoranda/arguments of the parties, and applicable law, the Undersigned makes the following Findings of Fact and Conclusions of Law.

**FINDINGS OF FACT**

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 Act, including making inspections and issuing citations and other pleadings. The Review Commission has jurisdiction over the parties and the subject matter to this action. NCGS §95-135.
2. Respondent is a Mississippi corporation authorized to do business in North Carolina beginning on May 8, 2008 and is active and current, maintaining a place of business in Saint Pauls, North Carolina.
3. Respondent is in the business of producing, processing, marketing and distributing chickens for commercial purposes which as a whole affect interstate commerce. Based upon Respondent's Answer to the Complaint and the Initial Joint Stipulations, the Respondent is an employer within the meaning of NCGS §95-127(11) and it maintains employees defined by NCGS §95-127(10).
4. Respondent submitted a timely Notice of Contest dated January 14, 2019 (Paragraph 13, Complaint and Answer). The Court obtained jurisdiction over this matter upon Respondent's timely filing of a notice of contest. NCGS § 95-137(b)(4). Respondent contested the alleged violations, abatement dates and proposed penalties.
5. Respondent operates a processing facility located at 2076 NC Hwy 20 West in St. Pauls, North Carolina (the "Worksite").
6. The North Carolina Department of Labor initiated an inspection (the "Inspection") of the Worksite on June 15, 2018 which continued through December 13, 2018. Compliance Safety and Health Officer Julie Martin ("CSHO Martin") conducted the Inspection .
7. CSHO Martin's initial assignment was an unprogrammed accident inspection. The assignment was from District X Supervisor Lafayette Atkinson on June 15, 2018.
8. The Accident
  - 8.1 On June 14, 2018 at approximately 2 a.m., while working in the Picking Room during the 3<sup>rd</sup> shift cleaning Quill Puller #2 (Equipment #: A2-18, Marel Stork, PIT 2000, data plate not visible) (hereinafter referred to as "Quill Puller #2"), during the scrub phase John Hammonds got his glove and hand caught in the rotating pinions/rollers of Quill Puller #2 which was energized and running resulting in three fingers being amputated on his left hand (the "Accident").
  - 8.2 There were no eyewitnesses to the Accident.

8.3 The Accident occurred on Quill Puller #2 in the Picking Room during the sanitation shift (3<sup>rd</sup> shift) after production (1<sup>st</sup> shift and 2<sup>nd</sup> shift) was completed.

9. Inspection and Scope

9.1 The Inspection was limited to addressing the hazard resulting in the injury cited in the referral and any plain sight hazards that were observed or discovered during the course of the investigation.

9.2 The Inspection was limited to the Sanitation Shift.

9.3 CSHO Martin requested authorization to expand the scope of the inspection but the request was declined; accordingly, the scope of the Inspection was not expanded.

10. CSHO Martin arrived at Respondent's Worksite at approximately 12:30 pm on June 15, 2018. CSHO Martin presented her credential to some members of Respondent's management and conducted the opening conference, explaining that the inspection would be limited to addressing the injury from the accident from the referral and any plain sight hazards that were observed or discovered during the course of the investigation. Following the opening conference the walkaround phase of the investigation was initiated, during which time CSHO Martin was accompanied by members of Respondent's management and Respondent's legal counsel.

11. As a result of the Inspection, on December 14, 2018, Complainant issued to Respondent the Citation.

12. Respondent submitted a timely Notice of Contest dated January 14, 2019. Respondent requested formal pleadings which were served by Complainant.

13. A Hearing in this matter was scheduled pursuant to the Rules of Procedure of the Safety and Health Review Commission of North Carolina.

14. The normal operation of the work at the Worksite is as follows:

i there are three shifts – this first and second shifts are for production (i.e. the processing of chickens); the third shift (the "Sanitation Shift") is for cleaning and sanitizing the equipment used in processing the chickens;

ii during the third shift the equipment is not used for processing chickens or other production purposes;

iii during the third shift the equipment is cleaned and sanitized preparing it for the processing of chickens during the first and second shifts;

iv Quill Puller #2 was the piece of equipment used to remove tail feathers from the chickens during the first and second shifts; Quill Puller #2 had to be cleaned and sanitized by the workers on the third shift;

v the relevant general steps or phases in cleaning/sanitizing Quill Puller #2 during the 3<sup>rd</sup> shift are as follows:

Initial Rinse (workers will use pressure hoses to spray off the Quill Puller to remove feathers and other debris);

Foam (cleaning foam is sprayed on the Quill Puller);

Scrub (Quill Puller is locked out and manually scrubbed by hand or using long-handled brushes); and

Final Rinse and Sanitize (workers will rinse down the Quill Puller and spray to sanitize it prior to Quality Assurance and USDA inspection).

15. The cleaning of Quill Puller #2 on the third shift did not occur during normal production activities.

16. Complainant issued the Citation and items in this matter based entirely upon the documents contained and interviews noted in Complainant's investigation file regarding the Inspection. (Complainant response to Respondent's First Request For Admissions to Complainant Request for Admissions #92; Exhibit R-43)

17. During the Inspection CSHO Martin interviewed employees and took witness statements, and took photographs and made videos; these documents together with additional documentation gathered during the investigation were assembled into the investigative file (herein sometimes referred to as the "Case File").

