

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

COMMISSIONER OF LABOR OF THE)	
STATE OF NORTH CAROLINA,)	DOCKET NO: OSHANC 2024-6645
)	
COMPLAINANT,)	INSPECTION NO: 318277654
)	
)	CSHO ID.: C9077
v.)	
)	
)	
MOUNT OLIVE PICKLE COMPANY, INC.)	
<i>and its successors,</i>)	
)	
RESPONDENT.)	

FILED
AUG 22 2025
NC OSH Review Commission

DECISION AND FINAL ORDER

THIS MATTER was duly noticed and came on for hearing before the undersigned on April 10 and 11, 2025, via the Lifesize video platform. The Complainant, Commissioner of Labor of the State of North Carolina ("Complainant"), was represented by Ms. Stacey A. Phipps, Special Deputy Attorney General / Section Head, N.C. Department of Justice. Respondent Mount Olive Pickle Company, Inc. was represented by Mr. Travis W. Vance and Mr. Lee M. Thomas, Fisher & Phillips LLP.

PROCEDURAL HISTORY

On March 7, 2024 Complainant issued one Serious citation with one item and a second Non-Serious citation with one item. Respondent timely submitted a Notice of Contest and Statement of Employer's Position, requesting formal pleadings. The Complaint and Answer were timely filed on May 21, 2024 and June 3, 2024, respectively. Complainant subsequently withdrew Citation 2, Item 1.

WITNESSES

For the Complainant: Mr. Jerry Midyette, Health Compliance Officer II, N.C. Department of Labor

For the Respondent: Mr. Larry Beckman, Vice-president of Manufacturing, Mount Olive Pickle Company, Inc.
Mr. Cameron Cottle, Plant Manager, Mount Olive Pickle Company, Inc.
Mr. Justin Pate, Supervisor, Mount Olive Pickle Company, Inc.
Mr. Thomas Kilpatrick, III, Safety, Security & Training Manager, Mount Olive Pickle Company, Inc.

EXHIBITS

The following exhibits were admitted into evidence at the hearing:

For the Complainant: C-1 Official Report of Inspection, consisting of 183 pages
C-2 Photographs labeled CD-1 and CD-2

For the Respondent: R-1 Employee Training Record
R-3 Eye Protection Policy, adopted Sept. 20, 2019
R-5 Pasteurizer Operator Training Checklist
R-8 OSHA-1AC, Inspection 318277654, Narrative Comments
R-14 Specification Sheet for Safety Glasses
R-16 Photo IMG_5432 (from inspection report)
R-21 Company Handbook, excerpt
R-26 Officer Midyette Field Notes
R-27 Officer Midyette Attestation of Record Custodian
R-28 CSHO-in-training Williams Field Notes
R-29 December 14, 2023 emails between Midyette / Beckman, including attachments (OSHA 300 logs, Job Safety Analysis)
R-30 Complainant's Responses to Respondent's Third Set of Requests for Admission
R-31 Stipulations Regarding PSIM
R-32 Photo IMG_5416 (from inspection report)
R-33 Verification re: Complainant's Responses to Respondent's Third Requests for Admission

Prior to the hearing the parties entered into a set of stipulations which became part of the record and which are included as Appendix A to this Order.

DECISION

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, judicially noticed information pursuant to N.C. Gen. Stat. §8C-1-201 and the entire record in this proceeding, the Undersigned makes Findings of Fact and Conclusions of Law. In making the Findings of Fact, the undersigned has weighed all the evidence and assessed the credibility of the witnesses. The undersigned has taken into account the appropriate factors for judging credibility of witnesses, including but not limited to the witnesses' demeanor and any interests, biases, or prejudice evinced by witnesses. Further, the undersigned has carefully considered the opportunity of the witnesses to see, hear, know or remember the facts or occurrences about which they testified and whether the witnesses' testimony was reasonable and consistent with all other believable evidence in the case. Based upon the foregoing, the Undersigned makes the following:

