



“employer” as defined by N.C.G.S. Section 95-127(11) and it maintains employees as defined by N.C.G.S. Section 95-127(10).

3. During the period between June 9, 2022 and August 12, 2022, Carl Burgette, an Occupational Safety and Health Compliance Officer with the North Carolina Department of Labor, conducted an inspection of Respondent’s worksite located at 1524 Airport Road in Shelby, North Carolina (the “Inspection”).

4. As a result of the Inspection, on November 16, 2022, Complainant issued the following Citation and Notification of Penalty (herein collectively referred to as the “Original Citation”):

Citation	Item	Standard	Type	Penalty
1	1a	1910.272(g)(1)(i)	Serious	\$8,000.00
1	1b	1910.272(g)(1)(ii)	Serious	\$Grouped
1	1c	1910.272(g)(1)(iii)	Serious	\$Grouped

5. Respondent submitted a timely Notice of Contest.

6. The Hearing in this matter was scheduled pursuant to the Rules of Procedure of the Safety and Health Review Commission of North Carolina (the “Rules”).

7. Complainant and Respondent agreed that the Hearing in this matter shall be conducted via the video conferencing platform known as “Lifesize”, the presence of a court reporter during the Hearing is waived, the Hearing’s audio and video will be recorded through Lifesize (the “Recording”), the Recording will be the official record of the Hearing, and the Hearing will be deemed to have taken place in Raleigh, North Carolina. 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 Final Order.

8. Respondent posted the Original Citation and the Notice of Hearing as required by the Rules. Neither Complainant nor Respondent have received notification from any affected employee that such employee, or its representative, wishes to have a say in, or participate as a party in, this matter, or has any objections in connection with this matter including without limitation objection to the reasonableness of any abatement period.

9. Respondent confirms that the violations alleged in the Original Citation as amended pursuant to Complainant’s Motion have been abated. **No abatement documentation is required.**

10. 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 Final Order.

11. 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 claim 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 Act by Complainant, this Order shall have the full force and effect of a final order; (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; (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.

12. Respondent agrees to:

- a. Respondent will pay the penalty of \$8,000.00 assessed in this matter (payment is to be by check payable to North Carolina Department of Labor, OSHA Division (identifying Inspection No. 318245941)) and mailed to North Carolina Department of Labor, NC Department of Labor Budget & Management Division, Attn: Collections Division, 1101 Mail Service Center, Raleigh, North Carolina 27699-1101; Payment will be made within 10 days of entry of this Order.
- b. Retrain affected employees at the Shelby facility who work on silos 101, 102, and 106 on lockout/tagout procedures and the employer's confined space program within thirty (30) days of signing this Agreement. The employer will document the training and provide the documentation NCDOL-OSH upon completion of the training.
- c. Provide a written copy of the deenergization and confined space program used by the employer to NCDOL-OSH.
- d. Provide the documentation above to the North Carolina Department of Labor by November 30, 2024. The document may be provided by Respondent or Respondent's attorney to NCDOL or to Complainant's attorney. No other abatement documentation is required.

**MOTIONS**

Complainant moved to do the following (“Complainant’s Motion”):

- a. Delete Citation 1, items 1b and 1c.
- b. Renumber Citation 1, item 1a to Citation 1, item 1.
- c. Change Citation 1, Item 1 to a standard of NCGS 95-129(1), the “general duty clause”

Citation	Item	Standard	Type	Penalty
1	1	95-129(1)	Serious	\$8,000.00

- d. Rewrite the AVD to state: “On or about June 9, 2022 at the corn silos 101, 102, and 106, the employer failed to test, and where applicable, remove hazards prior to entry, including safety and environmental hazards.

**Except as set forth in this motion, the Original Citation shall remain unmodified or amended.**

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”):

- a. 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 \$8,000.00 in the manner set forth in the Stipulations.
3. The parties shall abide by the terms and stipulations of this Order.

This the 15th day of October, 2024.

*Reagan Weaver*  
Reagan Weaver (Oct 22, 2024 17:05 EDT)

Reagan Weaver  
Hearing Examiner

**CONSENTED TO:**

*Rory Agan*  
Rory Agan (Oct 15, 2024 12:10 EDT)

Rory Agan  
Special Deputy Attorney General  
NCDOJ-Labor Section  
114 W. Edenton Street  
Raleigh, North Carolina 27603

*Travis W Vance*  
Travis W Vance (Oct 15, 2024 10:53 EDT)

Travis W. Vance  
Partner  
Fisher & Phillips, LLP  
227 West Trade Street, Suite 2020  
Charlotte, North Carolina 28202

**CERTIFICATE OF SERVICE**

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

TRAVIS W. VANCE  
FISHER & PHILLIPS  
227 WEST TRADE ST STE 2020  
CHARLOTTE, NC 28202

By depositing a copy of the same in the United States Mail, by 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

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.

THIS THE 25 DAY OF October 2024.

PAUL E. SMITH  
CHAIRMAN



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Karissa B. Sluss  
Docket Administrator  
NC Occupational Safety &  
Health Review Commission  
1101 Mail Service Center  
Raleigh, NC 27699-1101  
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