

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

**COMMISSIONER OF LABOR FOR  
THE STATE OF NORTH CAROLINA**

**Complainant,**

v.

**COCA-COLA CONSOLIDATED, INC.  
and its successors**

**Respondent.**

**DOCKET NO: 2022 - 6466**

**INSPECTION  
NO: 318231305**

**CSHO ID: C9077**

**CONSENT ORDER**

**FILED**

**DEC 18 2024**

**NC OSH Review Commission**

THIS CAUSE came on for hearing and was heard before the undersigned R. Joyce Garrett, Hearing Examiner for the North Carolina Occupational Safety and Health Review Commission, on December 18, 2024 at 10 a.m., via Lifesize teleconferencing platform, pursuant to a Notice of Hearing. The Notice of Hearing explicitly stated that the purpose of the hearing is to determine all matters relating to Respondent’s Notice of Contest in this matter.

Rory Agan, Special Deputy Attorney General, North Carolina Department of Justice, appeared remotely for Complainant. Michael McKnight, attorney with Ogletree, Deakins, Nash, Smoak & Stewart, P.C. in Raleigh, North Carolina, appeared remotely for Respondent. No affected employee of Respondent attended to have a say in, or participate as a party in, the Hearing.

At the Hearing, Complainant and Respondent notified the Undersigned that the parties agree upon certain stipulations as set forth in Court’s Exhibit 1 admitted into evidence.

As a result of this Hearing, based upon the record, and upon the stipulations of the parties including the Stipulations set forth in Court Exhibit 1, the Undersigned makes the Findings of Fact as hereinafter set forth. During the Hearing, Complainant made the motion set forth in Complainant’s Motion. Complainant’s Motion being granted, Respondent made the Motion set forth in Respondent’s Motion.

**FINDINGS OF FACT**

Based on the stipulations of the parties at the time of Hearing including the Stipulations in Court Exhibit 1, and on the record, the Undersigned makes the following 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 Occupational Safety and Health Act of North Carolina, Article 16, Chapter 95 of the General Statutes of North Carolina

(hereinafter “the Act”), including making inspections and issuing citations and other pleadings, and brings this action pursuant to N.C.G.S. §§95-133 et seq.

2. Pursuant to N.C.G.S. §95-135 the Review Commission has jurisdiction over the parties and the subject matter of this action.

3. Respondent, Coca-Cola Consolidated, Inc., is a foreign corporation, duly authorized, and is active and current under the laws of the State of North Carolina. It maintains a place of business at 977 Shotwell Road Ste. 104, Clayton, North Carolina. Respondent is in the business of operating a distribution warehouse for Respondent’s product distribution. Respondent is an “employer” within the meaning of N.C.G.S. § 95-127(11). Respondent’s employees referred to in this matter and identified/referenced in Respondent’s Pre-Trial Memorandum and Brief are “employees” within the meaning of N.C.G.S. § 95-127(10).

4. During the period of October 26 through October 29, 2021, a Compliance Safety and Health Officer Jerry Midyette (“CSHO Midyette”) and District Supervisor Neesia Hill (“Supervisor Hill”) (collectively “Inspectors”), employed by the North Carolina Department of Labor (“NC DOL”), conducted an inspection (the “Inspection”) of a work site at 977 Shotwell Road Ste. 104, Clayton, North Carolina (“Worksite”). The Inspection was conducted pursuant to a Special Emphasis Program. The Inspectors introduced themselves to a representative of Respondent upon their arrival at the Worksite and presented their credentials. Respondent did not object to the Inspectors conducting the Inspection.

5. There had been no employee accident or injury at the Worksite. The DART rate at the Worksite ranged from 3.1 to 4.4 during the three years prior to the Inspection, and was lower than the national average DART rate of 4.8. No OSHA citations related to the Worksite had been issued in the three years prior to the Inspection.