18. During the Hearing CSHO Martin completed her direct examination; however, she was not able to be cross-examined due to health issues. CSHO Martin's testimony and all exhibits introduced through her testimony were stricken from the record. There being no other compliance office or official with personal knowledge of the on-site Inspection, Complainant sought to have District X Supervisor Lafayette Atkinson testify in lieu of CSHO Martin and through him to introduce the Case File into evidence. Over objections by both Complainant and

Respondent the Case File as originally submitted by Complainant was preserved in the record in the event of an appeal of this matter, and portions of the Case File were admitted into evidence.<sup>4</sup>

19. CSHO Martin did not personally observe any step of the actual cleaning process for Quill Puller #2 prior to the Foam step.

20. Relative to Citation 01, Item 001a, the alleged violation of 29 CFR 1910.147(c)(4)(i):

20.1 29 CFR 1910.147(c)(4)(i) provides: "Procedures shall be developed, documented and utilized for the control of potentially hazardous energy when employees are engaged in the activities covered by this section."

20.2 the greater weight of the creditable evidence from the Case File and the testimony of witnesses at the Hearing show the following relevant facts:

- (i) on June 14, 2018 a worker, while scrubbing down Quill Puller #2 on the Sanitation Shift, suffered a serious injury (three fingers amputated on his left hand) when his glove and hand got caught in the rotating pinions/rollers of Quill Puller #2 which was energized and running at the time he started the scrub phase of cleaning;
- (ii) the Accident occurred after the worker had returned from a 'lunch' break;
- (iii) before the break while cleaning Quill Puller #2 the worker had turned off the Quill Puller #2 when he was going to put his hand on the machine; and then turned it back on to run;
- (iv) after the break the worker assumed that maintenance had locked out Quill Puller #2; the injured employee did not check to see if Quill Puller #2 was deenergized prior to beginning to scrub the machine;
- (v) the worker had previously cleaned Quill Puller #2 without incident;
- (vi) Respondent had a formal written Safety and Health Program Manual (Exhibit R-1 and Exhibit C-8) which included among other matters a Lockout/Tagout Program;
- (vii) Quill Puller #2 had its own equipment specific Lockout/Tagout Policy (Exhibit C-2 and Exhibit C-7);
- (viii) Respondent's LOTO required the Quill Puller to be locked out during the scrubbing phase of cleaning on the Sanitation shift;
- (ix) Respondent trained the employees who worked on Quill Puller #2 on lockout procedures (Exhibit R-10, Exhibit R-14, Exhibit R-42 and Exhibit C-9);
- (x) Regarding lockout/tagout training, Respondent required employees who worked on Quill Puller #2 to successfully complete a written test and successfully

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<sup>4</sup> Complainant offered the entire Case File into evidence as Complainant's Exhibit C-78. The entire Case File was included in the record. However the following pages were not admitted into evidence: 38-77; 294-377; 381-382; 384-389; 391; 396-397; 399-400; and 453-521. Further, the portion(s) of documents which consist of conclusions of Inspector Martin regarding the cause of the accident were not admitted into evidence. The remainder of the Case File was admitted into evidence and given due regard in the interests of justice, however the following limitations were applicable: For illustrative purposes only photos on Pages 195, 196, 252, 257, 222, 223, 201, 197, 198, and 203; and For demonstrative purposes only videos designated MVI6, MVI5, MVI17, and MVI5F2.



perform a practical skills demonstration (Exhibit C-9) including actual de-energizing and locking a machine in the presence of a supervisor;

(xi) the worker who was injured in the Accident successfully completed a written test and successfully performed a practical skills demonstration showing knowledge of lock out procedures (Exhibit R-15, Exhibit R-16, Exhibit R-37 and Exhibit C-9);

(xii) Respondent periodically/regularly audited workers' compliance with Respondent's lockout/tagout policy (Exhibit C-4)

(xiii) Respondent disciplined workers for safety infractions including violations of the lockout/tagout policy (Exhibit R-44);

(xiv) the worker who was injured in the Accident was disciplined for violation of the lockout policy (Exhibit R-35);

(xv) supervisors walked through the Picking Room where Quill Puller #2 was located multiple times during each shift when the workers were cleaning Quill Puller #2;

\* there was no evidence that the supervisors observed, or had knowledge of, any worker scrubbing Quill Puller #2 without using lockout;

\* there was no evidence that workers had failed to use required lockout during the scrubbing process when a supervisor was walking through the Picking Room;

(xvi) Respondent did not have actual knowledge that the injured worker or any other employee cleaning Quill Puller #2 had not followed the Lockout/Tagout Policy for Quill Puller #2;

(xvii) Respondent did not have actual knowledge that the injured worker or any other employee cleaning Quill Puller #2 would not follow the Lockout/Tagout Policy for Quill Puller #2;

(xviii) there was a machine specific lock out policy/procedure for Quill Puller #2 (Exhibit C-2 and Exhibit C-7);

(xix) there was an individual machine lockout device for Quill Puller #2 in the MCC Room which was in close proximity to Quill Puller #2;

(xx) the injured employee testified that he had been provided a lock to use in a lockout process, and his name was on his lock.

