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(Via Email)

February 16, 2021

Re: North Carolina Complaint About State Program Administration

Dear Mr. Petermeyer,

The Lawyers' Committee for Civil Rights Under Law, North Carolina Justice Center, and Southern Poverty Law Center, which collectively represent Episcopal Farmworker Ministry, North Carolina State AFL-CIO, Western North Carolina Workers' Center, North Carolina State Conference of the NAACP, NC Raise Up/ Fight for \$15 and a Union, and The Hispanic Liaison of Chatham County (collectively "Complainants"), file this Complaint About State Plan Administration ("CASPA") against the North Carolina Department of Labor's ("NCDOL") enforcement of the Occupational Safety and Health Act of North Carolina ("OSHANC"). The undersigned are seeking a full investigation of NCDOL's failure to adequately and lawfully respond to a request for rulemaking submitted on October 12, 2020¹, and the agency's failure to investigate complaints of workplace safety hazards during the COVID-19 pandemic.²

President Biden has made worker health and safety during the COVID-19 pandemic an immediate and urgent national priority. On January 21, 2021, the second day of the Administration, President Biden signed Executive Order 13999, which requires the Secretary of Labor and the Assistant Secretary of Labor for Occupational Safety and Health to issue revised workplace safety guidance within two weeks of issuance of Executive Order 13999; consider and issue emergency temporary standards by March 15, 2021; and launch a national program to focus on OSHA enforcement of worker safety violations related to COVID-19.³ Pursuant to the President's directive, on January 29, 2021, OSHA issued a new guidance document, "Protecting Workers; Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace."⁴ This guidance includes in general terms several of the elements specifically included in the Petition for Rulemaking filed by the Complainants with NCDOL, which that agency refused to consider. Further, because OSHA has stated that "this guidance is not a standard or regulation, and [it] creates no new legal obligations," this CASPA is necessary to ensure that there is an

¹ Pet. for Rulemaking, October 12, 2020 (attached as Exhibit 1).

² See Exs. 3–10 (attached).

³ <https://www.federalregister.gov/documents/2021/01/26/2021-01863/protecting-worker-health-and-safety>

⁴ <https://www.osha.gov/coronavirus/safework>

investigation into NCDOL's failures to act under its OSHA obligations even while emergency changes to protect workers from the pandemic are being considered. This complaint is being filed specifically to request that OSHA act to 1) immediately begin an investigation to protect North Carolina's workers; 2) hold NCDOL accountable for its failure to take adequate and necessary measures to ensure workplace safety consistent with federal standards since the beginning of the COVID-19 pandemic; and 3) ensure that if and when new federal emergency standards are issued, NCDOL will not be able to use similar delay and deflection tactics to circumvent its responsibilities to implement and enforce the new measures.

The increased prioritization of worker safety and enforcement of workplace protections, especially for workers of color, demonstrates that the Biden Administration views violations, like those highlighted in this CASPA, as requiring serious consideration and a swift response. We also recognize that a new Labor Commissioner took office in North Carolina earlier this year, and that the actions and failure to act raised in this complaint took place under the prior administration. We hope that Labor Commissioner Josh Dobson will take proactive steps to address the issues raised in this complaint and will develop and enforce standards that will allow NCDOL's OSHA program to be at least as effective as federal OSHA in ensuring safe and healthful places of employment with respect to the pandemic. However, given NCDOL's abdication of its responsibilities to address the impacts of COVID-19 on workers, its refusal to revisit the denial of rulemaking by the previous Commissioner, and the state's troubling history regarding worker safety (including the federal takeover of the state program following the catastrophic Hamlet fire in 1991),⁵ it is critical that an investigation of the allegations below begin immediately.

I. DISPROPORTIONATE IMPACT OF COVID-19 ON BLACK AND LATINX WORKERS IN NORTH CAROLINA

In North Carolina, workers from all industries, age groups, and across racial and ethnic lines are not safe at work because of the lack of enforceable COVID-19 workplace requirements. The North Carolina Department of Health and Human Services ("NC DHHS") counts over 810,466 lab-confirmed cases since the start of the pandemic—an increase of 577,931 since Complainants filed their Petition for Rulemaking.⁶ As of February 12, more than 10,294 North Carolinians have died of COVID-19—an 173% increase in deaths in the fourteen weeks since Complainants filed their Rulemaking Petition with NCDOL.⁷ Twenty-six of those deaths have been categorized as occupational fatalities by NCDOL.⁸

⁵ <https://www.osha.gov/laws-regs/federalregister/1996-12-18>

⁶ N.C. DEP'T OF HEALTH & HUM. SERVS., COVID-19 NORTH CAROLINA DASHBOARD (2021), <https://covid19.ncdhhs.gov/dashboard>.

⁷ Compare N.C. DEP'T OF HEALTH & HUM. SERVS., COVID-19 NORTH CAROLINA DASHBOARD (2021), <https://covid19.ncdhhs.gov/dashboard>, with Bailey Aldridge, Simone Jasper, & Hayley Fowler, *Coronavirus Live Updates*, THE NEWS & OBSERVER (Oct. 12, 2020), <https://www.newsobserver.com/news/coronavirus/article246383405.html>.

⁸ N.C. DEP'T OF LABOR, NCDOL RELEASES WORKPLACE FATALITY COUNT FOR 2020 (2021), <https://www.labor.nc.gov/news/press-releases/2021/01/29/ncdol-releases-workplace-fatality-count-2020>.

Many of North Carolina’s workers, including those who provide the critical services in healthcare and food production on which everyone relies, face dire health and safety hazards in the workplace. As COVID-19 cases surge, health care workers continue to face life-threatening conditions. As of February 12, 2021, NC DHHS reported over 10,313 COVID-19 cases and 16 deaths among staff in nursing homes and residential care facilities facing ongoing outbreaks.⁹ Workers in congregate workplaces like meat packing and food service plants are especially vulnerable to COVID-19, and there have been roughly 4,917 reported COVID-19 cases in the North Carolina farming (125), food processing (337), and meatpacking (4,455) industries.¹⁰ These industries have limited or no social distancing, lack options for remote work, and are less likely to provide access to health insurance and paid sick leave.¹¹ As a result, workplace safety complaints have spiked. As of July 2020, about 80 percent of workplace safety complaints in North Carolina were related to COVID-19.¹² It is impossible to know exactly how many agricultural workers have gotten sick so far because NC DHHS only reports cases associated with clusters and at firms or migrant housing centers of certain sizes. Ten months into the state of emergency, however, there have already been over 4,917 cases and 23 deaths from COVID-19 in North Carolina’s farms and meatpacking plants.¹³ And as of July 2020, COVID-19 outbreaks had already occurred at over 30 North Carolina farms spread over 25 counties.¹⁴

Workers of color in North Carolina are at an even higher risk of COVID-19 exposure, in large part because of over-representation in workforces such as meat processing, agriculture, home health care, personal care, and food service industries. The workforce in these industries is disproportionately workers of color.¹⁵ According to a January 2021 CDC report on COVID-19

⁹ N.C. DEP’T OF HEALTH & HUM. SERVS., COVID-19 ONGOING OUTBREAKS IN CONGREGATE LIVING SETTINGS: UPDATED FEBRUARY 8, 2021 (2021), <https://files.nc.gov/covid/documents/dashboard/Weekly-COVID19-Ongoing-Outbreaks.pdf>.

¹⁰ N.C. DEP’T OF HEALTH & HUM. SERVS., COVID-19 CLUSTERS IN NORTH CAROLINA: UPDATED FEBRUARY 8, 2021 (2021), <https://files.nc.gov/covid/documents/dashboard/COVID-19-Clusters-in-NC-Report.pdf> (“Clusters in North Carolina”); see also Leah Douglas, *Mapping Covid-19 outbreaks in the food system*, FOOD & ENV’T REPORTING NETWORK, <https://thefern.org/2020/04/mapping-covid-19-in-meat-and-food-processing-plants/> (last visited Feb. 12, 2021) (Providing data based on media reports from January 2021 indicating 349 farming, 47 food processing, and 1,949 meatpacking-related COVID-19 cases).

¹¹ Michelle A. Waltenburg et al., *Update: COVID-19 Among Workers in Meat and Poultry Processing Facilities — United States, April–May 2020*, 69 MORBIDITY AND MORTALITY WKLY. REP. 887 (2020), www.cdc.gov/mmwr/volumes/69/wr/mm6927e2.htm; Kate Taylor, *At Least 4,500 Tyson Workers Have Caught COVID-19, with 18 Deaths. The Meat Giant Still Doesn't Offer Paid Sick Leave, as the Industry Blames Workers for Outbreaks.*, BUS. INSIDER (May 11, 2020, 11:09am), www.businessinsider.com/tyson-4500-covid-19-cases-as-meat-industry-blames-workers-2020-5.

¹² Alex Shabad, *80% of workplace safety complaints are COVID-19 related in NC*, WCNC (Jul. 6, 2020), <https://www.wcnc.com/article/news/80-of-workplace-safety-complaints-are-covid-19-related-in-nc/275-9c82a8bb-4de2-45d0-90f2-d1254498ffd0>.

¹³ Clusters in North Carolina *supra* note 7.

¹⁴ Aaron Sánchez-Guerra, *NC not doing enough to protect immigrant farmworkers from coronavirus, advocates say*, THE NEWS & OBSERVER (Jul. 3, 2020), <https://www.newsobserver.com/news/business/article243878327.html>.

¹⁵ ELISE GOULD & VALERIE WILSON, ECON. POL’Y INST., BLACK WORKERS FACE TWO OF THE MOST LETHAL PREEXISTING CONDITIONS FOR CORONAVIRUS—RACISM AND ECONOMIC INEQUALITY (June 1, 2020), <https://www.epi.org/publication/black-workers-covid/>; Celine McNicholas & Margaret Poydock, *Who are essential workers? A comprehensive look at their wages, demographics, and unionization rates*, ECON. POL’Y INST.: WORKING ECON. BLOG (May 19, 2020), <https://www.epi.org/blog/who-are-essential-workers-a-comprehensive->

among workers in meat and poultry processing facilities covering March 1 – May, 31, 2020, 83.2% of cases occurred among racial and ethnic minority workers.¹⁶ Infection is particularly high in migrant labor camps, as shared sleeping quarters, kitchens, and bathrooms make it nearly impossible to practice social distancing.¹⁷ As of February 12, 2021, available data showed North Carolina’s meat and poultry processing plants have seen 41 clusters of COVID-19 cases, resulting in over 4,455 cases and 22 deaths.¹⁸ As essential workers, poultry and meat processing workers in North Carolina have to report to work, no matter the risks. Most, if not all, of such workers were ineligible for paid leave available prior to December 31, 2020 under the federal Families First Coronavirus Relief Act because of the size of their employer.

I. WORKER NARRATIVES

With increasing concerns around workplace safety in these industries, workers have shared alarming stories of their experiences working in crowded and unsafe conditions. The undersigned organizations have worked on behalf of North Carolina workers especially vulnerable to the NCDOL’s actions and inaction. For example, Episcopal Farmworker Ministry (“EFwM”), an organization located in Dunn and Harnett counties, has provided direct financial support to agricultural workers impacted by COVID-19, including payments to workers who did not get paid for time they were required to quarantine, workers who lost their jobs or had their hours reduced, and payments to relatives of workers who have been hospitalized or died as a result of contracting COVID-19 at work. Hispanic Liaison of Chatham County / El Vinculo Hispano (“EVH”) is a non-profit organization located in Siler City, Chatham County. Many of EVH’s Latinx clients work in the food processing, service, and construction industries, and have been deemed an “essential” labor force by state and federal government officials. Hundreds of poultry processing workers and their family members in EVH’s service region have been infected; some have died from COVID-19. NC Raise Up/ Fight for \$15 and a Union (“NC Raise Up”) is based in Durham, Durham County, NC. NC Raise Up members have complained that when coworkers get sick with COVID-19, they are not informed and their workplaces are not adequately cleaned. Many members have filed OSHA complaints with NCDOL regarding COVID health and safety concerns.

The workplace safety complaints on record, however, do not tell the whole story. Persons working onsite report high levels of fear of contracting COVID-19, particularly Black, Latinx,

[look-at-their-wages-demographics-and-unionization-rates/](#); N.C. JUST. CTR., SICK: MILLIONS OF NORTH CAROLINA WORKERS LEFT OUT OF PAID SICK DAYS PROTECTIONS AND COVID-19 SPREADS (Apr. 2020), https://www.ncjustice.org/wp-content/uploads/2020/04/NCJC-BRIEF-WRP-Paid_Sick_Days-4-2020.pdf.

¹⁶ See Michelle A. Waltenburg et al., *Coronavirus Disease Among Workers in Food Processing, Food Manufacturing, and Agriculture Workplaces*, 27 EMERGING INFECTIOUS DISEASES 243 (2021), https://wwwnc.cdc.gov/eid/article/27/1/20-3821_article; Waltenburg, *supra* note 8.

¹⁷ Aaron Sánchez-Guerra, Victoria Bouloubasis, & Paola Jaramillo, *Coronavirus poses a threat to a major NC food producer: the immigrant farmworker*, THE NEWS & OBSERVER (Apr. 8, 2020), <https://www.newsobserver.com/news/coronavirus/article241444926.html>.

¹⁸ N.C. DEP’T OF HEALTH & HUM. SERVS., *supra* note 10 (providing data solely for poultry and meat processing workplace clusters, requiring “a minimum of 5 cases with illness onsets or initial positive results within a 14-day period AND plausible epidemiologic linkage between cases”).

and low-income workers.¹⁹ Unfortunately, many workers stay silent about workplace COVID-19 hazards out of a reasonable fear of retaliation by their employers. In a recent study, one in eight workers reported that their employer may have retaliated against them or another worker for raising concerns about working conditions related to COVID-19.²⁰ The same study found that 56 percent of those going to work did so even though they believed they were seriously risking their health or that of a family member.²¹ Because workers are afraid to report COVID-19 hazards in the workplace, these hazards are likely underreported, and the threat to North Carolinians is even greater than that suggested by the available data. Additionally, Complainants report that workers are reluctant to file complaints related to COVID-19 with NCDOL because they know that NCDOL will do nothing in response.

II. NCDOL'S INADEQUATE RESPONSE TO RULEMAKING PETITION

The undersigned parties request a full investigation into NCDOL's inadequate and unlawful response to a formal request for rulemaking made pursuant to N.C. Gen. Stat. § 150B-20. The undersigned submitted a request for rulemaking on October 12, 2020 ("Petition for Rulemaking")²² to which Commissioner Berry responded on November 9, 2020.²³ In her response, Commissioner Berry stated: "While I am not dismissing the tragic deaths that have occurred as a result of this virus, statistically, the virus has not been proven likely to cause death or serious physical harm from the perspective of an occupational hazard."²⁴ The view that COVID-19 is not a workplace hazard under OSHA's jurisdiction, stands in sharp contrast to federal OSHA's position that states clearly that COVID-19 is a hazard under OSHA's jurisdiction.²⁵

In their response to the Rulemaking Petition, NCDOL further stated that "available data does not support that death or serious physical harm would be the likely outcome for the majority of those who contract the disease."²⁶ They assert without evidence that "[m]ost of those deaths [in North Carolina] are people over the age of 65; generally, this age group is no longer active in the workforce."²⁷ Since NCDOL is taking this position, it is not treating COVID as hazard, which would require inspection. NCDOL contends that issuing more regulations will not eradicate the virus or eliminate the risk of employees contracting COVID-19.²⁸ NCDOL erroneously asserts that the medical community knows too little about COVID-19 and its

¹⁹ Peter Dorman & Lawrence Mishel, *A majority of workers are fearful of coronavirus infections at work, especially Black, Hispanic, and low- and middle-income workers*, ECON. POL'Y INST. (June 16, 2020) <https://www.epi.org/publication/covid-risks-and-hazard-pay/>.

²⁰ IRENE TUNG & LAURA PADIN, NAT'L EMP. L. PROJECT, SILENCED ABOUT COVID-19 IN THE WORKPLACE, (June 10, 2020), <https://www.nelp.org/publication/silenced-covid-19-workplace/>.

²¹ *Id.*

²² Pet. for Rulemaking, Oct. 12, 2020 (attached as Ex. 1).

²³ N.C. Dep't of Labor Denial of Rulemaking Pet., Nov. 9, 2020 ("NCDOL Denial") (attached as Ex. 2).

²⁴ *Id.* at 6.

²⁵ Memorandum from Patrick J. Kapust, Acting Dir. Directorate of Enf't Programs, OSHA, to Reg'l Adm'rs & State Plan Designees (May 19, 2020), <https://www.osha.gov/memos/2020-05-19/updated-interim-enforcement-response-plan-coronavirus-disease-2019-covid-19> ("Kapust Memorandum 2020")

²⁶ NCDOL Denial at 6–7.

²⁷ *Id.*

²⁸ *Id.* at 11.

transmission to allow it to promulgate a rule to protect workers.²⁹ It states that promulgating a rule would “create conflicting interests on the required compliance side of OSH/ASH,” ignoring its legal obligation to conduct enforcement activities.³⁰ NCDOL also asserts that the General Duty Clause obligation of employers only applies to those “who are not making efforts to mitigate the coronavirus and for employers who directly expose their employees to COVID-19.”³¹ NCDOL ignores its responsibility to set forth clear standards for employers to follow to proactively protect employees. These unfounded assertions by NCDOL, both about the hazards posed by the virus and about their responsibility for responding, demonstrate that NCDOL is not adequately protecting North Carolina workers from COVID-19, and is not meeting its obligation as a state plan program.

III. NCDOL’S INADEQUATE RESPONSE TO COVID-RELATED COMPLAINTS

The undersigned parties also request an investigation related to NCDOL’s failure to adequately investigate complaints it has received related to COVID in North Carolina. As noted above, NCDOL has not fulfilled its duty to be as effective as federal OSHA in its response to COVID-related complaints. Federal OSHA must investigate NCDOL’s position that COVID-19 is not a hazard under the agency’s jurisdiction.³² NCDOL improperly told businesses that have had COVID-related complaints filed against them that there are no standards that cover the alleged hazard, and that the hazard is not covered by the General Duty Clause.³³ But Federal OSHA states clearly to employers that there are standards that cover COVID-19 hazards, including the General Duty Clause.³⁴ The law is clear that a state plan must provide equivalent protection as federal OSHA. North Carolina has failed to provide equivalent protection.

Through the end of October 2020, nearly 4,000 persons filed complaints with NCDOL about COVID issues.³⁵ NCDOL only issued citations to five of those, and they were for non-COVID related problems. In contrast, as of November 19, 2020, federal OSHA had conducted 244 inspections related to COVID-19 and issued proposed penalties totaling \$3,301,932, including citations issued under the General Duty Clause.³⁶ NCDOL has abdicated its legal responsibility to protect the health and safety of North Carolina workers during the pandemic, especially workers of color who are overrepresented in workforces with higher rates of COVID-19. The NCDOL’s enforcement of OSHANC is required to be at least as effective as federal

²⁹ *Id.* at 2

³⁰ *Id.* at 4.

³¹ *Id.* at 6.

³² *Id.* at 6–7.

³³ Mountaire Compl. No. 209666494, N.C. Dep’t of Labor, Occupational Safety & Health div., March 26, 2020, (attached as Ex. 6); Mountaire Compl. No. 209662337, N.C. Dep’t of Labor, Occupational Safety & Health div., April 30, 2020, (attached as Ex. 8).

³⁴ Kapust Memorandum 2020, *supra* note 22.

³⁵ Sophie Kasakove, *NC labor commissioner says COVID-19 isn’t a workplace threat that requires safety rules*, THE NEWS & OBSERVER (Dec. 4, 2020, updated Dec. 7, 2020), <https://www.newsobserver.com/news/coronavirus/article247463205.html>.

³⁶ News release, U.S. DEP’T OF LABOR, *Corrected: U.S. Department of Labor’s OSHA announces \$3,301,932 in coronavirus violations* (Nov. 27, 2020), <https://www.dol.gov/newsroom/releases/osha/osha20201127>.

OSHA,³⁷ yet NCDOL has refused to initiate on-site inspections in response to worker COVID-19 complaints and has taken a public position against enforcement related to COVID-19. In contrast, federal OSHA clearly states that employers could be cited for COVID-19 related violations under the General Duty Clause and has also issued multiple COVID-related citations under the General Duty Clause.³⁸

During the COVID-19 pandemic, workplace safety complaints have spiked. About 80 percent of workplace safety complaints in North Carolina are now related to COVID-19. NCDOL egregiously contends that “the virus has not been proven likely to cause death or serious physical harm from the perspective of an occupational hazard.”³⁹ When workers filed over a thousand complaints with NC OSHA alleging serious COVID-19 related health and safety hazards, the agency did not open an inspection, instead sending some employers a letter that stated: “We have evaluated the alleged hazard and determined it is not covered by an OSHA standard nor would it likely meet the criteria for a General Duty Clause citation under the OSH Act of North Carolina...Since the allegation does not fall under an OSHA standard or the General Duty Clause, a written response to this letter is not required.”⁴⁰ This stands in stark contrast to the sample letters federal OSHA advised be sent out when the federal agency decided not to inspect that said:

Currently, there is an outbreak of COVID-19, also known as Coronavirus. At this time, OSHA is prioritizing its enforcement resources, and OSHA does not intend to conduct an on-site inspection in response to the subject complaint at this time. However, because allegations of violations and/or hazards have been made, we request that you immediately investigate the alleged conditions and make any necessary corrections or modifications. Please advise me in writing, no later than **[Date Response Due]**, of the results of your investigation. You must provide supporting documentation of your findings. This includes any applicable measurements or monitoring results; photographs/video that you believe would be helpful; and a description of any corrective action you have taken or are in the process of taking, including documentation of the corrected condition...Depending on the specific circumstances at your worksite, several OSHA requirements may apply to the alleged hazards at your worksite, including:

- 29 CFR Part 1904, Recording and Reporting Occupational Injuries and Illness.
- 29 CFR § 1910.132, General Requirements - Personal Protective Equipment.
- 29 CFR § 1910.133, Eye and Face protection.

³⁷ See 29 U.S.C. § 667(c); see also OSHA, State Plan Frequently Asked Questions, <https://www.osha.gov/stateplans/faqs> (“OSHA monitors and evaluates State Plans annually through the Federal Annual Monitoring Evaluation (FAME) process. This process is used to: determine whether the State Plan is continuing to operate at least as effectively as OSHA, track a State Plan’s progress in achieving its strategic and annual performance goals, and ensure that the State Plan is meeting its mandated responsibilities under the Act and other relevant regulations.”) (last visited Feb. 11, 2021).

³⁸ News Release, OSHA, *U.S. Department of Labor’s OSHA Announces \$3,930,381 In Coronavirus Violations* (Jan. 8, 2021), <https://www.osha.gov/news/newsreleases/national/01082021>; OSHA, *OSHA Coronavirus-Related Issue Citations as of Thursday, January 14, 2021, with Total Initial Penalties of \$4,034,288*, <https://www.osha.gov/enforcement/covid-19-data/inspections-covid-related-citations> (last visited Feb. 11, 2021).

³⁹ NCDOL Denial at 6.

⁴⁰ See Ex. 6 at 3; Ex. 8 at 3.

- 29 CFR § 1910.134, Respiratory Protection.
- 29 CFR § 1910.141, Sanitation.
- 29 CFR § 1910.145, Specification for Accident Prevention Signs and Tags.
- 29 CFR § 1910.1020, Access to Employee Exposure and Medical Records.
- Section 5(a)(1), General Duty Clause of the OSH Act.⁴¹

Federal OSHA clearly communicated that COVID-19 hazards were covered by OSHA standards and the general duty clause. NCDOL communicated the opposite, and thus failed to provide the workers of North Carolina with equivalent protection as federal OSHA-- their legal responsibility.

Further, NCDOL failed to follow its own procedures when filing complaints. NCDOL failed to respond to complaints related to COVID-19 in a timely fashion, at least at the beginning of the pandemic. For example, NCDOL received a complaint on March 17, 2020 alleging there were COVID-19 cases at Mountaire Farms, a poultry processing facility. NCDOL took no action until May 18, when it sent a letter to the employer.⁴² NCDOL took no action on multiple other COVID-related complaints submitted regarding Mountaire Farms in March of 2020 for seven to eight weeks after receiving the complaints.⁴³ NCDOL has taken the position that exposure to COVID-positive individuals in the workplace is not a violation of any OSHA standard, nor of the General Duty Clause. NCDOL has failed to investigate complaints where the hazard alleged is exposure to persons with COVID-19.⁴⁴

NCDOL has also failed to investigate allegations that employees of Mountaire Farms Inc. were unable to social distance and that that failure is a violation of the General Duty Clause. Instead, NCDOL accepted that plexiglass or other barriers are an adequate substitution for social distance,⁴⁵ though even CDC has stated clearly that such barriers are not a substitute for social distancing and other protective measures.⁴⁶ Given the high number of outbreaks at meat processing facilities in North Carolina, including outbreaks at that Mountaire facility, NCDOL is not meeting its mandated responsibilities. Where a non-formal (i.e., unsigned or oral) complaint

⁴¹ Kapust Memorandum 2020, *supra* note 22.

⁴² Mountaire Compl. No. 209665223, N.C. Dep't of Labor, Occupational Safety & Health div., March 17, 2020, (attached as Ex. 3).

⁴³ Mountaire Compl. No. 209665116, N.C. Dep't of Labor, Occupational Safety & Health div., March 18, 2020, (attached as Ex. 4) (no action taken by NCDOL until May 13, 2020); Mountaire Compl. No. 209665710, N.C. Dep't of Labor, Occupational Safety & Health div., March 25, 2020, (attached as Ex. 5) (no action taken by NCDOL until May 15, 2020); Ex. 6 (no action taken by NCDOL until May 20, 2020).

⁴⁴ See Ex. 6 (March 26, 2020 Compl.); Mountaire Compl. No. 209661446, N.C. Dep't of Labor, Occupational Safety & Health div., April 30, 2020, (attached as Ex. 7); Ex. 8.

⁴⁵ Ex. 4 at 8–11; Mountaire Compl. No. 209659952, N.C. Dep't of Labor, Occupational Safety & Health div., 8–25 April 10, 2020, (attached as Ex. 9); Mountaire Compl. No. 209661800, N.C. Dep't of Labor, Occupational Safety & Health div., 10–20 April 27, 2020, (attached as Ex. 10).

⁴⁶ E.g., Memorandum from Michael Grant et al., Nat'l Inst. for Occupational Safety & Health, CDC, to Joshua Clayton, S.D. Dep't of Health, 7 (April 22, 2020), <https://www.documentcloud.org/documents/6876342-Smithfield-CDC-report.html> (recommending that barriers be used in combination with, rather than as replacements for, social distancing with regard to a Smithfield Foods plant).

alleges a serious hazard that could cause immediate death or serious physical harm, NCDOL can use its discretion to inspect, but it is not doing so.⁴⁷

Finally, NCDOL has classified complaints as not valid where those complaints allege there are individuals with COVID-19 in the workplace.⁴⁸ If NCDOL believes that a complaint does not contain specific information allowing them to evaluate whether there is a workplace hazard that threatens physical harm, “every reasonable attempt should be made to contact the person giving the notice to obtain more specific information.”⁴⁹ Though the attached complaints involve telephone complaints, it appears there was no attempt to get sufficient detail from the caller to convert these complaints to valid complaints.⁵⁰

In attempting to defend its failure to respond to what it acknowledges were “over 1000 COVID-19 related complaints,” NCDOL attempts to distinguish between “investigations” and “inspections,” and explains that its actions are limited to “formal” complaints (in writing and signed). And although the agency’s letter rejecting the petition for rulemaking also states that it “investigates” all claims and “requests the employer provide a response” to the allegations, this statement is directly contradicted by its advice to employers regarding COVID-19 complaints, that “a written response to this letter is not required.”⁵¹ NCDOL suggestion that it has adequately met its legal obligations to investigate these claims and meeting its legal obligations is undercut by its own admissions regarding its actual practices. NCDOL is required to be at least as effective as federal OSHA; however, NCDOL falls far short of the protections offered by federal OSHA. By failing to ensure the protections of federal OSHA, NCDOL has failed to protect workers from hazards that cause serious physical harm or death during this pandemic. NCDOL decided that COVID-19 hazards were not a hazard under its jurisdiction, a policy in stark contrast to federal OSHA’s policies. This has left workers in North Carolina with no protection by the agency, is a failure of the state program, and requires immediate investigation and correction.

For the reasons set forth above, the undersigned organizations request a full investigation of all the allegations made in this CASPA.

Sincerely,

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Attorneys for Episcopal Farmworker Ministry, NC State AFL-CIO and NC Raise Up/ Fight for \$15 and a Union

⁴⁷ N.C. Dep’t of Labor, *Complaints, Referrals and Accidents*, Field Op. Man., A.6, A.8, Ch. IX (Feb. 2000, rev. Oct. 19, 2018), <https://www.labor.nc.gov/media/852/open> [hereinafter NCDOL FOM].

⁴⁸ Ex. 7 at 3; Ex. 8 at 3.

⁴⁹ NCDOL FOM, *supra* note 45, at A.2.a.i.A, Ch. IX.

⁵⁰ See Ex. 7; Ex. 8.

⁵¹ See Ex. 2; *supra* note 42.

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EXHIBIT 1

PETITION FOR RULEMAKING

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Pursuant to N. C. Gen. Stat. §§ 150B-20 and 150B-21.1A, the undersigned Petitioners, Episcopal Farmworker Ministry, North Carolina State AFL-CIO, NC Raise Up/ Fight for \$15 and a Union, the Hispanic Liaison of Chatham County/ El Vinculo Hispano, Western North Carolina Workers' Center and the North Carolina State Conference of the NAACP, petition and request that the North Carolina Department of Labor (hereafter "NCDOL" or "Department") adopt the proposed Rule attached to this petition as Exhibit A; or, in the alternative, the Department grant the Petition for Rulemaking and initiate rule-making proceedings, as allowed by N. C. Gen. Stat. § 150B-20(c).

I. Introduction

Workers throughout North Carolina, from all industries, age groups, and across racial and ethnic lines, are not safe¹ at work because of the lack of enforceable COVID-19 workplace requirements. As of September 20, 2020, NCDOL has closed nearly 1,000 formal workplace health and safety complaints related to COVID-19, from employees who did not think their employers were taking adequate steps to protect them¹. Of that total, NCDOL only opened investigations on six occasions – in each case because there was an NCDOL regulation implicated in addition to the COVID-19 related concerns². For all other cases, NCDOL simply wrote to the employer to notify them of the complaint and encourage them to comply with

¹ Occupational Safety and Health Administration COVID-19 Complaint Data, compiled through September 20, 2020. <https://www.osha-slc.gov/factsheets/covid-19-complaints>

² *Id.*

voluntary guidance from the Centers for Disease Control (“CDC”), the federal Occupational Safety and Health Administration (“OSHA”), or NCDOL. Only nursing homes, day cares, and congregate living settings are required to report cases of COVID-19,³ but it is clear that workers are getting sick and dying from COVID-19 that they contracted at work. The current voluntary guidance for workplaces is not sufficient.

Petitioners are organizations in North Carolina which seek to protect and advance the rights of North Carolina’s workers to a safe and healthy working environment. Since March 2020, they have worked to connect their members and constituents to resources, assisted them with filing NCDOL complaints, led calls for action by state and federal leaders, drafted letters to state leaders, held press conferences, and organized workers to advocate for themselves. Many of them have also had to mourn the death of workers who lost their lives to COVID-19. They are calling on NCDOL to put an end to the dangerous conditions and exercise its power to engage in rulemaking.

The Episcopal Farmworker Ministry (“EFWM”) seeks to minister to farmworkers through direct services, development and support of programs that work towards the empowerment of farmworkers, and by advocating for systemic change of agricultural policy at local and state levels. Their mission is to respond to the physical, emotional, and spiritual needs of migrant and seasonal farmworkers and their families. During the pandemic, EFWM has served its community by providing food, personal protective equipment, cleaning supplies, and mental health services to agricultural workers. In addition, they have provided direct financial support to agricultural workers impacted by COVID-19, including payments to workers who did not get

³ Lynn Bonner, Chip Alexander and Adam Wagner, *Most NC businesses don’t have to report outbreaks as COVID-19 cases rise*, The News & Observer, June 15, 2020.

<https://www.wncn.com/story/45090660/covid-19-cases-rise-but-most-nc-businesses-dont-have-to-report-outbreaks> (attached hereto as Exhibit B).

paid for time they were required to quarantine, workers who lost their jobs or had their hours reduced, and payments to relatives of workers who have been hospitalized or died as a result of contracting COVID-19 at work.

NC Raise Up/ Fight for \$15 and a Union (“NC Raise Up”) believes that people who work hard for a living should make enough to support themselves, their families and their neighborhood and should be treated with dignity and respect. They advocate for just compensation and dignified treatment for fast-food workers and other low wage workers. NC Raise Up has been helping members file complaints with the NCDOL about the lack of COVID precautions taken by fast food employers. Members have complained that when coworkers get sick, they are not informed, and their workplaces are not adequately cleaned. NCDOL has not taken action against the employers in response to any of their complaints.

The North Carolina State AFL-CIO is the largest association of unions of working people in North Carolina, representing over a hundred thousand members. They work together for good jobs, safe workplaces, workers’ rights, consumer protections, and quality public services on behalf of ALL working people. Since the start of the pandemic, the NC AFL-CIO has been calling for emergency standards to protect essential workers.

Western North Carolina Workers’ Center builds power among immigrant workers in western North Carolina through education, organizing and direct action to promote worker justice. They have been in continuous communication with workers about their concerns about working during a pandemic through their worker leadership circles. They have also distributed \$118,000 in financial support to immigrant workers across western North Carolina, including to the families of three workers who died after contracting COVID-19 at the local poultry processing plant, Case Farms.