6. As a result of the Inspection, on February 2, 2022, Complainant issued to Respondent a Citation and Notification of Penalty alleging a Serious violation of twelve standards as set out below (“Citation 01”), and a Citation and Notification of Penalty alleging a NonSerious violation of five standards as set out below (“Citation 02”). Citation 01 and Citation 02 are collectively referred to as the “Original Citation”.

CITATION 01 (Serious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
Grouped			
001a	29 CFR 1910.22(c)	4/11/2022	\$1,200.00
001b	29 CFR 1910.25(b)(3)	4/11/2022	\$0.00
001c	29 CFR 1910.25(b)(4)	4/11/2022	\$0.00
002	29 CFR 1910.28(b)(1)(i)	3/21/2022	\$1,200.00
Grouped			

003a	29 CFR 1910.147(c)(4)(ii)(D)	3/21/2022	\$6,300.00
003b	29 CFR 1910.147(c)(6)(i)	3/21/2022	\$0.00
004	29 CFR 1910.147(c)(5)(ii)(D)	3/21/2022	\$6,300.00
005	29 CFR 1910.147(c)(7)(i)(B)	3/21/2022	\$4,000.00
006	29 CFR 1910.151(c)	Corrected During Inspection	\$1,200.00
007	29 CFR 1910.178(k)(1)	Corrected During Inspection	\$4,000.00
008	29 CFR 1910.212(a)(1)	Corrected During Inspection	\$1,200.00
009	29 CFR 1910.212(b)	Corrected During Inspection	\$1,200.00

CITATION 02 (NonSerious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001	29 CFR 1910.37(b)(2)	3/21/2022	\$0.00
002	29 CFR 1910.157(c)(1)	3/21/2022	\$0.00
003	29 CFR 1910.157(g)(1)	3/21/2022	\$0.00
004	29 CFR 1910.305(g)(1)(iv)(A)	Corrected During Inspection	\$0.00
005	29 CFR 1910.1200(f)(6)	Corrected During Inspection	\$0.00

7. Respondent submitted a timely Notice of Contest. Respondent delivered to the NC DOL “Employer’s/Respondent’s Statement of Position” dated June 7, 2022. Respondent denies the allegations contained in the Original Citation and objects to the proposed penalties and abatement dates.

8. 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”).

9. Complainant and Respondent have no objection, either procedurally or otherwise, to this Hearing; both parties consent to the conduct of this Hearing by the Undersigned, and to entry of this Consent Order. Complainant and Respondent confirm that there has been no employee objection in this matter to the reasonableness of any abatement period.

10. Respondent posted the Original Citation and the Hearing Notice as required by the Rules. Neither Complainant nor Respondent have received notification from any affected employee that such employee, or his or her 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.

11. Respondent confirms that the violations alleged in the Original Citation as amended pursuant to Complainant’s Motion have been abated. Complainant confirms that no additional documentation of abatement is required by Complainant.

12. The parties agree that upon granting of Complainant’s Motion that the proposed penalty for each Item designated in the Original Citation has been calculated in accordance with the

standard Field Operations Manual procedure; and the new proposed penalty for each Item designated in the Original Citation as amended pursuant to Complainant's Motion has been derived in consideration of the standard mitigating factors and specific factors applicable to Respondent.

13. Respondent agrees as follows:

a) To continue its present safety and health program including the conducting of periodic worksite safety and health inspections. Inspections shall include verification that any open dock doors are protected;

b) Hazards identified in the workplace shall be immediately corrected and employees provided with training and information on those hazards observed in their work areas;

c) The employer agrees to remove the two sets of stairs that were not originally installed or designed into the roller system and ensure that employees are provided with training and information regarding how to safely utilize the crossover steps. Training shall include the use of three points of contact, wearing slip resistant shoes, and only using the stairs when necessary;

d) To review its energy control procedures referenced in this inspection to ensure that the procedures are not vague and provide clear and detailed information regarding the steps needed to verify the machine has been deenergized prior to the utilization of the procedure; and

e) To pay the total penalty of \$12,700.00 assessed in this matter and as modified by Complainant's Motion below within 45 days of the date of this Consent Order. In the event Respondent does not pay the penalty as stated above, all unpaid amounts shall become immediately due and payable, and the Complainant retains the right to institute collection proceedings as allowed by law.

