

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

COMMISSIONER OF LABOR OF THE STATE OF NORTH CAROLINA,)	DOCKET NO.: OSHANC 2023-6554
)	INSPECTION NUMBER: 318256393
COMPLAINANT,)	CSHO ID: Q0750
)	
v.)	
)	<u>ORDER</u>
MOUNT OLIVE PICKLE COMPANY, INC.)	
<i>and its successors</i>)	FILED
)	
)	MAY 14 2024
RESPONDENT.)	

NC OSH Review Commission

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 citation issued in this matter, and the undersigned having reviewed the citation, 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 Commission, the undersigned makes the following:

FINDINGS OF FACT:

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

2. Complainant is an agency of the State of North Carolina charged with the administration and enforcement of the provisions of 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.

3. Respondent, Mount Olive Pickle Company, Inc., is a North Carolina corporation, duly organized and existing under the laws of the State of North Carolina, which does business in the State of North Carolina and maintains a place of business in Mount Olive, North Carolina.
4. Respondent is in the business of food manufacturing; specifically, Respondent is in the business of producing and canning pickled cucumbers, pickled jalapenos, and relish.
5. Respondent operates a facility at 1 Cucumber Boulevard in Mount Olive, North Carolina.
6. Respondent is an "employer" within the meaning of N.C.G.S. §95-127(11).
7. On and between December 6, 2022 and January 12, 2023, Compliance Safety and Health Officer Chris Jasion, employed by the North Carolina Department of Labor (NCDOL), accompanied by Compliance Safety and Health Officer-in training Sharon Owens, also employed by NCDOL, inspected Respondent's facility located at 1 Cucumber Boulevard in Mount Olive, North Carolina.
8. On May 16, 2023, as a result of the inspection, Complainant issued one citation with three items, classified as Serious, carrying the following proposed abatement dates and penalties:

CITATION NUMBER ONE (Serious)

Item	Standard	Abatement Date	Penalty
1	29 CFR 1910.147(c)(4)(i)	6/12/2023	\$14,502.00
2	29 CFR 1910.147(c)(6)(i)	6/12/2023	\$6,500.00
3	29 CFR 1910.147(c)(7)(i)	6/12/2023	\$14,502.00

9. The Respondent submitted a timely Notice of Contest, dated June 20, 2023.
10. The parties have mutually agreed to resolve the Citation(s) upon the following terms, and seeks the undersigned's approval of the same.

STIPULATED TERMS OF AGREEMENT:

- a. Respondent agrees to continue 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. Delete Citation One, Items 1, 2, and 3, and the associated penalties in their entirety.
- c. Without admitting any allegations of the Citation and Notification of Penalty, or waiving any defense to the Citation(s), Respondent agrees to conduct affected employee lockout training or re-training for employees working in the packing department at the Respondent’s facility within sixty (60) days from the date of this Order.
- d. Each party agrees to bear its 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 Consent Order.
- e. The parties agree that this Consent Order is a full and final settlement of the 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 Consent Order 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.

- f. There are no other outstanding matters to be addressed in this proceeding.
11. Neither party has any objection, procedural or otherwise, to this Hearing.
 12. No affected employee elected party status and no employee raised an objection to the reasonableness of the abatement time.
 13. The foregoing terms are reasonable and supported by the underlying facts.
 14. 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 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; and
2. The parties shall comply with the terms and conditions set out above.

This May 14, 2024.

Mary-Ann Leon

Mary-Ann Leon | May 14, 2024 10:14 CDT

MARY-ANN LEON
Hearing Examiner

CONSENTED TO:

JOSHUA H. STEIN
Attorney General

Sage A. Boyd

Sage A. Boyd (May 13, 2024 10:50 EDT)

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ATTORNEYS FOR COMPLAINANT

Travis Vance

Travis Vance (May 13, 2024 10:47 EDT)

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ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

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

TRAVIS W VANCE
LEE M THOMAS
FISHER & PHILLIPS
227 W TRADE ST STE 2020
CHARLOTTE NC 28202

by depositing same in the United States Mail, via certified mail, return receipt requested, at Raleigh, North Carolina; and upon:

SAGE BOYD
NC DEPARTMENT OF JUSTICE
LABOR SECTION
PO BOX 629
RALEIGH NC 27602-0629

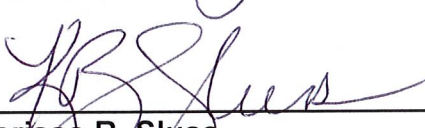
by depositing same in the United States Mail, first class, postage prepaid, at Raleigh, North Carolina; and upon:

NC DEPARTMENT OF LABOR
1101 MAIL SERVICE CENTER
RALEIGH NC 27699
carla.rose@labor.nc.gov

Via email.

THIS THE 15 DAY OF May 2024.

PAUL E. SMITH
CHAIRMAN



Karissa B. Sluss
Docket Administrator
NC Occupational Safety &
Health Review Commission
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