The Hispanic Liaison of Chatham County / El Vinculo Hispano ("EVH"), a non-profit organization serving Chatham, Lee, Alamance and Randolph counties' Hispanic community, has a particular interest in an emergency rule from NCDOL to protect the community it serves. Many of EVH's Latinx clients work in food processing, including at Mountaire, Pilgrim's Pride and Tyson poultry processing plants located in Siler City and Sanford, as well as in the service and construction industries, and have been deemed "essential" labor force by state and federal government officials. Due to the working conditions in these industries, EVH's clients are at an increased risk for contracting COVID-19. Hundreds of poultry workers and their family members in EVH's region have been infected; a few have died from COVID-19. These workers are being subjected to dangerous working conditions without adequate personal protective equipment, social distancing, COVID-19 prevention information and leave time necessary to ensure a safe workplace.

The North Carolina Conference of the NAACP (NC-NAACP) is North Carolina's branch of the nation's oldest and largest civil rights organization. It is the second largest state conference of the NAACP in the United States. For over 70 years, NC-NAACP has pursued its mission to ensure the political, educational, social and economic equality of rights of all persons and to eliminate racial hatred and discrimination. The organization has followed a variety of strategies to carry out this goal, including litigation and direct advocacy on behalf of workers' rights and economic justice.

The workers represented by Petitioners, North Carolinians who risk their lives to go to work each day, deserve more protection. It is not too late to act. NCDOL should exercise its power to adopt an emergency rule to stop the continued spread of coronavirus among North Carolina workers.

II. Petition for Rulemaking

NCDOL has the statutory authority to enforce the Occupational Safety and Health Act of North Carolina (“OSHANC”). N.C. Gen. Stat. § 95-126(b)(2)(m). The North Carolina General Assembly declared in legislative findings when enacting OSHANC that “the burden of employers and employees of this State resulting from personal injuries and illnesses arising out of work situations is substantial,” and that “the prevention of these injuries and illnesses is an important objective of the government of this State.” N.C. Gen. Stat. § 95-126(b)(1). The General Assembly further declared that it was its “purpose and policy through the exercise of its powers to ensure so far as possible every working man and woman in the State of North Carolina safe and healthful working conditions and to preserve our human resources: a. By encouraging employers and employees in their effort to reduce the number of occupational safety and health hazards at the place of employment” and “e. [b]y providing occupational health criteria which will assure insofar as practicable that no employee will suffer diminished health, functional capacity, or life expectancy as a result of his work experience.” N.C. Gen. Stat. §§ 95-126(b)(2)(a) and (e).

To further those ends, the North Carolina Commissioner of Labor (“Commissioner”) is statutorily authorized to develop occupational safety and health standards. N.C. Gen. Stat. § 95-126(c). The Commissioner also has the statutory authority “to secure the enforcement of all laws relating to the inspection of factories, mercantile establishments, mills, workshops, public eating places, and commercial institutions in the State,” N.C. Gen. Stat. § 94-4(4), and to take action in the courts to enforce such laws. N.C. Gen. Stat. § 95-13. Despite the clear dangers to the health and safety of employees posed by the COVID-19 pandemic, as described in Section III, the Department has not adopted or amended health and safety standards to protect North Carolina

workers. The Department has issued guidance on worker protections. See

<https://www.labor.nc.gov/coronavirus-disease-2019-covid-19> and

<https://www.labor.nc.gov/documents/temporary-guidance-migrant-housing-covid-19-impacted-workers>. The CDC and federal OSHA have also issued voluntary guidance for businesses and

employers to protect employees from COVID-19. See <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html> and <https://www.osha.gov/SLTC/covid-19>.

However, neither federal nor NC OSHA has issued mandatory rules to keep employees safe from COVID.

Since the COVID-19 pandemic began impacting North Carolina, Governor Cooper has issued a series of Executive Orders designed to protect residents from infection and slow the spread of the virus. Many of those Executive Orders have included protections that protect workers, including:

Executive Order 116 (March 10, 2020) – authorized restrictions on the travel of state employees

Executive Order 117 (March 14, 2020) – closed all public schools

Executive Order 118 (March 14, 2020) – closed restaurants and bars for dine-in service

Executive Order 120 (March 23, 2020) – closed entertainment facilities without a retail or dining component and personal care and grooming businesses, restricted visitors to long term care facilities, continued the closure of public schools

Executive Order 131 (April 9, 2020) – imposed additional social distancing, cleaning and disinfecting requirements in retail establishments, restricted occupancy, and encouraged face coverings, hand hygiene, protective barriers, and other measures to protect retail workers; required screening at skilled nursing facilities, the end of communal dining and group activities, and other measures to protect workers at these facilities

Executive Order 141 (May 20, 2020) – required workers in personal care, grooming, and tattoo businesses to wear cloth face coverings

Executive Order 147 (June 24, 2020) – required customers and employees to wear face coverings in retail establishments, restaurants, personal care, grooming, tattoo, child care facilities and camps, state government, in transportation, and in manufacturing, construction, agriculture, meat or poultry processing plants, and long term care facilities where workers may be within six feet

of another person. Required health care facilities to follow the Centers for Disease Control's face covering requirements.

However, the Commissioner has made it clear that NCDOL is not willing to enforce workplace requirements contained in an Executive Order. Furthermore, NCDOL's position is that it lacks authority under the current regulations to issue citations related to violations of CDC and OSHA guidance to protect workers. When Governor Cooper shared a draft Executive Order with NCDOL which would have created requirements for employers of agricultural workers and meat processing workers, Commissioner Berry wrote to Governor Cooper opposing the release of that Executive Order because of NCDOL's asserted lack of authority.⁴ Therefore, it is necessary that NCDOL adopt new protections through rulemaking in order to effectively protect employees from the spread of COVID-19.

Compelling local conditions, as described in Section IV, make the issuance of such rules in North Carolina both urgent and necessary to protect employee health and safety. Pursuant to N.C. Gen. Stat. § 150B-20, the Petitioners request that Respondent grant and approve the Petition for Rulemaking and initiate rulemaking proceedings consistent with this Petition and pursuant to N.C. Gen. Stat. § 150B-20(c).

III. Documentation Submitted in Support of Petition

In accordance with NCAC § 13 NCAC 01B .0102, Petitioners submit the following information and documentation:

- (1) A draft of the proposed rule (which is incorporated by reference herein and attached as Exhibit A);

⁴ Aaron Sánchez-Guerra, *After Cooper backs down on executive order, NC worker advocates push for protection*, The News & Observer, Sept. 18, 2020, <https://www.newsobserver.com/news/story/157438845.html> (attached hereto as Exhibit C)

- (2) A statement of the reasons for adoption of the proposed rule and supporting documentation;
- (3) A statement of the effect of the proposed rule on existing rules and local government, and the proposed rule's economic impact; and
- (4) The names and addresses of the Petitioners.

IV. Reasons for Adoption of the Proposed Rule

More than 3,000 North Carolinians have died of COVID-19, and the North Carolina Department of Health and Human Services counts nearly 220,000⁵ lab-confirmed cases since the start of the pandemic. Many of the state's workers, including those who provide the critical services in healthcare and food production on which everyone relies, face dire health and safety hazards in the workplace. As a result, workplace safety complaints have spiked; about 80 percent of workplace safety complaints in North Carolina are related to COVID-19.⁶

The workplace safety complaints on record, however, do not tell the whole story. Persons working onsite in their workplace report high levels of fear of contracting COVID-19, particularly Black, Latinx, and low-income workers.⁷ Unfortunately, many workers stay silent about workplace COVID-19 hazards out of a reasonable fear of retaliation by their employers. In a recent study, one in eight workers reported that their employer may have retaliated against them or another worker for raising concerns about working conditions related to COVID-19. The same study found that 56 percent of those going to work did so even though they believed they

⁵ NC DHHS COVID-19 North Carolina Dashboard, as of October 5, 2020, <https://ncdhhs.org/covid19/dashboard/>

⁶ Alex Shabad, *80% of workplace safety complaints are COVID-19 related in NC*, WCNC, Jul. 6, 2020, <https://www.wncn.com/article/news/80-of-workplace-safety-complaints-are-covid-19-related-in-nc/2759465a8b6-44e2-45d0-90f2-d12541931f00>

⁷ Economic Policy Institute, *A majority of workers are fearful of coronavirus infections at work, especially Black, Hispanic, and low- and middle-income workers*, June 16, 2020, <https://www.epi.org/publication/coronavirus-and-work-safety/>

were seriously risking their health or that of a family member.⁸ Because workers are afraid to report COVID-19 hazards in the workplace, workplace hazards are likely underreported, and the threat to North Carolinians is even greater than that suggested by the available data. In addition, Petitioners report that workers are reluctant to file complaints related to COVID-19 with NCDOL because they know that NCDOL will do nothing in response.

The danger of COVID-19 infection is especially high for North Carolina workers who provide essential services in healthcare, agriculture, and poultry and meat processing. One month into the state of emergency, there had already been over 1,250 cases and two deaths from COVID-19 in North Carolina's farms and meatpacking plants.⁹ The workforce in these industries is disproportionately workers of color.¹⁰ Workers there are underpaid, lack health benefits, and have few worksite protections.¹¹ And due to systemic inequalities leading to inadequate access to health care, workers of color are already at increased risk of serious complications should they become infected with COVID-19.¹²

Healthcare. Governor Roy Cooper has declared that health care professionals are “integral to ensuring the state is best situated to respond to and mitigate the threat posed by

⁸ Irene Tung & Laura Padin, *Silenced about COVID-19 in the workplace*, National Employment Law Project, Jun. 10, 2020, <https://www.nelp.org/publication/silenced-covid-19-workplace>

⁹ Leah Douglas, *Mapping Covid-19 outbreaks in the food system*, Apr. 22, 2020, <https://thefern.org/2020/04/mapping-covid-19-in-meat-and-food-processing-plants/>

¹⁰ Elise Gould & Valerie Wilson, *Black workers face two of the most lethal preexisting conditions for coronavirus—racism and economic inequality*, Jun. 1, 2020, <https://www.epi.org/publication/black-workers-covid/>; Celine McNicholas & Margaret Poydock, *Who are essential workers? A comprehensive look at their wages, demographics, and unionization rates*, May 19, 2020, <https://www.cni.org/blog/who-are-essential-workers-a-comprehensive-look-at-their-wages-demographics-and-unionization-rates/>; North Carolina Justice Center, *Sick: Millions of North Carolina workers left out of paid sick days protections and COVID-19 spreads*, Apr. 2020, <https://www.ncjustice.org/wp-content/uploads/2020/04/NCJC-BRIEF-WRP-Paid-Sick-Days-4-2020.pdf>

¹¹ North Carolina Justice Center, *Sick: Millions of North Carolina workers left out of paid sick days protections as COVID-19 spreads*, Apr. 2020, *id.*

¹² See Executive Order No. 143, *Addressing the Disproportionate Impact of COVID-19 on Communities of Color*, Jun. 4, 2020, <https://files.nc.gov/governor/documents/files/EO143-Addressing-the-Disproportionate-Impact-of-COVID-19-on-Communities-of-Color.pdf>

COVID-19.”¹³ Nevertheless, as COVID-19 cases surge, health care workers continue to face life-threatening conditions. As of September 15, 2020, the North Carolina Department of Health and Human Services (“NC DHHS”) reported hundreds of COVID-19 cases among staff in nursing homes facing ongoing outbreaks.¹⁴ Nationwide, over 900 health workers are estimated to have died of COVID-19. That number includes doctors, nurses, and paramedics, as well as crucial support staff such as hospital custodians, administrators, and nursing home workers, who put their own lives at risk during the pandemic to care for others. The early data indicates that dozens who have died were unable to access adequate personal protective equipment, and at least 35 succumbed after federal work-safety officials received safety complaints about their workplaces.¹⁵ Early tallies also suggest that the majority of the deaths were among people of color, and many were immigrants.¹⁶

Agriculture. It is impossible to know exactly how many agricultural workers have gotten sick so far because NC DHHS is not sharing this information. However, as of nearly three months ago, COVID-19 outbreaks had already occurred at over 30 North Carolina farms spread over 25 counties.¹⁷ The risk of infection is particularly high in migrant labor camps, as shared sleeping quarters, kitchens, and bathrooms make it nearly impossible to practice social

¹³ Executive Order No. 116, *Declaration of a State of Emergency to Coordinate Response and Protective Actions to Prevent the Spread of COVID-19*, Mar. 10, 2020, <https://files.nc.gov/governor/documents/files/EO116-SOE-COVID-19.pdf>

¹⁴ North Carolina Department of Health and Human Services, *COVID-19 Ongoing Outbreaks in Congregate Living Settings: Updated September 15, 2020*, Sept. 15, 2020, <https://files.nc.gov/covid/documents/dashboard/Weekly-COVID19-Ongoing-Outbreaks.pdf>

¹⁵ Danielle Renwick & Shoshana Dubnow, *Exclusive: Over 900 workers have died of COVID-19. And the toll is rising*, The Guardian & Kaiser Health News, Aug. 11, 2020, <https://khn.org/news/exclusive-over-900-health-workers-have-died-of-covid-19-and-the-toll-is-rising/>

¹⁶ See *id.*

¹⁷ Aaron Sánchez-Guerra, *NC not doing enough to protect immigrant farmworkers from coronavirus, advocates say*, The News & Observer, Jul. 3, 2020, <https://www.newsobserver.com/news/business/article243878327.html> (attached hereto as Exhibit D)

distancing.¹⁸ Once infected, farmworkers face barriers to testing and follow-up care. Some employers are refusing to provide transportation for workers to get tested and/or get medical care, and outreach workers have not been able to get medical providers to conduct large-scale testing in migrant labor camps.¹⁹ Some hospitals and health departments are refusing to test farmworkers, even when they are identified as being on the NC DHHS priority list due to their congregate living settings.²⁰ As a result, some workers have had to travel to other counties in order to get tested.²¹ Workers have been turned away from hospitals when seeking testing after 5:00 p.m. when most community clinics in rural areas are closed.²² Tests can cost as much as \$350, which is unaffordable to farmworkers, and a lack of interpretation creates a barrier to both diagnosis and follow-up.²³ When workers are able to get tested, some hospitals and health departments are not asking patients about the type of work they do or their housing, likely leading to an undercount of infected farmworkers.²⁴ Compounding these issues, farmworkers are reluctant to report systems or get tested.²⁵ Many workers cannot afford to lose even a day's worth of income, and they fear causing trouble for their employer and inviting retaliation if a reported infection triggers a requirement for a large portion of the labor camp to be isolated.²⁶

Poultry and meat processing. North Carolina's meat and poultry processing plants have seen more than 800 confirmed cases of COVID-19, with outbreaks in at least 19 plants. In a

¹⁸ Aaron Sánchez-Guerra, Victoria Bouloubasis, & Paola Jaramillo, *Coronavirus poses a threat to a major NC food producer: the immigrant farmworker*, The News & Observer, Apr. 8, 2020,

<https://www.newsobserver.com/news/coronavirus/article241444926.html>

¹⁹ Farmworker Advocacy Network letter to Governor Cooper and Secretary Cohen, Jun. 16, 2020,

<https://ncfan.org/2020-a-letter-to-gov-cooper/>

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

recent study, counties with or near meatpacking plants were found to have almost twice the rate of known COVID-19 infections as the national average.²⁷ The conditions in North Carolina's poultry and meat processing plants exacerbate the risks of workers contracting COVID-19: close proximity on the production line and in breakrooms, cold and humidity, infrequent breaks, and lack of access to personal protective equipment. Most workers do not have paid sick time or adequate healthcare, most do not have health insurance, and after years earning low wages, they have little reserves to enable them to leave steady employment.²⁸ Poultry and meat processing workers in North Carolina have to work, no matter the risks. Many North Carolina poultry and meat processing plants claim that they have plans for keeping workers safe against the spread of COVID-19. However, workers on the ground are reporting otherwise.²⁹ Simply put, North Carolina poultry workers are afraid to be at work now because they fear getting sick and getting members of their families and communities sick.³⁰ They face an impossible choice: between losing their income or risking their lives.

In light of the substantial risk to workers throughout North Carolina, particularly in healthcare, agriculture, and poultry and meat processing, the proposed rule does not unduly burden interstate commerce. The proposed rule appropriately balances the tremendous benefit of preventing widespread infection in North Carolina workplaces with the incidental impact on

²⁷ Sarah Graddy, Soren Rundquist, & Bill Walker, *Investigation: Counties with meatpacking plants report twice the national average rate of COVID-19 infections*, Environmental Working Group, May 14, 2020, <https://www.ewg.org/news-and-analysis/2020-05-ewg-map-counties-meatpacking-plants-report-twice-national-average-rate>.

²⁸ Farmworker Advocacy Network letter to Governor Cooper, May 8, 2020, https://www.nejustice.org/wp-content/uploads/2020/05/WRF_Poultry-and-Meat-processing-letter-5.8.20.pdf?cType=EmailBlastContent&id=351ea54f-6572-192e-bf28-6e9197828063; Oxfam America, *Lives on the Line: The Human Cost of Cheap Chicken*, Oct. 26, 2015, <https://static-media.oxfam.org/files/oxfam-lives-on-the-line-full-report-final.pdf>.

²⁹ Farmworker Advocacy Network letter to Governor Cooper, May 8, 2020, https://www.nejustice.org/wp-content/uploads/2020/05/WRF_Poultry-and-Meat-processing-letter-5.8.20.pdf?cType=EmailBlastContent&id=351ea54f-6572-192e-bf28-6e9197828063.

³⁰ *Id.*

interstate commerce.³¹ This is especially true in light of Governor Cooper's declaration that "COVID-19 has caused and will continue to cause substantial economic disruption in North Carolina, including disruptions to employees and employers."³²

V. Statement of the Effect of the Proposed Rule on Existing Rules and Local Government, and the Proposed Rule's Economic Impact

Since the Department has not adopted any rules, policies or procedures, there is no effect on existing rules. The proposed rule would not require local government to carry out additional or modified responsibilities nor would it increase the cost of providing or delivering a public service funded in whole or in part by any unit of local government. 13 NCAC § 01B.0102(4); N.C. Gen. Stat. §§ 150B-21(c)(1)-(2). Local governments in North Carolina have been severely impacted by COVID-19. With the majority of those surveyed expecting General Fund shortfalls in FY21, county and municipal governments are planning for reduced staffing, closing of facilities, increased taxes, and reducing capital expenditures.³³ The proposed rule would likely have a positive impact on the revenues of local government, in that a lower number of COVID infections should lead to increased retail spending, lower unemployment, and less reliance on local government relief efforts such as eviction prevention funds or food distribution. N.C.G.S. § 150B-21(c)(3). The proposed rule would not have a substantial economic impact as set forth in N.C.G.S. 150B-21.4(b1). If NCDOL actually investigated complaints related to the new rule,

³¹ See *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970) (balancing "legitimate local public interest" against incidental effects on interstate commerce); *Brown v. Hovatter*, 561 F.3d 357, 367 (4th Cir. 2009) (the "incidental burden on interstate commerce is not excessive and is justified by the very real benefits of protecting the public health, safety, and welfare").

³² Executive Order No. 131, *Establishing Additional Policies for Retail Establishments, Further Risk Mitigation Measures at Long Term Care Facilities, and New Processes to Expedite Payment of Unemployment Insurance Claims*, Apr. 9, 2020, <https://files.nc.gov/governor/documents/files/E0131-Retail-Long-Term-Care-Unemployment-Insurance.pdf>.

³³ The COVID-19 Crisis and How Local North Carolina Governments are Budgeting for It, April 28, 2020, <https://dearthandtaxes.org/nc.edu/the-covid-19-crisis-and-how-north-carolina-local-governments-are-budgeting-for-it/>.

there would be costs associated with the time and expense of the investigations. However, if the investigations resulted in changed employer practices that reduced the incidence of COVID in a particular workplace, that could also result in enhanced revenue for that business and enhanced local economic activity.

VI. Name and Address of the Petitioners

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Petitioners, NC State AFL-CIO, Episcopal Farmworker Ministry, Western
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NC Raise Up/ Fight for \$15 and a Union, and the NC Conference of the NAACP,
submit this Petition through their undersigned attorneys.

This the 12th day of October, 2020.

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Exhibit A

Section 1. Purpose, Scope and Applicability

- (a) This emergency temporary standard is designed to establish requirements for employers to assess the risk of, prepare for, control, prevent, and mitigate the spread of SARS-CoV-2, the virus that causes coronavirus disease 2019 (COVID-19) to and among employees and employers.
- (b) This standard shall apply to every employer, employee and place of employment in North Carolina within the jurisdiction of the North Carolina OSHA.
- (c) This standard is designed to supplement and enhance existing NC OSHA laws, rules, regulations and standards applicable directly or indirectly to COVID-19 disease-related hazards such as, but not limited to, those dealing with personal protective equipment ("PPE"), respiratory protective equipment, non-medical masks, and sanitation. Should this standard conflict with an existing NC OSHA rule, regulation, or standard, the more stringent requirement from an occupational safety and health hazard prevention standpoint shall apply.
- (d) This standard shall not conflict with requirements and guidelines applicable to businesses set out in any applicable NC executive order or order of public health emergency.
- (e) This emergency temporary standard shall take immediate effect upon adoption.

Section 2. Definitions

- (a) "Administrative Control" means any procedure which significantly limits daily exposure to SARS-CoV-2 virus and COVID-19 disease related workplace hazards and job tasks by control or manipulation of the work schedule or manner in which work is performed. The use of personal protective equipment is not considered a means of administrative control.
- (b) "Agricultural employment", "migrant", "migrant housing", and "operator" all have the definitions provided in the Migrant Housing Act of North Carolina, N.C.G.S. § 95-223.
- (c) "Airborne infection isolation room (AIIR)", formerly a negative pressure isolation room, means a single-occupancy patient-care room used to isolate persons with a suspected or confirmed airborne infectious disease. Environmental factors are controlled in AIIRs to minimize the transmission of infectious agents that are usually transmitted from person to person by droplet nuclei associated with coughing or aerosolization of contaminated fluids. AIIRs provide negative pressure in the room (so that air flows under the door gap into the room); and an air flow rate of 6-12 ACH (6 ACH for existing structures, 12 ACH for new construction or renovation); and direct exhaust of air from the room to the outside of the building or recirculation of air through a HEPA filter before returning to circulation.
- (d) "Asymptomatic" means a person who does not have symptoms

- (e) "Building/facility owner" means the legal entity, including a lessee, which exercises control over management and record keeping functions relating to a building and/or facility in which activities covered by this standard take place.
- (f) "Business" means all businesses that maintain any level of authority, responsibility, or control for locations where work is being performed, which may include, but is not limited to, businesses, facility owners and/or operators, staffing and temporary labor agencies, and public entities.
- (g) "CDC" means the Centers for Disease Control and Prevention.
- (h) "Cleaning" means the removal of dirt and impurities, including germs, from surfaces.¹
- (i) "COVID-19" means Coronavirus Disease 2019, which is a respiratory disease caused by the SARS-CoV-2 virus.
- (j) "COVID-exposed" means that, in the last 14 days, someone has had close contact (within 6 feet for at least 15 minutes) with someone diagnosed with COVID-19.
- (k) "COVID-positive" means that someone has tested positive for COVID-19.
- (l) "COVID-symptomatic" means that someone either (a) has been diagnosed with COVID-19 by a health care provider, but has not yet tested positive, or (b) has any of the following symptoms of COVID-19:
- Fever of 100.4 degrees or above; or
 - Chills; or
 - Shortness of breath or difficulty breathing; or
 - New cough;
 - A new loss of taste or smell; or
 - Any other clinically recognized symptoms.

A person is no longer COVID-symptomatic if the person has tested negative for COVID-19 or if a physician has found that the person does not have COVID-19.

- (m) "Department" means the North Carolina Department of Labor.

¹ Cleaning alone does not kill germs. But by removing the germs, it decreases their number and therefore any risk of spreading infection. See <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html>.

- (n) "Disinfecting" means using chemicals approved for use against SARS-CoV-2, for example EPA-registered disinfectants,² to kill germs on surfaces.³
- (o) "Employee" means an employee of an employer who is employed in a business of his employer. Reference to the term "employee" in this standard also includes, but is not limited to, temporary employees and other joint employment relationships, persons in supervisory or management positions with the employer, etc., in accordance with North Carolina occupational safety and health laws, standards, regulations, and court rulings.
- (p) "Employer" means an individual or entity that suffers or permits a person to work, and shall include contracting for the services of a person. More than one entity may be the "employer."
- (q) "Engineering control" means the use of substitution, isolation, ventilation, and equipment modification to reduce exposure to SARS-CoV-2 virus and COVID-19 disease related workplace hazards and job tasks.
- (r) "Face mask" or "non-medical mask" means an item normally made of cloth or various other materials with elastic bands or cloth ties to secure over the wearer's nose and mouth in an effort to potentially contain or reduce the spread of potentially infectious respiratory secretions at the source (i.e., the person's nose and mouth).⁴
- (s) "Face shield" means a form of personal protective equipment made of transparent, impermeable materials intended to protect the entire face or portions of it from droplets or splashes.
- (t) "Feasible" means capable of being done.⁵
- (u) "Hand sanitizer" means alcohol-based hand sanitizer that is at least 60 percent alcohol or 70 percent isopropanol.
- (v) "Health care and emergency response employee or worker" means any person whom a health care and emergency response employer suffers or permits to work, and shall include independent contractors and persons performing work for a health care and emergency response employer through a temporary services or staffing agency.

² <https://www.epa.gov/pesticide-registration/list-n-disinfectants-use-against-sars-cov-2>

³ Disinfecting does not necessarily clean dirty surfaces or remove germs. But killing germs remaining on a surface after cleaning further reduces any risk of spreading infection.

<https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html>

⁴ <https://www.osha.gov/Publications/OSHA3990.pdf> at page 9

⁵ See *American Textile Manufacturers Institute, Inc. v. Donovan (Cotton Dust)*, 19. 452 U.S. 490, 509 (1981).

- (w) "Health care and emergency response employer" means employers, both public and private, of: health care and long-term care sector workers, including nursing home and home health care workers and assisted living facility workers; paramedic and emergency medical services workers, including such services provided by firefighters and other emergency responders; corrections, detention, or secure treatment facility workers; and mortuary and laboratory workers.
- (x) "Known to be infected with the SARS-CoV-2 virus" means a person, whether symptomatic or asymptomatic, who has tested positive for SARS-CoV-2 and the employer knew or with reasonable diligence should have known that the person has tested positive for SARS-CoV-2.
- (y) "Labor Union" means an organization of workers joined to protect their common interests and improve their working conditions.
- (z) "Meatpacking employers" includes employers engaged in the slaughtering, rendering, refining, processing, and preparing meat and meat by-products (e.g. beef, pork, poultry, seafood).
- (aa) "Personal protective equipment" means equipment worn to minimize exposure to hazards that cause serious workplace injuries and illnesses. These injuries and illnesses may result from contact with chemical, radiological, physical, electrical, mechanical, biological or other workplace hazards. Personal protective equipment may include, but is not limited to, items such as gloves, safety glasses, shoes, earplugs or muffs, hard hats, respirators, surgical/medical procedure masks, gowns, face shields, coveralls, vests, and full body suits.
- (bb) "Physical distancing" also called "social distancing" means keeping space between yourself and other persons while conducting work-related activities inside and outside of the physical establishment by staying at least 6 feet from other persons. Physical separation of an employee from other employees or persons by a permanent, solid floor to ceiling wall constitutes physical distancing from an employee or other person stationed on the other side of the wall.
- (cc) "Respirator" means a protective device that covers the nose and mouth or the entire face or head to guard the wearer against hazardous atmospheres. Respirators are certified for use by the National Institute for Occupational Safety and Health (NIOSH). Respirators may be: 1. Tight-fitting, that is, half masks, which cover the mouth and nose, and full face pieces that cover the face from the hairline to below the chin; or 2. Loose-fitting, such as hoods or helmets that cover the head completely. There are two major classes of respirators: 1. Air-purifying, which remove contaminants from the air; and 2. Atmosphere-supplying, which provide clean, breathable air from an uncontaminated source. As a general rule, atmosphere-supplying respirators are used for more hazardous exposures.

- (dd) "SARS-CoV-2" means a betacoronavirus, like MERS-CoV and SARS-CoV. The SARS-CoV-2 causes what has been designated as the Coronavirus Disease 2019 (COVID-19).
- (ee) "Surgical/medical procedure mask" means a mask to be worn over the wearer's nose and mouth that is fluid resistant and provides the wearer protection against large droplets, splashes, or sprays of bodily or other hazardous fluids, and prevents the wearer from exposing others in the same fashion. It protects others from the wearer's respiratory emissions. It has a loose fitting face seal. It does not provide the wearer with a reliable level of protection from inhaling smaller airborne particles. It is considered a form of personal protective equipment, but is not considered respiratory protection equipment under North Carolina occupational safety and health laws, rules, regulations, and standards. Testing and approval is cleared by the U.S. Food and Drug Administration (FDA).
- (ff) "Suspected to be infected with SARS-CoV-2 virus" means a person that has signs or symptoms of COVID-19 but has not tested positive for SARS-CoV-2 and no alternative diagnosis has been made (e.g., tested positive for influenza).
- (gg) "Symptomatic" means the employee is experiencing symptoms similar to those attributed to COVID-19 including fever or chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, or diarrhea. Symptoms may appear in 2 to 14 days after exposure to the virus.
- (hh) "Work practice control" means a type of administrative control by which the employer modifies the manner in which the employee performs assigned work. Such modification may result in a reduction of exposure to SARS-CoV-2 virus and COVID-19 disease related workplace 7.17.2020 Page | 14 hazards and job tasks through such methods as changing work habits, improving sanitation and hygiene practices, or making other changes in the way the employee performs the job.
- (ii) "Worker" means any person whom an employer or business suffers or permits to work, and shall include independent contractors, and persons performing work for an employer or business through a temporary services or staffing agency.

Section 3. Protecting Workers from COVID-19

(a) Mandatory Requirements for All Employers and Businesses.

(1) Written Assessment:

- A All employers and businesses that require workers to leave their homes or residences for work must perform an assessment to determine which hazards and job tasks can potentially expose employees to the SARS-CoV-2 virus or

COVID-19 disease and necessitate the use of personal protective equipment (PPE) and administrative, work practice and/or engineering controls. The employer or business shall provide for worker and labor union involvement in the assessment process.

- B. The employer or business shall verify that the SARS-CoV-2 virus and COVID-19 disease workplace assessment described in subdivision (a)(1)(A) has been performed through a written certification that identifies the workplace evaluated, the person certifying that the evaluation has been performed, and the date(s) of the hazard assessment. The document must be identified as a certification of hazard assessment.

(2) COVID-19 Preparedness and Response Plan

- A. After performing the hazard assessment discussed in 1(A) above, all employers shall develop a COVID-19 preparedness and response plan. The plan shall:
 - 1. Identify the name(s) or title(s) of the person(s) responsible for administering the plan. This person shall be knowledgeable in infection control principles and practices as they apply to the facility, service or operation.
 - 2. Provide for employee involvement in development and implementation of the plan.
 - 3. Using the assessment described in (A)(1)(a) consider and address the level(s) of SARS-CoV-2 virus and COVID-19 disease risk associated with various places of employment, the hazards employees are exposed to and job tasks employees perform at those sites. Such considerations shall include:
 - i. Where, how and to what sources of the SARS-CoV-2 virus or COVID-19 disease might employees be exposed at work, including:
 - 1. The general public, customers, other employees, patients, and other persons;
 - 2. Known or suspected to be infected with SARS-CoV-2 virus persons or those at particularly high risk of COVID-19 infection (e.g., local, state, national and international travelers who have visited locations with ongoing COVID-19 community transmission, healthcare employees who have had unprotected exposures to known or

- suspected to be infected with SARS-CoV-2 virus persons); and
 - 3. Situations where employees work more than one job with different employers and encounter hazards or engage in job tasks that present exposure risk.
 - 4. Consider contingency or emergency plans for situations that may arise as a result of outbreaks, or worker shortages.
 - 5. Identify basic infection prevention measures to be implemented for employees, customers, visitors, and the general public.
 - 6. Provide for the prompt identification and isolation of known or suspected to be infected with the SARS-CoV-2 virus employees away from work, including procedures for employees to report when they are experiencing symptoms of COVID-19.
 - 7. Address infectious disease preparedness and response with outside businesses, including but not limited to, subcontractors that enter the place of employment, businesses that provide or contract for temporary employees to the employer, as well as other persons accessing the place of employment to comply with the requirements of this rule and the employer's plan.
 - 8. Ensure compliance with mandatory requirements of any applicable North Carolina executive orders related to SARS-CoV-2 virus or COVID-19 disease.
- B. The plan must be provided to all workers in a language they understand and made readily available to workers, labor unions, and customers, whether via website, internal network, or by hard copy.
- C. Designate one or more managers or executives to implement, monitor, and report on the COVID-19 control strategies developed under Section 2(a). At least one designee must remain on-site at all times when workers are present on site. A designee must also be responsible for receiving, investigating and responding to reports of possible and confirmed COVID cases, and COVID-19 related complaints regarding unsafe working conditions.