FINDINGS OF FACT

1. Complainant is an agency of the State of North Carolina charged with the administration and enforcement of the provisions of the Occupational Safety and Health Act of North Carolina. N.C. Gen. Stat. § 95-126 et seq. ("the Act").
2. Respondent Mount Olive Pickle Company, Inc. is a corporation organized under the laws of the State of North Carolina, doing business in Mount Olive, North Carolina. Parties' Stipulations ("Stip.") #2.
3. Respondent's business is food manufacturing, specifically the business of producing and canning pickled cucumbers, pickled jalapeños, and relish. Stip. #3.
4. As a result of a complaint received by the NC Department of Labor, Compliance Safety and Health Officer ("CSHO") Jerry Midyette opened an investigation at Respondent's Mount Olive plant on December 6, 2023. Midyette Test., Day 1, T. p 21.
5. Prior to beginning the inspection, CSHO Midyette received photographs from the initial complainant, and during the inspection, CSHO Midyette and CSHO-in-training Lanika Williams took photographs and interviewed employees. In addition, during the investigation Midyette received documents from the employer, including a video from Respondent's plant manager, Cameron Cottle. All of the photographic evidence offered was admitted into the record at the hearing. There were no formal witness statements taken by the CSHOs. Midyette Test., Day 1, T. pp 21-24.
6. The area of the plant relevant to the citation at issue in this hearing is called the "pasteurizer" area. In that area there are four pasteurizers where produce jars are moved along a conveyor. The jars are heated with water. The water temperature is controlled through valves. Compl. Ex. C-1, p 69.
7. At the time of the inspection, three of the four pasteurizers relied upon manual steam valves where employees had to adjust the valves in order to lower the temperature in the pasteurizer. The valves are located approximately seven feet from the ground. In order to make adjustments employees use a five foot metal rod to reach the overhead valve. Midyette Test., Day 1, T. pp 52; 53:3-9; 54:12-13; 54:19-22; 63:7-11. Compl. Ex. C-2 Photo 5438; Photo IMG 001.
8. There are reservoirs (also called pump boxes) that are thirty-eight inches from the ground ("basically at waist height"). The reservoirs' purpose is to retain water for the pump. The distance between the hot water pipe and the reservoir is about twelve inches. Midyette Test., Day 1, T. pp 63-64. Beckman Test., Day 2, T p 209. Compl. Ex. C-2, IMG 0016. Compl. Ex. C-1 p 177.
9. The reservoirs boil over if the pasteurizer pump is turned off or "cut off," if there is insufficient water for some other reason, or, if the pump becomes too hot. Resp. Ex. R-26, pp 15; 18; 22.
10. The primary contentions at the enforcement hearing concerned whether Respondent's employees were exposed to hazards from debris or liquids, including extremely hot water, splashing into their eyes. At the enforcement hearing, CSHO Midyette stated that the only two areas of

employee exposure to steam, or, to hot water splashing into the employee's eye(s) occurred during the quality control check, when employees must reach into the pasteurizer to retrieve jars and when employees are standing next to the reservoir while manually adjusting an overhead valve. T p 54:4-7.

