

FILED

JUL 31 2025

NC OSH Review Commission

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

COMMISSIONER OF LABOR OF THE	)	DOCKET NO.: OSHANC 2024-6616
STATE OF NORTH CAROLINA	)	INSPECTION NUMBER: 318266640
	)	CSHO ID: L1173
COMPLAINANT,	)	
	)	
v.	)	
	)	<u>CONSENT ORDER</u>
	)	
CLEARWATER ENTERPRISES, INC. DBA	)	
CAMP CLEARWATER	)	
<i>and its successors,</i>	)	
	)	
RESPONDENT.	)	

THIS CAUSE came on pursuant to the Notice of Pre-Hearing Conference ("Hearing Notice") on July 29, 2025 at 10:00 a.m., via Lifesize teleconferencing platform before the undersigned, Brian Clarke, Hearing Examiner for the North Carolina Occupational Safety and Health Review Commission. Sage A. Boyd, Special Deputy Attorney General, North Carolina Department of Justice, Raleigh, North Carolina, appeared as counsel for the Complainant. Kenzie M. Rakes and Shannon R. Joseph, Attorneys with Morningstar Law Group, Raleigh, North Carolina, appeared for Respondent, accompanied by Hope Campbell, client-representative for Respondent.

Pursuant to the Hearing Notice, a pre-hearing conference ("the Hearing") was held for the purpose of considering matters which would simplify the issues and expedite the proceedings in the above referenced case including considering such matters that may be necessary or advisable for the completion of the case, and if possible, to reach a resolution without the necessity of further hearing. This Hearing was not an evidentiary hearing and the specific facts and circumstances relevant to the Inspection (hereinafter defined) and the Original Citation (hereinafter defined) were not introduced of record, and such facts and circumstances are not included in the Stipulations hereinafter set forth. At the Hearing, Complainant and Respondent requested that the Stipulations and Motions be made part of the Hearing record and that the Undersigned issue a Consent Order. The Stipulations and Motions are as follows:

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").

2. The Review Commission has jurisdiction over the parties and the subject matter to this action.
3. On May 24, 2023, District Supervisor Ted Hendrix, accompanied by Compliance Safety and Health Officer Mark Tulio, North Carolina Department of Labor, inspected Respondent's worksite at 2038 White Lake Road, Elizabethtown, North Carolina ("the Inspection").
4. Respondent, Clearwater Enterprises, Inc., a North Carolina corporation, does business as Camp Clearwater in Elizabethtown, North Carolina.
5. As a result of the Inspection, on November 17, 2023, Complainant issued two citations with the following items, carrying the following proposed abatement dates and penalties in the Citation and Notification of Penalty (hereafter referred to as the "Original Citation"):

**CITATION NUMBER ONE (Serious)**

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1	N.C.G.S. § 95-129(1)	Immediately upon receipt	\$3,125.00
2	29 CFR 1910.110(b)(14)(vi)	Immediately upon receipt	\$2,000.00
3	29 CFR 1910.110(b)(16) or, in the alternative, N.C.G.S. § 95-129(1)	January 11, 2024	\$3,125.00
4	29 CFR 1910.110(b)(18)	Immediately upon receipt	\$4,687.50

**CITATION NUMBER TWO (Non-Serious)**

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1	29 CFR 1910.303(b)(7)(i)	December 15, 2023	\$0.00

6. Respondent submitted a timely Notice of Contest dated January 17, 2024.
7. The Hearing in this matter was scheduled pursuant to Rules of Procedure of the Safety and Health Review Commission of North Carolina (the "Rules").
8. Complainant and Respondent have no objection, either procedural or otherwise, to this Hearing; waive the making of a transcript; and consent to the conduct of this Hearing by the Undersigned and consent to entry of this Order.

