

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

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

Complainant,

v.

**CASE FARMS PROCESSING, INC.
*and its successors***

Respondent.

) **DOCKET NO: 2023-6548**
) **INSPECTION NO: 318257615**
) **CSHO ID: S0054**

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FINAL ORDER

FILED

MAY 13 2025

NC OSH Review Commission

THIS CAUSE came on for hearing and was heard before the undersigned Richard Koch, Hearing Examiner for the North Carolina Occupational Safety and Health Review Commission, on May 13, 2025, pursuant to a Notice of Hearing. Rory Agan, Special Deputy Attorney General, North Carolina Department of Justice, appeared for the Complainant. Curtis Moore, Fisher & Phillips, Charlotte, North Carolina, appeared for the Respondent. No affected employee of Respondent, or its representative, attended to have a say in, or participate as a party in, the Hearing.

At the time of the Hearing the parties agreed upon and consented to the following Stipulations.

STIPULATIONS

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"). The Review Commission has jurisdiction over the parties and the subject matter to this action.

2. Respondent is a North Carolina corporation, duly organized and authorized to do business under the laws of the State of North Carolina, and maintains a place of business in Raleigh, North Carolina. Respondent is an "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 January 3, 2023 and May 12, 2023, Lynn Stevenson, an Occupational Safety and Health Compliance Officer with the North Carolina Department of Labor,

conducted an inspection of Respondent's worksite located at 330 Pecan Road in Dudley, North Carolina (the "Inspection").

4. As a result of the Inspection, on May 12, 2023, Complainant issued the following Citation and Notification of Penalty (herein collectively referred to as the "Original Citation"):

Citation	Item	Standard	Type	Penalty
1	1	1910.28(b)(1)(i)	Serious	\$13,051.80

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 beyond that outlined in 12(b).**

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 none of the foregoing agreements, statements, stipulations, and actions taken by Respondent shall be deemed an admission of any of the allegations contained in the Citation and Notification of Penalty or waiver of defenses for any other civil or criminal proceeding, to include but not limited to a *Woodson* claim. Provided, however, that in any subsequent proceeding with respect to matters covered by this Consent Order brought directly under the Act by the OSH Division, this Consent Order 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 efficiently 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.

12. Respondent agrees to:

- a. Respondent will pay the penalty of \$500.00 assessed in this matter (payment is to be by check payable to North Carolina Department of Labor, OSHA Division (identifying Inspection No. **318257615**)) 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;
- b. Respondent agrees to provide abatement documentation to NCDOL showing employees who may be tasked with hanging plastic were fully retrained and reminded to use ladders or platforms to access overhead pipes safely within sixty (60) days of the date of this executed Order.

[Remainder of page intentionally left blank]

MOTIONS

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

- a. Change Citation 1, Item 1 to a nonserious citation under standard 1910.9(b) with a penalty of \$500.00 as follows:

Citation	Item	Standard	Type	Penalty
1	1	1910.9(b)	Nonserious	\$500.00

- b. Rewrite the AVD to state: “On or about December 21, 2022, an employee was not adequately trained on how to properly access and place plastic on a condensating, overhead pipe.”

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 \$500.00 in the manner set forth in the Stipulations.
3. The parties shall abide by the terms and stipulations of this Order.

This the 13th day of May, 2025.

Signature: Richard M. Koch

Richard M. Koch May 13, 2025 12:26 EDT

Email: lawoffice@richardkochlaw.com

Richard Koch
Hearing Examiner

CONSENTED TO:

Signature:

RA

Rory Agan May 13, 2025 12:35 EDT

Email: ragan@ncdoj.gov

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

Signature:

Curtis

Curtis Moore May 13, 2025 12:01 EDT

Email: cmoore@fisherphillips.com

Curtis G. Moore
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:

CURTIS G MOORE
FISHER & PHILLIPS LLP
227 W TRADE ST STE 2020
CHARLOTTE NC 28202

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 14 DAY OF May 2025.

PAUL E. SMITH
CHAIRMAN



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