11. Respondent's eye protection policy requires that employees wear "full eye protection, safety glasses that include side shields or wrap-around safety glasses meeting ANSI Standard Z87.1-2010" when performing tasks "with the potential of generating flying particles." Resp. Ex. R-3. See also, Beckman Test., Day 2, T. p 189:6-15 (full eye protection required when employees are doing "specific tasks where there's a potential of flying debris, such as hot water").
12. In addition, Respondent's safety committee completed a job safety analysis for pasteurizer operators and determined that safety glasses should be required when operators are performing quality control checks (although reaching into the pasteurizer was not specified). Resp. Ex. R-29, p 6.
13. Respondent's employees wear full eye-protection safety glasses, as described in Respondent's eye-protection policy, whenever they are performing quality control checks, including reaching into the pasteurizer. CSHO Midyette admitted that while he was conducting his inspection he never saw any employee conduct a quality control check without proper safety glasses. He also photographed a pasteurizer operator performing a quality control check, including retrieving a jar from inside the pasteurizer. The operator was wearing proper safety glasses that protected her from the hazards of flying debris, including splashing hot water. Midyette Test., Day 1, T. pp 49-50; 92:22-25. Compl. Ex. C-2, Photo #5417; Compl. Ex. C-1, p 170. Resp. Ex. R-26 p 15. See also Pate Test., Day 2, T pp 245:16 - 246:8; 247:1-19 (stating that operators wear safety glasses while performing quality control checks and testifying that he has observed employees Spencer and Swinson performing quality control checks with safety glasses worn over their prescription glasses).
14. CSHO Midyette asserted that employees were exposed to a hazard when manually adjusting valves because the employees "are standing right there beside the reservoir where the hot water is." T p 53:24-25.
15. Respondent does not require employees to wear full eye-protection safety glasses when manually adjusting overhead valves. Beckman Test., Day 2, T. p 196.
16. Midyette admitted that he did not observe any employee adjusting the valves while he conducted his investigation. Midyette Test., Day 1, T. p 94:1-3.
17. Midyette also admitted that there was no evidence that steam escaping from an overhead valve would create a hazard to an employee. Midyette Test., Day 1, T. p 103:24-104:1. He testified that steam released from the overhead manual valve would rise up from the valve, not toward the employee(s) down below. Midyette Test., Day 1, T. pp 103:9-14; 103: 24 - 104:1 ("there wasn't any valves that were open that we saw that would allow steam to get out where the employee was").
18. When asserting that there was a hazard associated with standing close to the reservoirs, Midyette did not specify that the hazard was to the employees' eyes. Midyette Test., Day 1, T. p 53:3-9.

Midyette was asked by the government's attorney: "If an employee was adjusting a valve that was seven feet high, is that person still exposed to a hazard?" His response: "Possibly. It depends on where they're standing." Midyette Test., Day 1, T. p 136:12-15. When asked whether being in proximity to the reservoir while adjusting the valve would expose the employee to a hazard, Midyette responded: "there's definitely a potential hazard there." He theorized the mechanism of potential injury as follows: "if that reservoir boils over or is boiling over at the time . . . there could be a hazard." Midyette Test., Day 1, T. p 137:9-11.

19. Beckman described the "boil over:" "It's something that gradually happens . . . the lid would rise slowly or rise up and fall" alerting the employee that they would need to contact maintenance. Beckman Test., Day 2, T. pp 211:15 - 212:2. See also Resp. Ex. R-28, p 5 (Lanika Williams' notes interviewing supervisor Justin Pate: "proper response to boil over is to report").
20. When the reservoir boils over, the water drips onto the floor. Beckman Test., Day 2, T p 211:14 - 212:2. Midyette Test., Day 1, T. pp 42:25 - 43:7.
21. Employees are typically not be required to approach the reservoir when there is a boil-over. They are required to call maintenance to address the issue. Beckman Test., Day 2, T p 212:1-2. Resp. Ex. R-26, p 22 (employee Swinson reports that she calls maintenance when the reservoir boils over). See also, Resp. Ex. R-28, p 5 (Lanika Williams' notes interviewing supervisor Justin Pate).
22. Midyette's conclusion that the Respondent exposed employees to a hazard by not requiring full eye protection for employees manually adjusting overhead valves was based upon two sources of evidence. First, he asserted that the injury which triggered the initial complaint to NC DOL was analogous to how hot water might splash into an employee's eye. Second, he relied upon his summaries of interviews conducted with two pasteurizer operators.
23. Complainant Brad Piro contacted the NC DOL after he was injured by boiling water from a reservoir at one of the pasteurizers. Based on Mr. Piro's description of the incident, Mr. Piro saw the water boiling out of the reservoir as he approached the pasteurizer on November 27, 2023. He grabbed a piece of cardboard to shield his body. He did not don protective gloves but acknowledged that these would have protected him from the injury he suffered. As he reached up to adjust the overhead valve hot water exploded upward from the reservoir and burned his hands and arm. The injury was serious enough to require medical treatment. Compl. Ex. C-1, pp 29; 133; 140. Midyette Test., Day 1, T p 102:4-6.
24. Mr. Piro described the water shooting upward as an anomaly, stating that he had never seen it "shoot that high before." Compl. Ex. C-1, p 140. He also described the circumstances which he believed caused the accident: because of an earlier problem starting up one of the boilers all of the valves were completely opened. In addition, there weren't any jars passing through the conveyer. These circumstances combined to cause excessive steam to build up. *Id.* Respondent's investigation of the accident also revealed that another employee had turned off the pump switch, an action which should not have occurred but which contributed to the boil over. Compl. Ex. C-1, p 29. See also Resp. Ex. R-26, pp 15; 18; 22 (explaining that turning off the pump switch leads to boil over).