9. Respondent confirms that the Original Citation and the Hearing Notice have been posted as required by the Rules.
10. 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.
11. Respondent confirms that the violations alleged in the Original Citation as amended pursuant to Complainant's Motion have been abated.
12. Respondent agrees that LPG tank and filling station will remain locked out and tagged out and ultimately removed from the premises; and in the event that Respondent places a LPG tank and filling station(s) back in service at the facility, then the Respondent agrees to exercise its best efforts to comply with the OSH Act.
13. Respondent agrees to pay the total penalty of **\$9,812.50 within thirty (30) days of the date of this Order**. In the event Respondent does not pay the penalty as agreed upon, Complainant retains the right to institute collection proceedings as allowed by law. Respondent agrees to 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. **318266640**) and mailed to North Carolina Department of Labor, Financial Services Division. ATTN: Collections Division, 1101 Mail Service Center, Raleigh, NC 27699-1101.
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 Motions of each party are 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 additional 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 foregoing 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 or the amendments to the Original

Citation or the 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 Consent Order shall have the full force and effect of a final order; and

- (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 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"):

- 1. Delete Citation One, Item 1 and the penalty associated with it;**
- 2. Delete Citation One, Item 2 and the penalty associated with it;**
- 3. Delete Citation One, Item 3 and the penalty associated with it; and**
- 4. For Citation One, Item 4:**
  - a. Amend the penalty from \$3,125.00 to \$9,812.50;**
  - b. Reclassify from Serious to Non-Serious; and**
  - c. Amend the Alleged Violation Description in instance a) to add the words "on May 24, 2023," after "-" and before "where" so that instance a) states the following:**

**"a) LPG dispensing station – on May 24, 2023, where the intrinsically safe operating switch for the dispenser (propane pump) was missing one of the four screws holding the cover on the switch box, and another screw wasn't tight, allowing an approximately 1/8-inch gap between the cover and the switch box, negating the intrinsically safe properties of the switch box. On or about May 22, 2023, an employee was fatally injured when a cloud of LPG vapor ignited while the employee was refilling an LPG cylinder for a customer."**

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"):

**1. 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 record and the Stipulations at the time of the Hearing as memorialized herein, the Undersigned makes the following Findings of Fact:

1. 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.
2. Respondent is subject to the provisions of the Act and jurisdiction of the Safety and Health Review Commission of North Carolina.
3. This Court has jurisdiction over the parties and the subject matter of this Hearing.
4. Neither party has any objection, procedural or otherwise, to this Hearing. No affected employee elected party status and no employee raised an objection to the reasonableness of the abatement time.
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**;
2. That Respondent's Motion is hereby **GRANTED**;
3. That Respondent shall pay the penalty of **\$9,812.50 within thirty (30) days of this Order**; and
4. That the parties shall comply with the terms and conditions set forth in the Stipulations.

This the 07/31/2025.

Signature: 

Email: bclarke.ncoshrc@outlook.com

Brian Clarke  
Hearing Examiner

**CONSENTED TO:**

**Signature:** Sage A. Boyd  
Sage A. Boyd (Jul 30, 2025 10:38:57 EDT)

**Email:** sboyd@ncdoj.gov

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Sage A. Boyd  
Special Deputy Attorney General  
North Carolina Department of Justice  
sboyd@ncdoj.gov

**Signature:** Shannon Joseph  
Shannon Joseph (Jul 30, 2025 10:38:14 EDT)

**Email:** sjoseph@morningstarlawgroup.com

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Shannon R. Joseph  
Attorney  
Morningstar Law Group  
sjoseph@morningstarlawgroup.com

**Signature:** Kenzie M. Rakes

**Email:** krakes@morningstarlawgroup.com

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Kenzie M. Rakes  
Attorney  
Morningstar Law Group  
krakes@morningstarlawgroup.com

ATTORNEY FOR COMPLAINANT

ATTORNEYS FOR RESPONDENT

**CERTIFICATE OF SERVICE**

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

SHANNON R. JOSEPH  
KENZIE M. RAKES  
MORNINGSTAR LAW GROUP  
434 FAYETTEVILLE ST.  
SUITE 2200  
RALEIGH, NC 27601

By depositing same in the United States Mail, Certified Mail, Return Receipt Requested, postage prepaid at Raleigh, North Carolina, and upon:

SAGE A. BOYD  
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

By email.

THIS THE 1 DAY OF August 2025.

PAUL E. SMITH  
CHAIRMAN



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