(3) Personal Protective Equipment (PPE):

- A. After performing the assessment described in subdivision (a)(1)(A), the employer shall:

1. Except as otherwise required in the standard, identify and require each worker use the types of PPE that will protect the worker from the SARS-CoV-2 virus or COVID-19 disease hazards identified in the hazard assessment;
 2. Clearly communicate PPE requirements to each worker in a language the worker understands; and,
 3. Ensure that each worker is wearing PPE that properly fits them.
- B. Unless specifically addressed by an industry specific standard applicable to the employer and providing for PPE protections to employees from the SARS-CoV-2 virus or COVID-19 disease, the requirements of §§1910.132 (General requirements) and 1910.134 (Respiratory protection) shall apply to all employees.
- C. If required by §1910.134 or the hazard assessment conducted in section (a)1(A.) The employer shall implement a respiratory protection program in accordance with §1910.134 (b) through (d) (except (d)(1)(iii)), and (f) through (m), which covers each employee required to use a respirator

(4) Face Masks:

- A. If the hazard assessment does not reveal that a higher level of PPE is necessary, employers are required to provide workers with face masks free of charge in sufficient quantity such that they do not need to launder face masks more than once per week. Employers shall require workers to wear face masks at all times when at the facility, except when removal is necessary to eat or drink.
- B. All businesses shall require customers in grocery stores, retail operations, recreational facilities, and pharmacies to wear face masks. All customers in restaurants and other businesses selling food or drink to be consumed on the premises shall be required by the business to wear face masks except when eating and drinking.
- C. Nothing in this section shall require the use of a face mask by any worker whose health or safety would be jeopardized by the use of a face mask due to a documented medical condition. Nothing in this section shall negate an employer's obligations to comply with personal protective equipment standards applicable to its industry.
- D. Businesses shall provide face coverings to on-site third parties, including visitors, clients, or vendors performing business-related or other official functions.

(5) Administrative and Work Practice Controls:

- A. Where feasible, employers shall implement telework and other flexible work arrangements (e.g., implementing flexible meeting and travel options, use telephone or video conferencing instead of in-person meetings, postpone non-essential meetings or events);
- B. If teleworking is not feasible, the employer shall ensure that workers are able to maintain physical distance of six (6) feet between workers, and between workers and other persons of the general public during non-break times. This may require the employer to make changes such as:
 - 1. staggering shifts;
 - 2. providing drive-through options;
 - 3. limits to the number of customers on site;
 - 4. deliver services remotely (e.g. phone, video, or web);
 - 5. deliver products through curbside pick-up or delivery;
 - 6. reduce processing capacity or modify the processing for production lines; and
 - 7. install physical barriers, (e.g., clear plastic sneeze guards, etc.), where such barriers will aid in mitigating the spread of SARS-CoV-2 and COVID-19 virus transmission.
- C. The employer shall ensure that workers are able to maintain physical distance of six feet between themselves and other individuals before and after beginning work and during break times by staggering breaks, staggering meal times and staggering arrival and departure time.
- D. Employers shall ensure that employees observe physical distancing while on the job and during paid breaks on employer or business property, including through policies and procedures that:
 - 1. Use verbal announcements, signage, plastic barriers or visual cues to promote physical distancing;
 - 2. Limit non-worker access to the place of employment or restrict access to only certain workplace areas to reduce the risk of exposure.

- E. Employers may designate, reconfigure, and alternate usage of common spaces where employees congregate, including lunch and break rooms, locker rooms, near time clocks, etc., to limit access and ensure physical distancing by meeting the following conditions:
1. Clearly posting the policy limiting the occupancy of the space and requirements for physical distancing, hand washing/hand sanitizing, and cleaning and disinfecting of shared surfaces at the entrance(s) of the designated common area or room;
 2. Limiting occupancy of the designated common area or room so that occupants can maintain physical distancing from each other. The employer shall enforce the occupancy limit;
 3. Providing for cleaning and disinfecting of the common of the common areas or rooms at regular intervals throughout the day, and between shifts of employees using the same common area or room (i.e., where an employee or groups of employees have a designated lunch period and the common area or room can be cleaned in between occupancies);
 4. Providing workers hand washing facilities and hand sanitizer where feasible. Hand sanitizers required for use to protect against SARS-CoV-2 are flammable and use and storage in hot environments can result in a hazard.
- F. When multiple employees are occupying a vehicle for work purposes, the employer shall ensure compliance with respiratory protection and personal protective equipment standards applicable to its industry.

(6) Hand Sanitizing, Hand Washing, and Gloves:

- A. Workers must have easy access and permission to wash their hands with soap and water frequently – especially before and after breaks or meals. If a worker requests a break to wash his or her hands and is denied, it will be presumed that the employer is not in compliance with this provision.
- B. Where feasible, employers must provide hand sanitizers that are readily available in multiple locations in the workplace, and workers must have easy access and permission to use sanitizer.
- C. Mobile crews shall be provided with hand sanitizer where feasible for the duration of work at a work site and shall have transportation immediately available to nearby toilet facilities and handwashing facilities.

- D. Employers must ensure that supplies in restrooms, portable toilets, and handwashing/sanitizing stations are regularly monitored and continually stocked.
- E. Employers shall provide tissues or towels for coughing and sneezing.
- F. Employers shall provide no-touch trash bins.
- G. Gloves shall be provided by employers to workers who request them.
- H. Employers shall ensure that workers regularly wash and/or sanitize their hands, in particular when entering and exiting the business and before and after eating or drinking, using tobacco products, using restroom facilities, and using devices, tools, and equipment used by other workers.
- I. Employers shall instruct workers to avoid touching their faces as much as possible.

(7) Regular Cleaning and Disinfection:

- A. Employers must routinely clean and disinfect all areas, such as offices, bathrooms, locker and changing rooms, and common areas. Employers must clean and disinfect regularly all frequently touched surfaces in the workplace, such as workstations, touchscreens, telephones, barriers, handrails, doorknobs, countertops, and bathroom surfaces.
- B. Electronic devices (e.g., light switches, circuit-breakers) shall not be cleaned and disinfected with a liquid agent. Employers should consider covering electronic devices with a poly-covering that allows the user to manipulate the device without touching the switch, and change out the poly-covering frequently. Electronic devices must be sanitized only when disconnected from the power source and sanitized in accordance with the listing/labeling requirements.
- C. Where feasible, employers must assign a designated user/operator for each station, machine, or piece of equipment as opposed to allowing several users/operators to share stations, machines, or pieces of equipment. If stations, machines, or pieces of equipment must be shared, shared tools, equipment, and vehicles shall be cleaned and disinfected prior to transfer from one worker to another.
- D. Employers shall ensure that the manufacturer's instructions for use of all disinfecting chemicals and products are complied with (e.g., concentration, application method, contact time, personal protective equipment, etc.).

- (8) Ventilation. Employers must ensure that air-handling systems where installed are appropriate to address the SARS-CoV-2 virus and COVID-19 disease related hazards and job tasks that occur at the workplace. Employers must ensure that appropriate air-handling systems:
- A. Are maintained in accordance with the manufacturer's instructions, and
 - B. Comply with minimum American National Standards Institute (ANSI)/American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standards 62.1 and 62.2 (ASHRAE 2019a, 2019b), which include requirements for outdoor air ventilation in most residential and nonresidential spaces. Based on risk assessments or owner project requirements, designers of new and existing facilities can go beyond the minimum requirements of these standards.
- (9) Community drinking stations and water fountains must not be available unless protocols are implemented to ensure frequent sanitation between users. Touchless water-filling stations may still be provided.
- (10) Self-Reporting: Employers and businesses shall develop and implement policies and procedures for workers to report when they are experiencing symptoms consistent with COVID-19 and no alternative diagnosis has been made (e.g., tested positive for influenza).
- A. Such workers shall be designated by the employer as "suspected to be infected with SARS-CoV-2 virus." Employers and businesses shall not permit workers or other persons known or suspected to be infected with SARS-CoV-2 virus to report to or remain at the work site or engage in work at a customer or client location until cleared for return to work.
 - B. Nothing in this standard shall prohibit an employer from permitting a worker known or suspected to be infected with SARS-CoV-2 virus from engaging in teleworking or other form of offsite work that would not result in potentially exposing other people to the SARS-CoV-2 virus.
 - C. Employers shall discuss with subcontractors and companies that provide contract or temporary employees the importance of employees or other persons who are known or suspected to be infected with the SARS-CoV-2 virus staying home. Known or suspected to be infected with the SARS-CoV-2 virus subcontractor, contract, or temporary employees shall not report or be allowed to remain at the work site until cleared for return to work. Subcontractors shall not allow their known or suspected to be infected with the SARS-CoV-2 virus employees to report to or be allowed to remain at work or on a job site until cleared for return to work.

(11) Screening: Employers shall screen all workers at the beginning of their shifts as follows:

- A. Set up an outdoor location to perform symptom screening in a manner that allows for social distancing and proper hygiene. Ensure barriers are in place to prevent anyone from bypassing the screening.
- B. Screeners must wear appropriate personal protective equipment (PPE). There should be at least six (6) feet between the screener and the worker being screened. If the screener needs to be within six (6) feet of a worker, the screener should wear gloves, a gown, face shield, and a surgical/medical procedure mask.
- C. Check for fever (100.4 degrees or above).
- D. Ask, or allow workers to report via paper or phone application, if they have been in contact with anyone who has tested positive for COVID-19 within the past fourteen (14) days; and/or are experiencing fever, a new or worsening cough, shortness of breath, sore throat, a new loss of taste or smell, nausea or vomiting, or diarrhea.
- E. If the worker has a fever of 100.4 degrees or above and/or answers yes to the questions in subdivisions (a)(11)(D), the employer should not allow the worker to enter the workplace until they have self-isolated at home for thirteen (13) days, including three (3) days fever-free and feeling well or until they receive a negative COVID test, whichever is sooner.
- F. Employers must affirmatively inform workers of their right to receive paid leave and that they will not be discharged, disciplined or retaliated against for reporting an exposure, reporting symptoms, or testing positive for COVID-19.
- G. Remind workers to report to their supervisor immediately if they get sick during a shift.

(12) Confirmed Cases of COVID-19: In the event of a confirmed case of COVID-19 in the workplace, all employers and businesses must comply with the following requirements.

- A. If a worker is confirmed or suspected to have COVID-19, the worker must self-isolate at home for thirteen (13) days, including three (3) days fever-free and feeling well or until the worker receives a negative COVID test, whichever is sooner.
- B. COVID-exposed workers who are asymptomatic should be encouraged to self-isolate for ten days or until they receive a negative COVID test,

whichever is sooner. They should be permitted to work only in consultation with the local health department.

- C. If there is an outbreak at a workplace, which is defined as two or more cases within fourteen days, the employer must coordinate with NCDHHS to ensure that all workers on all shifts at the facility are given the opportunity for on-site COVID-19 testing.
- D. To the extent permitted by law, including HIPAA (Health Insurance Portability and Accountability Act), employers shall establish a reasonable system to receive reports of positive SARS-CoV-2 tests by employees, subcontractors, contract employees, and temporary employees present at the place of employment within the previous 14 days from the date of the positive test, and the employer shall notify:
 - 1. Its own employees who may have been exposed, within 24 hours of discovery of their possible exposure, while keeping confidential the identity of the known to be infected with SARS-CoV-2 virus person in accordance with the requirements of the Americans with Disabilities Act (ADA) and other applicable federal and state laws and regulations. Every week, employers with twenty-five or more employees shall post in an area where all workers can see the number of confirmed COVID-19 infections among workers;
 - 2. Other employers whose employees were present at the work site during the same time period;
 - 3. The building facility owner. The building/facility owner will require all employer tenants to notify them of the occurrence of a SARS-CoV-2-positive test for any employees or residents in the building. This will allow them to take the necessary steps to sanitize the common areas of the building. In addition, the building/facility owner will notify all employer tenants in the building that one or more cases have been discovered and the floor or work area where the case was located. The identity of the individual will be kept confidential in accordance with the requirements of the ADA and other applicable federal and state laws and regulations;
 - 4. The North Carolina Departments of Health and Human Services and Labor and the county Department of Health within 24 hours of the discovery of a positive case and include in the notification the industry, worker's occupation, and, for agricultural workers, the type of housing the worker lives in;

5. Deep Cleaning and Disinfection: If a worker is confirmed to have COVID-19, the employer shall close off workplace areas visited by the ill person, open outside doors and windows and use ventilating fans to increase circulation in the area. After 24 hours or as long as practical, the employer shall conduct cleaning and disinfection as directed by CDC Cleaning and Disinfection for Community Facilities guidelines;
6. Employers shall ensure employee access to their own SARS-CoV-2 virus and COVID-19 disease related exposure and medical records in accordance with the standard applicable to its industry.

(13) Isolation and Quarantine.

- A. Whenever a medical provider or public health official recommends isolation or quarantine, whether as a result of contact tracing or otherwise, the affected worker(s) must be reassigned duties that do not involve in-person contact with other workers or the public. Such reassignment must continue until the need for isolation no longer exists, based on guidance from the employee's medical provider or from the involved public health officials.
- B. To the degree reassignment to other duties is not possible, the employer must allow workers to use leave to which they are entitled under the Families First Coronavirus Response Act (FFCRA). If the employer is not covered by the FFCRA or has previously opted out of the paid sick leave provisions, or if the employee has already used their FFCRA paid leave, then the employer must provide up to two weeks of paid reassignment leave in addition to whatever benefits to which the worker would otherwise be entitled (such leave will be provided at 40 hours per week for full-time employees and on a pro-rata basis for part-time employees, at the worker's regular rate of pay).

(14) Employers must modify any incentive programs that penalize employees for missing work because they are sick so that workers are not discouraged from staying away from the workplace while sick.

(15) Communication and Training: All Employers must comply with the following requirements regarding communication and training.

- A. Employers must provide ongoing job-specific COVID-19 training aligned with current CDC guidance to existing and new workers that covers, at a minimum:
 1. The requirements of this standard;
 2. The characteristics and methods of transmission of the SARS-CoV-2 virus;

3. The symptoms of the COVID-19 disease;
 4. Risk factors of severe COVID-19 illness with underlying health conditions;
 5. Awareness of the ability of pre-symptomatic and asymptomatic COVID-19 persons to transmit the SARS-CoV-2 virus;
 6. Workplace infection-control practices, including but not limited to physical distancing, disinfection procedures, disinfecting frequency, ventilation, noncontact methods of greeting, etc.;
 7. The proper use of personal protective equipment, including:
 - i. When PPE is required;
 - ii. What PPE is required;
 - iii. How to properly don, doff, adjust and wear PPE;
 - iv. The limitations of PPE; and
 - v. The proper care, maintenance, useful life, and disposal of PPE.
 8. The employer's COVID-19 Preparedness Plan;
 9. How to notify the business or operation of any symptoms of COVID-19 or a suspected or confirmed diagnosis of COVID-19;
 10. How and to whom to report unsafe working conditions related to the SARS-CoV-2 virus, as well as the protocol for responding to such reports; and
 11. The anti-retaliation and anti-discrimination provisions of Section 4 of this rule.
- B. Employers must present any communication or training on COVID-19 infection control practices in the primary languages common in the worker population.
- C. Employers must place posters in the workplace in the languages common in the worker population that encourage social distancing, proper use of personal protective equipment, staying home when sick, cough and sneeze etiquette, and proper hand hygiene practices. Posters shall include the information listed in subdivision (a)(15)(A) of this Section. Posters must be written in the languages common in the worker population. If there is evidence of low literacy in the worker population, posters must account for this limitation.

- D. For the purposes of this Rule, and consistent with multi-employer work-sites, work being performed and/or work-sited may have more than one business with authority, responsibility or control (e.g. building operator and cleaning services contractor), all of which maintain joint responsibility for ensuring the proper implementation and execution of the COVID-19 Preparedness Plan.

(b) Additional Requirements for Health Care and Emergency Response Employers.

(1) Administrative and Work Practice Controls

- A. If working in a healthcare facility, follow existing guidelines and facility standards of practice for identifying and isolating infected persons and for protecting workers;
- B. Post signs requesting patients and family members to immediately report symptoms of respiratory illness on arrival at the healthcare facility and use disposable face coverings; and
- C. In addition to COVID-19 prescreening or surveying prior to the commencement of each shift, offer enhanced medical monitoring of employees during COVID-19 outbreaks (e.g., automatically reminding healthcare workers to self-assess for symptoms, screening at the end of shifts, etc.).
- D. To the extent feasible, ensure that psychological and behavioral support is available to address COVID-19 related worker stress at no cost to the worker.

(2) Engineering Controls

- A. Ensure appropriate air-handling systems:
 - 1. Are installed and maintained in accordance with manufacturer's instructions in healthcare facilities and other places of employment treating, caring for, or housing persons with known or suspected to be infected with the SARS-CoV-2 virus, and
 - 2. Comply with minimum American National Standards Institute (ANSI)/American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standards 62.1 and 62.2 (ASHRAE 2019 a, 2019b) which include requirements for outdoor air ventilation in most residential and nonresidential spaces, and ANSI/ASHRAE/ASHE Standard 170 (ASHRAE 2017a) covers both outdoor and total air ventilation in healthcare facilities. Based on risk assessments or owner project requirements, designers of new and existing facilities can go beyond the minimum requirements of these standards.

- B. Hospitalized patients who are known or suspected to be infected with the SARS-CoV2 virus shall, where feasible and available, be placed in an airborne infection isolation room (AIIR).
1. Use AIIR rooms when available for performing aerosol-generating procedures on patients with known or suspected to be infected with the SARS-CoV-2 virus.
 2. For postmortem activities, employers shall use autopsy suites or other similar isolation facilities when performing aerosol-generating procedures on the bodies of known or suspected to be infected with the SARS-CoV-2 virus persons at the time of their death.
 3. Use special precautions associated with Biosafety Level 3 (BSL-3), as defined by the U.S. Department of Health and Human Services Publication No. (CDC) 21-1112 "Biosafety in Microbiological and Biomedical Laboratories" (Dec. 2009), which is hereby incorporated by reference, when handling specimens from known or suspected to be infected with the SARS-CoV-2 virus patients or persons.
- C. Unless contraindicated by a hazard assessment and equipment selection requirements, workers in health care and first response shall be provided with and wear gloves, a gown, a face shield or goggles, and a NIOSH certified respirator compliant with §1910.134 when in contact with or inside six feet of patients or other persons known to be, or suspected to be, infected with SARS-CoV-2. Where indicated by the hazard assessment and equipment selection requirements in subdivision (a)(3)(B), such workers shall also be provided with and wear a surgical/medical procedure mask compliant with §1910.134. Gowns shall be large enough to cover the areas requiring protection.

(c) Additional Requirements for Agricultural Employers and Migrant Housing Providers.

(1) Required Testing.

- A. All migrant housing operators must
1. Provide testing for any housing resident with symptoms or suspected of COVID-19;
 2. Provide testing for all newly arriving residents within 48 hours after arrival unless the resident has already been tested in the 72

hours before arrival;

3. House newly arriving residents in a separate living unit from current residents for 14 days after arrival;
 4. If separate living units are not available, newly arriving residents shall be required to wear a cloth face covering at all times during the first 14 days after arrival, except when eating, drinking, sleeping, or performing personal hygiene activities or if the resident cannot medically tolerate a face covering;
 5. Provide a second test to newly arriving residents 10-14 days after arrival;
 6. Conduct temperature checks of residents at least once a day;
 7. provide testing for any resident registering a fever of 100.4 degrees Fahrenheit or higher.
- B. Employers must cooperate with local health departments to provide for regular testing of all workers by allowing workers paid time off for testing, coordinating with health departments and clinics to schedule a plan testing events at times and locations that are convenient to the workers, and affirmatively stating that workers will not be retaliated against if the test positive.

(2) Transportation

- A. Transport workers in vehicles that allow workers to sit at least six feet apart and/or maintain partitions in between the various workers inside the vehicle.
- B. Clean and disinfect work-vehicles in accordance with an established sanitation schedule, including in between the use of each worker or work crew, and before and after each use. Schedule the trips in order to accommodate and allow ample time for cleaning and disinfection of seats and high touch surfaces in between trips.
- C. Avoid recirculating the air within the vehicle while transporting passengers. Use the vehicle's ventilation system to exchange fresh-air in from outside the vehicle. Lower the vehicle's windows as often as possible.

(3) Housing.

- A. Provide at least two washable face coverings at no charge to each resident of the housing.

- B. Separate beds by at least six feet or more in all directions and arrange the beds in head to toe sleeping arrangements. Only one person should be permitted to sleep in a bed or bunk bed. This provision does not apply to family members who live in their own family unit of the employer provided housing.
- C. If they do not already exist, install partitions between each toilet and between each shower stall.
- D. Provide separate housing for each of the following groups: : residents who are COVID-positive, residents who are COVID-symptomatic but who are awaiting test results, residents who are asymptomatic but COVID-exposed, and residents who are healthy and are not COVID-exposed. If COVID-exposed residents who are asymptomatic reside in a one-family housing unit or in a family living unit that is part of a multifamily unit and can effectively isolate themselves within the unit it is not necessary to provide them with separate housing.
- E. Separate housing means, at a minimum, separate sleeping areas. Separate bathing, toileting and eating facilities should be provided where feasible. If it is not feasible to provide separate bathing, toileting and eating facilities, the housing operators must create schedules for when each group can use those facilities.
- F. COVID-exposed residents should be housed separately for fourteen days after the last known exposure to someone who is COVID positive or until the COVID-exposed resident receives a negative test, whichever is sooner.
- G. If there is no separate space available on-site to provide separate housing as specified in (c)(3)(D) above, the housing operator must coordinate with the local health department and NCDHHS for alternative housing off-site.
- H. Ensure regular ventilation of rooms (e.g., by opening screened windows to let the outside to let fresh air circulate).
- I. Ensure that anyone who delivers food and water to isolated residents is equipped with appropriate PPE.
- J. Within 24 hours of a resident becoming symptomatic, arrange for that person to be evaluated by a medical provider through the local health department or federally qualified health center and for all residents to be tested for COVID-19.
- K. Attempt to collect emergency contact numbers for each worker.
- L. Ensure that camp employees and residents have access to the phone number of the local health department. "Camp superintendents" (or those providing the

housing) are required to report immediately to the local health officer the name and address of any individual in the camp known to have or suspected of having a communicable disease. (29 CFR 1910.142(l)(1)). Additionally, camp owners and operators must ensure that the name, phone number, and email address of the camp superintendents is posted prominently in a central location.

- M. Conspicuously post workers' housing address in a central location to ensure that workers will be able to call a 911 operator if needed.
- N. Conspicuously post the phone number for the North Carolina Coronavirus hotline and include on the posting a statement that if workers would like to make a CONFIDENTIAL complaint about unsafe working or employer provided living conditions, they may call the hotline number.
- O. Adopt any additional infection control measures consistent with guidance issued by the Department of Health and Human Services ("DHHS").
- P. NCDOL-ASH must use best efforts to conduct outreach visits to each migrant labor camp certified under the NC Migrant Housing Act within 20 working days of occupant arrival to review the rules issued pursuant to this order and any relevant DHHS guidance.

Section 4. Refusal to Work Under Dangerous Conditions

- (a) A worker shall have the right to refuse to work under conditions that the worker reasonably believes may expose that worker, other workers or the public to an unreasonable risk of illness or exposure to the SARS-CoV-2 virus or an individual with the COVID-19 disease.
- (b) An employer shall not retaliate or take adverse action against a worker for a refusal to work if, upon receiving reasonable notice, the employer refuses to correct conditions that may expose that worker to an unreasonable risk of illness or exposure to the SARS-CoV-2 virus or an individual with the COVID-19 disease.
- (c) A worker who has refused to work under conditions that may expose that worker to an unreasonable risk of illness or exposure to the SARS-CoV-2 virus or an individual with the COVID-19 disease, and who has not been reassigned to other work by the employer, shall: (a) retain a right to continued employment; and (b) continue to receive pay for the worker's regular hours until the condition has been remedied.
- (d) If an employer or other person takes adverse action against a worker or other person within 90 days of the worker or person's engagement or attempt to engage in activities protected by this Section, such conduct shall raise a presumption that the action is retaliation in violation of REDA.

Section 5. Enforcement

- (a) Administrative Enforcement. Either on its own initiative or after receiving a complaint, the Department shall have the authority to inspect workplaces, and to subpoena records and witnesses. Where an employer does not comply with any of them, the Department shall order relief as authorized in this Section.
- (b) Other Government Enforcement. The attorney general, a district attorney, or a city or county attorney may also enforce the requirements of this Rule, acting in the public interest, including the need to deter future violations. Such law enforcement agencies may inspect workplaces and subpoena records and witnesses and, where they determine that a violation has occurred, may bring a civil action seeking:
 - 1. An injunction to order compliance with the requirements of this Rule and to restrain continued violations, including through a stop-work order or business closure;
 - 2. Payment by the employer of reasonable costs, disbursements, and attorney's fees; and/or
 - 3. Civil penalties payable to the state of not less than \$100 per day per worker affected by any noncompliance with the provisions of this chapter.
- (c) Qui tam enforcement. The relief specified in subdivision (b) of this section may be recovered through a civil action brought on behalf of the Department in a court of competent jurisdiction by a whistleblower, defined herein as a worker, contractor, or employee of a contractor of the employer, or by a representative nonprofit or labor organization designated by said person, pursuant to the following procedures:
 - 1. The whistleblower shall give written notice to the Department of the specific provisions of this Rule alleged to have been violated. The whistleblower or representative organization may commence a civil action under this subsection if no enforcement action is taken by the Department within 30 days.
 - 2. The right to bring an action under this section shall not be impaired by any private contract. A public enforcement action shall be tried promptly, without regard to concurrent adjudication of private claims.

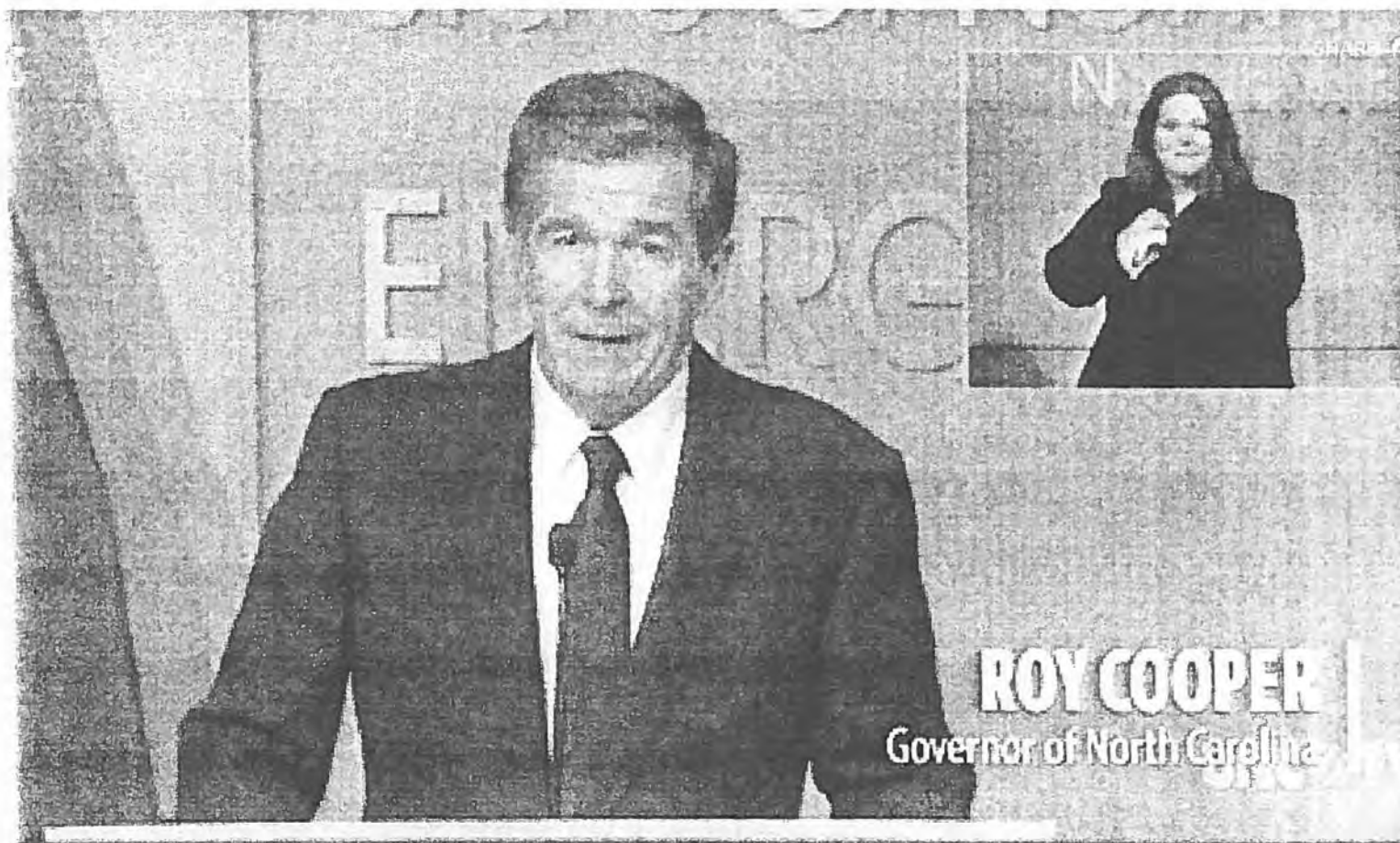
Exhibit B

LOCAL

Most NC businesses don't have to report outbreaks as COVID-19 cases rise

BY LYNN BONNER, CHIP ALEXANDER, AND ADAM WAGNER

JUNE 15, 2020 03:31 PM, UPDATED JUNE 15, 2020 05:38 PM



North Carolina Gov. Roy Cooper said he and Vice President Pence talked about getting federal help to increase COVID-19 coronavirus testing as the state sees an increase in cases and hospitalizations. Cooper spoke to reporters on June 15, 2020. BY WUNC-TV



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04:13

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Gov. Roy Cooper said Monday he spoke to Vice President Mike Pence about the state's climbing coronavirus infections and the need for testing.


The state's Department of Health and Human Services "is pushing assistance to local health departments, especially in the counties experiencing the highest growth — Alamance, Duplin, Durham, Forsyth, Guilford, Johnston, Lee, Mecklenburg and Wake are of particular concern," Cooper said Monday in a press briefing.

Cooper said he and Pence talked last weekend about increased testing, especially in those counties.


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VIA PHONE:

"just because of
our age."



DONNA MARIE, NORTH CAROLINA



[SKIP AD](#)

While hospitals have enough beds for COVID-19 patients, "that can change really quickly," Cooper said. The state is monitoring hospital capacity.

Sunday marked the second-highest increase in new cases, at 1,443. The highest was 1,768, the number of new cases announced Friday.

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Infections have been climbing since mid-May, and crowds have been gathering at race tracks, at protests, and in lines for restaurants.

“That kind of behavior in crowds really worries the health experts and epidemiologists and why we continue to tell people to avoid being in crowds if you can,” Cooper said Monday.

Cooper said he would announce early next week whether the state would continue to loosen restrictions on businesses and leisure activities that were meant to curb viral spread.

“We believe we can get a handle on this,” he said. “Let’s pull together so we can continue to move forward in easing restrictions.”

Cooper, who entered the press briefing wearing a mask, also said he is working to determine if the state should mandate the use of face coverings.

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COVID-19 OUTBREAK REPORTING

Only certain businesses are required to report outbreaks: congregate living facilities, day care centers, and schools.

Other businesses are encouraged to report outbreaks to local health offices, DHHS Secretary Dr. Mandy Cohen said in Monday’s press briefing.

“We work very closely with our local health departments to try to understand how the virus is spreading across our state,” she said. “We’ve talked many times of how we track those outbreaks. ... But those outbreaks are not consistently reported. There are only a few required by law — congregate living settings, childcare and others —

so we will often do the detective work through our tracing, or an entity may proactively identify themselves and say, hey, we have a number of cases in the setting and the local health department will work with us and help us understand what to do next.

"Those are good. We want folks to get in touch with your local health department if you are seeing more than two cases, which is an outbreak, or five, which is a cluster.

"We want to make sure people are taking the proper protocols, whether that's additional deep cleaning or temporary closure or what have you that needs to be done in order to make sure we don't see further viral spreads."

Cohen said businesses are encouraged to follow all the precautions laid out in "all the very detailed guidance" being provided.

"And if you do see the virus spreading in your place of business please do call the local health department," she said.



North Carolina Gov. Roy Cooper says health experts are looking into mandatory cloth masks as the state grapples with increased COVID-19 cases. Cooper said June 15, 2020, that he will announce next week whether NC will continue to loosen restrictions. BY WUNC-TV

RESTAURANT, NURSING HOME CONNECTION

Cohen said it was important to connect restaurant crowds to infections in long-term care facilities. More virus circulating in communities means that people who work in long-term care facilities can bring the virus back to their workplaces, she said.

Nursing homes have been hit particularly hard by COVID-19. As of Friday afternoon, there were 3,961 cases associated with nursing homes and 589 deaths.

The state plans universal testing of all nursing home residents and staff, not just those homes where people have tested positive.

More than 45,100 people in the state have had lab-confirmed cases of coronavirus infections, the state Department of Health and Human Services reported Monday.

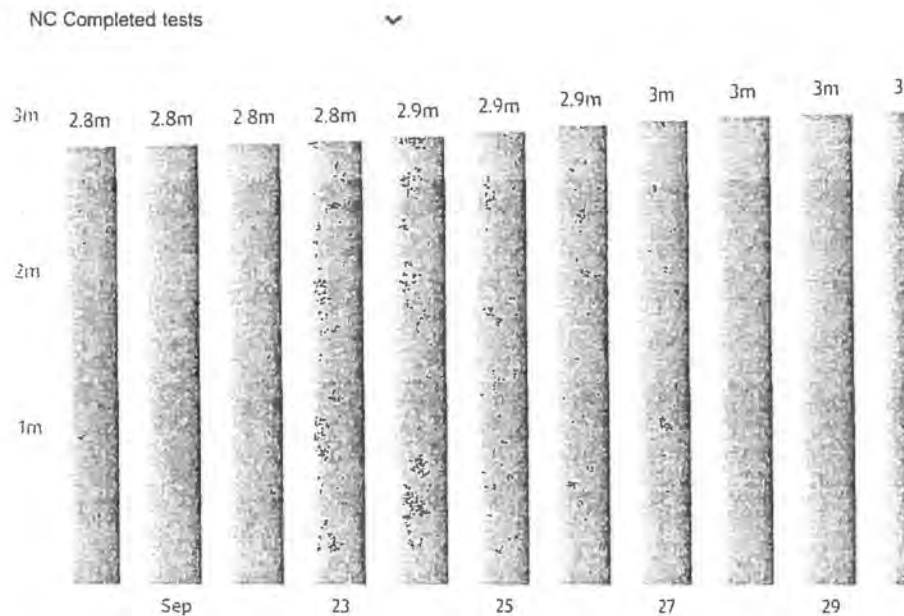
There were 303 newly reported cases Monday, and 737 patients hospitalized with 73% of hospitals reporting.