(xxi) the injured employee, John Hammonds, testified that he had not been trained on lock out procedures;

(xxii) the injured employee asserted that he did not know how to lockout Quill Puller #2; no evidence was presented that the injured employee informed his supervisor or any other person that he did not know how to lock out Quill Puller #2;

(xxiii) documentation presented by Respondent showed that Mr. Hammonds was trained on lock-out procedures (Exhibit R-13, Exhibit R-14, Exhibit R-15 and Exhibit R-16);

(xxiv) Kristoffer McGill, sanitation lead on third shift, personally trained John Hammonds on how to clean the Quill Puller, and prior to the day of the Accident Mr. McGill had seen Mr. Hammonds run the cable in the MCC room and put his lock on the cable to lockout the Quill Puller.

21. Relative to Citation 01, Item 001b, the alleged violation of 29 CFR 1910.147(f)(3)(ii):

21.1 29 CFR 1910.147(f)(3)(ii) provides: "Group lockout or tagout devices shall be used in accordance with the procedures required by paragraph(c)(4) of this section including, but not necessarily limited to, the following specific requirements: ...."

29 CFR 1910.147(f)(3)(ii) is predicated on 29 CFR 1910.147(f)(3)(i) being applicable to the circumstances. 29 CFR 1910.147(f)(3)(i) provides:

"When servicing and/or maintenance is performed by a crew, craft, department or other group, they shall utilize a procedure which affords the employees a level of protection equivalent to that provided by the implementation of a personal lockout or tagout device."

21.2 the greater weight of the creditable evidence from the Case File and the testimony of witnesses at the Hearing show the following relevant facts:

(i) District X Supervisor Lafayette Atkinson testified that the Citation for this Item was issued based the hazardous condition surrounding the Accident and that it was grouped with Citation 01 Item 001a;

(ii) Quill Puller #2 is a stand-alone machine not connected to any other equipment;

(iii) At the time of the Accident Quill Puller #2 was being cleaned by only one person;

(iv) At the time of the Accident there was no crew, craft, department or other group cleaning Quill Puller #2;

(v) At all times Quill Puller #2 was being cleaned during the 3<sup>rd</sup> shift it was being cleaned by only one person working the Sanitation Shift; at any one time there was no crew, craft, department or other group cleaning Quill Puller #2;

(v) There was an individual machine lockout device for Quill Puller #2 in the MCC Room;

(vi) There was a machine specific lock out policy/procedure for Quill Puller #2.

22. Relative to Citation 01, Item 002, the alleged violation of 29 CFR 1910.147(c)(5)(ii)(D):

22.1 29 CFR 1910.147(c)(5)(ii)(D) provides: "Identifiable. Lockout devices and tagout devices shall indicate the identity of the employee applying the device(s)."

22.2 the greater weight of the creditable evidence from the Case File and the testimony of witnesses at the Hearing show the following relevant facts:

- (i) On June 19, 2018 CSHO Martin had Kristoffer McGill demonstrate for her the group lock out process;
- (ii) CSHO Martin took photographs on June 19, 2018 and on August 22, 2018 of locks used in connection with a lock-out (either actual or demonstration) identified as Complainant's Exhibits C-38, C-46 through C-49, C-51 through C-53; and C-55 through C-58<sup>5</sup> (the "Referenced Exhibits");
- (iii) some of the locks which CSHO Martin identified as not indicating the identity of the employee applying the device may have been locks used in the demonstration and those locks may not have been locks belonging to an employee;
- (iv) the Referenced Exhibits showed that the stickers on the locks were either blank/without identification or defaced;
- (v) John Hammonds, the injured worker, had been provided locks and he had his name on the sticker on his locks;
- (vi) Mr. McGill testified that an employee's name is engraved on the side of the lock belonging to that employee; the side being the ½ inch part of the lock;
- (vii) the engraving of the employee identification on the side of the lock could not be seen on the Referenced Exhibits;
- (viii) the engraving is done with an engraver by the safety person at the plant;
- (ix) Roosevelt Kelly testified that the locks used for lock-out were engraved on the small edge with the employee's identification;
- (x) when an employee left employment, that employee's lock could not be used by another employee because of the engraved identification on the lock, and the lock would be thrown sway.

23. Relative to Citation 01, Item 003, the alleged violation of 29 CFR 1910.212(a)(1):

23.1 29 CFR 1910.212(a)(1) provides: "Types of guarding. One or more methods of machine guarding shall be provided to protect the operator and other employees in the machine area from hazards such as those created by point of operation, ingoing nip points, rotating parts, flying chips and sparks. Examples of guarding methods are— barrier guards, two-hand tripping devices, electronic safety devices, etc."

23.2 the greater weight of the creditable evidence from the Case File and the testimony of witnesses at the Hearing show the following relevant facts:

- (i) there were no side and rear doors on Quill Puller #2 while cleaning was being performed during the Sanitation Shift;
- (ii) this condition existed during the Sanitation Shift when Quill Puller #2 was being cleaned;

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<sup>5</sup> See Footnote 6. None of the photographs were separately admitted into evidence except Exhibit C-52; however they were referenced in a portion of Complainant Exhibit C-78 (the Case File) which was admitted into evidence; although not separately admitted into evidence Exhibit C-46 through C-48 and Exhibit C-56 through C-58 were introduced during the Hearing.

