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Att: Richard A. Love
 Assistant Attorney General
 : Alex Shugart

Administrative Law Judge: Beecher R. Gray
 Beecher R. Gray, administrative law
 Yadkinville, North Carolina. This hearing
 of the parties. Both parties waived the
 conclusion of the hearing the parties
 me to file proposed findings of fact and
 10B-34(b). Respondent filed a proposed
 memorandum of law on May 19, 1989.

ISSUES
 failed to provide an adequate and
 ed by the appropriate health authority
 nd laundry purposes at a house owned
 d by migrant workers on State Road
 ember 7, 1988.
 ailed to maintain fly and rodent-tight
 containers present did not have tight
 Respondent] and inhabited by migrant
 Yadkin County on September 7, 1988.

FINDINGS OF FACT

1. [Complainant] is an agency of the State of North Carolina with responsibility and authority for insuring compliance with the federal occupational Safety and Health Act (OSHA) under the provisions of North Carolina General Statute Chapter 95, Article 16, the Occupational Safety and Health Act of North Carolina (OSHANC).

2. [Respondent] is in the business of farming in Yadkin County North Carolina. His address is P. O. Box 188 Yadkinville, North Carolina 27055.

3. [Respondent] grows tobacco on land he owns or controls in Yadkin County. He maintains two houses on land he farms in which agricultural workers live during the tobacco season. One house is located on State Road 1374 and one on State Road 1370.

4. On August 16, 1988 Safety Compliance Officer Kathleen Ragan, an agent of [Complainant], entered [Respondent's] farm land and conducted an inspection of the two houses used by the agricultural workers for compliance with OSHA standards.

5. On August 16, 1988 Officer Ragan observed that there were three (3) workers living in the house on State Road 1374 and five (5) workers in the house on State Road 1370.

6. At the house on State Road 1374, Officer Ragan found that [Respondent] had a hand-dug well as a source of water supply and could not furnish evidence of its approval as a safe water supply by the Yadkin County Health Department. The Yadkin County Health Department had taken a water sample on May 20, 1988 for bacteriological analysis but had refused to release the results because an unlined hand dug well is nonconforming to State health requirements for agricultural worker water supply.

7. Officer Ragan also observed that [Respondent] had a 55 gallon drum for a waste container for the house on State Road 1374. On August 16, 1988 the drum was located about 25 feet from the house and its lid was lying on the ground a few feet away. [Respondent] had previously furnished the 55 gallon drum and lid for the workers and had repeatedly instructed them to keep the lid in place on top of the drum.

8. An improper water supply may cause serious illnesses such as typhoid fever and infectious hepatitis.

9. The three workers observed at [Respondent's] house on State Road 1374 on August 16, 1988 were the same workers who had worked for [Respondent] during the 1987 tobacco season and who, in September 1987, had given Officer Ragan permanent addresses as Mexico. All three workers were dark-skinned and primarily spoke Spanish. As of August 16, 1988 these three workers had been on [Respondent's] farm for approximately six months.

10. [Respondent] did not charge rent to the three agricultural workers living in the house on State Road 1374 during the 1988 tobacco season but began to charge rent after the season when the workers remained in the house and became employed by a local poultry plant. [Respondent] expects these same workers to work for him during the 1989 tobacco season and intends to let them live in the house on State Road 1374 rent free during the time they work for him in tobacco farming.

11. There is no evidence in the record that any person has become ill because of drinking the water in the well at the house on State Road 1374. [Respondent] hired a private laboratory, Hamilton Laboratories, Inc. of Salisbury, North Carolina, to collect and analyze a water sample from the State Road 1374 well on March 15, 1989. The results of this test showed that no coliform bacteria were found.

12. On December 16, 1988 [Respondent] was issued three citations for six violations observed by Officer Ragan during the August 16, 1988 visit. The citations at issue in this contested case are as follows:

a. Citation number one, item 1, alleges a repeat serious violation of 29 CFR 1910.142(c)(1) as adopted by N.C. Admin. Code tit. 13, r. 7C.0100 through .0309, in that an adequate and convenient water supply, approved by the appropriate health authority, was not provided to employees for drinking, cooking, bathing, and laundry purposes at [Respondent's] house on State Road 1374 in Yadkin County, North Carolina. A civil penalty of \$320 was proposed for this alleged violation.

b. Citation number two, item 2, alleges a repeat nonserious violation of 29 CFR 1910.142(h)(1) as adopted by N.C. Admin. Code Tit. 13, r. 7C.0100 through .0309 in that a garbage container at [Respondent's] house on State Road 1374 in Yadkin County was not fly or rodent-tight because it was not covered with a tight fitting lid. A civil penalty of \$80 was proposed for this alleged violation.