The 1,443 new cases reported Sunday marked the second-highest increase in new cases — the highest was 1,768 announced Friday. The NC DHHS reported Monday that 29,219 people in North Carolina are presumed recovered from coronavirus infections.

Forecast models compiled by the Centers for Disease Control and Prevention predict that North Carolina is one of six states where COVID-19 deaths are expected to jump between June 8 and July 4, McClatchy News reported. DHHS reported 1,118 COVID-19 deaths Monday since the first in March.

NC CORONAVIRUS TESTING

The chart below shows the change in the number of tests each day, the number of new cases each day and how they compare. Select variables from the dropdown menu for more information.





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Orange County commissioners weigh light industry, warehouse, research campus at I40, Old NC 86 near Hillsborough. Davis Road won't be a key exit from the site.

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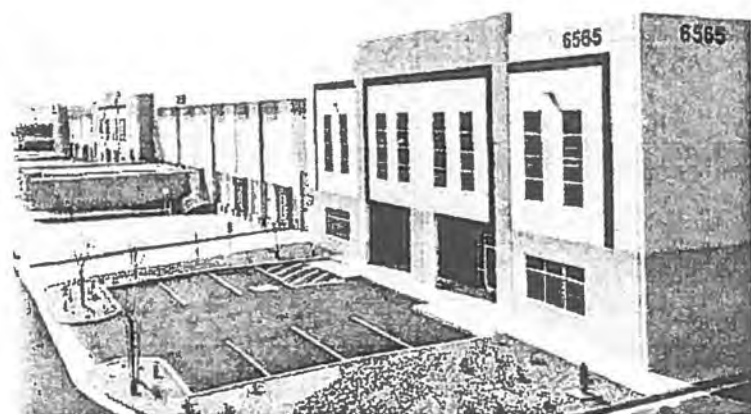
Gov. Roy Cooper removes his mask to begin a briefing on North Carolina's coronavirus pandemic response Monday, Jun. 15, 2020, at the N.C. Emergency Operations Center in Raleigh, N.C. CASEY TOTH CTOTH@NEWSOBSERVER.COM

LYNN BONNER

  919-829-4821

Lynn Bonner is a longtime News & Observer reporter who has covered politics and state government. She now covers environmental issues and health care.

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ORANGE COUNTY

Orange County board gets major road change in RTLP development plan for Hillsborough

BY TAMMY GRUBB

Cal Cunningham affair included July encounter in NC, new texts and interviews show

UPDATED OCTOBER 06, 2020 06:02 PM

What Cal Cunningham's Democratic primary opponent says about his scandal

UPDATED OCTOBER 05, 2020 06:45 PM

Coronavirus live updates: Here's what to know in North Carolina on Oct. 6

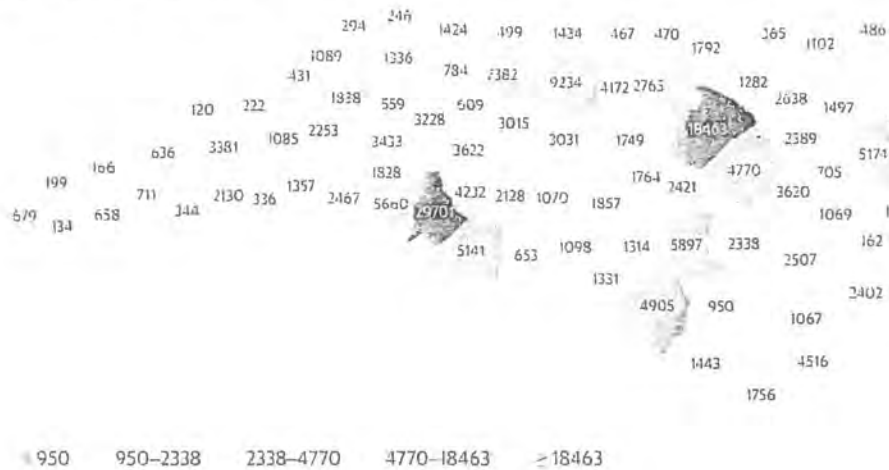
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Family, friends worry as San Francisco, NC police search for missing Berkeley student

UPDATED OCTOBER 06, 2020 02:12 PM

Thom Tillis says he's now free of COVID-19

Number of reported coronavirus cases by county as reported by NC DHHS. Not all cases of COVID-19 are tested, so this does not represent the total number of people who have or had the virus.

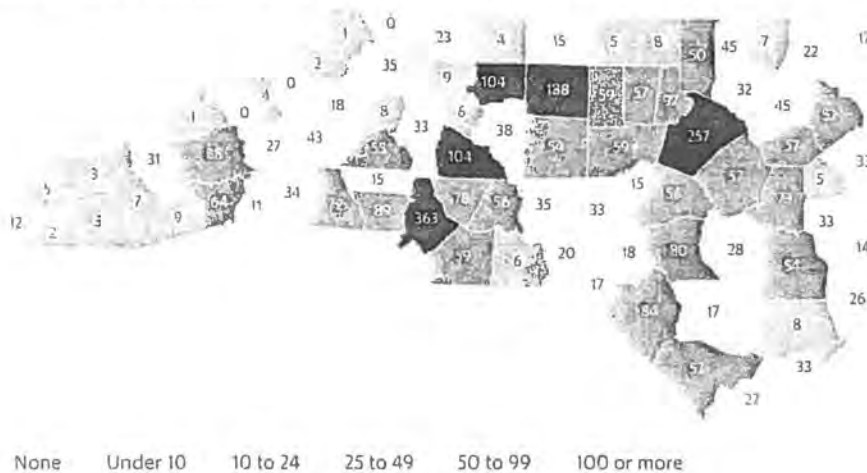


Case totals for the following counties include state and federal prisons where positive tests have been reported: Granville, Greene, Halifax, Hertford, Johnston, Pasquotank, Wayne.

Map: David Raynor • Get the data

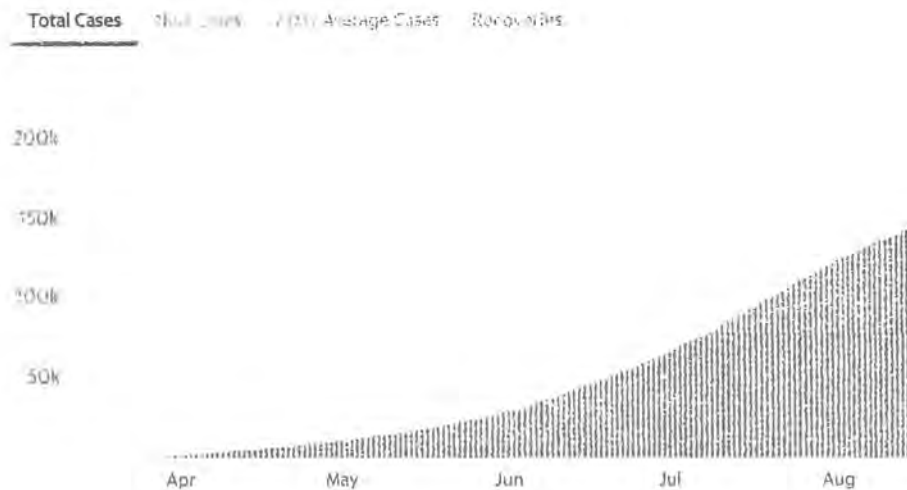
NC CORONAVIRUS DEATHS

Number of reported deaths due to COVID-19 by county as reported by NC DHHS.



Map: David Raynor • Get the data

"Total Cases" shows the cumulative number of positive cases from molecular and antigen tests. "New Cases" shows the number of new cases by day. "7-Day Rolling Average" shows a 7-day average of new cases in order to account for the lag-time of how cases are reported by county health departments to the state. On Sept. 25, the state Department of Health and Human Services started including the cases and deaths diagnosed via antigen tests and the number of antigen tests completed. The spike of more than 6,140 cases over one day on Sept. 25 reflect a one-time addition of new information as the state backfilled data through May 20, when the first antigen positive case was reported, a DHHS spokesperson said. We flatten the curve by reducing the number of new cases per day.



Data is from the NC DHHS daily updates. Not all cases of COVID-19 are tested, so this does not represent the total number of people who have or had the virus. The number of recovered patients is reported each Monday by DHHS.

Chart: David Raynor • [The News Observer](#)

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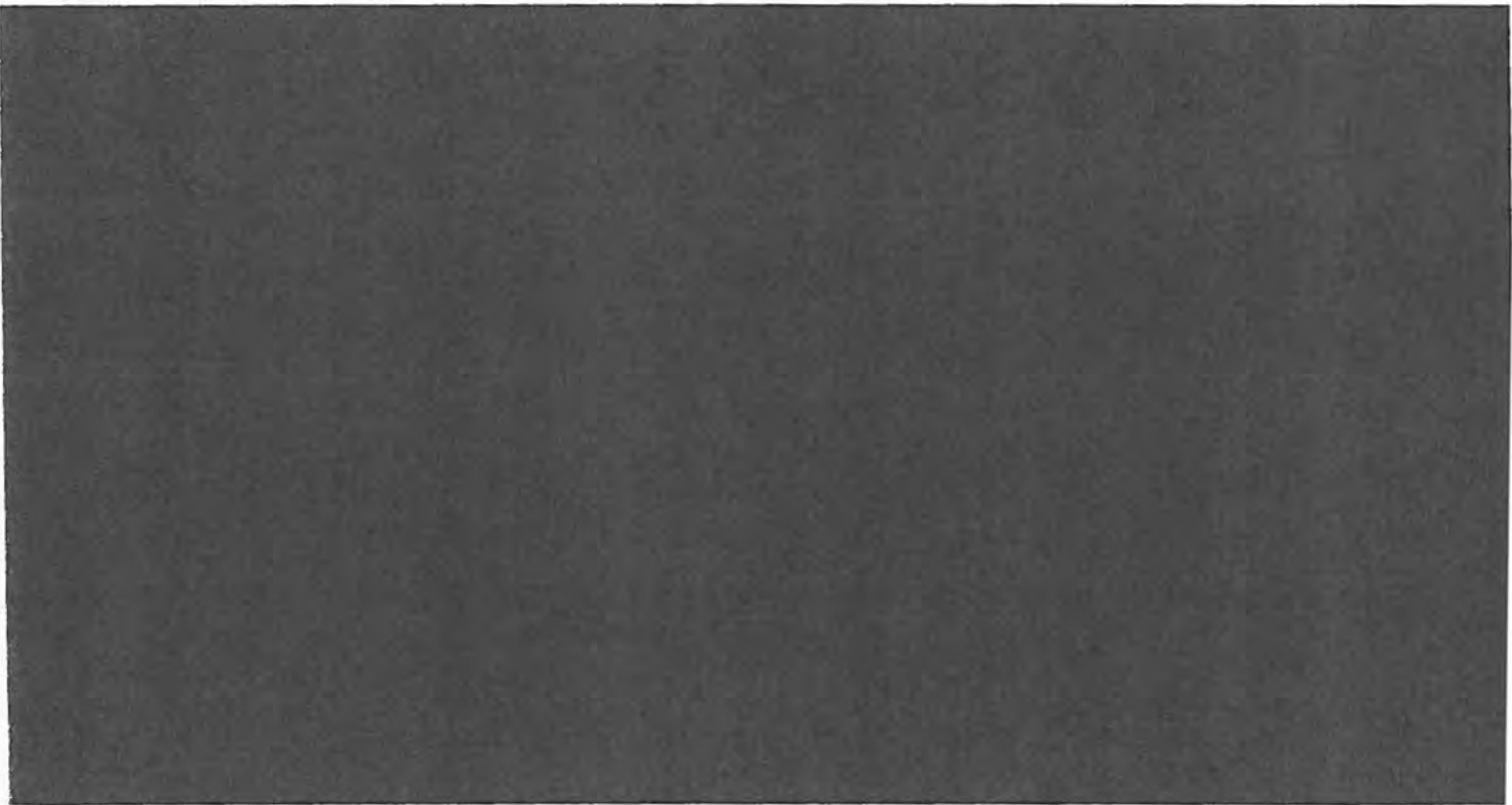
Exhibit C

CORONAVIRUS

After Cooper backs down on executive order, NC worker advocates push for protection

BY AARON SÁNCHEZ-GUERRA

SEPTEMBER 18, 2020 04:50 PM, UPDATED SEPTEMBER 18, 2020 08:00 PM



Risela Martinez shares her experience taking a contract position as a housekeeper near the start of the pandemic at Mountaire Farms, a poultry processing plant, at their location in Miller City, N.C., and later testing positive for COVID-19. BY CASEY TOTH



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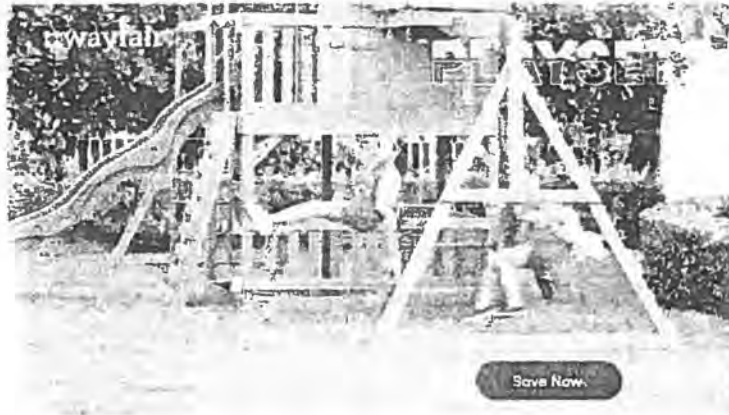
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After Gov. Roy Cooper stopped short of issuing an executive order to protect the agricultural workforce on fields and in meat processing plants in the COVID-19 pandemic, several organizations on Friday turned their demands to the North Carolina Department of Labor.

After initially telling state advocacy groups he would issue an executive order, Cooper quietly backed out, telling members of the Farmworker Advocacy Network that opposition from state labor and agriculture officials would harm his ability to enforce the order.

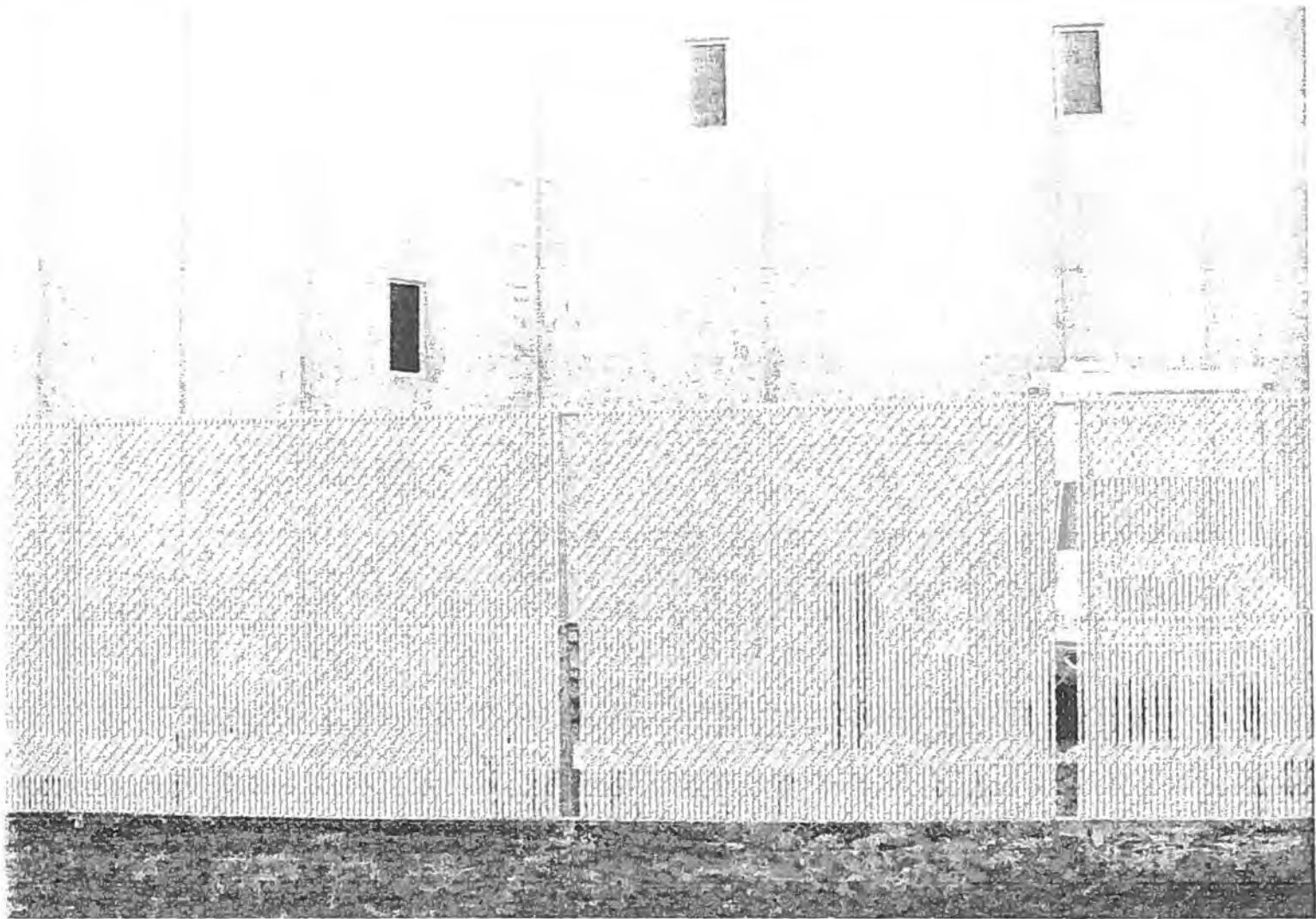
In a Friday afternoon conference held virtually, farmworker advocacy groups including the North Carolina Justice Center, the AFL-CIO, NC Raise Up/Fight for \$15, Rural Advancement Foundation International (RAFI-USA), Student Action for Farmworkers and the Episcopal Farmworker Ministry demanded that N.C. Department of Labor Commissioner Cherie Berry, a Republican, issue an Emergency Infectious Disease Standard to protect largely Latino immigrant essential workers, who have been hit disproportionately hard by the pandemic.

TOP ARTICLES



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"Far too many of North Carolina's essential workers are working in unsafe conditions to keep the state's economy running in the midst of the COVID-19 pandemic," the organizations said in a joint press release. "These workers, while deemed essential, have been too often forced to work without adequate personal protective equipment, in crowded and poorly ventilated conditions, and without wellness checks."



Workers at Mountaire Farms, a poultry processing plant, line up outside a truck displaying the logo of Examinetics, whose website advertises the service of onsite mobile health screenings, on Monday, Aug. 3, 2020, in Siler City, N.C. Casey Toth CTOTH@NEWSOBSERVER.COM

Coronavirus: Latest news

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An Emergency Infectious Disease Standard, or Emergency Temporary Standard, is a set of mandatory infection control requirements that employers must implement. The AFL-CIO urged the Occupational Safety and Health Administration (OSHA) to issue the order in March.

OSHA denied this request and the AFL-CIO sued to compel the agency to issue a standard. It voiced support for a bill in Congress that would require OSHA to issue it. As of July, courts have upheld OSHA's decision not to, according to the Laborers' Health and Safety Fund of North America.

Such a standard was issued in Virginia on July 15 by its Department of Labor and approved by its governor.

"In times of crisis, we need leaders and leadership requires a moral compass, which means that we actually have to care for our fellow human beings," said Rev. Fred

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CORONAVIRUS

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OCTOBER 07, 2020 7:40 AM



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Trump says no stimulus negotiations until election ends, shifting focus to Barrett

UPDATED 4 HOURS 5 MINUTES AGO



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Before she died, NC teacher said a student gave her COVID-19. What really happened?

UPDATED OCTOBER 06, 2020 10:41 PM



EDUCATION

Wake teachers warn board that reopening schools will put people at risk of dying

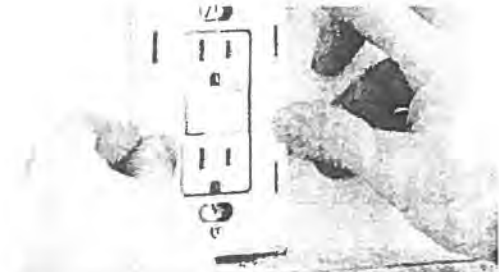
UPDATED OCTOBER 06, 2020 09:28 PM



CORONAVIRUS

COVID-19 affected brains of most patients hospitalized with disease, Chicago study finds

OCTOBER 06, 2020 6:12 PM



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BY POWERVOLT





.. Labor Commissioner Cherie Berry CHUCK LIDDY CLIDDY@NEWSOBSERVER.COM



AARON SÁNCHEZ-GUERRA

[Twitter](#) [Email](#) [Phone](#) (919) 829-4576

Aaron Sánchez-Guerra is the business and real estate reporter for The News & Observer and The Herald-Sun. He previously worked at WLRN Public Media in Miami and as a freelance journalist in Raleigh and Charlotte covering the Latino population. He is a graduate of North Carolina State University, a native Spanish speaker and was born in Mexico.

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CORONAVIRUS

UNC research center is one of the leaders in the race to find a COVID-19 vaccine

BY HANNAH TOWEY [UNC MEDIA HUB](#)

OCTOBER 07, 2020 08:00 AM



Infectious disease specialists at the University of North Carolina at Chapel Hill are among the leaders in the race toward a vaccine for COVID-19.

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Clarkson, the opinion magazine founder, contributed to the editorial process of the Carolina.

"Secondly, we also need clarity — there is no dichotomy between the economy and people's lives. Dead people don't support economies, living people do," Clarkson said. "Also, there isn't a segmentation. If certain people get sick, eventually we will all get sick."

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DEPARTMENT OF LABOR RESPONSE

In response to a request for comment, the department directed The N&O to its previously provided letter from Berry to Cooper opposing his executive order for worker protections.

"This EO, as currently drafted, represents overregulation of industries that are already facing tremendous hardship and that, in general, have shown a willingness to voluntarily comply with CDC guidance to protect their workers," Berry wrote in late August. "Above all, the EO appears to overreach the Governor's power by creating new legal requirements and implying that the NCDOL will enforce standards that exceed existing authority."

[Commissioner Berry Letter - Governor Cooper - 083120](#) by Aaron Sánchez-Guerza on Scribd

Berry noted that while the NCDOL can be more stringent than federal safety standards, it "has chosen not to adopt more certain standards" regarding seasonal immigrant farmworkers' temporary labor camps.

Berry also said in the letter that the implementation of the executive order "appears to violate the Separation of Powers Clause of the NC Constitution" because it does not allow public comment.

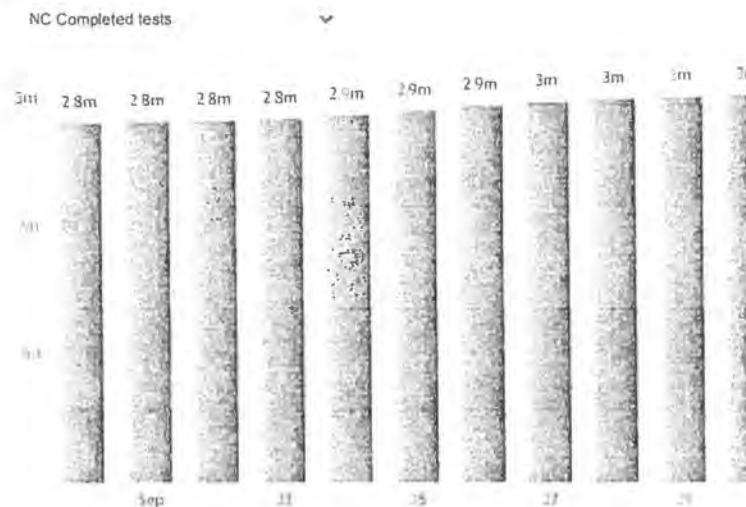
Worker safety guidelines recommended by the Centers for Disease Control and Prevention (CDC) and the state Department of Health and Human Services, but no mandatory safety requirements across essential workplaces like meatpacking plants and produce fields were issued.

As of August, cases across meatpacking plants in the state rose past 3,000 in more than 37 clusters in at least 20 counties, according to state health officials. They also report that outbreaks in immigrant farmworker housing camps have topped 1,700.

"A refusal to move forward with a comprehensive rule is an act of gross negligence that unnecessarily puts the lives of workers and their families at risk. Worker safety should be the NC DOL's top priority in the midst of this devastating global pandemic," the advocacy groups' statement said.

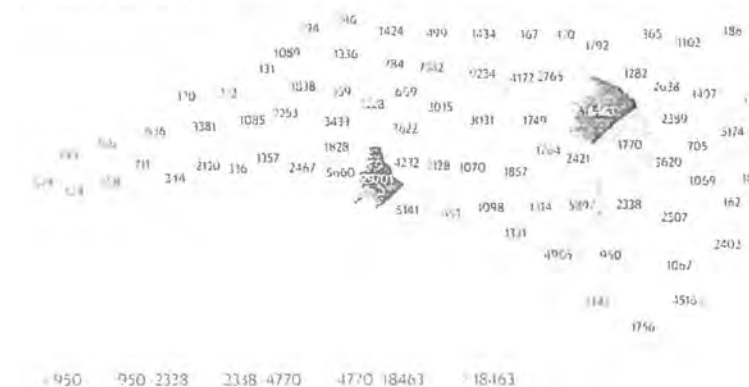
NC CORONAVIRUS TESTING

The chart below shows the change in the number of tests each day, the number of new cases each day and how they compare. Select variables from the dropdown menu for more information.



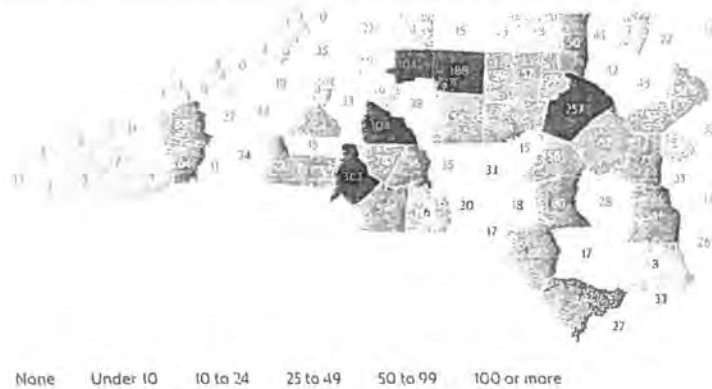
NC CORONAVIRUS CASES

Number of reported coronavirus cases by county as reported by NC DHHS. Not all cases of COVID-19 are tested, so this does not represent the total number of people who have or had the virus.



Case totals for the following counties include state and federal prisons where positive tests have been reported: Granville, Greene, Halifax, Henderson, Johnston, Pasquotank, Wayne.

Number of reported deaths due to COVID-19 by county as reported by NC DHHS.

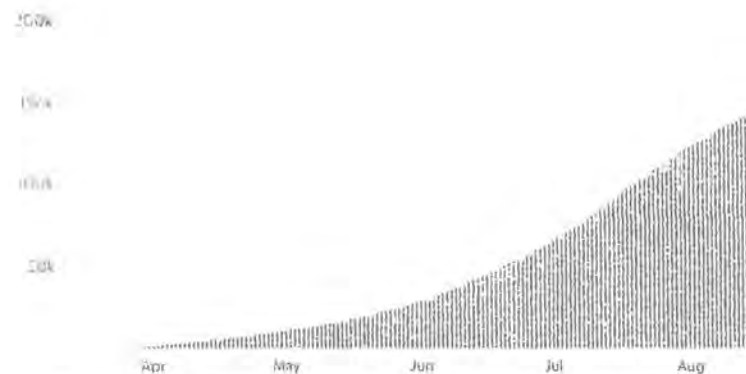


Map: David Raynor • For the 19th

CORONAVIRUS CASES BY DAY

"Total Cases" shows the cumulative number of positive cases from molecular and antigen tests. "New Cases" shows the number of new cases by day. "7-Day Rolling Average" shows a 7-day average of new cases in order to account for the lag-time of how cases are reported by county health departments to the state. On Sept. 25, the state Department of Health and Human Services started including the cases and deaths diagnosed via antigen tests and the number of antigen tests completed. The spike of more than 6,140 cases over one day on Sept. 25 reflect a one-time addition of new information as the state backfilled data through May 20, when the first antigen positive case was reported, a DHHS spokesperson said. We flatten the curve by reducing the number of new cases per day.

Total Cases New Cases 7-Day Average Cases Recoveries



Data is from the NC DHHS daily updates. Not all cases of COVID-19 are tested, so this does not represent the total number of cases in the state. The number of recovered patients is estimated with RPHS.

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Exhibit D



NC seeing pockets of higher COVID infection rates in agricultural areas

Dr. Mandy Cohen talks pockets of higher rates of COVID infection pockets in agricultural areas of eastern N.C., as well as higher rates in the Latinx communities. BY WUNC-TV

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Trump briefly leaves hospital at top drive-by

BUSINESS

NC not doing enough to protect immigrant farmworkers from coronavirus, advocates say

BY AARON SÁNCHEZ-GUERRA

JULY 03, 2020 06:45 AM, UPDATED JULY 03, 2020 10:07 AM



Mandy Cohen talks pockets of higher rates of COVID infection pockets in agricultural areas of eastern N.C., as well as higher rates in the Latinx communities. BY WUNC-TV



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Reported coronavirus cases are rising among seasonal farmworkers living in migrant worker housing, a group setting like nursing homes that the state is watching.

On Tuesday, 128 new COVID-19 cases across four farms were reported through June, according to the N.C. Department of Health and Human Services.



NC seeing pockets of higher COVID infection rates in agricultural areas

Dr. Mandy Cohen talks pockets of higher rates of COVID infection pockets in agricultural areas of eastern N.C., as well as higher rates in the Latinx communities. BY WUNC-TV

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Trump briefly leaves hospital on drive by

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THE TRIANGLE EXAMINER

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Six farms had active outbreaks in June compared to five active outbreaks reported in May. DHHS defines an outbreak as more than two cases but is only reporting them at facilities with at least 10 residents.

The cases reported are among seasonal immigrant farmworkers from Mexico who come to work in the United States on a temporary visa and live in grower-provided housing. Other infected workers who live in private residences not on farm property are not included in the count, and no one knows how many farmworkers have tested positive overall.

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The [Farmworker Advocacy Network](#), a statewide coalition, says its members think there are outbreaks at over 30 farms in 25 counties. They want the state to provide more information than the congregate living facility report.

Though it published them at first, DHHS removed the names of farms from the May report and replaced them with road names of where the migrant worker housing with outbreaks was located, according to a spokesperson.

BLADEN COUNTY FARM OUTBREAKS

In Bladen County in southeastern North Carolina, the state reported that Sweet [Berry Farms](#) had 13 cases on June 16.

The farm's website depicts workers packing blueberries and out in the fields in the town of Ivanhoe. The farm did not return phone calls and emails requesting



NC seeing pockets of higher COVID infection rates in agricultural areas

Dr. Mandy Cohen talks pockets of higher rates of COVID infection pockets in agricultural areas of eastern N.C., as well as higher rates in the Latinx communities. BY WUNC-TV

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The N.C. Department of Labor reports on its website that the farm requested at least 500 seasonal immigrant workers this season, but it doesn't say how many arrived.

Sleepy Creek Farms in the town of Harrells in Bladen County first reported two cases in late May, then 54 cases on June 12.

Sleepy Creek Farms employs and houses around 200 seasonal farmworkers, in addition to roughly 50 year-round workers who live off the farm, said Yusef Ewais, the farm's human relations coordinator, in an interview.

"We would communicate with [workers] daily to check how they're feeling and to gauge the timeframe of when they got sick," Ewais said.

The majority of the infected were seasonal workers, who use an agricultural H-2A visa to come to the U.S. to work temporarily. Most have completed their quarantine in their barracks housing and recovered. However, two were hospitalized and are in stable condition, said Ewais.

The positive cases were discovered first in mid-May, he said. The farm partnered with Goshen Medical Center clinic to test its employees, quarantining asymptomatic workers and testing the symptomatic ones first.



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Episcopal Farmworker Ministry, based in Harnett County, serving seasonal farmworkers at Sleepy Creek Farms in Bladen County with needed groceries in April 18. A coronavirus break had not yet been reported at the farm. COURTESY OF THE EPISCOPAL FARMWORKER MINISTRY

"Because they were in our housing and live on our property we were able to not spread it within the community," said Ewais.

The outbreak caused "some production hiccups," he added. The farm's website says they currently harvest approximately 700 acres of blueberries.

Angie Santibañez, director for the farmworker health program Manos Unidas, told The N&O it sent staff members to the farm to provide medicine and disinfectants to sick workers, as well as health education in Spanish. It also teamed with the Migrant Education Program in the Bladen County Schools to provide food assistance.



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THERE WERE TWO OR THREE SICK WORKERS THEN, THE OUTBREAK HAD Barely started," Tapia said in Spanish. "I'm thinking that they spread it among each other since. There's a lot of workers there."

Her organization contacted the symptomatic workers through video calls to teach them health care and safety.

Pope & Son Farms in Clinton declined to comment on the five COVID-19 cases it reported.

According to Tapia, the N.C. Farmworkers Project was able to visit the sick workers there last month to provide medication and other supplies. Four have recovered, but one worker has been hospitalized. The farm houses over 100 workers.