- (iii) the type of work activity that was being performed on Quill Puller #2 during the Sanitation Shift was cleaning activity,
- (iv) the cleaning activity on Quill Puller #2 during the Sanitation Shift did not take place during normal production activities;
- (v) the Inspection did not include any inspection of Quill Puller #2 during the normal production activities;
- (vi) Respondent's Lock Out/Tag Out policy/procedures were applicable to Quill Puller #2 during the cleaning of Quill Puller #2 on the Sanitation Shift.

24. The Joint 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

1. 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.
2. The Respondent is subject to the provisions of the Occupational Safety and Health Act of North Carolina, N.C.G.S. 95-126 et seq.
3. The burden of proof is on the Complainant to prove each of the following elements by a preponderance of the evidence with respect to each alleged serious violation: (1) the cited standard applies; (2) the terms of the standard were violated; (3) employees were exposed to the hazard covered by the standard; (4) the employer had actual or constructive knowledge of the violation (i.e., the employer knew or, with the exercise of reasonable diligence, could have known of the violative condition), and (5) the hazard created the possibility of an accident and the substantially probable result of an accident could be death or serious bodily injury.
4. With respect to the Alleged Violation of 29 CFR § 1919.147(c)(4)(i) --- Citation 01 Item 001a, Complainant failed to carry its burden of proof to establish that the terms of the standard were violated.
5. With respect to the Alleged Violation of 29 CFR § 1910.147(f)(3)(ii) -- Citation 01 Item 001b, Complainant failed to carry its burden of proof to establish that the cited standard applies.
6. With respect to the Alleged Violation of 29 CFR § 1910.147(c)(5)(ii)(D) -- Citation 01 Item 002, Complainant failed to carry its burden of proof to establish that the terms of the standard were violated.
7. With respect to the Alleged Violation of 29 CFR § 1910.212(a)(1) -- Citation 01 Item 003, Complainant failed to carry its burden of proof to establish that the cited standard applies.

## DISCUSSION

### A. General Applicable Law To Establish A Violation

To establish a violation of a specific OSHA standard, Complainant must establish: (1) the standard applies; (2) the terms of the standard were violated; (3) employees were exposed to the hazard covered by the standard; and (4) the employer had actual or constructive knowledge of the violation (i.e., the employer knew or, with the exercise of reasonable diligence, could have known of the violative condition). *JPC Grp., Inc.*, 22 BNA OSHC 1859, 1861 (No. 05-1907, 2009). The elements are collectively referred to herein as the "Required Elements".

Further, to establish that the violation was serious the Complainant must also establish that the hazard created the possibility of an accident and that the substantially probable result of an accident could be death or serious bodily injury. *Commissioner of Labor v Liggett Group, Inc.*, OSHANC 94-3175 (1996); *Commissioner of Labor v Yates Construction Company, Inc.*, OSHANC 93-2967 (1995).

Complainant has the burden of establishing each Required Element by a preponderance of the evidence. *Commission Rule .0514(a)*; *See Hartford Roofing Co.*, 17 BNA OSCH 1361 (No. 92-3855, 1995). A preponderance of the evidence is "that quantum of evidence which is sufficient to convince the trier of fact that the facts asserted by a proponent are more probably true than false." *Astra Pharma. Prods.*, 9 BNA OSHC 2126, 2131, n. 17 (No. 78-6247, 1981) *aff'd in relevant part*, 681 F.2d 69 (1st Cir. 1982).

An employer who has been issued a citation can present evidence which negates or reduces the validity or strength of Complainant's evidence offered to support a Required Element; however, the employer does not have the burden to prove that it is not liable for an alleged violation. The burden of proof of the alleged violation rests entirely on the Complainant.

In this case Complainant is clearly at a disadvantage in presentation of its case when it cannot produce a witness, such as the safety compliance officer who conducted the inspection, who has first-hand personal knowledge of the events, facts and circumstances relative to each Required Element for each alleged serious violation. The Case File contains (among other documentation) an Inspection Report, an OSHA-300 Data/Safety and Health Program Evaluation, Narrative Comments, Violation Worksheets, photographs, videos and witness statements regarding the alleged violations. The information presented in the Case File is sometimes conflicting and/or presented an incomplete/insufficient description of the events, facts and circumstances. The Case File is not a good substitute for a witness with first-hand personal knowledge who could testify, and be cross examined, and who could possibly give additional



testimony to add clarifying details to help the trier of fact determine the actual events, facts and circumstances.

### **B. The Applicability of 29 CFR 1910.147**

The OSHA standard for The Control of Hazardous Energy (Lockout/Tagout), Title 29 Code of Federal Regulations (CFR) Part 1910.147 was adopted in 1989 by the U.S. Department of Labor Occupational Safety and Health Administration. OSHA Control of Hazardous Energy Sources (Lockout/Tagout) Rule, 29 C.F.R. § 1910.147 (1989). This standard is frequently referred to as the Lockout Standard or Lockout/Tagout (LOTO), and generally requires that machines undergoing servicing or maintenance be shut down and locked out against re-restart.