25. CSHO Midyette interviewed two pasteurizer operators: Tanisha Spencer and Candace Swinson. In his narrative apprising the employer of the grounds for finding a violation, Midyette summarized both employees' statements. He wrote that Ms. Spencer had stated that "she is not required to wear safety glasses while operating the pasteurizers because she wears prescription glasses." Compl. Ex. C-1, p 78. To Ms. Swinson, CSHO Midyette attributed the following statements: "she wears her prescription glasses while working on the production floor instead of safety glasses. . . . safety glasses are not required for employees who wear prescription glasses . . ." Compl. Ex. C-1, p 79.
26. At the enforcement hearing, CSHO Midyette testified that he learned from Spencer that "her manager told her prescription glasses were good enough to wear for her job," that "she did not wear safety glasses for any part of her job, and parts of her job involved obtaining jars from the pasteurizer, and adjusting the valves for the temperatures." Midyette Test., Day 1, T p 82:4-12. With respect to Ms. Swinson, CSHO Midyette testified that "she told us that her supervisors approve the use of prescription glasses instead of using safety glasses." Midyette Test., Day 1, T p 84:3-6.
27. However, CSHO Midyette's notes from his interviews with the employees were ambiguous, at best, and in some ways, contrary to the position taken by Complainant. Employees were asked what kind of personal protective equipment is required for their jobs. In his notes from Ms. Spencer's interview, Midyette wrote down "we have our glasses." After writing that sentence it appears that Midyette inserted the word "prescription" and indicated the addition to the sentence with an arrow pointing to where he intended the insertion. He also wrote "we don't need safety glasses, hairnets, ST shoes, earplugs." Yet, he recorded the cost of steel toed shoes, suggesting that the list of equipment was what *was* needed. Before this sentence Midyette inserted the words "they told us," apparently after he had written "we don't need safety glasses." R-26, p 19.
28. According to CHSHO Midyette's notes, employee Swinson stated that "safety glasses" were personal protective equipment used for her job. In parentheses, Midyette wrote "prescription glasses" after the words "safety glasses." R-26 p 21.
29. CSHO Midyette also interviewed supervisor Justin Pate but did not include Pate's statement regarding safety glasses in his narrative. According to Midyette's notes from this interview, Pate stated that "hairnet, safety glasses, ear plugs, heat resistant gloves" were "required." Resp. Ex. R-26 p 17. At the enforcement hearing, Midyette stated that he did not ask Pate about safety glasses. Midyette Test., Day 1, T. p 130:16-21.
30. CSHO-in-training Lanika Williams also took notes during the employee interviews. Williams' notes from Swinson's interview indicate that when asked what kind of personal protective equipment was required for her job, Swinson responded "safety glasses, heat protection gloves, rags for hot jar, ear plugs, wear steel toes." There is no reference to prescription glasses. Williams' notes on Spencer's statement indicate that "no safety glasses" was a response provided to the question about required personal protective equipment. There is no reference to prescription glasses or management statements. Williams also recorded Pate's response that safety glasses were required. Resp. Ex. R-28, pp 5; 6; 9.
31. CSHO Midyette also asserted that Respondent's plant manager Cameron Cottle stated that employees could wear prescription eye glasses instead of safety glasses. However, CSHO

