

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

FILED

MAY -2 2023

NC OSH Review Commission

COMMISSIONER OF LABOR OF THE
STATE OF NORTH CAROLINA

COMPLAINANT,

v.

VALLEY PROTEINS, INC.
and its successors

RESPONDENT.

) DOCKET NO.: OSHANC 2020-6336
) INSPECTION NUMBER: 318191699
) CSHO ID: E3182

CONSENT ORDER

The parties having appeared before the undersigned for a duly-noticed hearing, and having informed the undersigned hearing officer that they have reached a resolution of the citations issued in this matter, and the undersigned having reviewed the citations, the documents filed by the parties, and the representations of counsel, now pursuant to Rule .0507 of the Rules of Procedure adopted by the North Carolina Occupational Safety and Health Review Commissions, the undersigned makes the following:

FINDINGS OF FACT:

1. Respondent is a Virginia corporation, duly organized and existing under the laws of the State of Virginia, which is authorized to conduct and does business in the State of North Carolina and maintains a place of business in Rose Hill, North Carolina.
2. On or about March 11, 2020, Compliance Safety and Health Officer (CSHO) Greg Williams and CSHO Chris Jaison, employed by the North Carolina Department of Labor,

inspected Respondent's worksite located at 469 Yellow Cut Road in Rose Hill, North Carolina, hereinafter referred to as "the site." CSHO Williams and Jaison properly entered onto Respondent's site and properly conducted the inspection pursuant to an accident report.

3. As a result of the inspection, on September 4, 2020, Complainant issued one citation with two items, carrying the following proposed abatement dates and penalties:

CITATION NUMBER ONE (Serious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1	29 CFR 1910.252(a)(2)(iv)	Immediate	\$7000.00
2	29 CFR 1910.1200(e)(2)(ii)	Immediate	\$7000.00

4. The Respondent submitted a timely Notice of Contest dated October 22, 2020.

5. The parties have mutually agreed to resolve the Citation(s) upon the following terms, and seek the undersigned's approval of the same:

- a. Respondent agrees that the violations alleged in the Citation and Notification of Penalty, as amended below, have been abated, and agrees to continue to use its best efforts to comply with the requirements of the Occupational Safety and Health Act of North Carolina (hereinafter referred to as "the Act"). No abatement certification or documentation is required.
- b. Complainant agrees to make the following amendments to the Citation items:
 - i. Rewrite Citation 1, Item 1 AVD to read: Where the employer did not ensure procedures were communicated in writing to control/mitigate dust accumulations in areas where subcontractor employees were welding. On 3/11/2020, a contractor's employees were TIG welding two screw conveyors

together as part of the bypass screw conveyor system, when dust in the surrounding environment ignited, resulting in a flash fire/small explosion where five employees sustained third degree burns.

- ii. Rewrite Citation 1, Item 2 AVD to read: Where the employer's written hazard communication program failed to address potential dust generating processes and specific precautions for subcontractors that perform work in those areas.

On 3/11/2020, a contractor's employees were TIG welding two screw conveyors together as part of the bypass screw conveyor system, when dust in the surrounding environment ignited, resulting in a flash fire/small explosion where five employees sustained third degree burns.

- iii. Reduce the penalty for Citation 1, Item 1 to \$5250.00; and,

- iv. Reduce the penalty for Citation 1, Item 2 to \$5250.00.

- c. Each party agrees to bear its own attorney's fees, costs and other expenses that have been incurred in connection with these proceedings.
- d. The parties agree that this Consent Order is a full and final settlement of these claims set out in the underlying Citation and Notification of Penalty, and none of the foregoing agreements, statements, stipulations and actions taken by the Respondent shall be deemed an admission by the Respondent of any of the allegations contained in the Citation and Notification of Penalty or waiver of defenses; provided, however, that in any subsequent proceeding with respect to matters covered by this Stipulation and Notice of Settlement brought directly under the Act by Complainant, this Agreement shall have the full force and effect of a final order. The agreements, statements, stipulations and actions herein are made solely for the purpose of settling

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 Occupational Safety and Health Act and Article 21, Chapter 95 of the North Carolina General Statutes. Respondent's agreement to accept any Citation in this Agreement under a particular standard shall not be deemed as an admission by Respondent that the cited standard applies to its operations for purposes of any other matter

- e. There are no other outstanding matters to be addressed in this proceeding.
- f. Neither party has received any notification from any employee indicating an intent to participate in or attend the hearing in this matter.
6. The foregoing terms are reasonable and supported by the underlying facts.
7. Upon approval of this Consent Order by the Hearing Examiner, the Respondent agrees to pay the new proposed penalty of \$10,500.00 within thirty (30) days following the receipt of the Order approving the Consent Order.
8. No outstanding issues remain to be resolved by a hearing of this matter.

Based on the foregoing, the undersigned makes the following

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties and over the subject matter.
2. The parties' proposed resolution of this matter is consistent with the purpose and objectives of the Act.

NOW THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

1. The parties' agreement, as set out above, is approved.

2. The parties shall comply with the terms and conditions set out above.

This May 2, 2023.

Mary-Ann Leon

Mary-Ann Leon (May 2, 2023 15:12 EDT)

Mary-Ann Leon
Hearing Examiner

CONSENTED TO:

JOSHUA H. STEIN, Attorney General

Rory Agan

Rory Agan (May 2, 2023 15:08 EDT)

Rory Agan
Special Deputy Attorney General
North Carolina Department of Justice
P.O. Box 629/Labor Section
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Counsel for Complainant

Jennie Maldonado

Jennie Maldonado (May 2, 2023 15:00 EDT)

Jennie Maldonado
Attorney
Batten Lee
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Raleigh, NC 27612
Tel. 919-439-2221
Email: jmaldonado@battenlee.com
Counsel for Respondent

CERTIFICATE OF SERVICE

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

JENNIE MALDONADO
BATTEN LEE
4141 PARKLAKE AVE, STE 250
RALEIGH NC 27612

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


RORY AGAN
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
carla.rose@labor.nc.gov

via email.

THIS THE 3 DAY OF May 2023.



Karissa B. Sluss
Docket and Office Administrator
NC Occupational Safety & Health Review Commission
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