

FILED

MAY 05 2023

NC OSH Review Commission

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

COMMISSIONER OF LABOR OF THE
STATE OF NORTH CAROLINA,

Complainant,

-vs-

LARRY FARMER dba FARMER'S
CONSTRUCTION & ASSOCIATES,
and its successors,

Respondent.

) DOCKET NO.: OSHANC 2021-6357
) INSPECTION NUMBER:318199866
) CSHO ID: T7624

) 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 company existing under the laws of the State of North Carolina.
2. On July 17, 2020, Officer Higham, an Occupational Safety and Health Officer with the North Carolina Department of Labor, conducted an inspection of Respondent's worksite.
3. As a result of the inspection, on January 15, 2021, Complainant issued the following Citation(s):

CITATION NUMBER ONE

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1	29 CFR 1926.416(a)(1)	Immediate	\$4000.00

4. The Respondent submitted a timely Notice of Contest dated February 9, 2021.

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").
- b. Complainant agrees to make the following amendments to the Citation items:
 - i. Reduce the penalty of Citation 1, Item 1 to \$2000.00;
 - ii. Allow for payment of the penalties in twelve equal payments of \$166.67;
 - iii. Upon the occurrence and during the continuance of any two consecutive failures to make payment, Complainant may, by written notice to Respondent, declare that the remaining unpaid amount be immediately due and payable, without demand, notice, or legal process of any kind.
- 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. There are no other outstanding matters to be addressed in this proceeding.

- e. 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.
- 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. Payment can be accomplished through the NCDOL website or by check or money order made payable to NC Department of Labor and should include the inspection number. Send the payment directly to: NC Department of Labor, Budget & Management Division, Attn: Collections Division, 1101 Mail Service Center, Raleigh, NC 27699-1101.

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.
3. The Respondent shall pay the penalty specified above within 30 days of this

Consent Order.

This the _____ day of May 5, 2023, 2023.

Reagan Weaver

Reagan Weaver (May 5, 2023 19:57 EDT)

Reagan Weaver
Hearing Examiner

CONSENTED TO:

JOSHUA H. STEIN, Attorney General

Rory Agan

Rory Agan (May 5, 2023 16:48 EDT)

Rory Agan
Special Deputy Attorney General
North Carolina Department of Justice
P.O. Box 629/Labor Section
Raleigh, NC 27602-0629
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Email: ragan@ncdoj.gov
Counsel for Complainant

Larry Farmer

Larry Farmer
Larry Farmer dba Farmer's
Construction & Associates
85 Bear Road
Benson NC 27504

Email: jfarmer361@gmail.com
Respondent

CERTIFICATE OF SERVICE

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

LARRY FARMER
FARMER'S CONSTRUCTION & ASSOCIATES
85 BEAR RD
BENSON NC 27504

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 12 DAY OF May 2023.



Karissa B. Sluss
Docket and Office Administrator
NC Occupational Safety & Health Review Commission
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Raleigh, NC 27699-1101
TEL.: (919) 733-3589
NCOSHRC@labor.nc.gov