As stated by the Federal Review Commission in *Secretary of Labor v General Motors Corp., CPCG Oklahoma City Plant*, OSHRC 91-2834E & 91-2950 (OSHRC 2007) “In general, the LOTO standard requires an employer to establish a program that includes employee training, use of energy control procedures, and periodic inspections designed to prevent employee exposure to the unexpected energization of equipment during servicing and maintenance operations, and dovetails with the requirements for the safe operation of machines during production, as prescribed by 29 C.F.R. Part 1910, subpart O.”

### **C. Respondent’s Argument That LOTO Standard Does Not Apply**

Respondent’s counsel argues in Respondent’s Supplemental Pre-Trial Brief that the standard cited in Citation 01 Item 001a [29 CFR 1910.147(c)(4)(i)]

“...is inapplicable to the facts of this case because 29 CFR 1910.147(a)(1)(i) , provides “[t]his standard covers the servicing and maintenance of machines and equipment in which the **unexpected energization or start up** of the machines or equipment, or release of stored energy, could harm employees...” (emphasis added). Thus “[b]y its terms, the lockout standard’s scope provision limits the applicability of the regulation to machines that could cause injury if they were to startup unexpectedly.” *Sec’y of Labor v United Launch Alliance, LLC*, 26 O.S.H.Cas. (BNA) 1660 (O.S.H.R.C.A.L.J.), 2017 WL 1788460, at page 6 (quoting *Reich v. Gen Motors Corp.*, 89 F.3d 313, 315 (6<sup>th</sup> Cir. 1966)).

According to OSHA’s own investigatory file, and will be further established at the hearing, Hammonds stuck his hand into the quill puller while it was running and already energized. Consequently, there could be no “unexpected energization or start up” because the machine was already running and energized. Therefore the LOTO standard is inapplicable.”



Respondent made a similar argument with respect to Citation 01 Item 001b [29 CFR 1910.147(f)(3)(ii)] stating "...the LOTO standard is inapplicable to Hammonds' conduct that is at issue in this case. The quill puller was running when Hammonds stuck his hand into it and therefore, there was no unexpected energization or startup of the machine."

A review of applicable case law, learned articles and treatises shows that there is an on-going controversy concerning the definition of 'unexpected' as used in 29 CFR §1910.147 .

Federal OSHA appears to interpret 'unexpected energization' to mean energization that is unintended or unplanned by the worker providing the servicing of the machine. Federal OSHA asserts that this definition is necessary to fulfill the purpose of the standard to protect workers by the control of hazardous energy. (72 FR 72452, 72496, December 20, 2007; CPL 02-00-147) (See CPL 02-00-147, The Control of Hazardous Energy--Enforcement Policy and Inspection Procedures at 3-1 (Feb. 11, 2008) ("Quite simply, the LOTO standard is violated when an employee is, or may be, exposed to hazardous energy that has not been isolated, even if the employee knows that the energy has not been controlled and continues to constitute a hazard."))

The Federal Occupational Safety and Health Review Commission supported this definition in *Burkes Mechanical, Inc.*, 21 BNA OSHC 2136, 2139 & n.4 (No. 04-0475, 2007), when it held that the lockout/tagout standard applies to workers who were servicing conveyor equipment when the equipment was operating.

Federal OSHA's definition of 'unexpected energization' is not uniformly accepted.

\* The case of *Sec'y of Labor v United Launch Alliance, LLC*, 26 O.S.H.Cas. (BNA) 1660 (O.S.H.R.C.A.L.J.), 2017 WL 1788460, cited by Respondent, involved the allegation of "a serious violation of 29 C.F.R. § 1910.212(a)(1) for failing to provide machine guarding, exposing employees to nip points." United Launch Alliance ("ULA") asserted that when machine guards were removed to conduct maintenance and repair activities the lockout-tagout standards would apply and therefore the incorrect standard was cited. The Court found the circumstances in that case were that the injured worker "was engaged in the startup of the component and knew the piston would extend as soon as he connected the hose to the extension nipple." The worker not only received notice that the machine would start up, he was the one who started it. The Court concluded that in the matter before it the guarding standard was a more specific standard. The worker was testing the piston used in connection with a rocket - - - - energization of the piston in the machine was the assigned task - and therefore was not unexpected. The Court justified its conclusion that the expected start up in its case would be regulated by the more specific guarding standard by citing "By its terms, the lockout standard's scope provision limits the applicability of the regulation to machines that could cause injury if they were to start up unexpectedly. *Reich v. Gen. Motors Corp.*, 89 F.3d 313, 315 (6th Cir. 1996)."

\* In the case of *Reich v. Gen Motors Corp.*, 89 F.3d 313 (6<sup>th</sup> Cir. 1996) cited by Respondent the machines were shut off (deactivated) when being worked on and there was a eight to twelve step process that had to be followed to restart the machine; the multi-step process

would have alerted servicing employees that the machine was about to start up. Since the workers would have advance notice through the start-up warning sequences it was held that the lockout/tagout standard did not apply because the service workers would not be subject to 'unexpected' energization.