Midyette could not clarify in what context Mr. Cottle's remark was alleged to have been made. Midyette only stated the remark was made "during the walk-through when we saw an employee out there working on the pasteurizers" There was no description of the particular task being performed by the employee about whom this remark is alleged to have been made. Midyette Test., Day 1, T. p 15-21. Mr. Cameron Cottle followed up with CSHO Midyette to clarify that the Respondent's policy was to require full eye protection when operators are performing quality control checks. Compl. Ex. C-1, p 70. However, CSHO Midyette continued to use the ambiguous statement cited during the walk-through as evidence of employer knowledge of a violation. *Id.*, at p 79.

32. Complainant's official report of the investigation contained statements about the evidence used to support the citation which proved to be less credible when the evidence was presented at the enforcement hearing. For instance, Complainant's official report of the investigation stated "CSHOs observed an operator on pasteurizer number one wearing regular prescription glasses instead of safety glasses. . . . During the inspection walk-through, the CSHOs observed the steam and hot water from the pasteurizers exposes the employee to splash hazards The CSHOs observed the OSHA 300 logs for the past three years and for the current year and found that eye-related injuries are common at the facility." Compl. Ex. C-1, p 72.
33. At the enforcement hearing several pictures of one employee wearing prescription glasses in the pasteurizer area was presented. The employee was checking the temperature of the pasteurizer and adjusting the temperature. She was not performing a quality control check nor was she manually adjusting a valve. Compl. Ex. C-2, Photo PXL 164456578, PXL 164459130, PXL 164503222; Midyette Test. Day 1, T p 65:14 - 67:12.
34. At the enforcement hearing, CSHO Midyette admitted that steam from the overhead valves did not create an eye hazard. Midyette Test., Day 1, T. p 103:9-104:1.
35. At the enforcement hearing, CSHO Midyette speculated that a splash hazard was created by a reservoir boil-over, stating that there was "possibly" a splash hazard, depending on where the employee was standing. Midyette Test., Day 1, T. p 136:12-15.
36. The OSHA 300 logs included in the official inspection report also do not support the conclusion that "eye-related injuries are common at the facility" and, in any case, do not support a conclusion that eye-related injuries on the pasteurizer lines were foreseeable. Of the one-hundred fifty three injuries recorded over a four year period on Respondent's OSHA 300 logs only four injuries involved an eye and none of those incidents occurred in the pasteurizer area. Compl. Ex. C-1, pp 87-118.
37. As a result of the inspection, two citations with one item each were issued on March 7, 2024, carrying the following proposed abatement dates and penalties:

ITEM NO.	STANDARD	ABATE DATE	PENALTY
	CITATION ONE (SERIOUS)		

001	29 CFR 1910.133(a)(1)	Upon Receipt	\$ 2,400.00
	CITATION TWO (NON-SERIOUS)		
001	29 CFR 1904.4(a)	Corrected During Inspection	\$ 0.00

Stip. #10.