13. The OSHA Field credit for history

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Based conclusion

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[Respondent's] house on State Road 1374 during the 1988 season when the same workers who had worked for [Respondent] in 1987 tobacco season and who, in addition, have permanent addresses as migrant workers, were employed by [Respondent] and primarily spoke Spanish. [Respondent] has three workers had been on the premises for six months.

ent to the three agricultural workers who had worked for [Respondent] on State Road 1374 during the 1988 season when the same workers who had worked for [Respondent] in 1987 tobacco season and who, in addition, have permanent addresses as migrant workers, were employed by [Respondent] and primarily spoke Spanish. [Respondent] has three workers had been on the premises for six months.

hat any person has become ill from drinking water from the well at the house on State Road 1374 in Yadkin County, North Carolina. Hamilton Laboratories, Inc., analyzed a water sample from the well on August 15, 1989. The results of this analysis are as follows:

[Respondent] was issued three citations under N.C. Admin. Code tit. 13, r. 02.0101 during the August 16, 1988 case are as follows:

is a repeat serious violation of N.C. Admin. Code tit. 13, r. 02.0101 for inadequate and convenient water supply for health authority, was not provided for drinking, bathing, and laundry purposes at State Road 1374 in Yadkin County. A fine of \$320 was proposed for this violation.

ges a repeat nonserious violation of N.C. Admin. Code tit. 13, r. 02.0101 for a garbage container at State Road 1374 in Yadkin County was not covered with a tight fitting lid for this alleged violation.

13. The proposed penalties were calculated in accordance with the OSHA Field Operations Manual. [Respondent] was given 40 percent credit for size, 30 percent credit for good faith and 10 percent credit for history.

14. The remaining alleged violations carried no proposed civil penalties and are not contested in this proceeding.

CONCLUSIONS OF LAW

Based upon the foregoing findings of fact, I make the following conclusions of law.

1. The parties are properly before the Office of Administrative Hearings.

2. A migrant agricultural worker is defined in 29 U.S.C. 1802 as an individual who is employed in agricultural employment of a seasonal or other temporary nature, and who is required to be absent overnight from his permanent place of residence.

3. At the time of Officer Ragan's inspection of August 16, 1988 the three agricultural workers employed by [Respondent] and residing in his house on State Road 1374 in Yadkin County were migrant agricultural workers for purposes of OSHA and OSHANC.

4. On August 16, 1988 [Respondent] was not in violation of 29 CFR 1910.142(h)(1) requiring garbage containers with fly and rodent-tight lids because he had in fact furnished such equipment for the workers and had instructed them in keeping the lid on the can. [Respondent] is not required to maintain a 24 hour watch over such facilities to ensure proper use.

5. On August 16, 1988 [Respondent] was in violation of 29 CFR 1910.142(c)(1) in that he failed to provide an adequate and convenient water supply approved by the appropriate health authority for drinking, cooking, bathing, and laundry purposes for the three migrant workers in [Respondent's] house on State Road 1374 in Yadkin County.

6. [Complainant] has the authority under North Carolina General Statute 95-138 (1985) to impose a civil penalty against [Respondent] for the water supply violation.

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Findings of Fact and Conclusions of Law made by the Administrative Law Judge are sufficiently supported by the admissible evidence and the Review Board hereby adopts the Findings of Fact and Conclusions of Law in the Administrative Law Judge's Recommended Decision.

ORDER

The Review Board hereby adopts the Administrative Law Judge's Recommended Decision affirming citation Number One, Item 1 against [Respondent] and the six month suspension of the penalty conditioned on [Respondent's] spending the penalty amount of \$320 on upgrading the well in question or obtaining an approved means of water supply. The Review Board also adopts the reversal of citation Number Two, Item 2, thereby dismissing that citation.

This the 18th day of October, 1989.

Kenneth K. Kiser, Chairman

Hugh M. Wilson, Member