"The grower at the farm has cooperated with us and was who contacted us," said Tapia. "The logistics behind testing all of the workers there are difficult."

Many farm workers in general don't want to be tested, Tapia said, because they don't want to risk losing work if they test positive or suffer the stigma of someone thinking they might be positive.

OTHER COUNTIES

On July 2 DHHS updated its report to include an outbreak at a farm in Wayne County in the town of Seven Springs east of Johnston County. The N.C. Department of Labor lists Mack L. Grady Farms as requesting immigrant farmworkers in that town. The N&O could not find contact information for the farm online.

A second outbreak was reported in Hyde County near the Pamlico Sound at an address linked to Mattamuskeet Seafood, a blue crab and oyster processing plant in the town of Swan Quarter.

The plant's Facebook page shows an image of various women in a plant shelling crabs next to each other. The owners of the plant could not be reached by phone by



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Cohen pointed to existing guidelines in place but did not elaborate on what the state is doing now to protect agricultural workers, whom The N&O has reported are especially vulnerable in the pandemic.

In an academic article in the Journal of Agriculture, Food Systems, and Community Development, authors Lariza Garzón of the Episcopal Farmworker Ministry and Andrew R. Smolski, a scholar at N.C. State University, criticized the state's provided data.

"According to our current understanding, NCDHHS only reports outbreaks, defined as two or more cases in a congregate living facility and only in migrant labor camps with more than 10 occupants," the article reads. "That is problematic, because of 1,877 migrant labor camps in the state, 1,011 are certified for fewer than 10 occupants. Thus, current reports most likely underestimate the current level of COVID-19 in farmworker communities."

Since the start of the pandemic, the Farmworker Advocacy Network has written three letters to Gov. Roy Cooper calling on him to protect agricultural workers, including those in meat processing plants.

In a June 16 letter to Cooper and Cohen, they wrote that "During the two months between when we sent our letter and you responded, thousands of farmworkers arrived in North Carolina and outbreaks started happening at migrant labor camps."

The following week, FAN members met with Cooper's office and DHHS to talk about potential steps to protect farmworkers through executive orders, according to Lariza Garzón of the Episcopal Farmworker Ministry, a member organization of FAN.

In their letter to the state, FAN' cited concerns about accessible and free testing for workers, a lack of information, the fear of virus testing to avoid potentially losing work, and hurricane protection plans.



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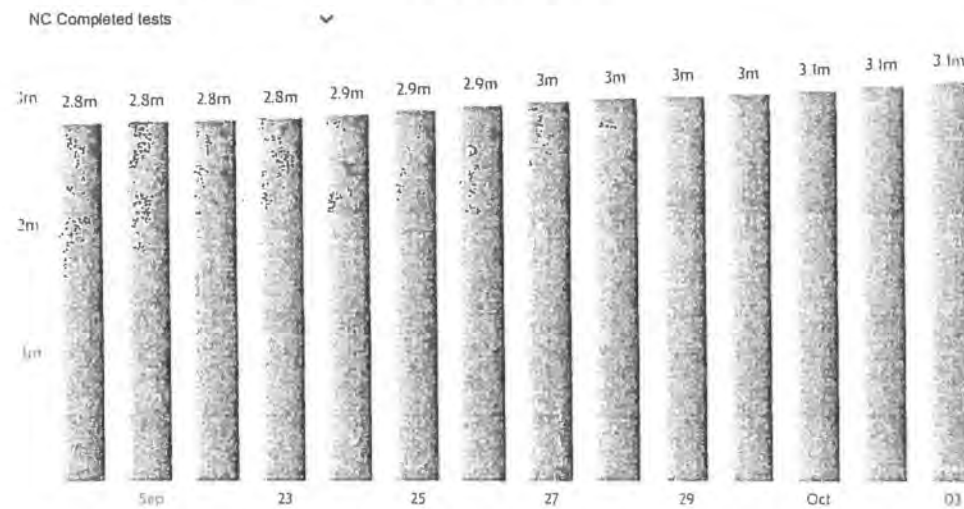
Trump briefly leaves hospital to drive by

"Housing for workers has been substandard on average for a long time and must be changed throughout the agricultural system or else "we are going to keep having issues not just with pandemics, but also other disasters and emergencies such as hurricanes," said Garzón.

"This issue is systemic," she said. "We need to think about systemic solutions."

NC CORONAVIRUS TESTING

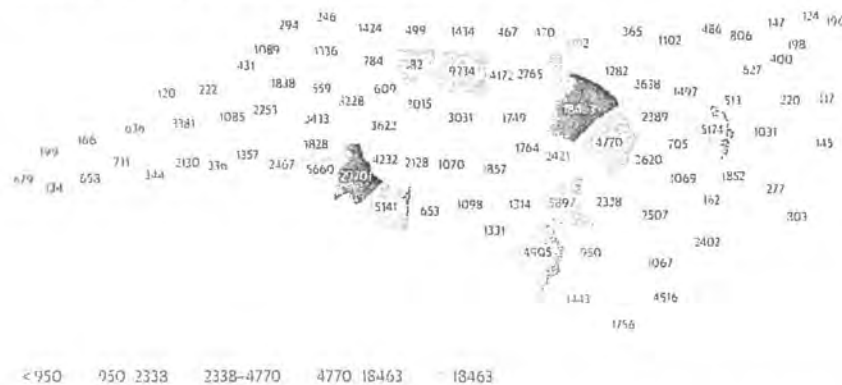
The chart below show the change in the number of tests each day, the number of new cases each day and how they compare. Select variables from the dropdown menu for more information.



Source: DHHS analysis of IIS, DHHS July • Get the data

NC CORONAVIRUS CASES

Number of reported coronavirus cases by county as reported by NC DHHS. Not all cases of COVID-19 are tested, so this does not represent the total number of people who have or had the virus



Case totals for the following counties include state and federal prisons where positive tests have been reported: Granville, Greene, Halifax, Hertford, Johnston, Pasquotank, Wayne

Map: David Rayner



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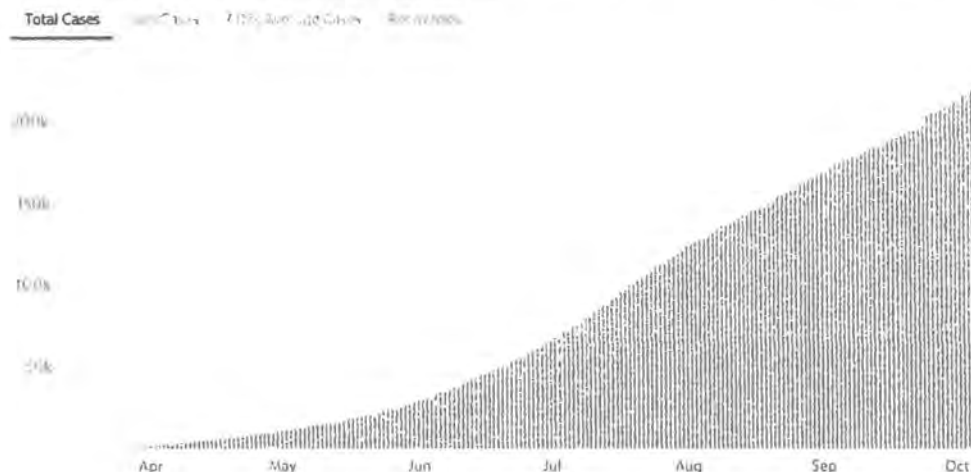


None Under 10 10 to 24 25 to 49 50 to 99 100 or more

Map: David Raynor

CORONAVIRUS CASES BY DAY

"Total Cases" shows the cumulative number of positive cases from molecular and antigen tests. "New Cases" shows the number of new cases by day. "7-Day Rolling Average" shows a 7-day average of new cases in order to account for the lag-time of how cases are reported by county health departments to the state. On Sept. 25, the state Department of Health and Human Services started including the cases and deaths diagnosed via antigen tests and the number of antigen tests completed. The spike of more than 6,140 cases over one day on Sept. 25 reflect a one-time addition of new information as the state backfilled data through May 20, when the first antigen positive case was reported, a DHHS spokesperson said. We flatten the curve by reducing the number of new cases per day.



Data is from the NC DHHS daily updates. Not all cases of COVID-19 are tested, so this does not represent the total number of people who have or had the virus. The number of recovered patients is reported each Monday by DHHS.

Chart: David Raynor

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isonal farmworkers pick strawberries at Porter Farms & Nursery where 14 workers tested positive for COVID-19 last month, on Thursday, May 14, 2020, in Raleigh, N.C. The North Carolina Department of Health and Human Services has reported 46 coronavirus cases across personnel in four produce farms in the state during the strawberry season. CASEY TOTH@NEWSOBSERVER.COM



AARON SÁNCHEZ-GUERRA

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Aaron Sánchez-Guerra is the business and real estate reporter for The News & Observer and The Herald-Sun. He previously worked at WLRN Public Media in Miami and as a freelance journalist in Raleigh and Charlotte covering the Latino population. He is a graduate of North Carolina State University, a native Spanish speaker and was born in Mexico.

[COMMENTS](#) ▼



BUSINESS

2 scientists win Nobel chemistry prize for gene-editing tool

BY DAVID KEYTON, CHRISTINA LARSON AND FRANK JORDAN'S ASSOCIATED PRESS
OCTOBER 07, 2020 10:11 AM



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UPDATED OCTOBER 06, 2020 06:02 PM

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Thom Tillis says he's now free of COVID-19 symptoms

UPDATED OCTOBER 06, 2020 11:43 AM

EXHIBIT 2



Charlie K. Berry
Commissioner

November 9, 2020

Sent via email to Clermont Fraser Ripley clermont@ncjustice.org
Ms. Clermont F. Ripley
North Carolina Justice Center
224 S. Dawson Street
Raleigh NC 27601

Sent via email to Mark Dorosin at mdorosin@lawyerscommittee.org
Mr. Mark Dorosin
Lawyers' Committee for Civil Rights Under Law
PO Box 956
Carrboro, NC 27510

Sent via email to Julia.Solorzano@splcenter.org
Ms. Julia Solorzano
Southern Poverty Law Center
PO Box 1287
Decatur, Georgia 30030-1287

RE: Petition for Rulemaking

Dear Ms. Ripley, Mr. Dorosin and Ms. Solorzano:

The North Carolina Department of Labor (NCDOL) received your October 12, 2020, Petition for Rulemaking requesting that we either adopt your proposed rule as an emergency temporary standard or to initiate rulemaking to establish requirements for employers regarding SARS-CoV-2. As required by N.C. General Statute § 150B-20(a), your petition was sent electronically to the Office of Administrative Hearings on October 13, 2020, which was within three business days of receipt. The Office of Administrative Hearings electronically sent your proposed text and comments to its mailing list on October 14, 2020. This letter is the agency's official response to your petition.

The NCDOL will not adopt an emergency temporary standard regarding SARS-CoV-2, and is denying your Petition for Rulemaking to adopt a permanent rule to establish requirements for employers regarding SARS-CoV-2, the virus that causes COVID-19, pursuant to North Carolina General Statute § 150B-20.

Historical Information Related to the Coronavirus

On March 10, 2020, North Carolina Governor Roy Cooper declared a State of Emergency to Coordinate Response and Protective Actions to Prevent the Spread of COVID-19. On March 11, 2020, the World Health Organization declared COVID-19 to be a global pandemic. On March 13, 2020, President Donald Trump declared a National Emergency for all states/tribes/territories and the District of Columbia. Since March, Governor Cooper has issued over forty (40) executive orders related to COVID-19.

Since March of 2020, the NCDOL has worked tirelessly to provide education, assistance and information to employers and employees across the state, and to work with other state and federal agencies to best address how to effectively deal with the pandemic in relation not only to the agency's clients, but the public in general. (See Exhibit A – OSH COVID-19 Response - 4/1/02/2020.) This is a new disease that has perplexed the medical community with the extensive range of disparate symptoms. Some who have the disease are completely asymptomatic, while older adults are more seriously affected. Conversely, younger children seem to be less seriously affected, yet the virus produces the Multisystemic Inflammatory Syndrome in Children (MIS-C), which is a connection that the medical community struggles to understand. Information from the CDC has continued to change since February. Masks were not recommended until April. The CDC information currently states that "Masks may slow the spread of the virus and help people who may have the virus and do not know it from transmitting it to others. Wearing a mask helps protect others in case you're infected, while others wear one to protect you should they be infected. Who should NOT use masks: Children under age 2 or anyone who has trouble breathing, is unconscious, or is incapacitated or otherwise unable to remove the mask without assistance." <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html#:~:text=Masks%20should%20be%20worn%20over,the%20mask%20without%20assistance.> A State agency cannot responsibly adopt a rule about a disease about which the medical community knows so little, especially regarding its transmission, how it affects different populations, and the long-term effects.

The Occupational Safety and Health Division (OSH) of the NCDOL enforces the Occupational Safety and Health Act of North Carolina. To fully respond to your petition, we must address some of the history of the Occupational Safety and Health Act of North Carolina (OSHANC). This Act mirrors the federal OSHA Act of 1970. The reason for this is that there are certain indices of effectiveness established by federal OSHA and included in the federal Act that all State Plans must meet to receive approval for and maintain a State Plan program: <https://www.osha.gov/laws-regs/regulations/standardnumber/1902/1902.4>

In addition, the Agricultural Safety and Health Bureau (ASH) of OSH enforces a broad scope of workplace safety and health laws that apply to North Carolina growers. ASH conducts preoccupancy inspections under the Migrant Housing Act of North Carolina and agricultural OSH compliance inspections when there is employee exposure to a hazard, an injury, or a fatality for specified agricultural employers. In addition, ASH assists growers with safety programs and training, and provides tools for growers and labor contractors in the State.

Communicable diseases are present in North Carolina every day. This specific novel coronavirus remains an evolving health care issue, like the Middle East Respiratory Syndrome (MERS) in 2012 and the Severe Acute Respiratory Syndrome (SARS) in 2003. The N.C. Department of Health and Human Services (NCDHHS) has statutes and rules in place to address general public health issues and dedicates an entire division to communicable diseases. COVID-19 falls into the category of communicable diseases. Please note that the public health laws in North Carolina were originally enacted primarily in response to tuberculosis. See Chapter 130A of the North Carolina General Statute:

https://www.ncleg.gov/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_130A/Article_6.html. The Division of Emergency Management, within the NC Department of Public Safety, works with NCDHHS in public health emergencies such as the coronavirus.

Action by NCDOL Regarding COVID-19

Beginning early in 2020, OSH and ASH began researching means to address the virus and implement effective measures to address the growing concern of all employers across the state. Pursuant to that, OSH created a webpage within the NCDOL website dedicated to the Coronavirus Disease 2019 (COVID-19): <https://www.labor.nc.gov/coronavirus-disease-2019-covid-19>. That webpage has been frequently updated to include information ranging from general information for employers and employees to industry specific information on how to mitigate the virus and provide a safe working environment for employees. As of the end of October, there were over 21,450 hits on the website. It provides OSH-related pertinent information to employees and employers across the State of North Carolina on how to prevent the spread of COVID-19 both personally and in the workplace. The page contains FAQ's in both English and Spanish from OSH, and FAQ's from federal OSHA, information from various United States government agencies including the CDC and the U.S. Environmental Protection Agency (EPA), NCDHHS, and the NC State Government regarding North Carolina's current reopening phase per the most recent executive order issued by Governor Cooper. In addition, the webpage provides Hazard Overviews, Guidance by Industry, Guidance by Topic, applicable regulations, and COVID-19 posters in various languages. OSH has issued multiple Temporary Guidance Memorandums to help employers address the virus, including migrant housing guidance, respirator use, and guidance for recording cases of COVID-19. And of importance in relation to your proposed rule, the regulations page references NCGS 95-129(1), which is commonly known as the General Duty Clause (GDC) of the OSHANC. In short, the GDC states that the "Each employer shall furnish to each of his employees conditions of employment and a place of employment free from recognized hazards that are causing or are likely to cause death or serious injury or serious physical harm to his employees."

In addition, and to be as proactive as possible, both the OSH Division and the ASH Bureau have worked closely with the NCDHHS since late March of this year to meet with and educate employers on how to best mitigate the virus. These concerted efforts have focused on specific employment environments on how to reduce exposure risks, best practices, and hazard assessments. In addition, representatives from OSH and ASH have participated in ongoing team meetings with NCDHHS and the NC Department of Agriculture and Consumer Services (NCDACS) to provide extensive assistance to the agricultural and meat packing industries in the

state. NCDHHS, NCDOL, and the NCDACS are working together to provide education and resources to the community for COVID-19 prevention and outbreak control, especially in the initial focus which has been on meatpacking plants and agricultural locations. The teams are going into the employment community in a consultative and educational capacity, not in a **regulatory** capacity. The goal of the teams has been to provide education to control the spread of COVID-19.

Should NCDOL adopt any standard relating to this specific virus, we would have to be extremely careful in how we participate in educational efforts because the rule would create conflicting interests on the required compliance side of OSH/ASH. The agency would be required to enter facilities in a regulatory, compliance-based enforcement capacity, which I strongly believe is much less effective than working with other state agencies to mitigate the virus. The NCDHHS-led teams, in which NCDOL continues to participate, are primarily focusing on those locations with clusters of the virus; however, we are making the training resources available online to all meatpacking facilities plus all manufacturing facilities, agricultural facilities, farms, and other employers with large numbers of employees working in close proximity.

Draft Executive Order

In late August of 2020, Governor Cooper's office contacted NCDOL regarding the Governor's plan to issue an executive order specifically addressing agricultural workers and meat packing workers. A meeting was held with the Governor's staff and several NCDOL managerial staff. Following that meeting, my agency held internal discussions regarding the proposed executive order.

On August 31, 2020, I provided a response to Governor Cooper regarding the proposed executive order. See Exhibit B. A concern expressed in my response was that the draft executive order appeared to overreach the Governor's power. It created new statutory requirements in addition to requiring NCDOL to enforce standards that exceeded existing authority; both actions exceed Governor Cooper's executive authority as established in the Separation of Powers Clause of the North Carolina Constitution. Some specific concerns were expressed in my response. Your proposed rule raises many of the same concerns. Specific issues with the draft executive order included the following:

- Requirements for toilet and handwashing that far exceed the current federal and OSHANC standards. (see 29 CFR 1910.142)
- Requirements over which federal OSHA, OSH and ASH have no jurisdiction, including transportation of migrant workers and requiring face coverings be worn inside the personal housing of migrant workers.
- Requirements that are simply infeasible for immediate compliance by growers. Examples include expanding sleeping arrangements and changing the type of beds provided, providing double or triple the living space for migrant workers, and requiring separate living facilities for those in isolation. Please note that growers must request and receive certification of the migrant housing they provide for their workers. All housing must be pre-certified by ASH safety compliance officers before migrant

workers may move in. Migrant workers are housed at these locations for various periods of time from as little as six (6) weeks up to as many as ten (10) months in a season.

- The draft language allowed for the use of tents as living quarters. Tents are not acceptable accommodations for migrant workers under any current standards.
- The draft language prohibited retaliation against workers who stay home from work due to the coronavirus; however, such language exceeds the statutory authority of the Retaliatory Employment Discrimination Act, which NCDOL enforces.
- The draft language was confusing from several perspectives including, mixing the requirements for migrant workers, workers in meat packing/processing plants, and workers in seafood processing plants – all of which have different working conditions.
- The draft language also required NCDOL's limited OSH and ASH compliance officers to enforce the executive order, while simultaneously continuing to perform all the current statutory requirements of the OSH Act and the Migrant Housing Act.

I strongly believe that the consultative work by OSH and ASH in concert with NCDHHS and NCDACS, instead of aggressive regulatory actions specific to COVID-19, benefit a greater number of employees across the state. NCDOL's work to lessen the impact and mitigate the virus has been beneficial and has produced positive results. To date, representatives of OSH have visited over a dozen meatpacking sites, to include over 22,000 employees, to focus on COVID-19.

To illustrate one positive result, from March to May of 2020 there was an increase in COVID-19 cases in the meatpacking industry; however, after the NCDHHS-led team's intervention, this industry experienced a tremendous **decrease** in COVID-19 cases due to sharing of information, testing, masks, and educational efforts. See Exhibit C - NCDHHS Statistics

The goals of the team approach are to use the same strategies with the agricultural industry, growers, the construction industry, etc., and have the same success in those areas of employment. Those persons tested or exposed are asked to quarantine for 10-14 days. We all understand that it creates a hardship for those who rely on a paycheck that only comes when they go to work. However, NCDHHS has established an isolation and quarantine support program to help workers; no documentation is required of individuals to receive any type of assistance, including financial assistance for household needs, food, medication, essential transportation for healthcare, cleaning supplies, masks, etc. Programs are in place to offer alternative housing so employees will not expose other members of their household should they have the virus. NCDHHS offers maps that provide the location of these organizations and agencies that are providing such services.

The NCDHHS' Communicable Disease Branch is also setting up a team that NCDOL will be a part of. That team will conduct site visits to farms experiencing outbreak and will assess work and living environments for migrant workers. Farm workers are critical infrastructure workers. The team's mission will be to assist farmers in implementing measures to prevent the spread of the virus in addition to general measures that NCDHHS and NCDOL have provided as guidance to migrant farmworkers, their employers, and housing providers. This is a collaborative effort by NCDHHS, NCDOL and NCDACS that would be hurt by the adoption of rules that would require NCDOL to become more of a regulatory entity.

The General Duty Clause

You state that, "NCDOL's position is that it lacks authority under the current regulations to issue citations related to violations of CDC and OSHA guidance to protect workers." NCDOL strongly disagrees with this statement. NCDOL's position is that our agency has been and will continue to investigate and issue citations for violations of OSHANC to include the General Duty Clause for those employers who are not making efforts to mitigate the coronavirus and for employers who directly expose their employees to COVID-19. I have expressed concerns about enforcement, especially in relation to withstanding a legal challenge. To date, NCDOL OSH has not yet issued any citations related to COVID-19. Federal OSHA has issued COVID-19 related citations that have been contested, but they have not been fully litigated. My concern is based on NCDOL OSH being able to issue citations that will legally withstand any contestment by the cited employer. As background, once citations are issued to an employer, the citations may be contested by the employer. Contestments are filed with the North Carolina Occupational Safety and Health Review Commission. See <https://oshrc.nc.gov/>. Like federal OSHA, in litigating contestments, my agency carries the burden of proof and must present evidence that proves the following elements: (1) the employer failed to keep the workplace free of a hazard to which employees of that employer are or were exposed; (2) the hazard is recognized; (3) the hazard caused or was likely to cause death or serious physical harm; and (4) there is a reasonable means of abatement. See: <https://www.osha.gov/laws-regs/standardinterpretations/2003-12-18-1>

While I am not dismissing the tragic deaths that have occurred as a result of this virus, statistically, the virus has not been proven likely to cause death or serious physical harm from the perspective of an occupational hazard. On October 26, 2020, the total number of US deaths involving COVID-19 was 210,545 compared to 8,799,613 cases; that is less than 2.4% of those who contracted the disease in the United States. On the same date in North Carolina, there were 261,742 cases and 4,183 deaths; that is less than 1.5% of those who contracted the disease in North Carolina. <https://www.cdc.gov/nchs/covid19/index.htm>. Most of these deaths are people over the age of 65; generally, this age group is no longer active in the workforce. It would be irresponsible for a state agency to adopt rules relating to pandemic that remains a moving target.

Key language in the GDC is the section that states the place of employment must be free from recognized hazards "causing or are likely to cause death or serious injury or serious physical harm. . . ." Sadly, COVID-19 has resulted in many deaths and hospitalizations in North Carolina and throughout the world. However, the available data does not support that death or serious physical harm would be the likely outcome for the majority of those who contract the disease. Data shows that the likelihood of death appears to increase if the infected person falls into an identified high-risk group. An important aspect of citing the GDC, any OSH standard, or state-specific OSH rule, is the requirement to prove the exposure to the hazard occurred in the workplace. There may be instances of exposure to COVID-19 that OSH could enforce under the GDC or even under your proposed rule, but most instances of exposure would likely not fall under the OSH Act, because the exposure must be work-related to fall under the jurisdiction of OSH. Work-related does not include community exposure. The hazard of contracting COVID-19 exists literally everywhere, including grocery stores, restaurants, churches, schools, or a neighbor's home, as Governor Cooper noted recently that small group gatherings may be

spreading the virus. Because the virus is so pervasive, it may be very difficult if not impossible to prove that the illness is work-related. To issue a citation and be unable to provide evidence sufficient to uphold the citation, means that the citation will be dismissed. In such a case, the legal precedent would effectively negate any future compliance efforts by NCDOL based on the original enforcement position.

Specific Concerns About Information in Your Comments

You state that "NCDOL has closed nearly 1,000 formal workplace health and safety complaints related to COVID-19, from employees who did not think their employers were taking adequate steps to protect them," and that "NCDOL only opened investigations on six occasions." This information is incorrectly stated. While it is correct that OSH has received over 1,000 COVID-19 related complaints, please allow us to explain the status of complaints, investigations and inspections. OSH opens an *investigation* into all valid complaints; however, we do not open an *inspection* on every complaint. This process is established in the OSH Field Operations Manual, which provides standard operating procedures as approved by federal OSHA on implementation of the North Carolina state OSH program. In many instances, complaints can be satisfactorily addressed in a much timelier way through an *investigation* instead of an *inspection*. An *investigation* requests the employer provide a response to the complaint item allegations. The *investigation* results are provided to the complainant (unless it is an anonymous complaint), and the complainant can indicate to OSHNC whether they are satisfied with the employer's response. OSHNC also sends informational letters to employers regarding many of the non-valid OSH complaints called into our agency. Such non-valid complaints would include most cases of violations of CDC recommendations or executive order provisions over which NCDOL has no jurisdiction. It is correct that OSH has closed many valid and non-valid COVID-19 related complaints, but very few of those valid complaints were "formal" complaints. A "formal complaint" must be in writing and signed by an employee. When an OSH employee talks to the complainant, they ask if the complainant is willing to sign a complaint; however, complainants frequently refuse to sign the complaint. Without a formal complaint, an *inspection* may only occur in certain situations.

Your letter goes on to state that, "Commissioner Berry wrote to Governor Cooper opposing the release of that Executive Order because of NCDOL's asserted lack of authority." This statement is taken out of context. In the News and Observer story, that statement was footnoted, and it appears you did not take the footnote into consideration. I have attached my August 31, 2020, response to Governor Cooper. See Exhibit B, page 1. What I said was that Governor Cooper's proposed executive order "appears to overreach the Governor's power by creating new legal requirements and implying that the NCDOL will enforce standards that exceed existing authority."

You also state that "the Commissioner has made it clear that NCDOL is not willing to enforce workplace requirements contained in an Executive Order. Furthermore, NCDOL's position is that it lacks authority under the current regulations to issue citations related to violations of the CDC and OSHA guidance to protect workers." This statement also fails to fully capture the context of my argument. As noted above, NCDOL does **not** have any statutory authority or

jurisdiction to enforce workplace requirements of an Executive Order. NCDOL is headed by an elected commissioner and is a Council of State agency. The draft executive order provided to NCDOL by Governor Cooper's office appeared to overreach the Governor's power by creating legal requirements and implying that NCDOL would enforce standards that exceeded its existing statutory and regulatory authority. My response pointed out specific instances that appeared to be legislative action, which would violate the Separation of Powers Clause of the North Carolina Constitution. In addition, the draft executive order and your proposed rule confuse areas in which OSH has no jurisdiction (e.g., transportation of migrant workers); requires enforcement of retaliation against workers that is outside the statutory requirements of the Retaliatory Employment Discrimination Act; overrides the current requirements of 29 CFR 1910.142 and establishes requirements for sleeping that exceed the Temporary Labor Camp standard requirements; and creates requirements for growers that are simply infeasible in the current growing season. Finally, your proposed draft appears to require that NCDOL invoke NCGS 130A-145, the Quarantine Statute; NCDOL has no such authority.

In your Exhibit C, the News and Observer article references the Virginia Department of Labor's Emergency Temporary Standard. Please note that the Virginia Commissioner of Labor and Industry is an appointed state executive position, not an elected official. On July 15, 2020, the Virginia Department of Labor issued an Emergency Temporary Standard regarding infection control requirements that Virginia employers must implement with an effective date of August 26, 2020. Virginia Governor Northam instructed his Commissioner of Labor and Industry to enact the rules, which he may do pursuant to the VA Commissioner of Labor being an appointed position. A lawsuit was filed in September contesting Virginia's temporary emergency standard; opponents state the regulation fails to establish that an emergency standard was necessary to address a grave danger, particularly with respect to "low hazard" employers. (See: <https://www.natlawreview.com/article/virginia-covid-19-restrictions-and-workplace-standards-challenged-manufacturers>) As noted, I too have concerns about the necessity of an emergency temporary rule or a rule specific to a pandemic.

Fiscal Note Concerns

The fiscal analysis component of rulemaking requires extensive research and accuracy. Your extremely brief comments regarding costs have not taken into consideration the full fiscal analysis that is required prior to submitting a rule for adoption. Your analysis does not include the substantial economic impact on private employers in North Carolina. Your proposed rule includes requirements for cleaning, isolating, implementing protocols, testing, and installing "appropriate air handling systems." Your fiscal information, however, does not include the actual cost of implementing multiple sections of your proposed rule. It does not take into consideration either the remodeling of existing plants or the installation of air handling devices, and it certainly has not taken into consideration any of the costs related to the construction of new migrant housing to meet your proposed requirements, including housing, bathing facilities, and cooking facilities. The full cost of implementing the rule must be addressed in a fiscal note, and if something in a proposed rule is economically infeasible, that must also be addressed.

According to the Administrative Procedures Act, Chapter 150B of the N.C. General Statutes, each rule submitted for adoption requires a fiscal note that provides a full explanatory statement of the fiscal impact on state and local entities **and on private entities** to include whether each specific part of the rule would have a "substantial economic impact" of over \$1 million. An accurate fiscal note is required to be submitted to the Office of State Budget and Management for approval **prior** to submitting proposed rules to the Rules Division of the North Carolina Office of Administrative Hearings for adoption. See N.C. Gen. Stat. §§ 150B-19.1, 150B-21, 150B-21.2, and 150B-21.4. Researching, analyzing, drafting, and getting approval of a fiscal note takes months. Your statement on page 13 of your comments is that, "The proposed rule would not have a substantial economic impact as set forth in N.C. Gen. Stat. § 150B-21.4(b1)." It appears that you have failed to take into consideration the following language from that statute:

As used in this subsection, the term "substantial economic impact" means an aggregate financial impact on **all persons affected** of at least one million dollars (\$1,000,000) in a 12-month period. In analyzing substantial economic impact, an agency shall do the following:

- (1) Determine and identify the appropriate time frame of the analysis.
- (2) Assess the baseline conditions against which the proposed rule is to be measured.
- (3) Describe the persons who would be subject to the proposed rule and the type of expenditures these persons would be required to make.
- (4) Estimate any additional costs that would be created by implementation of the proposed rule by measuring the incremental difference between the baseline and the future condition expected after implementation of the rule. The analysis should include direct costs as well as opportunity costs. Cost estimates must be monetized to the greatest extent possible. Where costs are not monetized, they must be listed and described.
- (5) For costs that occur in the future, the agency shall determine the net present value of the costs by using a discount factor of seven percent (7%).

(emphasis added)

My agency has reviewed your draft rule and is of the opinion that the largest issue implementing the rule at migrant housing sites would be an employer's inability to provide enough separate housing, bathrooms and dining areas to comply with the distance separation requirements. Therein lies the concern of infeasibility of compliance. For some growers, the only alternative would be to not bring migrant workers in to gather their crops or, even more alarming, simply leave crops in the field because they would be unable to immediately provide congregant living situations for temporary, seasonal workers.

Section 5 establishes a \$100 per day/per worker penalty for noncompliance. This proposal is out of line with the OSH Division's current penalty structure and would require extensive revisions to our computer program. Your fiscal information did not take into account this and other additional expenditures that would be placed upon the Division. Nothing in your fiscal information addressed any additional costs to NCDOL.

Specific Concerns Regarding Your Petition in Relation to Rulemaking

- The standard is specific to SARS-CoV-2, the virus that causes the coronavirus 2019 or COVID-19. If NCDOL were to adopt any standard regarding a coronavirus, it would be generic to allow the agency to address this disease and any possible new virus or health related pandemic that could occur in the future.
- The definitions for “Employer” and “Employee” differ from the statutory definitions found in Chapter 95. Such an action would conflict with the statutes, which is not allowed in rulemaking. Specifically, for “employees” you have added references to temporary agencies, joint employers, supervisors and managers. NCDOL cannot enforce regulations that differ from the current statutes.
- Multiple sections raise concerns related to HIPPA. NCDOL does not have the same protections regarding communicable diseases that are held by NCDHHS.
- Multiple sections contain vague terms that are not allowed in rulemaking. (e.g., “*consider* contingency or emergency plans, provide *prompt* identification and isolation, *ensure* compliance with mandatory requirements; *frequently*; *immediately* . . .)
- Your proposed rule mandates that all businesses require customers in grocery, retail, etc., to wear face masks. OSHANC provides no jurisdiction over the public; the Act only applies to employers.
- References are made to employees occupying vehicles. Do you mean a company vehicle or personal vehicles? NCDOL OSH has no authority regarding transportation of employees or migrant workers.
- Section 3(a)(11)F provides that employers must affirmatively inform workers of their right to receive paid leave and that they will not be discharged, disciplined or retaliated against for reporting an exposure, reporting symptoms, or testing positive for COVID-19. This appears to establish a new law under the Retaliatory Employment Discrimination Act. A rule cannot enact a new law. Does this also take the Families First Coronavirus Relief Act (FFCRA) into consideration?
- When FFCRA leave does not cover an employee, this rule requires an employer to provide up to two weeks of paid reassignment leave in addition to other benefits. NCDOL OSH does not enforce any part of the FFCRA.
- Section 4 creates several new laws or revisions to current laws. As noted above, rules cannot enact new law.
- Section 5 references other enforcement by the attorney general, a district attorney, or a city or county attorney. This is highly unusual. NCDOL has no authority to require other state or local government agencies to enforce its rules.