38. Complainant subsequently withdrew Citation Two, Item 001. Stip. #12.

CONCLUSIONS OF LAW

1. To the extent that the foregoing Findings of Fact contain conclusions of law, or that these Conclusions of Law are findings of fact, they are intended to be considered without regard to their given labels. *Charlotte v. Heath*, 226 N.C. 750, 755, 40 S.E.2d 600, 604 (1946); *Peters v. Pennington*, 210 N.C. App. 1, 15, 707 S.E.2d 724, 735 (2011). *Warren v. Dep't of Crime Control*, 221 N.C. App. 376, 377, 726 S.E.2d 920, 923, *disc. rev. den.*, 366 N.C. 408, 735 S.E.2d 175 (2012). 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. Gen. Stat. §95-127(11). Stip. #5.
3. The Review Commission has jurisdiction over the parties and the subject matter pursuant to N.C. Gen. Stat. § 95-135.
4. 29 CFR 1910.133(a)(1) requires employers to ensure that each affected employee uses appropriate eye or face protection when exposed to eye or face hazards from flying particles, molten metal, liquid chemicals, acids or caustic liquids, chemical gases or vapors, or potentially injurious light radiation.
5. In order to establish a violation of a safety standard, Complainant bears the burden to show, by the preponderance of the evidence, that the cited standard is applicable, the employer failed to comply with the standard, employees were exposed to the violative condition, and, the employer had actual or constructive knowledge of the violation. *N&N Contrs., Inc. v. OSHRC*, 255 F.3d 122, 126 (4th Cir. 2001).
6. In this case, the Complainant failed to meet its burden to show that employees were exposed to a hazard when manually adjusting overhead valves and failed to meet its burden to show that the employer did not comply with 29 CFR 1910.133(a)(1) when employees were conducting quality control checks.
7. Complainant's allegation that employees are exposed to a hazard from the reservoir boil-over when manually adjusting overhead valves is speculative.

- a) There is no foreseeable mechanism of injury given the physical facts established at the hearing. When the reservoir boils over there is typically a warning by the movement of the reservoir lid and, in any case, employees are instructed not to approach the reservoir. When the reservoir boils over the water, for the most part, drips to the floor.
 - b) Notwithstanding the injury to Mr. Piro's arms and hands, there is no history of injury which provides grounds for foreseeability of injury to employees' eyes when performing this task.
 - c) The injury to Mr. Piro does not make injury to employees' eyes from splash hazards more foreseeable. Mr. Piro acknowledged that he had never seen the reservoir water "shoot up" and the undisputed evidence was that a unique set of circumstances combined to produce that consequence. An employee had turned off the pump, all of the valves were completely open, and, there was no product moving through the conveyor.
 - d) The CSHO's statement that there is potential for injury based on where the employee is standing is too vague to establish a foreseeable hazard. The CSHO did not identify a specific location nor did the CSHO specify that employees would be exposed to *eye* injuries. In fact, the CSHO did not observe any employee manually adjusting a valve (FOF #16).
8. Complainant may not establish liability based upon speculation of exposure to a hazard. *Greb Elec. Co.*, 11 OSAHRC 389, 396-397, 1974 OSAHRC LEXIS 260 at *11-13 (Sept. 4, 1974) (Citation dismissed where Complainant sought "to sustain its burden of proof by showing a mere possibility").
 9. There was no credible evidence that employees performed quality control checks without wearing safety glasses compliant with 29 CFR 1910.133(a)(1). The only photographs submitted to illustrate the employers' practices indicated: (1) the employee performing the quality control check was photographed wearing proper safety glasses; (2) the employee photographed with prescription eye glasses was not performing a quality control check (nor adjusting an overhead valve).
 10. The attributed employee statements upon which Complainant relied to establish a violation were not credible. The statements were based on the CSHOs' notes, recording out of court statements by the witnesses who, in turn, were acknowledged to be providing hearsay evidence regarding what managers purportedly stated. Complainant provided no indicia for the reliability of such evidence. The attributed statements had inconsistencies between the two CSHOs' written records and inconsistencies with the live testimony given by the CSHO at the enforcement hearing. The statements were also inconsistent with the notes of the CSHOs' interview with supervisor Pate as well as Pate's live testimony at the enforcement hearing. Complainant made no attempt to reconcile the inconsistencies or otherwise demonstrate why the hearsay evidence used to support a violation should be believed.
 11. The Respondent received all of the witness statements Complainant was required to provide pursuant to N.C. Gen. Stat. §95-136(e1). Any issues raised by Respondent concerning its due process rights do not need to be reviewed in order to reach the decision in this matter. *Green v. Green*, 284 S.E.2d 171, 174, 54 N.C. App. 571, 575 (1981) (A judge is not required to find all the facts shown by the evidence, but only sufficient material facts to support the decision).