As a general principal deference is to be given to the Secretary's interpretation of its own regulations unless it is unreasonable or plainly contradicts the regulation's language or purpose. *S.G. Loewendick & Sons, Inc. v. Reich*, 70 F.3d 1291, 1294 (D.C.Cir.1995).

Further regarding the applicability of 29 CFR §1910.147 the standard must be interpreted based on all of its provisions, not merely the words 'unexpected energization'. Some of the relevant provisions are the following:

- \* 29 CFR §1910.147(a)(2)(i) provides "This standard applies to the control of energy during servicing and/or maintenance of machines and equipment."
- \* 29 CFR §1910.147(a)(3)(i) provides "This section requires employers to establish a program and utilize procedures ...to otherwise disable machines or equipment to prevent unexpected energization, start-up or release of stored energy in order to prevent injury to employees."
- \* 29 CFR §1910.147(b) defines 'Energized' as follows: "Connected to an energy source or containing residual or stored energy."
- \* 29 CFR §1910.147(b) specifies that "servicing and /or maintenance" includes "cleaning" machines.
- \* 29 CFR §1910.147(c)(4) (i) provides: "Procedures shall be developed, documented and utilized for the control of potentially hazardous energy when employees are engaged in the activities covered by this section."
- \* 29 CFR §1910.147(d)(2) provides: "Machine or equipment shutdown. The machine or equipment shall be turned off or shut down using the procedures established for the machine or equipment."
- \* 29 CFR §1910.147(d)(3) provides: "Machine or equipment isolation. All energy isolating devices that are needed to control the energy to the machine or equipment shall be physically located and operated in such a manner as to isolate the machine or equipment from the energy source."

Consideration of 29 CFR §1910.147 in its entirety together with applicable case law leads to the logical conclusion that the standard requires that machines or equipment should be deenergized (shut down) and energy control measures applied when workers are performing servicing and maintenance activities if such work causes the employee to be located in a hazardous area or to come in contact with a point-of-operation, and such work does not come under the minor servicing exception.

Based on a reading of 29 CFR §1910.147 in its entirety and on applicable case law, 29 CFR §1910.147 is applicable to Quill Puller #2 during its cleaning during the Sanitation Shift at Respondent's Worksite.

**D. Alleged Violation of 29 CFR § 1919.147(c)(4)(i)**  
**--- Citation 01 Item 001a**

During the sanitation shift at Respondent's Worksite employees are required to clean Quill Puller #2. When an employee is required to service or maintain a machine with the potential to energize, start-up, or release stored energy without sufficient notice, an energy control program is required. *See Dayton Tire*, 23 BNA OSHC 1247, 1250 (No. 94-1374, 2010), *aff'd in pertinent part, vacated in part*, 671 F.3d 1249 (D.C. Cir. 2012). 29 CFR § 1919.147(c)(4) captioned "Energy control procedures" specifically addresses how to control hazardous energy. 29 C.F.R. § 1910.147(c)(4)(i) expressly provides that energy control procedures must be "developed, documented and utilized for the control of potentially hazardous energy when employees are engaged" in activities such as service, maintenance, or cleaning.

Complainant alleges a violation of 29 CFR § 1910.147(c)(4)(i) when on or about June 14, 2018 a 3<sup>rd</sup> shift sanitation worker cleaned Quill Puller #2 without utilizing the equipment specific lockout procedure. The citation does not assert that Respondent had not developed, documented and utilized applicable energy control procedures --- rather the citation asserted that an employee had not utilized the Quill Puller #2 lockout procedure. The Case File, the Briefs filed in this matter, and the witnesses at the Hearing confirmed that Respondent had

- \* a formal written Lockout/Tagout Policy (consisting of 12 pages plus 38 pages of Appendices); (see Complainant Exhibit C-8)
- \* a specific written Lockout/Tagout Data Sheet for Quill Puller #2 (which among other information identified the hazardous energy, the isolation device, the control device, the specific procedures for the application of controls, and the procedure for removing energy control devices); (see Complainant Exhibit C-7)
- \* provided training to employees regarding Lockout/Tagout (evidenced by copies of Certification Checklist/Acknowledgement Form establishing that the employees had been trained on lockout/tagout and had viewed a lockout/tagout video, had completed the lockout/tagout written test with an acceptable score, had successfully completed a practical skills demonstration on lockout/tagout and had received an assigned lock for administrating lockout/tagout. (see Complainant Exhibit C-9)

A Certification Checklist/Acknowledgement Form was provided for the employee who had been injured on Quill Puller #2. The injured worker asserted that he had not been trained on lockout. However, the testimony of the injured worker is not controlling compared to the other documentation and testimony presented evidencing that the injured worker had been trained on lock-out.

Based on the evidence provided in connection with this matter, Respondent substantially complied with the requirements of 29 CFR § 1910.147(c)(4)(i). Respondent had established a program which included Quill Puller #2 that included use of energy control procedures, employee training and periodic inspections designed to prevent employee exposure during cleaning and servicing operations. Respondent's lockout/tagout plan provides the steps on how

to perform the required lockout procedures and Respondent had a formal program for training employees with respect to required lockout procedures. Employees testified at the Hearing that the training was provided, that lockout procedures were utilized and that there were periodic inspections to monitor compliance. The failure of an employee to properly follow the established lockout procedure during the scrub step of cleaning Quill Puller #2 is not sufficient evidence to establish that Respondent did not satisfy the requirements of 29 CFR §1910.147(c)(4)(i) for the development, documentation and utilization of energy control procedures during the cleaning of Quill Puller #2 on the Sanitation Shift.