The Rules Division of the Office of Administrative Hearings has very specific requirements regarding the format in which rules must be submitted; your draft does not fulfill the requirements. Moreover, the permanent rulemaking process is lengthy, requiring at the very minimum, six additional months **after** the required fiscal note has been completed and approved by OSBM. (See N.C. Gen. Stat. § 150B-21.4(b)). Often rulemaking requires up to a year or longer if there are public objections to proposed rules or the Rules Review Commission itself objects to the rule. We all sincerely hope that a coronavirus vaccine will be available by that time.

In conclusion, let me say again that this virus is everywhere; it is found in every state in the United States, and on every continent in the world. Implementing more regulations will not eradicate the virus, and it will not eliminate the fear of employees of contracting COVID-19. However, I strongly believe that working together to educate both employees and employers as to the best practices to mitigate the spread of the virus is the best way of addressing this pandemic. Our priority is for North Carolina citizens and employers to implement practices to help control the spread of COVID-19. Imposing new regulations is not the most efficient means to help control the spread of the virus.

Sincerely,



Cherie K. Berry
Commissioner of Labor

Exhibit A – OSH COVID-19 Response - 11/02/2020

Exhibit B – Commissioner Berry's August 31, 2020, response to Governor Cooper

Exhibit C - NCDHHS Statistics

OSH Division
Calls/Emails received and directed regarding COVID-19

	April 2020*	May 2020*	June 2020*	July 2020*	August 2020*	September 2020*	October 3-9 2020	October 10-16 2020	October 17-23 2020	October 24-30, 2020	Total
OSH Director's Office	217	436	397	390	397	306	53	44	43	41	2324
ETTA calls	419	144	98	70	56	27	5	11	4	9	843
ETTA emails	268	118	57	38	30	22	5	3	8	8	557
ASH**	45	45	32	56	74	89	23	12	11	0	387
PSIM	0	2	2	4	3	0	0	0	0	0	11
CSB	401	276	101	127	109	70	15	15	10	11	1135
Totals	1350	1021	687	685	669	514	101	85	76	69	5257

*Monthly data as follows: April 2020 includes data through May 1, May 2020 includes data from May 2- June 5, June 2020 includes data from June 6-July 3, July 2020 includes data from July 4-July 31, August 2020 includes data from August 1-28, September 2020 includes data from August 29-October 2.

**Includes weekly conference calls with other Agencies.

OSH Division
COVID-19 related activities

	March-April 2020*	May 2020*	June 2020*	July 2020*	August 2020*	September 2020*	Sept. 28-Oct. 4	Oct. 5-11 2020	Oct. 12-18 2020	Oct. 19-25 2020	Oct. 26-Nov. 1 2020	Total
DIRECTOR'S OFFICE												
COVID-19 Meetings	10	26	25	16	4	21	4	3	5	1	2	117
OSH COMPLIANCE												
Valid COVID-19 OSH Complaints	180	176	166	217	200	71	29	31	32	37	23	1162
Non-Valid COVID-19 OSH Complaints	435	278	170	249	197	60	20	29	27	22	35	1522
Inspections	0	3	3	6	4	3	1	0	0	0	0	20
Referrals	2	9	9	10	17	4	0	0	1	0	0	52
Unprocessed Complaints**	505	116	144	180	102	60	6	12	13	14	12	1164
CONSULTATIVE SERVICES												
CSB Interventions	28	4	4	1	1	0	0	0	1	0	0	39
CSB Visits	2	20	49	41	26	19	11	5	7	7	8	195
ETTA												
Webinars conducted	13	3	3	2	5	2	0	1	1	1	0	31
Pre-recorded Webinars	4	0	0	0	2	0	0	0	0	0	0	6
Powerpoint presentations	4	1	2	0	14	4	3	0	0	0	0	28
Hazard Alerts	6	0	0	0	0	1	0	1	1	0	0	9
Streaming videos	15	16	14	9	12	6	1	2	2	3	2	82
Fact sheets	1	0	2	1	0	0	0	0	0	1	0	5
A-Z Topics added/updated	4	5	5	3	4	3	1	1	1	0	0	27
Compliance memos	8	2	0	0	0	0	0	0	0	0	0	10
Example Programs	0	0	1	0	0	0	0	0	0	1	0	2
Billboards	0	0	0	0	0	0	0	0	1	0	0	1
PSIM												
COVID-19 related disclosure requests	0	194	8	153	1228	44	0	1076	6	8	2	2719
ASH												
Guidance document for growers	1	0	0	0	0	0	0	0	0	0	0	1
Interview with NCSU	0	0	1	0	0	0	0	0	0	0	0	1
Webinar participation, not sponsored by	1	2	0	0	0	0	0	0	0	0	0	3

*Monthly data as follows: April 2020 includes data through May 3, May 2020 includes data May 4 - 31, June 2020 includes data June 1 - July 5, July 2020 includes data July 6-August 2, August 2020 includes data August 3-30, September 2020 includes data from August 31-September 27.

** This data is preliminary and subject to change as unprocessed complaints are moved to other categories. Many of these unprocessed complaints contain insufficient information to process and/or they cover complaint items that do not fall under OSH jurisdiction. Referrals to other Agencies are made, as appropriate.

Exhibit A page 2



Cherie K. Berry
Commissioner

August 31, 2020

North Carolina Office of the Governor
20301 Mail Service Center
Raleigh, North Carolina 27699-0301

Governor Cooper,

This letter serves as my official response to the August 28 draft of your proposed Executive Order (EO) regarding COVID-19 protections for workers in meat and poultry processing facilities and for migrant and seasonal workers in agriculture. This draft was shared with my staff following an August 28 meeting in which we explained our department's concerns about many provisions of the proposed order.

As you know, I oppose any order that would add new mandates for employers in agriculture or other food processing industries. This EO, as currently drafted, represents overregulation of industries that are already facing tremendous hardship and that, in general, have shown a willingness to voluntarily comply with CDC guidance to protect their workers. At 20 pages in length, most employers will not have the time or legal resources to sort through each of these new requirements, decipher its impact to their worksite, or determine how to properly comply. Above all, the EO appears to overreach the Governor's power by creating new legal requirements and implying that the NCDOL will enforce standards that exceed existing authority.

The current version of the order does not appear to address many, if any, of the major concerns raised by my staff during the August 28 meeting. Following is a summary of the department's major concerns which remain unaddressed in the current draft.

- Page 4 and Page 11 include language that would require employers to provide one toilet facility and one handwashing facility for each 10 employees. This is more stringent than federal law; see 29 CFR 1910.142. Whereas, NCDOL may adopt standards that are more stringent than federal OSHA, NCDOL has chosen not to adopt more stringent standards regarding temporary labor camps. Such a requirement appears to be a legislative action and/or a rulemaking action to which the public can comment. The implementation of an EO does not allow public comment and appears to violate the Separation of Powers Clause of the NC Constitution.
- Page 7 – The definition of "Agriculture or seafood processing" seems to include employees who are performing work on a boat on/in open waters. As my staff mentioned in our meeting, NCDOL has no enforcement authority over employees working on open water, as that work is covered by separate maritime law. Specifically, NCGS § 95-223

1101 Mail Service Center • Raleigh, North Carolina 27699-1101
(919) 707-7700 • cherie.berry@labor.nc.gov

Exhibit B

includes in the definition for "Agricultural employment" the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity for the harvesting of saltwater crabs. It does not include the act of unloading fish from a boat, which would fall under either USDOL or the US Coast Guard. See: <https://ecfr.io/Title-46/Part-28>

- Page 12, Section G (2) provides language prohibiting retaliation against workers who stay home from work due to a COVID-related issue. While NCDOL enforces the Retaliatory Employment Discrimination Act (REDA), nothing in REDA covers this specific issue. NCDOL would be unable to enforce this section, thus leaving workers without a legal remedy. See: USDOL/ The Migrant & Seasonal Agricultural Worker Protection Act - https://www.dol.gov/agencies/whd/laws-and-regulations/laws/mspa#title_2
- Regarding health concerns or the spread of COVID-19 at migrant labor camps, see 29 CFR 1910.142(l)(2): "Whenever there shall occur in any camp a case of suspected food poisoning or an unusual prevalence of any illness in which fever, diarrhea, sore throat, vomiting, or jaundice is a prominent symptom, it shall be the duty of the camp superintendent to report immediately the existence of the outbreak to the health authority by telegram, telephone, electronic mail or any method that is equally fast."
- Page 13 and 14 – Transportation of Migrant Workers. During the meeting, my staff discussed concerns about the requirements for social distancing in vehicles. Some farm workers travel an hour or more to reach their worksite. If growers are required to limit the number of employees in vehicles, some workers may never actually make it to the worksite before the end of the day. Beyond the infeasibility of this section, the NCDOL does not have jurisdiction over worker transportation on public roadways. Transportation is covered by federal laws under the Migrant & Seasonal Agricultural Worker Protection Act; See 29 U.S.C. 1801, et seq.: https://www.dol.gov/agencies/whd/laws-and-regulations/laws/mspa#title_2
- Page 14 and elsewhere – Face Coverings for Residents. The EO adds certain requirements for face coverings applicable to workers in their personal housing. Housing owners/operators typically do not monitor day-to-day activity of workers in their housing after non-working hours.
- Page 14, Section A (2) – This section requires the housing owner to ensure six feet between workers' heads, regarding sleeping arrangements. This requirement exceeds OSHA Temporary Labor Camp standards and some growers will be unable to comply with this mandate due to space limitations at existing housing. 29 USC 1910.142(b)(3): "Beds, cots, or bunks, and suitable storage facilities such as wall lockers for clothing and personal articles shall be provided in every room used for sleeping purposes. Such beds or similar facilities shall be spaced not closer than 36 inches both laterally and end to end and shall be elevated at least 12 inches from the floor. If double-deck bunks are used,

they shall be spaced not less than 48 inches both laterally and end to end. The minimum clear space between the lower and upper bunk shall be not less than 27 inches. Triple-deck bunks are prohibited.” NCGS § 95-225(h) requires a bed that shall include a mattress in good repair with a clean cover.

- Page 15, Section 3 (c) – The EO adds a new requirement for partitions or dividers between toilets and sinks. This is not a current requirement of the Temporary Labor Camp (TLC) standards.
- Page 16, Section B (2) states the migrant housing operator must provide or coordinate separate shelter. This appears to invoke § 130A-145. Quarantine and isolation authority – NCDOL has no authority to invoke the Quarantine Statute.
- Page 16, Section 3 (c) – This section allows for the use of tents in situations where a COVID outbreak requires worker separation. As we discussed in our meeting, tents are not permitted under TLC standards. See 1910.142 above
- Page 16, Section 6 – Protection for People who Deliver Care. If these people are not employees, NCDOL does not have jurisdiction.
- Page 19, Enforcement – Despite having a lengthy conversation about NCDOL’s limited ability to enforce the provisions in the EO, and despite the your staff’s commitment to review the language, no changes were made to this section.

Aside from our concerns about the tremendous burden that this proposed order will place on employers and growers, the department’s primary concern is enforcement. As related in our meeting on August 28, NCDOL enforces the Occupational Safety and Health Act, the Migrant Housing Act, and the Retaliatory Employment Discrimination Act. Nearly all the requirements in the EO either exceed existing standards or create new law entirely. As written, the EO suggests that NCDOL will enforce the provisions of the EO. However, we believe that attempts to enforce many of these provisions by way of an OSH citation and/or civil penalty will not likely withstand legal challenge. As explained during our meeting, NCDOL may issue a General Duty Clause citation in situations where a specific standard does not exist. But the department must also meet a very specific legal bar for those standards to pass legal review.

If you issue this proposed order as written, the department will be unable to conduct programmed on-site inspections related to these provisions due to both legal and resource (time/staff) concerns. If the department receives a complaint pursuant to the EO, our staff will most likely respond by sending a letter to the employer outlining the allegation and informing the employer of the EO requirements.

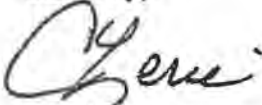
As we also explained in our meeting, the OSH Division compliance staff has been working since March with employers and growers. This work has included technical assistance, visits to worksites, providing guidance, etc. Please note that if you issue this order – thus creating additional compliance responsibilities for NCDOL – the compliance staff will be unable to participate in further consultative-type activity with employers in this industry. For the record,

NCDOL believes strongly that consultative activities and technical assistance could be far more effective in generating employer compliance with COVID exposure controls, in a timely manner, than adding new compliance mandates with which many employers will simply find impossible to implement.

Should you decide to issue this EO, I respectfully ask that you take care not to publicly overstate the role of the NCDOL regarding enforcement. As state government leaders, our priority should be for North Carolina citizens and employers to implement practices to help control the spread of COVID-19. However, imposing new mandates or regulations is not the only means to help control the spread of the virus that causes COVID-19 related illnesses.

Thank you for considering the concerns enumerated above, and please call on me or my staff should you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Cherie".

Cherie Berry
Commissioner



Key Takeaways from this Report

- In the past two weeks, clusters from **social gatherings** (such as parties, family gatherings, weddings, funerals) have **increased**. This trend is consistent with patterns seen in other parts of the country like the northeast, as referenced by Dr. Deborah Birx of the White House Coronavirus Task Force earlier in October.
- The number of cases associated with clusters in **religious gatherings** increased during September.
- The number of cases associated with meat and poultry processing clusters plants has **decreased** since early May.
- Clusters in college and university settings peaked in late August.

Introduction

As community spread of COVID-19 continues in North Carolina, clusters of cases are being identified in workplaces, educational settings, and many other community locations. Identifying and responding to COVID-19 clusters helps Local Health Departments (LHDs) and the state implement prevention and control measures, identify risk factors, and understand settings where transmission of COVID-19 is most likely to occur.

This report includes clusters identified by LHDs, but underrepresents the full scope of clusters and associated cases occurring across the state. In part, this is due to the fact that many COVID-19 cases are never diagnosed or cannot be linked to a specific setting or specific cluster. Additionally, **while congregate living settings, schools, and child care are required to report clusters or outbreaks to their LHDs, other settings are not required to report in the same manner**. Thus, the cluster data provided in this report is limited to clusters that have been voluntarily reported to LHDs or identified through case investigation and contact tracing efforts.

The North Carolina Department of Health and Human Services (NC DHHS) defines clusters of COVID-19 in non-congregate living settings as:

- A minimum of 5 cases with illness onsets or initial positive results within a 14-day period AND
- Plausible epidemiologic linkage between cases*

**Cases should be present in the same general setting during the same time period (e.g., same shift, same classroom, same physical area) and there should not be a more likely source of exposure for identified cases (e.g., household or close contact to a confirmed case in another setting)*

Cases and deaths included in this report represent only those linked to clusters meeting the above definition. Clusters are included if they were reported to public health on or after May 22, 2020, the date the cluster definition was published; the exception is clusters in meat and poultry processing facilities, which were tracked beginning in April 2020.

A cluster is considered over if there is not evidence of continued transmission within the setting. This is measured as 28 days after the latest date of onset in a symptomatic person or the latest date of specimen collection in an asymptomatic person, whichever is later. If additional cases are subsequently reported and a new cluster exists, it will be reported as a second, new cluster in that setting.

Clusters are often identified through the case investigation process, during which LHDs contact people newly diagnosed with COVID-19 to determine where they had been for the previous 14 days. This helps identify links to other cases with shared exposures. Confirmed or suspected clusters can also be reported directly to LHDs by individuals or businesses, although such reporting of clusters or outbreaks is only required by congregate living settings, child care programs and K-12 schools. Lists of ongoing outbreaks in congregate living settings and ongoing clusters in child care and school settings can be found in separate reports. Cluster data from the most

recent weeks are preliminary and subject to change as case investigations proceed, as it can take time for LHDs to link cases to a specific cluster.

Spread of COVID-19 is most likely to occur in indoor settings with large numbers of people, particularly those where mask use and social distancing are not being observed. While clusters in some settings have decreased over time, continuing clusters in many workplace and community settings reinforces the need for all North Carolinians to practice the 3 W's: Wear, Wait, and Wash.

This report includes 1) total cumulative reported clusters, cases and deaths by type of cluster since May 22, 2020 (except for meat and poultry processing facilities, which were tracked beginning in April 2020 and 2) graphs per type of cluster showing trends over time. This report will be updated each Monday by 4pm.

Cumulative Reported Clusters, Cases, and Deaths by Type of Cluster

Cluster Category	Setting Type	Number of Total Reported Clusters	Total Cluster-associated Cases	Total Cluster-associated Deaths
Workplace	Agriculture*	9	110	0
	Construction/Contractor	16	121	0
	Food Processing	7	321	1
	Government Services ¹	40	323	1
	Manufacturing	64	770	3
	Meat and Poultry Processing	39	3,841	19
	Other Workplace	52	549	4
Shopping and Services	Retail	8	73	0
	Personal Care Services ²	4	21	2
Food and Drinks	Bar/Brewery	2	14	0
	Restaurant	19	115	2
Child Care, Schools, and Higher Education	Child Care	49	401	3
	Camp	7	104	0
	K-12 School	38	295	0
	College or University	168	1,902	0
Health Care³	Health Care Setting	24	169	3
Community Living and Events	Religious Gathering	76	1,040	13
	Social Gathering ⁴	23	231	2
	Independent Living Facility	10	88	9
	Apartments**	2	60	0
	Community Event ⁵	1	26	0
	Other Community Setting	13	89	1
Total		671	10,663	63

*Clusters in agricultural settings represent cases that did not occur among migrant farmworkers. Cases among migrant farmworkers are captured as outbreaks rather than clusters because they occurred in congregate living settings. See [COVID-19 Outbreak Outbreaks in Congregate Living Settings report](#) for information about outbreaks.

**Clusters that occur in apartments among college or university students are included in the College or University setting type

1 - Government Services includes first response, fire, law enforcement, courts, and government offices

2 - Personal Care Services includes salons, barbers, and spas

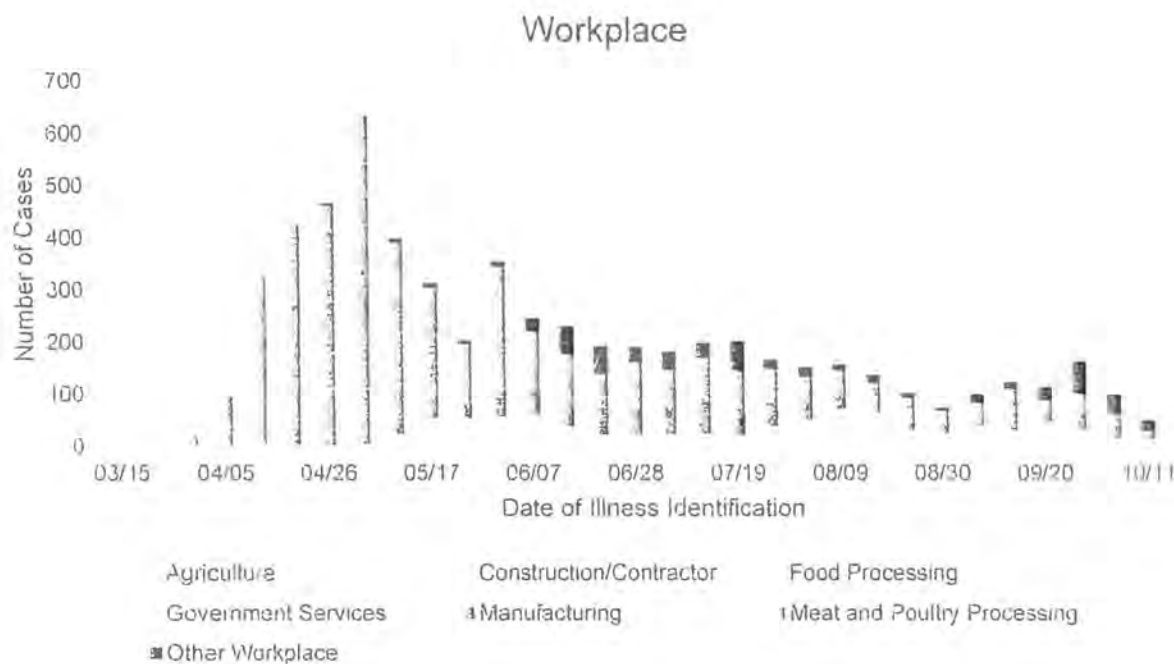
3 - Health Care includes hospitals, hospice facilities, and other non-hospital clinical settings. Cases among congregate living facilities are captured as outbreaks rather than clusters because they occurred in congregate living settings. See [COVID-19 Outbreaks and Congregate Living Settings report](#) for information about outbreaks.

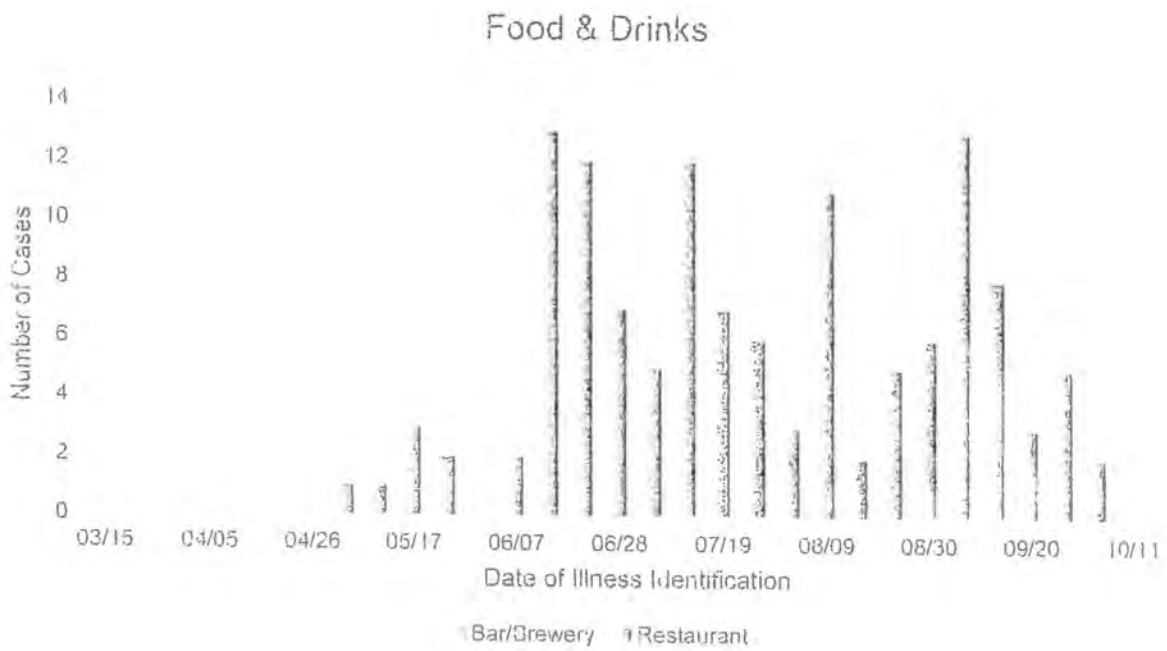
4 - Social Gathering includes parties, family gatherings, weddings, funerals

5 - Community Event includes concerts, festivals, rallies, and sporting events

Cluster-associated Cases Over Time by Type of Setting

Please note that the range of number on the y axis varies significantly by graph.





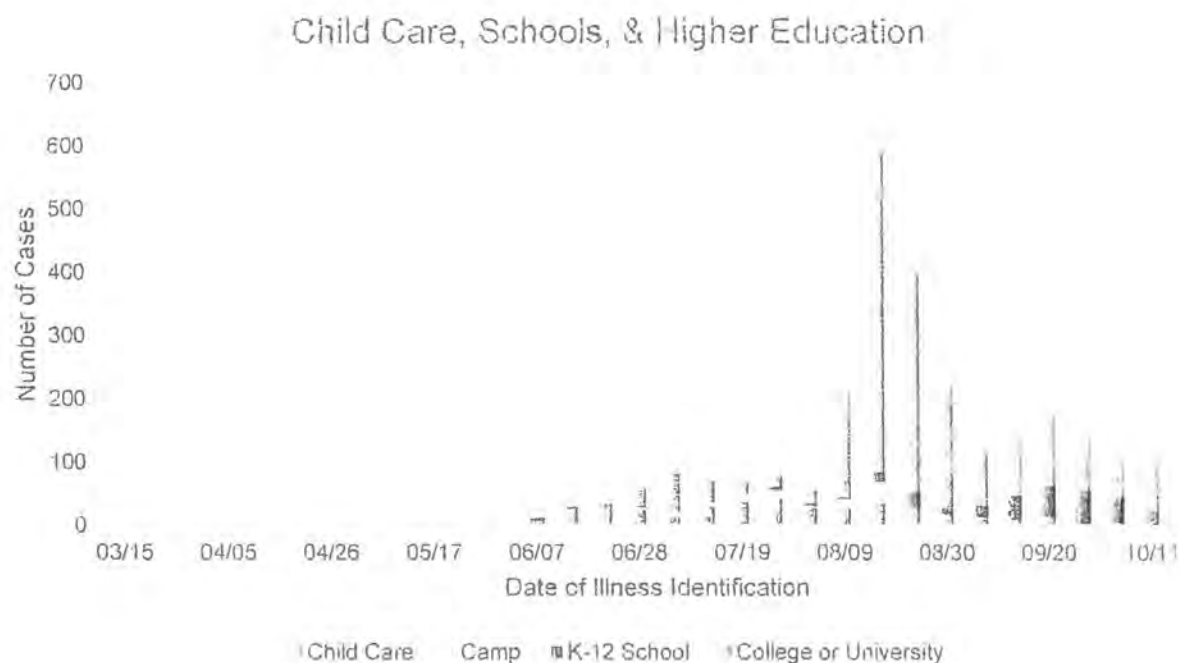


EXHIBIT 3

North Carolina Department of Labor
Occupational Safety and Health Division
Notice of Alleged Safety or Health Hazards

Friday 7/10/2020 16:16:33

Reporting ID	Complaint Number	Complaint Date/Time		Optional Number	City	County	Employer ID
0453710	209665223	03/17/2020	01:13 PM	1000	4200	037	

Establishment Name	MOUNTAIRE FARMS OF NORTH CAROLINA CORP.				Ownership	A Private Sector	
Site Address	1100 East 3rd Street Siler City, NC 27344			Site Phone	919-663-1768	Site Fax	- -
Mailing Address	1100 East 3rd Street Siler City, NC 27344			Mailing Phone	919-663-1768	Mailing Fax	- -

X

	Fax	- -
	Method Received	Telephone
		Supervisor(s) Assigned
		H9336

Valid Complaint?	Formality	Intake	Send OSHA-7?	Primary SIC	Primary NAICS
Yes	Non-Formal	Deborah Samad		2015	311615
Complaint Classification	Health - Serious		Inspection Planned?	Priority	Close Complaint
			No		Yes

Hazard Description:

Employees could be exposed to the COVID-19 virus in the workplace, due to there being confirmed cases in the workforce, and the employer continuing operations unchanged.


Hazard Location:
Facility.

Send Letter	Type	Date Letter Sent	Date Response Due	
Receive Letter	Type	Date Received	Evaluation	Abatement Date

Strategic Plan	
National Emphasis	
Local Emphasis	

Type	ID	Optional Information

Complaint Occupational Safety or Health Hazards

North Carolina Department of Labor Occupational Safety and Health Division		Complaint Number 209665223	Optional Number 1000
Employer Name MOUNTAIRE FARMS OF NORTH CAROLINA			
Site Location (Street, City, State, ZIP) 1100 East 3rd Street Siler City NC 27344			
Mailing Address (Street, City, State, ZIP) 1100 East 3rd Street Siler City NC 27344			
Management Official 		Telephone Number 919-663-1768	
Complaint Assigned To H9336		SIC/NAICS 2015 311615	
Hazard Description: Employees could be exposed to the COVID-19 virus in the workplace, due to there being confirmed cases in the workforce, and the employer continuing operations unchanged.			
Hazard Location: Facility.			

7017 2620 0000 0627 5298

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| <input type="checkbox"/> Return Receipt (electronic) | \$ _____ |
| <input type="checkbox"/> Certified Mail Restricted Delivery | \$ _____ |
| <input type="checkbox"/> Adult Signature Required | \$ _____ |
| <input type="checkbox"/> Adult Signature Restricted Delivery | \$ _____ |

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209665225-Comp to ER
MONTAIRE FARMS OF
NORTH CAROLINA CORP.
1100 East 3rd Street
Siler City, NC 27344



CHERIE BERRY
COMMISSIONER OF LABOR

OCCUPATIONAL SAFETY AND HEALTH DIVISION
RALEIGH FIELD OFFICE

May 18, 2020

MOUNTAIRE FARMS OF NORTH CAROLINA CORP.
1100 East 3rd Street
Siler City, NC 27344

Re: Complaint Number 209665223

Dear [REDACTED]

Recently the North Carolina Department of Labor Occupational Safety and Health Division received a complaint alleging health and/or safety hazards related to **coronavirus disease 2019 (COVID-19)**, which is the illness caused by coronavirus, at your establishment at 1100 East 3rd Street, Siler City, NC 27344. The specific nature of the complaint is described in detail on the attached page.

Information about COVID-19, including guidance on preventing worker exposure and for preparing your workplace, can be found at the following locations:

- OSHA COVID-19 website – <https://www.osha.gov/SLTC/covid-19/>
- CDC COVID-19 website – <https://www.cdc.gov/coronavirus/2019-ncov/index.html>
- CDC Info for healthcare workers – <https://www.cdc.gov/coronavirus/2019-nCoV/hcp/index.html>
- NC Division of Public Health website – <https://www.ncdhhs.gov/divisions/dph>
- NC's Stay at Home Order, including list of essential businesses - <https://files.nc.gov/governor/documents/files/EO121-Stay-at-Home-Order-3.pdf>

We have not determined whether the hazards, as alleged, exist at your workplace; and we are not conducting an inspection, at this time. However, since allegations of violations have been made, you should investigate the alleged conditions and make any necessary corrections or modifications. Within 7 working days of your receipt of this letter, please advise us, in writing, by certified mail, or submitting electronically of your finds and the action you have taken. Your response should be detailed stating specifically what action you have taken to correct each hazard. You should enclose any supporting documentation, such as monitoring results, equipment purchases, photographs etc.

The complainant has been advised of this preliminary response to the complaint and furnished a copy of this letter. An un-redacted employer response will be forwarded to the complainant. Please focus on providing documentation on the alleged conditions and do not include any comments or information about the person(s) that you believe filed the complaint. You should be aware that North Carolina General Statute 95-241 provides that "no person shall discriminate or take any retaliatory action against an employee because the employee in good faith does or threatens to file a claim or complaint, initiate any inquiry, investigation, proceeding or other action, or testify or provide information to any person with respect to ... the Occupational Safety and Health Act of North Carolina."

This letter is not a citation nor is it a notification of proposed penalty, which according to the Occupational Safety and Health Act, may be issued only after an inspection or investigation of the workplace. If we do not receive a response from you within 7 working days of your receipt of this letter indicating that appropriate action has been taken or that no hazard exists and why, an inspection may be conducted.

You are requested to post a copy of this letter and your response to it where it will be readily accessible for review by your employees. Please send your written response electronically to me at John.Jaskolka@labor.nc.gov, with a carbon copy to Charmaine.Burnett@labor.nc.gov. Supporting documentation, such as photos or safety policies, should be attached to the email if applicable.

If you have any questions about this letter, please contact me at 919-779-8570. Your personal support and interest in the safety and health of your employees are appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Dawn Eason for".

John Jaskolka
District Supervisor

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

209665223-Comp to ER
MOUNTAIRE FARMS OF
NORTH CAROLINA CORP.
1100 East 3rd Street
Siler City, NC 27344

NCDOL
RALEIGH FIELD OFFICE



9590 9402 4344 8190 0812 57

2. Article Number (Transfer from service label)

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☐ Addressee

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- ☒ Yes
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☐ Signature Confirmation Restricted Delivery



May 22, 2020

Mr. John Jaskolka
N.C. Department of Labor
Occupational Safety & Health
Compliance Bureau
1101 Mail Center
Raleigh, N.C. 27699-1101

Re: Complaint Number 209665223

Dear Mr. Jaskolka,

We received the letter of complaint concerning alleged health and safety hazards at our Siler City Processing Facility located at 1101 East 3rd St. Siler City N.C. 27344. The following represent our response to the alleged hazards. While we appreciate the concerns expressed in the complaint with respect to COVID-19, we disagree with the allegations.

Hazard Location: Facility

Hazard Description:

1. Employees could be exposed to the COVID-19 virus in the workplace due to there being confirmed cases in the workforce and the employer continuing operations unchanged.
- Contrary to the allegations in the complaint; Lexan, Plexiglass and Stainless-Steel barriers have been installed between workstations on the lines and throughout facility as an added protection to employees. Employees are required to wear face coverings and face shields have been added to bump caps as well. Prior to the outbreak of the virus in North Carolina these engineering and administrative controls did not exist in our facility.
- We have also distributed a variety of facial coverings to employees to meet CDC and state recommendations, these are given out as needed prior to entry into facility.

(See picture A1, A2)

We will continue to monitor CDC, OSHA and North Carolina public health guidance as the outbreaks continues and implement additional protective measures if necessary and appropriate. If you have any questions regarding this response, please feel free to contact me at [REDACTED] thank you.