Flanders v. Gabriel, 110 N.C. App. 438, 440, 429 S.E.2d 611, 612 (1993) (stating that the tribunal “need only find those facts which are material to the resolution of the dispute.”)

12. The Complainant has failed to meet its burden of proof to establish a violation. Therefore, Citation One is dismissed and vacated in its entirety. Citation Two was previously withdrawn.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby **ORDERED** that the citations issued by the Complainant are DISMISSED WITH PREJUDICE and VACATED.

This the 21st day of August 2025.



Mary-Ann Leon
Hearing Examiner Presiding
maleon@leonlaw.org

APPENDIX A

PARTIES' STIPULATIONS

Prior to the hearing the parties submitted a joint prehearing report which included the following stipulated facts:

1. Complainant is an agency of the State of North Carolina charged with the administration and enforcement of the provisions of the Occupational Safety and Health Act of North Carolina, N.C. Gen. Stat. § 95-126, *et seq* (“the Act”), including conducting inspections and issuing appropriate citations.
2. Respondent is a corporation duly organized and existing under the laws of the State of North Carolina, does business in the State of North Carolina, and maintains a place of business in Mount Olive, North Carolina.
3. Respondent is in the business of food manufacturing; specifically, the business of producing and canning pickled cucumbers, pickled jalapenos, and relish.
4. Respondent operates a facility at One Cucumber Boulevard in Mount Olive, North Carolina (“Worksite”).
5. Respondent is an “employer” within the meaning of the Act.
6. The Review Commission has jurisdiction over the parties and subject matter.
7. On and between December 6, 2023 and December 14, 2023, NC DOL Compliance Safety and Health Officer Jerry Midyette (“CSHO Midyette”) and CSHO-In-Training Lanika Williams (“CSHO Williams”) conducted a partial inspection of the Worksite in response to an employee complaint (the “Inspection” or “Inspection No. 318277654”).
8. The employee complaint alleged hazards in the pasteurizer section of the production area.
9. During the Inspection, CSHO Midyette and/or CSHO Williams took handwritten notes during the opening conference, employee interviews, the walkaround, the closing conference, and interactions with agents or employees of entities other than Respondent.
10. On March 7, 2024, as a result of the Inspection, Complainant issued Respondent two citations with one item each, classified and carrying the following proposed abatement dates and penalties:

ITEM NO.	STANDARD	ABATE DATE	PENALTY
	CITATION ONE (SERIOUS)		
001	29 CFR 1910.133(a)(1)	Upon Receipt	\$ 2,400.00

	CITATION TWO (NON-SERIOUS)		
001	29 CFR 1904.4(a)	Corrected During Inspection	\$ 0.00

11. Respondent timely submitted a Notice of Contest on or about April 24, 2014, and contested all citations, proposed penalties, abatement dates, and all other aspects of the citations.
12. Complainant has withdrawn Citation 2, Item 1.
13. A complaint and answer were timely filed.
14. Complainant stipulates to the admissibility of Respondent's trial exhibits R-30 (Complainant's Responses to Respondent's Third Requests for Admission) and R-33 (Verification of Scott Mabry to Complainant's Responses to Respondent's Third Requests for Admission).

CERTIFICATE OF SERVICE

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

TRAVIS W. VANCE
FISHER & PHILLIPS
227 WEST TRADE ST STE 2020
CHARLOTTE, NC 28202

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:

STACEY A. PHIPPS
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 25 DAY OF August 2025.

PAUL E. SMITH
CHAIRMAN



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