

FILED

JAN 10 2024

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, )

v. )

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

Respondent. )

DOCKET NO.: OSHANC 2022-6454  
INSPECTION NUMBER: 318228376  
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 was, at the time of the inspection referenced in Paragraph 2, a Virginia corporation, duly organized and existing under the laws of the State of Virginia and was authorized to conduct business in the State of North Carolina. Further, at the time of the inspection, Respondent maintained a place of business and worksite located at 1309 Industrial Drive in Fayetteville, North Carolina. Respondent ceased operations on April 8, 2022 and was converted to Valley Proteins, LLC the same date.

2. On or about September 12, 2021 through March 3, 2022, Compliance Safety and Health Officer Greg Williams and Ushang Desai, employed by the North Carolina Department of Labor, inspected the worksite at 1309 Industrial Drive in Fayetteville, North Carolina, hereinafter referred to as "the site." Officer Williams and Desai properly entered the site and properly conducted the inspection pursuant to an accident report.

3. The inspection was expanded to a comprehensive due to other inspection findings in other cases that were still open at the time of the accident.

4. As a result of the inspection, on March 10, 2022, Complainant issued two citations 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>
1a	95.129(01)/29 CFR 1910.146(d)(3)	4/27/2022	\$7,000.00
1b	29 CFR 1910.134(d)(2)(i)	4/27/2022	Grouped
2	29 CFR 1910.307(c)	Immediate	\$1,350.00
3	29 CFR 1910.1200(h)(3)(ii)	4/5/2022	\$4,500.00

CITATION NUMBER TWO (Nonserious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1	29 CFR 1904.10(a)	Immediate	\$900.00
2	29 CFR 1910.1200(d)(2)	Immediate	\$ 0.00

5. The Respondent submitted a timely Notice of Contest dated April 21, 2022.

6. 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"). Respondent will provide completed confirmation of abatement forms for the remaining abated items within 60 days: Citation 1, Items 1a, 1b, 3, and Citation 2 Item 2.
- b. Complainant agrees to make the following amendments to the Citation items:
  1. Rewrite Citation I, Item 2 AVD to read: "a) pet food grinding room-where the employer had a receptacle box (120V, 20A) on the north wall of the grinding room whose cover was bent at the corners and had unused openings, which nullified the receptacle box from being dustproof in a location that contained poultry meal dust, a potential hazard; b) pet food grinding room-where the employer had a receptacle box (120V, 20A) on the south wall of the grinding room whose cover was bent at the corners and had unused openings, which nullified the receptacle box from being dustproof in a location that contained poultry meal dust, a potential hazard." ;
  2. Rewrite Citation 1, Item 3 AVD to read: "a) feed grade grinding room-where employees are exposed to poultry meal, dust may form an explosive mixture with the air, while working and/or cleaning the grinding room if fine dust is dispersed in the air in sufficient concentrations, and in the presence of an ignition source there is a potential dust explosion hazard and the employees are unfamiliar with

the potential hazard; b) pet food grinding room- where employees are exposed to poultry meal, dust may form an explosive mixture with the air while working and/or cleaning the grinding room if fine dust is dispersed in the air in sufficient concentrations, and in the presence of an ignition source there is a potential dust explosion hazard and the employees are unfamiliar with the potential hazard.” ;

3. Rewrite Citation 2, Item 2 AVD to read: “a) facility- where the employer manufactured poultry meal, developed a safety data sheet for the meal, had evidence to show that the meal was a potential hazard, but did not classify the meal as a potential hazard.”;

4. Delete the reference in Citation 1, Item 1a to NCGA 95-129(01) and cite the item under only the standard 29 CFR 1910.146(d)(3);

5. Reduce the penalty for Citation 1, Item 2 to \$1000.00; and

6. Reduce the penalty for Citation 1, Item 3 to \$1600.00.

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 Citations 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.

7. The foregoing terms are reasonable and supported by the underlying facts.

8. 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.

9. 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 Jan 10, 2024

Reagan Weaver

Reagan Weaver (Jan 10, 2024 18:26 EST)

Hearing Examiner

CONSENTED TO:

Rory Agan

Rory Agan (Jan 10, 2024 14:29 EST)

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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*Counsel for Complainant*

Jennie Maldonado

Jennie Maldonado (Jan 10, 2024 14:16 EST)

Jennie Maldonado  
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Email: jmaldonado@battenpllc.com  
*Counsel for Respondent*

CERTIFICATE OF SERVICE

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

RORY AGAN  
NC DEPARTMENT OF JUSTICE  
LABOR SECTION  
PO BOX 629  
RALEIGH, NC 27602-0629

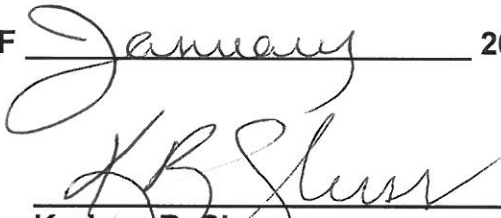
JENNIE MALDONALDO  
BATTEN MCLAMB SMITH PLLC  
4141 PARKLAKE AVE STE 350  
RALEIGH NC 27612

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 January 2024.



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