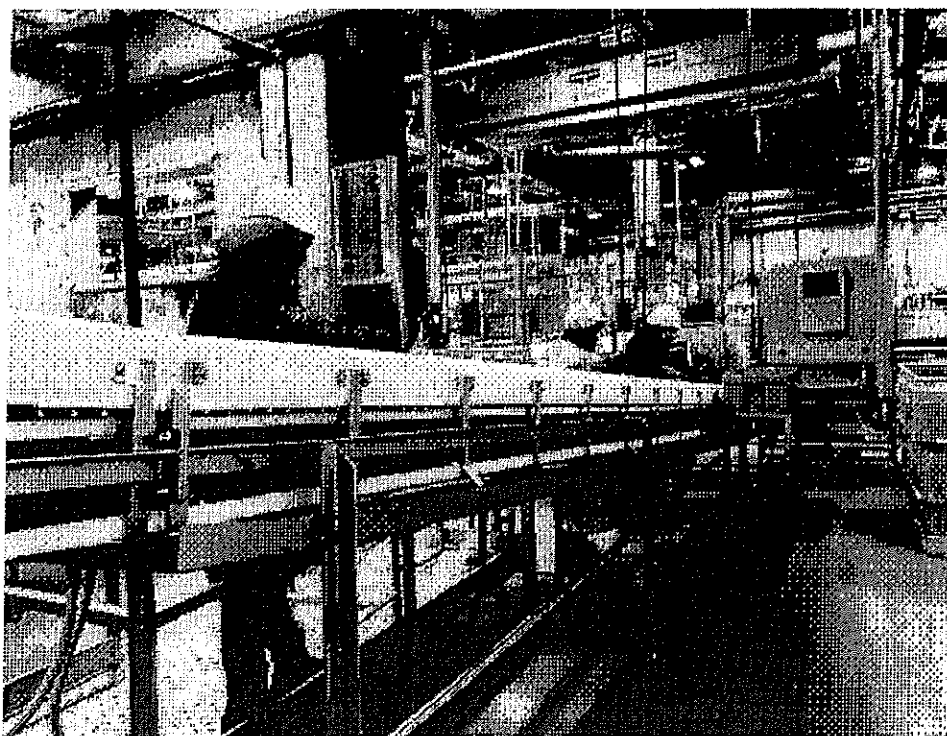
Sincerely,

A handwritten signature consisting of a stylized 'X' shape.

Mountaire Farms



A-1



A-2

Jaskolka, John

From: Jaskolka, John
Sent: Wednesday, May 27, 2020 9:56 AM
To: [REDACTED]
Subject: RE: [External] Complaint response 209665223

[REDACTED]

Thank you for your response.

However, I'll need some additional information before I can close out this complaint. Would you please provide the policy/procedures you have in place to address a positive case in your facility and other policy/procedural changes you've made to address COVID-19 (e.g., temperature checks, etc.). If you could, please provide this information by Wednesday (6/03/2020). Thank you.

John Jaskolka, MS, CIH
District Supervisor
North Carolina Department of Labor
Office: (919) 779-8528

From: [REDACTED]
Sent: Wednesday, May 27, 2020 9:25 AM
To: Jaskolka, John <john.jaskolka@labor.nc.gov>
Cc: [REDACTED]
Subject: [External] Complaint response 209665223

CAUTION: External email. Do not click links or open attachments unless you verify. Send all suspicious email as an attachment to report.spam@nc.gov

Good morning,

Please find the attached response to complaint 209665223, if you have any questions please contact me. Thank you.


Siler City, NC
Mountaire Farms





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From: [REDACTED]
To: Jaskolka, John
Cc: [REDACTED]
Subject: [External] Additional information Complaint 209665223
Date: Wednesday, June 3, 2020 12:25:34 PM
Attachments: [image002.png](#)
[CDC OSHA Guidance Plan.pdf](#)

CAUTION: External email. Do not click links or open attachments unless you verify. Send all suspicious email as an attachment to reportspam@nc.gov

Good afternoon,

Mountaire has worked diligently to follow CDC and OSHA guidance. Based on the guidance, we developed the attached program and are using it as a roadmap for continuous improvement. We appreciate your support.

If you have any other questions please feel free to contact me, thank you.

X

Siler City, NC
Mountaire Farms

X



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Mountaire Farms

Coronavirus Infectious Disease Plan

Purpose: To protect employees and the community by complying with interim guidance from the Centers for Disease Control (CDC) and Occupational Safety and Health Administration (OSHA).

Table of Contents:

- 1. General**
- 2. Exposure Risks**
- 3. Assessment and Control Plan**
 - Engineering Controls
 - Administrative Controls
- 4. Education & Training of Workers and Supervisors**
- 5. Cleaning and Disinfection**
- 6. Screening and Monitoring of Workers**
- 7. Managing Sick Workers**
- 8. Addressing Return to Work**
- 9. Personal Protective Equipment**
- 10. Workers' Rights**

1. General

Mountaire poultry processing facilities are a component of the critical infrastructure within the Food and Agriculture Sector.

CDC's Critical Infrastructure Guidance advises that critical infrastructure workers may be permitted to continue work following potential exposure to COVID-19, provided they remain asymptomatic and additional precautions are implemented to protect them and the community.

Mountaire has implemented this plan for continuing operations in the setting of COVID-19 occurring in the surrounding community to include:

- a. Working directly with appropriate state and local public health officials and occupational safety and health professionals;
- b. Incorporate relevant aspects of CDC & OSHA guidance
- c. Incorporate guidance from other authoritative sources or regulatory bodies as needed.

Workers at higher risk for serious illness include older adults and people of any age with chronic medical conditions. It is Mountaire's policy that any employee at higher risk of serious illness should consult with their primary care provider and the Human Resource office.

2. Exposure Risks

Distinctive factors that affect workers' risk for exposure to SARS-CoV-2 in meat and poultry processing workplaces include:

- a. Distance between workers – Close to one another on processing lines or near one another at other times, such as when clocking in or out, during breaks, or in locker/changing rooms.
- b. Duration of contact – Potential for prolonged closeness to coworkers.
- c. Type of contact – May be exposed to the infectious virus through respiratory droplets in the air by a cough or sneeze. It is also possible that exposure could occur from contact with contaminated surfaces or objects, such as tools, workstations, or break room tables. Shared spaces such as break rooms, locker rooms, and entrances/exits to the facility may contribute to their risk.
- d. Other distinctive factors that may increase risk among these workers include:
 - i. Sharing transportation such as ride-share vans or shuttle vehicles, car-pools, and public transportation
 - ii. Frequent contact with fellow workers in community settings in areas where there is ongoing community transmission.

3. Assessment and Control Plan

Mountaire has established a Coronavirus Task Force that is providing overall guidance and support. The Task Force is focusing on critical aspects to include all areas outlined in the interim guidance.

At the Processing facilities, the Human Resources Manager will be responsible for COVID-19 control planning and will work closely with facility employee safety and food safety management.

Mountaire's infection prevention recommendations are based on the hierarchy of controls. This approach groups actions by their effectiveness in reducing or removing hazards. This hierarchy of controls includes:

- Engineering Controls
- Administrative Controls

Engineering Controls

Mountaire is continuously conducting a hazard analysis for individual workstations to determine if improvements are needed to meet adequate social distancing of six feet or more in all directions. In areas where this is not feasible, physical barriers such as strip curtains, plexiglass or similar material are being added to separate workers.

Plexiglass partitions have been added to tables in break rooms and other areas workers may frequent to increase worker separation.

Mountaire facilities heating and ventilation systems are designed by qualified engineers. These systems are designed to help control moisture and temperature with a specific air flow based on the overall design and layout of the building.

Hand sanitizer stations have been added in multiple locations with at least 60% alcohol to encourage hand hygiene. Hand washing stations are available throughout the facilities.

Mountaire is currently adding more time clocks and will continue to evaluate if more are needed to improve social distancing.

Administrative Controls

Mountaire has implemented the following administrative controls:

- a. Conducting audits of social distancing, temperature & health screening and compliance with personal protective equipment.
- b. Staggered break and lunch times.
- c. Providing visual cues as a reminder to maintain social distancing.
- d. Encouraged employee to avoid carpooling to and from work as much as possible.
- e. If carpooling, encourage everyone to wear a mask.
- f. Provided mask to contracted company bus services and require everyone to wear a mask and social distance.
- g. Monitor absenteeism and adjust production capabilities as necessary.
- h. Implemented travel policy restrictions
- i. Implemented internal meeting protocols to move to virtual or less than 10 people.

- j. Suspended our Attendance "points system" for illness or childcare concerns and encouraging employees to Stay Home if they do not feel well.
- k. Implemented a Special Hourly Sick Pay Program from April 1 – May 30, 2020 that will encourage employees to stay home if sick.
- l. All hourly employee communications are translated into Spanish and Creole.
- m. Initial employee flyer communicated to employees "Don't be scared. Just be prepared" on 3/6/20 to educate employees on self-monitoring of systems and what they could do to help.
- n. Launch of Frequently Asked Questions and Answers intranet site.
- o. Launch of internal Coronavirus Resources intranet site for Management.
- p. Created a unified approach for all COVID-19 messages.
- q. Created a mailbox to receive questions related to COVID-19 for our employees CoronavirusQandQ@mountaire.com.
- r. Created videos as another means of communication with our employees.
- s. Launch of internal Coronavirus Resources intranet site for employees accessible via Kiosk.

The CDC has recommended the wearing of cloth face coverings as a protective measure in addition to social distancing. Cloth face coverings may be especially important when social distancing is not possible or feasible based on working conditions. A cloth face covering may reduce the amount of large respiratory droplets that a person spreads when talking, sneezing, or coughing. Cloth face coverings may prevent people who do not know they have the virus that causes COVID-19 from spreading it to others. Cloth face coverings are intended to protect other people—not the wearer.

Mountaire has provided face masks to all employees. They are required to wear them at all times while in the facility. Exceptions would include eating and drinking during breaks & lunch and one person occupying an office.

Requirements for masks:

- Fit over the nose and mouth and fit snugly but comfortably against the side of the face
- Secured with ties or ear loops
- Include multiple layers of fabric
- Allow for breathing without restriction
- Can be laundered using the warmest appropriate water setting and machine dried daily after the shift, without damage or change to shape (a clean cloth face covering should be used each day);
- Not used if they become wet or contaminated
- Replaced with clean replacements as needed
- Handled as little as possible to prevent transferring infectious materials to the cloth
- Are not worn with or instead of respiratory protection when respirators are needed

4. Education and Training of Workers and Supervisors

Training and information about COVID-19, recognizing signs and symptoms of infection, and ways to prevent exposure to the virus is provided to all employees. Training includes information about how to implement the various infection prevention and control measures recommended.

All communications and training are easy to understand and provided in languages appropriate to the preferred languages spoken or read by the workers.

Training information includes:

- Signs and symptoms of COVID-19, how it spreads, risks for workplace exposures, and how workers can protect themselves
- Proper handwashing practices and use of hand sanitizer stations
- Cough and sneeze etiquette
- Other routine infection control precautions such as putting on or taking off masks coverings and social distancing measures

Mountaire is using posters in all the languages that are common in the worker population that encourage staying home when sick, cough and sneeze etiquette, and proper hand hygiene practices. They are placed at multiple locations to include entrances, break areas, locker rooms, and other areas where they are likely to be seen.

5. Cleaning and Disinfection

Mountaire has established extensive procedures and provided the necessary supplies and resources to increase the frequency of sanitization in work and common spaces. This includes the disinfection of frequently touched surfaces in workspaces and break rooms, microwaves, refrigerator handles or vending machine touchpads at least once per shift. We frequently clean push bars and handles on any doors that do not open automatically and handrails on stairs. Where safely feasible, doors are propped open to eliminate touching of handle surfaces.

Workers who perform cleaning and disinfection tasks are provided appropriate PPE to protect them from chemical hazards posed by disinfectants.

The sanitation, cleaning and disinfection process includes:

- "8 Steps of Wet Sanitation" in all fresh chicken processing areas
- Housekeeping - increased staffing and conducting more frequent cleaning in common and auxiliary areas. Includes areas like:
 - Bathrooms, Cafeteria tables, Offices, Doors, USDA Office, Hallways, Maintenance, Lab, HR, Medical, Lockers, Shipping areas

- Third Party Cleaning - performed every night after processing to conduct deeper extended cleaning. Includes areas like:
 - Floors, Hand Rails, Desks, Computers, Bathrooms, Cafeteria, Supervisor Offices, Guard Shacks, Conference rooms, telephones
- High Risk Mitigation Step Misting & Fogging - conducted weekly using Aquox 275 (HOCL) Hypochlorous acid generated through electrolysis of salt water Includes areas like:
 - Offices, Lockers, Hallways, Cafeteria, Kitchen, Bathrooms, USDA Offices, Training Labs, Maintenance, Medical/HR.

6. Screening and Monitoring of Workers

Mountaire has developed and implemented a comprehensive screening and monitoring strategy aimed at preventing the introduction of COVID-19 into the worksite. Prior to entry, workers are screened for the signs or symptoms related to potential exposure. Our main goal is to exclude sick workers. This program has been coordinated with local public health authorities and consist of the following activities:

- Provide screening in appropriate language(s) to determine whether workers have had a fever, felt feverish, or had chills, coughing, or difficulty breathing in the past 24 hours.
- Check temperatures of workers at the start of each shift to identify anyone with a fever of 99.5°F or greater
 - Screeners are trained to use temperature monitors and wear appropriate PPE to include a face mask and face shield.
- Do not allow employees to enter the workplace if they have a fever of 99.5°F or greater or if screening results indicate that the worker is suspected of having COVID-19.
 - Encourage workers to self-isolate and contact a healthcare provider;
 - Provide information on the facility's return-to-work policies and procedures; and
 - Inform Human Resources or the Medical Department
- Physical barriers and position cues are used to ensure social distancing requirements are maintained.

7. Managing Sick Workers

Workers who appear to have symptoms (e.g., fever, cough, or shortness of breath) upon arrival at work or who become sick during the day are immediately separated from others at the workplace and sent home.

If a worker becomes or reports being sick, Mountaire will disinfect the workstation used and any tools handled by the symptomatic worker.

Medical personnel who identify sick employees are appropriately protected from exposure. When personnel need to be within six feet of a sick colleague, appropriate PPE will be worn and include gloves and a face mask. Our medical staff will not directly manage sick employees. Our goal is to remove them from the workplace as quickly as possible.

If a worker is confirmed to have COVID-19, Mountaire will conduct a traceback and attempt to identify anyone they have come into contact with (including fellow workers, inspectors, graders, etc.) of their possible exposure to COVID-19 in the workplace. Confidentiality as required by the Americans with Disabilities Act (ADA) will be maintained. Mountaire will instruct fellow workers about how to proceed based on the CDC Public Health Recommendations for Community-Related Exposure.

Mountaire will work with state, local, or territorial health officials to facilitate the identification of other exposed and potentially exposed individuals, such as coworkers in a plant. On-site healthcare personnel, will follow appropriate CDC and OSHA guidance for healthcare and emergency response personnel.

8. Addressing Return to Work

Mountaire is a critical infrastructure employer and has an obligation to manage the continuation of work and return to work of their workers in ways that best protect the health of workers, their coworkers, and the general public.

When bringing back exposed, asymptomatic workers to onsite operations, Mountaire will follow the CDC Critical Infrastructure Guidance. The guidance advises that employers may permit workers who have been exposed to COVID-19, but remain without symptoms, to continue to work, provided they adhere to additional safety precautions. Mountaire has consulted with an occupational health provider and state and local health officials to develop the most appropriate plan consistent with CDC guidance.

Reintegration of workers with COVID-19 (COVID-19 positive), including those workers who have remained asymptomatic, to onsite operations will follow the CDC interim guidance, "Discontinuation of Isolation for Persons with COVID-19 Not in Healthcare Settings."

As Mountaire moves forward with continuing essential work, we will implement strategies to prioritize positions and adjust based on production staff availability. This prioritization will be based on workforce availability at specific worksites.

Workers with COVID-19 who have symptoms and have stayed home (home isolated) should not return to work until they have met the criteria to discontinue home isolation and have consulted with their healthcare providers and state and local health departments.

Mountaire recognizes the situation is constantly changing. We will continue to work with local authorities and reassess the virus's transmission levels in our areas.

9. Personal Protective Equipment

Mountaire will maintain hazard assessments to determine if hazards are present or are likely to be present for which workers need PPE. Appropriate PPE will be selected to protect workers from hazards identified in the hazard assessment. The results of that assessment will be the basis of workplace controls (including PPE) needed to protect workers.

Mountaire will use videos or in-person visual demonstrations of proper PPE donning and doffing procedures and will comply with appropriate social distancing. We emphasize that care must be taken when putting on and taking off PPE to ensure that the worker or the item does not become contaminated. PPE will be properly disinfected and stored in a clean location when not in use. PPE worn at the facility will not be taken home or shared.

Face shields will serve as a source control. Face shields will be attached to bump caps. Face shields can provide additional protection from both potential process-related splashes and potential person-to-person droplet spread. The face shields also help minimize contamination of masks and cloth face coverings. Face shields will be cleaned and decontaminated after each shift.

During the COVID-19 pandemic, Mountaire will allow the voluntary use of filtering facepiece respirators if available.

10. Workers' Rights

Mountaire will not retaliate against workers for raising concerns about safety and health conditions.



CHERIE BERRY
COMMISSIONER OF LABOR

OCCUPATIONAL SAFETY AND HEALTH DIVISION
RALEIGH FIELD OFFICE

June 5, 2020

MOUNTAIRE FARMS OF NORTH CAROLINA CORP.
1100 East 3rd Street
Siler City, NC 27344

Re: Complaint Number 209665223

Dear [REDACTED]

Your letter received on 5/27/20 concerning the above referenced complaint has been reviewed. Based on the information you have provided, OSHNC feels the case can be closed on the grounds that the alleged hazardous conditions have been corrected or no longer exist. This letter does not prohibit OSHNC from initiating an inspection of this complaint.

Your actions on behalf of safety and health in the work place are appreciated.

Sincerely,

John Jaskolka
District Supervisor


EXHIBIT 4

North Carolina Department of Labor
Occupational Safety and Health Division
Notice of Alleged Safety or Health Hazards

Friday 7/10/2020 16:23:03

Reporting ID	Complaint Number	Complaint Date/Time		Optional Number	City	County	Employer ID
0453710	209665116	03/18/2020	11:25 AM	1000	4200	037	

Establishment Name	MOUNTAIRE FARMS OF NORTH CAROLINA CORP.				Ownership	A Private Sector	
Site Address	1100 East 3rd Street Siler City, NC 27344			Site Phone	919-663-1768	Site Fax	- -
Mailing Address	1100 East 3rd Street Siler City, NC 27344			Mailing Phone	919-663-1768	Mailing Fax	- -

				Fax	- -
				Method Received	Telephone
				Supervisor(s) Assigned	
				H9336	

Valid Complaint?	Formality	Intake	Send OSHA-7?	Primary SIC	Primary NAICS
Yes	Non-Formal	Deborah Samad		2015	311615
Complaint Classification	Health - Serious		Inspection Planned?	Priority	Close Complaint
			No		Yes

Hazard Description:

Employees could be exposed to the COVID-19 virus in the workplace, due to it remaining in operation, with hundreds of employees working in close proximity to each other.

Hazard Location:

Facility.

Send Letter	Type	Date Letter Sent	Date Response Due

Receive Letter	Type	Date Received	Evaluation	Abatement Date

Strategic Plan	
National Emphasis	
Local Emphasis	

Type	ID	Optional Information
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Complaint of Occupational Safety or Health Hazards

North Carolina Department of Labor Occupational Safety and Health Division	Complaint Number 209665116	Optional Number 1000
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Employer Name

MOUNTAIRE FARMS OF NORTH CAROLINA

Site Location (Street, City, State, ZIP)

1100 East 3rd Street

Siler City NC 27344

Mailing Address (Street, City, State, ZIP)

1100 East 3rd Street

Siler City NC 27344

Management Official

Telephone Number

919-663-1768

Complaint Assigned To

H9336

SIC/NAICS

2015 311615

Hazard Description:

Employees could be exposed to the COVID-19 virus in the workplace, due to it remaining in operation, with hundreds of employees working in close proximity to each other.

Hazard Location:

Facility.

7016 2070 0001 1354 0229

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| <input type="checkbox"/> Adult Signature Required | \$ | |
| <input type="checkbox"/> Additional Certified Delivery | \$ | |

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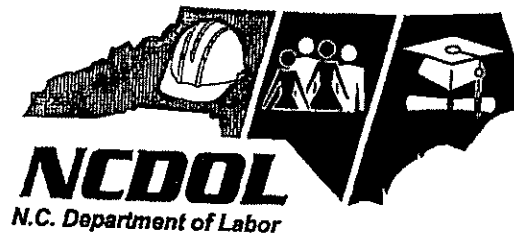
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Sent

Signature

209665116- OS0117
MOUNTAIRE FARMS OF NORTH
CAROLINA CORP.
1100 East 3rd Street
Siler City, NC 27344

City, State, ZIP+4®



CHERIE BERRY
COMMISSIONER OF LABOR

May 13, 2020

OCCUPATIONAL SAFETY AND HEALTH DIVISION
RALEIGH FIELD OFFICE

MOUNTAIRE FARMS OF NORTH CAROLINA CORP.
1100 East 3rd Street
Siler City, NC 27344

Re: Complaint Number 209665116

Dear [REDACTED]

Recently the North Carolina Department of Labor Occupational Safety and Health Division received a complaint alleging health and/or safety hazards related to **coronavirus disease 2019 (COVID-19)**, which is the illness caused by coronavirus, at your establishment at 1100 East 3rd Street, Siler City, NC 27344. The specific nature of the complaint is described in detail on the attached page.

Information about COVID-19, including guidance on preventing worker exposure and for preparing your workplace, can be found at the following locations:

- OSHA COVID-19 website – <https://www.osha.gov/SLTC/covid-19/>
- CDC COVID-19 website – <https://www.cdc.gov/coronavirus/2019-ncov/index.html>
- CDC info for healthcare workers – <https://www.cdc.gov/coronavirus/2019-nCoV/hcp/index.html>
- NC Division of Public Health website – <https://www.ncdhhs.gov/divisions/dph>
- NC's Stay at Home Order, including list of essential businesses - <https://files.nc.gov/governor/documents/files/EO121-Stay-at-Home-Order-3.pdf>

We have not determined whether the hazards, as alleged, exist at your workplace; and we are not conducting an inspection, at this time. However, since allegations of violations have been made, you should investigate the alleged conditions and make any necessary corrections or modifications. Within 7 working days of your receipt of this letter, please advise us, in writing, by certified mail, or submitting electronically of your finds and the action you have taken. Your response should be detailed stating specifically what action you have taken to correct each hazard. You should enclose any supporting documentation, such as monitoring results, equipment purchases, photographs etc.

The complainant has been advised of this preliminary response to the complaint and furnished a copy of this letter. An un-redacted employer response will be forwarded to the complainant. Please focus on providing documentation on the alleged conditions and do not include any comments or information about the person(s) that you believe filed the complaint. You should be aware that North Carolina General Statute 95-241 provides that "no person shall discriminate or take any retaliatory action against an employee because the employee in good faith does or threatens to file a claim or complaint, initiate any inquiry, investigation, proceeding or other action, or testify or provide information to any person with

respect to ... the Occupational Safety and Health Act of North Carolina."

This letter is not a citation nor is it a notification of proposed penalty, which according to the Occupational Safety and Health Act, may be issued only after an inspection or investigation of the workplace. If we do not receive a response from you within 7 working days of your receipt of this letter indicating that appropriate action has been taken or that no hazard exists and why, an inspection may be conducted.

You are requested to post a copy of this letter and your response to it where it will be readily accessible for review by your employees. Please send your written response electronically to me at John.Jaskolka@labor.nc.gov, with a carbon copy to Charmaine.Burnett@labor.nc.gov. Supporting documentation, such as photos or safety policies, should be attached to the email if applicable.

If you have any questions about this letter, please contact me at 919-779-8570. Your personal support and interest in the safety and health of your employees are appreciated.

Sincerely,



John Jaskolka
District Supervisor



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. **209665116-OS0117**
UNTAIRE FARMS OF NORTH
CAROLINA CORP.
1100 East 3rd Street
Siler City, NC 27344



9590 9402 4344 8190 0803 97

2. Article Number (Transfer from service label)

7016 2070 0001 1354 0229

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A.

X

☐ Agent
☐ Addressee

C. Date of Delivery

5-12-20

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☒ No

JUN 04 2020

NCDOL-OSH COMPLIANCE

RECEIVED

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Mail
- ☐ Mail Restricted Delivery

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

Jaskolka, John

From: [REDACTED]
Sent: Wednesday, May 20, 2020 9:19 AM
To: Jaskolka, John
Cc: [REDACTED]
Subject: [External] Response 209665116
Attachments: Response 209665116.pdf

CAUTION: External email. Do not click links or open attachments unless you verify. Send all suspicious email as an attachment to reportspam@nc.gov

Good morning,

Please find the response to complaint 209665116, if you have any questions feel free to me, thank you.

[REDACTED]
[REDACTED]
Siler City, NC
Mountaire Farms
Office: [REDACTED]
Cell: [REDACTED]



CONFIDENTIALITY NOTICE: The information contained in this email and any attachments is privileged and confidential and protected from disclosure. If you are not the intended recipient of this email or the attachments, do not read the message or read or open any attachment. Any disclosure, copying, distribution or use of this email or any attachment is strictly prohibited. If you are not the intended recipient, please immediately notify the sender and permanently delete the message from your system.



May 18, 2020

Mr. John Jaskolka
N.C. Department of Labor
Occupational Safety & Health
Compliance Bureau
1101 Mail Center
Raleigh, N.C. 27699-1101

Re: Complaint Number 209665116

Dear Mr. Jaskolka,

We received the letter of complaint concerning alleged health and safety hazards at our Siler City Processing Facility located at 1101 East 3rd St. Siler City N.C. 27344. The following represent our response to the alleged hazards. While we appreciate the concerns expressed in the complaint with respect to COVID-19, we disagree with the allegation.

Hazard Location: Facility

Hazard Description: Employees could be exposed to the COVID-19 virus in the workplace, due to it remaining in operation, with hundreds of employees working in close proximity to each other.

Response:

Mountaire has made many improvements to improve social distancing practices and continues to focus on this important aspect throughout the facility. Employees are encouraged to distance from others as well as wear masks prior to entering the facility.

- On the production lines, Lexan, Plexiglass and Stainless-Steel barriers have been installed between workstations on the lines as an added protection to employees. Employees are required to wear face coverings and face shields have been added to bump caps as well.

We will continue to monitor CDC, OSHA and North Carolina public health guidance as the outbreaks continues and implement additional protective measures if necessary and appropriate. If you have any questions regarding this response, please feel free to contact me at [REDACTED] thank you.

Attachments A-1, A-2

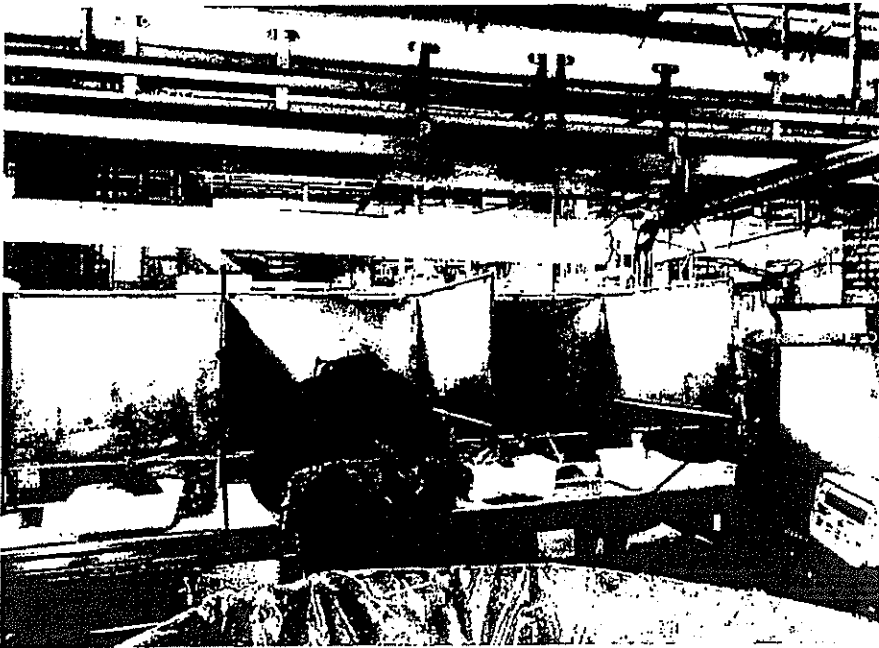
Sincerely,

A handwritten signature consisting of a large 'X' shape with a horizontal line through it, and a small checkmark to the right.

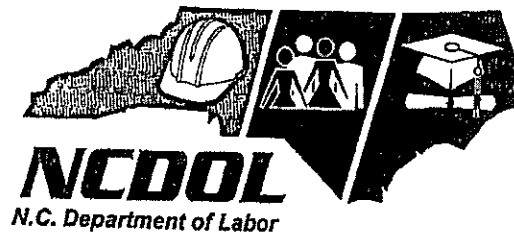
Mountaire Farms



A-1



A-2



CHERIE BERRY
COMMISSIONER OF LABOR

OCCUPATIONAL SAFETY AND HEALTH DIVISION
RALEIGH FIELD OFFICE

May 22, 2020

MOUNTAIRE FARMS OF NORTH CAROLINA CORP.
1100 East 3rd Street
Siler City, NC 27344

Re: Complaint Number 209665116

Dear [REDACTED]

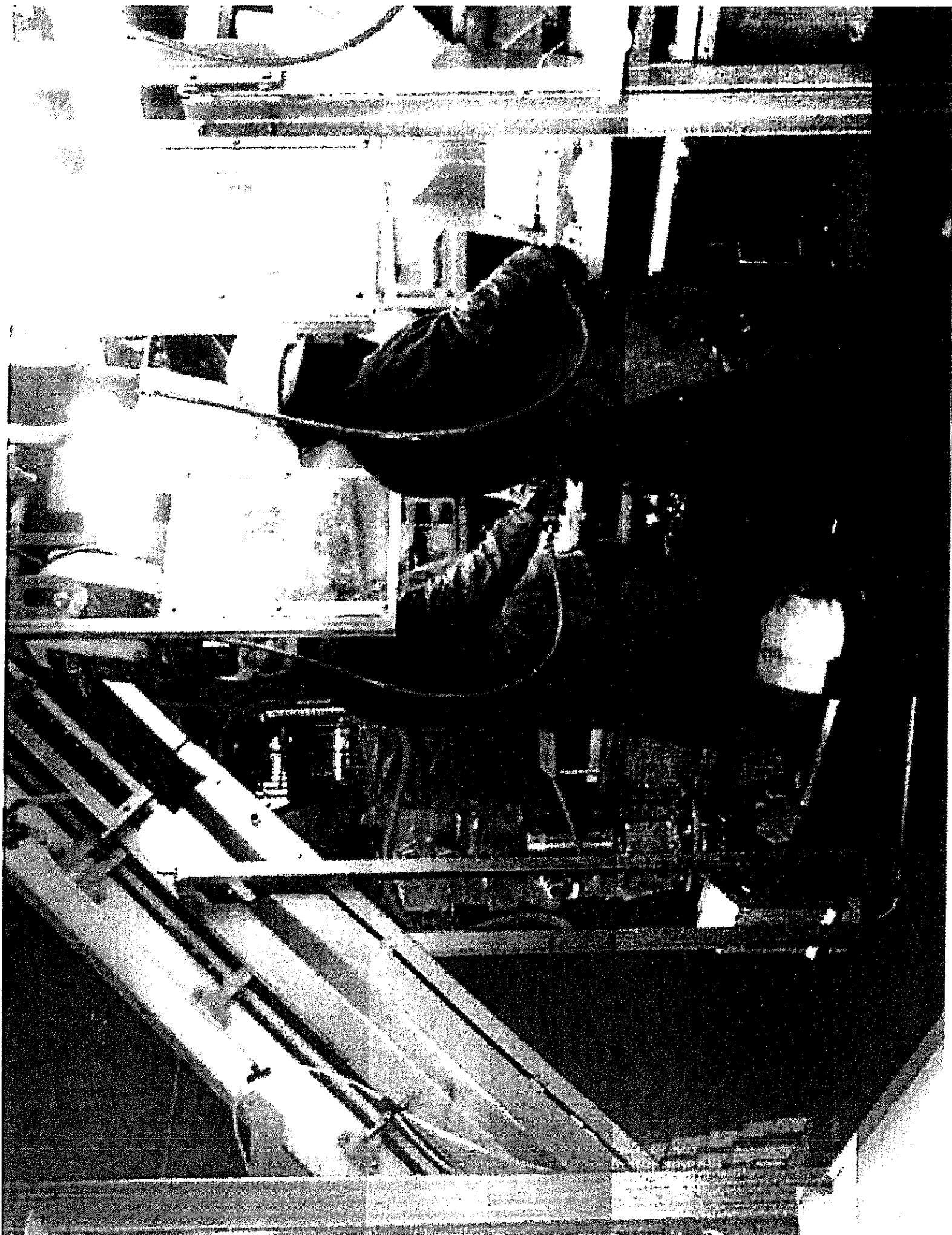
Your letter received on May 20, 2020 concerning the above referenced complaint has been reviewed. Based on the information you have provided, OSHNC feels the case can be closed on the grounds that the alleged hazardous conditions have been corrected or no longer exist. This letter does not prohibit OSHNC from initiating an inspection of this complaint.

Your actions on behalf of safety and health in the work place are appreciated.