**E. Alleged Violation of 29 CFR §1910.147(f)(3)(ii)**  
**--- Citation 01 Item 001b**

Complainant alleges a violation of 29 CFR §1910.147(f)(3)(ii) and describes the alleged violation as follows: the employer allowed the sanitation workers to clean and sanitize the equipment on Line #2 to include, but not limited to, Quill Puller #2 and the employer (a) did not document and utilize a group lockout/tagout procedure where each employee affixed a personal lockout device and (b) did not document and provide instructions on how the authorized employee was to ascertain the exposure status of each employee. Complainant asserted that on or about June 14, 2018 this violation resulted in the amputation of three fingers from an employee's left hand.

The Case File and the testimony of District X Supervisor Lafayette Atkinson confirm that this citation was based on the inspection relating to the Accident and not on a plain sight hazard. Although permission was requested by CSHO Martin on June 18, 2018 to expand the scope of the inspection her request was declined. The Accident occurred during the scrub phase of cleaning Quill Puller #2 during the Sanitation Shift.

Although Quill Puller #2 is included in the line of machines referred to as "Line #2" it is a stand-alone machine not connected to any other machine. Quill Puller #2 has its own separate and specific written Lockout/Tagout Data Sheet which, among other information, identifies the hazardous energy, the isolation device, the control device, the specific procedures for the application of controls, and the procedure for removing energy control devices. During the Sanitization Shift only one worker was assigned to clean Quill Puller #2 and that person was issued a personal lock and was required under the terms of the LOTO policy to use the personal lock to lockout Quill Puller #2 prior to commencement of the scrub phase of cleaning.

The cited standard 29 CFR §1910.147(f)(3)(ii) which requires group lockout or tagout is predicated on 29 CFR §1910.147(f)(3)(i) being applicable to the circumstances. 29 CFR §1910.147(f)(3)(i) provides: "When servicing and/or maintenance is performed by a crew, craft, department or other group, they shall utilize a procedure which affords the employees a



level of protection equivalent to that provided by the implementation of a personal lockout or tagout device.”

The cleaning of Line #2 was performed by more than one person at a time. However the scope of the investigation did not include the cleaning of Line #2, only the cleaning of Quill Puller #2. Quill Puller #2 was cleaned by only one person at a time. Since a crew, craft, department or other group of employees did not clean Quill Puller #2 at any given time 29 CFR §1910.147(f)(3)(ii) is not applicable under the circumstances of this case.

**F. Alleged Violation of 29 CFR §1910.147(c)(5)(ii)(D)**  
**--- Citation 01 Item 002**

Complainant alleges a violation of 29 CFR §1910.147(c)(5)(ii)(D) and describes the alleged violation as follows: where sanitation employees were cleaning line #2 and used locks for group lockout of the all line equipment to include Quill Puller #2 ... which did not identify the employee applying the lockout devices. The locks identified during the inspection were either blank/without identification or defaced.

The Case File states that the evidence to support the cited hazard was “where employees to include, but not limited to Kris McGill, sanitation worker, and Melvin Newson, advanced management trainee for maintenance, used locks for group lockout of all the equipment located on Line #2 to include, but not limited to, Quill Puller #2 ... which did not identify the employee applying the lockout device. The CSHO observed these locks in use during the walkaround portion of the inspection.” (Case File page 185)

The Case File states that the evidence which supports the basis for the alleged violation was Photo SF32, 33, 39-42, IMG\_42, 43, and 46-50.<sup>6</sup> (Case File page 185) These photographs were previously referred to herein as the Referenced Exhibits.

Complainant did not carry its burden of proof regarding the locks not having the identity of the employee. The Referenced Exhibits showed that the stickers on the photographed locks were either blank/without identification or defaced. However, based on the testimony of workers the greater weight of evidence showed that the locks used in the lock-out procedure had employee identification engraved on them. Although the engraving was not visible from the Referenced Exhibits the Complainant presented no evidence that such engraving was not present.

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<sup>6</sup> The referenced photos have the corresponding Complainant’s Exhibit (“C-”) numbers as follows: SF32, C-46; SF33, C-47; SF39, C-48; SF40, C-49; SF41, C-38; SF 42, C-51; IMG 42, C-52 ; IMG 43, C-53; IMG 46, --- ; IMG 47, C-55; IMG 48, C-56; IMG 49, C-57; and IMG 50, C-58.

**G. Alleged Violation of 29 CFR §1910.212(a)(1)**  
**--- Citation 01 Item 003**

Complainant alleges a violation of 29 CFR §1910.212(a)(1) because there were no side and rear guards on Quill Puller #2 to protect employees from the rotating pinions creating a caught-in hazard. This condition existed during the Sanitation Shift when Quill Puller #2 was being cleaned. The alleged violation was not based on the hazard which was being investigated in connection with the Accident (i.e. the hazard related to LOTO) but rather was considered a plain sight hazard (failure to have machine guarding) observed by CSHO Martin during the cleaning of Quill Puller #2 during the Sanitation Shift.