Respondent agrees to pay attorney's fees to Complainant in the event that the Complainant institutes collection proceedings to collect the debt. Payment is to be by check payable to the North Carolina Department of Labor, OSHA Division (identifying Inspection No. 318231305) and mailed to Budget-Collections, North Carolina Department of Labor, 1101 Mail Service Center, Raleigh, North Carolina 27699-1101. Credit card payment may also be arranged.

14. The parties agree to bear their own fees, costs and other expenses, including attorney's fees if any, that have been incurred in connection with any stage of these proceedings up to and including the filing of this Consent Order.

15. Complainant and Respondent agree that provided the respective Motion of each party is 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 Consent Order is a full and final resolution of the claims 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 a waiver of any defense, provided however, that in any subsequent proceeding with respect to matters covered by this Consent Order brought directly under the Act by Complainant, this Consent 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 purposes except for proceedings and matters arising under the Act and Article 21, Chapter 95 of the North Carolina General Statutes.

### MOTIONS

Complainant moved to do the following ("Complainant's Motion"):

- a) Delete Citation 01, Items 001a, 001b, and 001c;
- b) Reclassify Citation 01, Item 02 from Serious to Non-Serious but maintain the penalty of \$1,200.00;
- c) Reclassify Citation 01, Items 003a and 0003b from Serious to Non-Serious and group these items with a grouped penalty of \$6,300.00;
- d) Delete Citation 01, Item 04.
- e) Delete Citation 01, Item 06.
- f) Delete Citation 01, Item 07.
- g) Reclassify Citation 01, Items 08 and 09 from Serious to Non-Serious and group these items with a total grouped penalty of \$1,200.
- h) Delete Citation 02, Item 01.
- i) Delete Citation 02, Item 02.
- j) Delete Citation 02, Item 03.

Except as modified Complainant's Motion, the citation items shall remain as stated in the Original Citation. 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) 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.

### 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. Respondent is an "employer" within the meaning of N.C.G.S. §95-127(11); Respondent's employees referred to in the Original Citation as amended are "employees" within the meaning of N.C.G.S. §95-127(10).
3. This Court has jurisdiction over the parties and the subject matter of this Hearing.
4. Respondent is subject to the provisions of the Act and jurisdiction of the Safety and Health Review Commission of North Carolina.

Based on the foregoing Findings of Fact and Conclusions of law, **NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:**

1. That Complainant's Motion is hereby **GRANTED**;
2. That Respondent's Motion is hereby **GRANTED**; and
3. That the parties shall comply with the terms and conditions set forth in this Order specifically including paragraphs 13 and 15 of the Findings of Fact.

Effective the 18th day of December, 2024.

**SO ORDERED**

Signature: R Joyce Garrett  
R Joyce Garrett (Dec 18, 2024 20:11 EST)

Email: rjg.rjg@aol.com

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R. Joyce Garrett  
Hearing Examiner

CONSENTED TO:

JOSHUA H. STEIN, Attorney General

Signature: Rory Agan  
Rory Agan (Dec 18, 2024 10:55 EST)

Email: ragan@ncdoj.gov

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Signature: Michael McKnight  
Michael McKnight (Dec 18, 2024 10:52 EST)

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Counsel for Respondent

**CERTIFICATE OF SERVICE**

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

MICHAEL D. MCKNIGHT  
OGLETREE DEAKINS  
FORUM IV  
8529 SIX FORKS RD  
STE 600  
RALEIGH, NC 27615

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 23 DAY OF December 2024.

PAUL E. SMITH  
CHAIRMAN

  
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Docket Administrator  
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