Regarding this citation item, the following was stated in the Case File:

“During the walkaround portion of the investigation, the CSHO observed that the sides and rear of Quill Puller #2 were unguarded .... The only visible guarding were the two panel doors in the front of the quill puller.... The CSHO observed in the Marel Stork User’s Manual for the PIT 2000 Quill Puller, provided to the CSHO by Chris Eavenson, corporate safety and health manager, on June 18, 2018, that the manufacturer makes safety doors which guard the sides and rear of the quill puller model used by Sanderson Farms .... Employees can circumvent the existing guards exposing them to the rotating pinions inside the quill pullers.” (Case File Page 190).

At the Worksite the first and second shifts are for processing of chickens which is the normal production activity. The third shift, the Sanitation Shift, is for cleaning and sanitizing the equipment which is used in processing the chickens during the first and second shifts. One of the pieces of equipment is Quill Puller #2. On the Sanitation Shift the activity which involves Quill Puller #2 is cleaning. The cleaning of Quill Puller #2 during the Sanitation Shift (1) does not occur during the normal production activities which take place during the first and second shifts and (2) does not meet the minor servicing exception set forth in the LOTO standard.

OSHA Instruction Directive Number CPL 02-00-147 Effective Date: 2/11/08 Subject: The Control of Hazardous Energy – Enforcement Policy and Inspection (Complainant’s Exhibit LT-C4), herein sometimes referred to as “CPL 02-00-147, states that its purpose is to establish “OSHA’s enforcement policy for its standards addressing the control of hazardous energy. It instructs OSHA enforcement personnel on both the agency’s interpretations of those standards, and on the procedures for enforcing them. The application of this instruction will further OSHA’s goal of uniform enforcement of these standards. ... This instruction is not a standard, regulation or any other type of substantive rule.” (CPL 02-00-147, page Abstract-1)

In Chapter 2, Section III captioned Citation Guidance, subsection D Citation Examples, page 2-11, CPL 02-00-147 provides the following example for the issuance of a citation:



“Example # 1 - A CSHO observed employees cleaning unguarded machinery rollers (contrary to established and documented company procedure) and these employees were exposed to moving machine parts and in-going nip point hazards created by the operating high-speed rollers. Furthermore, the cleaning activity did not meet all of the elements contained in the minor servicing exception. This activity is a LOTO standard violation and not a machine guarding violation (covered by the 29 CFR §1910.212 standard) because cleaning is a servicing activity.

NOTE:

The applicability of 29 CFR §1910.147 versus Subpart O standards directly relates to the type of work activity being performed and not to the means of hazard abatement (i.e., LOTO versus machine guarding).”

In Chapter 3, Section II captioned Scope and Application of the Standard, subsection B Normal Production Operations, page 3-6, CPL 02-00-147 further provides the following

“Normal production operations occur during the utilization of a machine or piece of equipment to perform its intended production functions. The Subpart O, *Machinery and Machine Guarding*, requirements of 29 CFR §1910 apply to these operations. Thus, Subpart O complements the LOTO standard requirements.

Activities that are necessary to prepare or maintain a machine or piece of equipment are not considered utilization and are considered servicing and/or maintenance activities. Some of these workplace activities may include constructing, installing, setting up, modifying, maintaining, lubricating, cleaning, un-jamming, making minor adjustments, and tool changes.”

Quill Puller #2 when being cleaned during the Sanitation Shift was not being utilized to perform its intended production functions of removing tail feathers from chickens. Quill Puller #2 had its own separate and specific written lock out policy/procedure applicable to the time it was being cleaned during the Sanitation Shift.

Based on CPL 02-00-147 and applicable case law, 29 CFR §1910.212(a)(1) is not the applicable standard in this case because the type of work activity being performed on Quill Puller #2 was cleaning activity which was not taking place during normal production activities.

Complainant did not carry its burden of proof to establish that 29 CFR §1910.212(a)(1) was the applicable standard.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**


The foregoing Decision constitutes the Findings of Fact and Conclusions of Law in accordance with Rule .0601(a) of the Commission Rules.

**ORDER**

Based upon the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that

Citation 01 Item 001a is VACATED;  
Citation 01 Item 001b is VACATED;  
Citation 01 Item 002 is VACATED; and  
Citation 01 Item 003 is VACATED.

SO ORDERED

  
R. Joyce Garrett  
Administrative Law Judge

Date: May 9, 2022

**CERTIFICATE OF SERVICE**

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

TRAVIS W. VANCE  
FISHER PHILLIPS LLP  
227 WEST TRADE ST.  
SUITE 2020  
CHARLOTTE, NC 28202

By depositing same in the United States Mail, Certified Mail, Return Receipt Requested, postage prepaid at Raleigh, North Carolina, and upon:

MELISSA TAYLOR  
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, first class, postage prepaid at Raleigh, North Carolina, and upon:

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

via email to [carla.rose@labor.nc.gov](mailto:carla.rose@labor.nc.gov).

THIS THE 11 DAY OF May 2022.

  
\_\_\_\_\_  
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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