Sincerely,

Charmaine Burnett for

John Jaskolka
District Supervisor



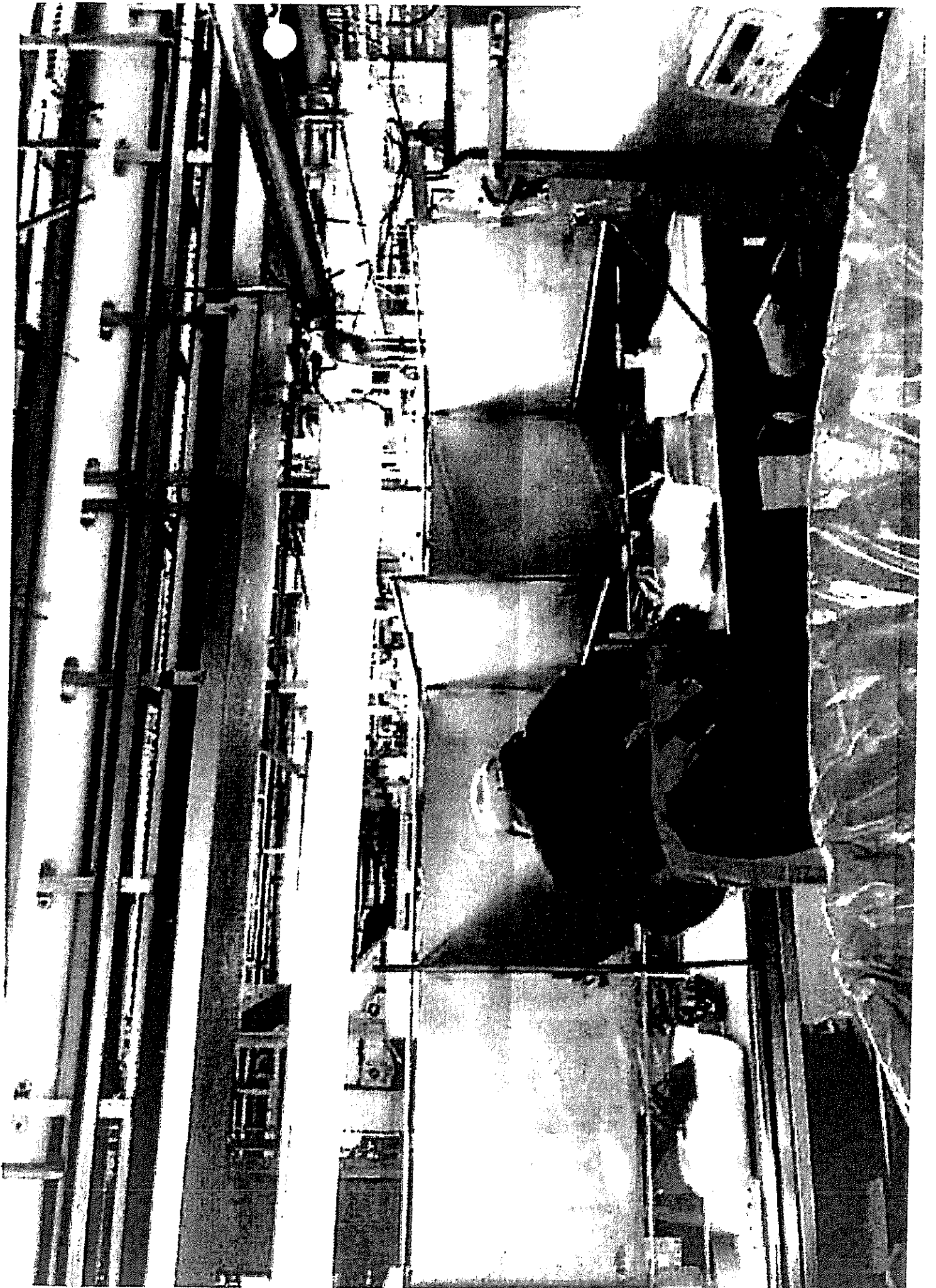


EXHIBIT 5

North Carolina Department of Labor
Occupational Safety and Health Division
Notice of Alleged Safety or Health Hazards

Friday 7/10/2020 16:52:26

Reporting ID	Complaint Number	Complaint Date/Time	Optional Number	City	County	Employer ID
0453710	209665710	03/25/2020 03:22 PM	1000	4200	037	
Establishment Name	MOUNTAIRE FARMS OF NORTH CAROLINA CORP.				Ownership	A Private Sector
Site Address	1100 E 3rd Street Siler City, NC 27344		Site Phone	919-663-1768	Site Fax	- -
Mailing Address	1100 E 3rd Street Siler City, NC 27344		Mailing Phone	919-663-1768	Mailing Fax	- -

X

	Fax	- -
Method Received	Email	
	Supervisor(s) Assigned	
	H9336	

Valid Complaint?	Formality	Intake	Send OSHA-7?	Primary SIC	Primary NAICS
Yes	Non-Formal	Deborah Samad		2015	311615
Complaint Classification	Health - Serious		Inspection Planned?	Priority	Close Complaint
			No		Yes

Hazard Description:


Employees could be exposed to the COVID-19 virus at the workplace, due to the employees not being provided with appropriate extra PPE, nor having the distance between them increased.

Hazard Location:

Facility.

Send Letter	Type	Date Letter Sent	Date Response Due	
Receive Letter	Type	Date Received	Evaluation	Abatement Date
Strategic Plan				
National Emphasis				
Local Emphasis				
Type	ID	Optional Information		

Complaint of Occupational Safety or Health Hazards

North Carolina Department of Labor Occupational Safety and Health Division		Complaint Number 209665710	Optional Number 1000
Employer Name MOUNTAIRE FARMS OF NORTH CAROLINA			
Site Location (Street, City, State, ZIP) 1100 E 3rd Street Siler City NC 27344			
Mailing Address (Street, City, State, ZIP) 1100 E 3rd Street Siler City NC 27344			
Management Official 		Telephone Number 919-663-1768	
Complaint Assigned To H9336		SIC/NAICS 2015 311615	
Hazard Description: Employees could be exposed to the COVID-19 virus at the workplace, due to the employees not being provided with appropriate extra PPE, nor having the distance between them increased.			
Hazard Location: Facility.			



CHERIE BERRY
COMMISSIONER OF LABOR

OCCUPATIONAL SAFETY AND HEALTH DIVISION
RALEIGH FIELD OFFICE

May 15, 2020

MOUNTAIRE FARMS OF NORTH CAROLINA CORP.
1100 E 3rd Street
Siler City, NC 27344

Re: Complaint Number 209665710

Dear [REDACTED]

Recently the North Carolina Department of Labor Occupational Safety and Health Division received a complaint alleging health and/or safety hazards related to **coronavirus disease 2019 (COVID-19)**, which is the illness caused by coronavirus, at your establishment at 1100 E 3rd Street, Siler City, NC 27344. The specific nature of the complaint is described in detail on the attached page.

Information about COVID-19, including guidance on preventing worker exposure and for preparing your workplace, can be found at the following locations:

- OSHA COVID-19 website – <https://www.osha.gov/SLTC/covid-19/>
- CDC COVID-19 website – <https://www.cdc.gov/coronavirus/2019-ncov/index.html>
- CDC info for healthcare workers – <https://www.cdc.gov/coronavirus/2019-nCoV/hcp/index.html>
- NC Division of Public Health website – <https://www.ncdhhs.gov/divisions/dph>
- NC's Stay at Home Order, including list of essential businesses - <https://files.nc.gov/governor/documents/files/EO121-Stay-at-Home-Order-3.pdf>

We have not determined whether the hazards, as alleged, exist at your workplace; and we are not conducting an inspection, at this time. However, since allegations of violations have been made, you should investigate the alleged conditions and make any necessary corrections or modifications. Within 7 working days of your receipt of this letter, please advise us, in writing, by certified mail, or submitting electronically of your finds and the action you have taken. Your response should be detailed stating specifically what action you have taken to correct each hazard. You should enclose any supporting documentation, such as monitoring results, equipment purchases, photographs etc.

The complainant has been advised of this preliminary response to the complaint and furnished a copy of this letter. An un-redacted employer response will be forwarded to the complainant. Please focus on providing documentation on the alleged conditions and do not include any comments or information about the person(s) that you believe filed the complaint. You should be aware that North Carolina General Statute 95-241 provides that "no person shall discriminate or take any retaliatory action against an employee because the employee in good faith does or threatens to file a claim or complaint, initiate any inquiry, investigation, proceeding or other action, or testify or provide information to any person with

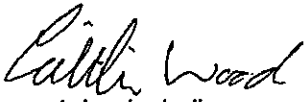
respect to ... the Occupational Safety and Health Act of North Carolina."

This letter is not a citation nor is it a notification of proposed penalty, which according to the Occupational Safety and Health Act, may be issued only after an inspection or investigation of the workplace. If we do not receive a response from you within 7 working days of your receipt of this letter indicating that appropriate action has been taken or that no hazard exists and why, an inspection may be conducted.

You are requested to post a copy of this letter and your response to it where it will be readily accessible for review by your employees. Please send your written response electronically to me at John.Jaskolka@labor.nc.gov, with a carbon copy to Charmaine.Burnett@labor.nc.gov. Supporting documentation, such as photos or safety policies, should be attached to the email if applicable.

If you have any questions about this letter, please contact me at 919-779-8570. Your personal support and interest in the safety and health of your employees are appreciated.

Sincerely,


John Jaskolka
District Supervisor



CHERIE BERRY
COMMISSIONER OF LABOR

OCCUPATIONAL SAFETY AND HEALTH DIVISION
RALEIGH FIELD OFFICE

May 15, 2020

X

Re: Complaint No. 209665710

Dear [REDACTED]

This letter is in response to your complaint concerning employee safety and/or health hazard(s) at MOUNTAIRE FARMS OF NORTH CAROLINA CORP. .

We have sent a letter to the employer requesting that appropriate action be taken to correct the situation. Enclosed is a copy of that letter for your information.

As the letter indicates, the employer has been given 7 working days to correct the hazard(s). Please notify me if no correction and/or modification has been made within 7 working days. We have not revealed your identity to the employer.

The North Carolina Occupational Safety and Health Act provides that no person shall discharge or discriminate against any employee because that employee has filed a complaint.

Your continued interest in workplace safety and health is appreciated. If you have any questions, about this letter, please contact John Jaskolka at 919-779-8570.

Sincerely,

Callie Wood

f John Jaskolka
District Supervisor

Enclosure(s)
/cw

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee

\$

Extra Services & Fees (check box, add fee as appropriate)

- ☐ Return Receipt (hardcopy) \$ _____
☐ Return Receipt (electronic) \$ _____
☐ Certified Mail Restricted Delivery \$ _____
☐ Adult Signature Required \$ _____
☐ Adult Signature Restricted Delivery \$ _____

5-15-20

Postmark
Here

Post

\$
Total

\$
Sent

Street

City, State, ZIP+4®

209665710-OS0117
MOUNTAIRE FARMS OF NORTH
CAROLINA CORP.
1100 E 3rd Street
Siler City, NC 27344

7016 2070 0001 1352 1471

SENDER: COMPLETE THIS SECTION

- Complete Items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

209665710-US0117
 MOUNTAIRE FARMS OF NORTH
 CAROLINA CORP.
 1100 E 3rd Street
 Siler City, NC 27344



9590 9402 4344 8190 0600 16

2 Article Number (Transfer from service label)

7016 2070 0001 1352 1471

COMPLETE THIS SECTION ON DELIVERY

- ☐ Agent
☒ Addressee

C. Date of Delivery

5-20-2020

- D. Is delivery address different from item 1? ☒ Yes
 If yes, enter delivery address below: ☐ No

P.O. Box 320
 Siler City NC 27344

3. Service Type

- ☐ Adult Signature
☐ Adult Signature Restricted Delivery
☐ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Mail
☐ Mail Restricted Delivery

- ☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Return Receipt for Merchandise
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery



May 20, 2020

Mr. John Jaskolka
N.C. Department of Labor
Occupational Safety & Health
Compliance Bureau
1101 Mail Center
Raleigh, N.C. 27699-1101

Re: Complaint Number 209665710

Dear Mr. Jaskolka,

We received the letter of complaint concerning alleged health and safety hazards at our Siler City Processing Facility located at 1101 East 3rd St. Siler City N.C. 27344. The following represent our response to the alleged hazards. While we appreciate the concerns expressed in the complaint with respect to COVID-19, we disagree with the allegation.

Hazard Location: Facility

Hazard Description: Employees could be exposed to the COVID-19 virus at the workplace due to not being provided extra PPE, nor having the distance between them increased.

Response:

Mountaire has made many improvements to improve social distancing practices and continues to focus on this important aspect throughout the facility.

Employees are encouraged to distance from others as well as wear masks prior to entering the facility.

- PPE is provided as required by standards to all employees as needed as well as replacement PPE when necessary. We have also distributed a variety of facial coverings to employees to meet CDC and state recommendations, these are given out as needed prior to entry into facility.
- On the production lines, Lexan, Plexiglass and Stainless-Steel barriers have been installed between workstations on the lines as an added protection to employees. Employees are required to wear face coverings and face shields have been added to bump caps as well.

We will continue to monitor CDC, OSHA and North Carolina public health guidance as the outbreak continues and implement additional protective measures if necessary and appropriate. If you have any questions regarding this response, please feel free to contact me at [REDACTED] thank you.

Attachments A-1, A-2

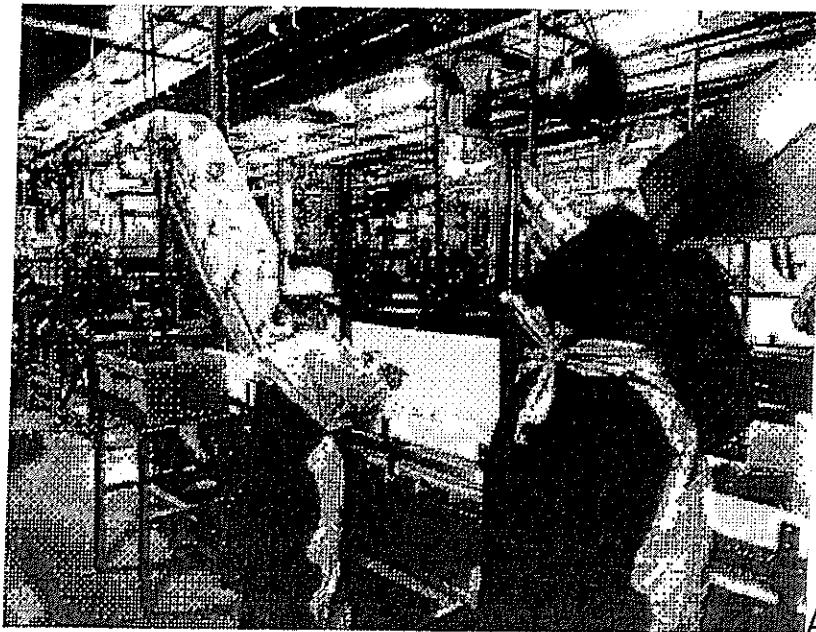
Sincerely,

A handwritten signature consisting of a stylized 'X' shape.

Mountaire Farms



A-1



A-2

Jaskolka, John

From: [REDACTED]
Sent: Friday, May 22, 2020 9:44 AM
To: Jaskolka, John
Cc: [REDACTED]
Subject: [External] Complaint Response 209665710
Attachments: Response 209665710.pdf

CAUTION: External email. Do not click links or open attachments unless you verify. Send all suspicious email as an attachment to report.spam@nc.gov.

Good morning,

Please see the attached response in reference to complaint 209665710, if you have any questions please contact me. Thank you.

X

Siler City, NC
Mountaire Farms

X



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CHERIE BERRY
COMMISSIONER OF LABOR

OCCUPATIONAL SAFETY AND HEALTH DIVISION
RALEIGH FIELD OFFICE

May 29, 2020

MOUNTAIRE FARMS OF NORTH CAROLINA CORP.
1100 E 3rd Street
Siler City, NC 27344

Re: Complaint Number 209665710

Dear [REDACTED]

Your letter received on 5/22/20 concerning the above referenced complaint has been reviewed. Based on the information you have provided, OSHNC feels the case can be closed on the grounds that the alleged hazardous conditions have been corrected or no longer exist. This letter does not prohibit OSHNC from initiating an inspection of this complaint.

Your actions on behalf of safety and health in the work place are appreciated.

Sincerely,

John Jaskolka for

John Jaskolka
District Supervisor



CHERIE BERRY
COMMISSIONER OF LABOR

OCCUPATIONAL SAFETY AND HEALTH DIVISION
RALEIGH FIELD OFFICE

May 29, 2020

X

Re: Complaint No. 209665710

Dear [REDACTED]

The North Carolina Department of Labor, Occupational Safety and Health Division (OSH) has conducted an investigation of MOUNTAIRE FARMS OF NORTH CAROLINA CORP., addressing your complaint.

Based on the investigation, the OSH Division feels the case can be closed on the grounds that the hazardous conditions have been corrected (or no longer exist). The employer's response, if applicable, is enclosed.

If you do not agree the hazards you complained about have been satisfactorily addressed, please contact me at 919-779-8570 to discuss your concerns. If your concerns continue following our discussion, you may seek a further review by contacting Compliance Bureau Chief Nicole Brown in writing at the address below.

North Carolina Department of Labor
Occupational Safety and Health Division
1101 Mail Service Center
Raleigh, NC 27699

Your action on behalf of safety and health in the workplace is sincerely appreciated.

Sincerely,

John Jaskolka for

John Jaskolka
District Supervisor

ATTENTION:



Everyone **MUST** wear a Face Mask
to enter this facility.

Todos **DEBEN** usar una máscara
facial para ingresar a esta instalación.

Tout le monde **DOIT** porter un masque
pour pénétrer dans cet établissement.



Thank You!



¡Gracias!



Mersi!

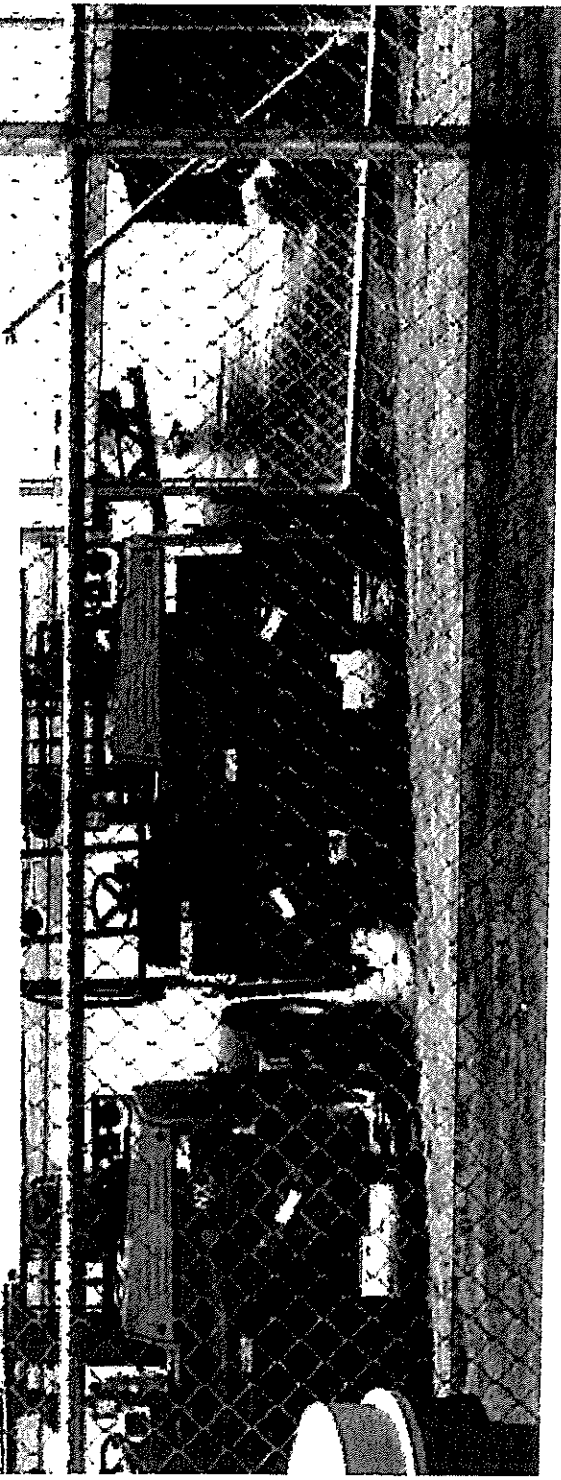




EXHIBIT 6

North Carolina Department of Labor
Occupational Safety and Health Division
Notice of Alleged Safety or Health Hazards

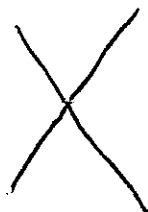
Monday 7/13/2020 14:56:35

Reporting ID	Complaint Number	Complaint Date/Time		Optional Number	City	County	Employer ID
0453710	209666494	03/26/2020	12:28 PM	1000	4200	037	

Establishment Name	MOUNTAIRE FARMS OF NORTH CAROLINA CORP.				Ownership	A Private Sector	
--------------------	---	--	--	--	-----------	------------------	--

Site Address	1100 East 3rd Street Siler City, NC 27344	Site Phone	919-663-1768	Site Fax	- -	
--------------	--	------------	--------------	----------	-----	--

Mailing Address	1100 East 3rd Street Siler City, NC 27344	Mailing Phone	919-663-1768	Mailing Fax	- -	
-----------------	--	---------------	--------------	-------------	-----	--

	Fax		- -
	Method Received		Telephone
			Supervisor(s) Assigned
			H9336

Valid Complaint?	Formality	Intake	Send OSHA-7?	Primary SIC	Primary NAICS
No	Non-Formal	Deborah Samad		2015	311615
Complaint Classification	Health - Serious		Inspection Planned?	Priority	Close Complaint
			No		Yes

Hazard Description:

Employees could be exposed to the COVID-19 virus at the workplace, due to some workers possibly having the infection.

Hazard Location:
Facility.

Send Letter	Type	Date Letter Sent	Date Response Due
-------------	------	------------------	-------------------

Receive Letter	Type	Date Received	Evaluation	Abatement Date
----------------	------	---------------	------------	----------------

Strategic Plan				
National Emphasis				
Local Emphasis				

Type	ID	Optional Information

Complaint Occupational Safety or Health Hazards

North Carolina Department of Labor Occupational Safety and Health Division	Complaint Number 209666494	Optional Number 1000
---	--------------------------------------	--------------------------------

Employer Name

MOUNTAIRE FARMS OF NORTH CAROLINA

Site Location (Street, City, State, ZIP)

1100 East 3rd Street

Siler City NC 27344

Mailing Address (Street, City, State, ZIP)

1100 East 3rd Street

Siler City NC 27344

Management Official

Telephone Number

919-663-1768

Complaint Assigned To

H9336

SIC/NAICS

2015 311615

Hazard Description:

Employees could be exposed to the COVID-19 virus at the workplace, due to some workers possibly having the infection.

Hazard Location:
Facility.



CHERIE BERRY
COMMISSIONER OF LABOR

OCCUPATIONAL SAFETY AND HEALTH DIVISION
RALEIGH FIELD OFFICE

May 20, 2020

MOUNTAIRE FARMS OF NORTH CAROLINA CORP.
1100 East 3rd Street
Siler City, NC 27344

Re: Complaint Number 209666494

Dear Management:

Recently the North Carolina Department of Labor Occupational Safety and Health Division received a complaint alleging health and/or safety hazards related to **coronavirus disease 2019 (COVID-19)**, which is the illness caused by coronavirus, at your establishment at 1100 East 3rd Street, Siler City, NC 27344. The specific nature of the complaint is described in detail on the attached page.

We have evaluated the alleged hazard and determined it is not covered by an OSHA standard, nor would it likely meet the criteria for a General Duty Clause citation under the OSH Act of North Carolina. However, since a complaint has been received, we are asking you to investigate the allegations and ensure your COVID-19 policies and procedures are consistent with the current guidelines published by OSHA, the Centers for Disease Control and Prevention (CDC), the NC Governor's Office, and other agencies as applicable to your industry and establishment. Links to the various websites can be found below:

- OSHA COVID-19 website – <https://www.osha.gov/SLTC/covid-19/>
- CDC COVID-19 website – <https://www.cdc.gov/coronavirus/2019-ncov/index.html>
- CDC info for healthcare workers – <https://www.cdc.gov/coronavirus/2019-nCoV/hcp/index.html>
- NC Division of Public Health website – <https://www.ncdhhs.gov/divisions/dph>
- NC's Stay at Home Order, including list of essential businesses - <https://files.nc.gov/governor/documents/files/EO121-Stay-at-Home-Order-3.pdf>

Since the allegation does not fall under an OSHA standard or the General Duty Clause, a written response to this letter is not required. We simply want you to investigate and, if needed, take corrective action to ensure employees are properly protected against COVID-19. The complainant has been furnished a copy of this letter. You should be aware that North Carolina General Statute 95-241 provides that "no person shall discriminate or take any retaliatory action against an employee because the employee in good faith does or threatens to file a claim or complaint, initiate any inquiry, investigation, inspection, proceeding or other action, or testify or provide information to any person with respect to ...the Occupational Safety and Health Act of North Carolina."

If you have any questions about this letter, please contact me via email at John.Jaskolka@labor.nc.gov or by phone at 919-779-8570. Your personal support and interest in the safety and health of your employees are appreciated.

Sincerely,

A handwritten signature in cursive script, appearing to read "John Jaskolka".

John Jaskolka
District Supervisor

EXHIBIT 7

North Carolina Department of Labor

Occupational Safety and Health Division

Notice of Alleged Safety or Health Hazards

Friday 7/10/2020 15:05:37

Reporting ID	Complaint Number	Complaint Date/Time	Optional Number	City	County	Employer ID
0453710	209661446	04/24/2020 11:09 AM	0872	4200	037	

Establishment Name	Mountaire Farms of North Carolina Corp.	Ownership	A Private Sector
Site Address	1100 East Third Street Siler City, NC 27344	Site Phone	919-663-1768
Mailing Address	P.O. Box 320 Siler City, NC 27344	Mailing Phone	919-663-1768
		Site Fax	999-999-9999
		Mailing Fax	999-999-9999

		Fax	- -
		Method Received	Federal Email
			Supervisor(s) Assigned
			H9336

Valid Complaint?	Formality	Intake	Send OSHA-??	Primary SIC	Primary NAICS
No	Non-Formal	Ric Schumann		2015	311615
Complaint Classification	Health - Serious	Inspection Planned?	Priority	Close Complaint	Yes
		No			

Hazard Description:

The facility has numerous confirmed cases of employees with COVID-19. Employees are extremely worried due to the fast rate the virus spreads and that they are still being required to come to work.

Hazard Location:

At the facility.

Send Letter	Type	Date Letter Sent	Date Response Due	
Receive Letter	Type	Date Received	Evaluation	Abatement Date
Strategic Plan				
National Emphasis				
Local Emphasis				

Complaint of Occupational Safety or Health Hazards

North Carolina Department of Labor Occupational Safety and Health Division		Complaint Number 209661446	Optional Number 0872
Employer Name Mountaire Farms of North Carolina Corp.			
Site Location (Street, City, State, ZIP) 1100 East Third Street Siler City NC 27344			
Mailing Address (Street, City, State, ZIP) P.O. Box 320 Siler City NC 27344			
Management Official		Telephone Number 919-663-1768	
Complaint Assigned To H9336		SIC/NAICS 2015 311615	
Hazard Description: The facility has numerous confirmed cases of employees with COVID-19. Employees are extremely worried due to the fast rate the virus spreads and that they are still being required to come to work.			
Hazard Location: At the facility.			



CHERIE BERRY
COMMISSIONER OF LABOR
April 29, 2020

OCCUPATIONAL SAFETY AND HEALTH DIVISION
RALEIGH FIELD OFFICE

Bradford Hammock, Attorney At Law for Mountaire Farms
Mountaire Farms of North Carolina Corp.
P.O. Box 1320
Millsboro, DE 19966

Re: Complaint Number 209661446

Dear Bradford Hammock:

Recently the North Carolina Department of Labor Occupational Safety and Health Division received a complaint alleging health and/or safety hazards related to **coronavirus disease 2019 (COVID-19)**, which is the illness caused by coronavirus, at your establishment at 1100 East Third Street, Siler City, NC 27344. The specific nature of the complaint is described in detail on the attached page.

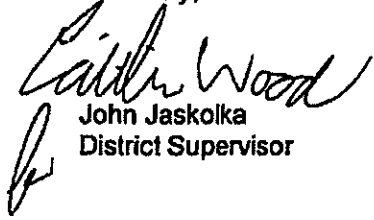
We have evaluated the alleged hazard and determined it is not covered by an OSHA standard, nor would it likely meet the criteria for a General Duty Clause citation under the OSH Act of North Carolina. However, since a complaint has been received, we are asking you to investigate the allegations and ensure your COVID-19 policies and procedures are consistent with the current guidelines published by OSHA, the Centers for Disease Control and Prevention (CDC), the NC Governor's Office, and other agencies as applicable to your industry and establishment. Links to the various websites can be found below:

- OSHA COVID-19 website – <https://www.osha.gov/SLTC/covid-19/>
- CDC COVID-19 website – <https://www.cdc.gov/coronavirus/2019-ncov/index.html>
- CDC info for healthcare workers – <https://www.cdc.gov/coronavirus/2019-nCoV/hcp/index.html>
- NC Division of Public Health website – <https://www.ncdhhs.gov/divisions/dph>
- NC's Stay at Home Order, including list of essential businesses - <https://files.nc.gov/governor/documents/files/EO121-Stay-at-Home-Order-3.pdf>

Since the allegation does not fall under an OSHA standard or the General Duty Clause, a written response to this letter is not required. We simply want you to investigate and, if needed, take corrective action to ensure employees are properly protected against COVID-19. The complainant has been furnished a copy of this letter. You should be aware that North Carolina General Statute 95-241 provides that "no person shall discriminate or take any retaliatory action against an employee because the employee in good faith does or threatens to file a claim or complaint, initiate any inquiry, investigation, inspection, proceeding or other action, or testify or provide information to any person with respect tothe Occupational Safety and Health Act of North Carolina."

If you have any questions about this letter, please contact me via email at John.Jaskolka@labor.nc.gov or by phone at 919-779-8570. Your personal support and interest in the safety and health of your employees are appreciated.

Sincerely,

A handwritten signature in cursive script, appearing to read "John Jaskolka".

John Jaskolka
District Supervisor

EXHIBIT 8

North Carolina Department of Labor

Occupational Safety and Health Division

Notice of Alleged Safety or Health Hazards

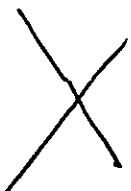
Friday 7/10/2020 15:04:23

Reporting ID	Complaint Number	Complaint Date/Time		Optional Number	City	County	Employer ID
0453710	209662337	04/30/2020	08:00 AM	0961	4200	037	

Establishment Name	Mountaire Farms Inc.	Ownership	A Private Sector
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Site Address	1101 E. 3rd St. Siler City, NC 27344	Site Phone	- -	Site Fax	- -
--------------	---	------------	-----	----------	-----

Mailing Address	PO BOX 320 Siler City, NC 27344	Mailing Phone	- -	Mailing Fax	- -
-----------------	------------------------------------	---------------	-----	-------------	-----

		Fax	- -
		Method Received	Email
		Supervisor(s) Assigned	
		H9336	

Valid Complaint?	Formality	Intake	Send OSHA-7?	Primary SIC	Primary NAICS
No	Non-Formal	Jeffrey Mitchell		2015	311615
Complaint Classification	Health - Serious		Inspection Planned?	Priority	Close Complaint
			No		Yes

Hazard Description:

There have been confirmed COVID-19 cases and the employer has not shutdown establishment.

Hazard Location:

Inside facility

Send Letter	Type	Date Letter Sent	Date Response Due

Receive Letter	Type	Date Received	Evaluation	Abatement Date

Strategic Plan	
National Emphasis	
Local Emphasis	

Complaint of Occupational Safety or Health Hazards

North Carolina Department of Labor

Occupational Safety and Health Division

Complaint Number

209662337

Optional Number

0961

Employer Name

Mountaire Farms Inc.

Site Location (Street, City, State, ZIP)

1101 E. 3rd St.

Siler City

NC 27344

Mailing Address (Street, City, State, ZIP)

PO BOX 320

Siler City

NC 27344

Management Official

Telephone Number

Complaint Assigned To

H9336

SIC/NAICS

2015

311615

Hazard Description:

There have been confirmed COVID-19 cases and the employer has not shutdown establishment.

Hazard Location:

Inside facility



CHERIE BERRY
COMMISSIONER OF LABOR

OCCUPATIONAL SAFETY AND HEALTH DIVISION
RALEIGH FIELD OFFICE

May 01, 2020

Mountaire Farms Inc.
PO BOX 320
Siler City, NC 27344

Re: Complaint Number 209662337

Dear [REDACTED]

Recently the North Carolina Department of Labor Occupational Safety and Health Division received a complaint alleging health and/or safety hazards related to **coronavirus disease 2019 (COVID-19)**, which is the illness caused by coronavirus, at your establishment at 1101 E. 3rd St., Siler City, NC 27344. The specific nature of the complaint is described in detail on the attached page.

We have evaluated the alleged hazard and determined it is not covered by an OSHA standard, nor would it likely meet the criteria for a General Duty Clause citation under the OSH Act of North Carolina. However, since a complaint has been received, we are asking you to investigate the allegations and ensure your COVID-19 policies and procedures are consistent with the current guidelines published by OSHA, the Centers for Disease Control and Prevention (CDC), the NC Governor's Office, and other agencies as applicable to your industry and establishment. Links to the various websites can be found below:

- OSHA COVID-19 website – <https://www.osha.gov/SLTC/covid-19/>
- CDC COVID-19 website – <https://www.cdc.gov/coronavirus/2019-ncov/index.html>
- CDC info for healthcare workers – <https://www.cdc.gov/coronavirus/2019-nCoV/hcp/index.html>
- NC Division of Public Health website – <https://www.ncdhhs.gov/divisions/dph>
- NC's Stay at Home Order, including list of essential businesses - <https://files.nc.gov/governor/documents/files/EO121-Stay-at-Home-Order-3.pdf>

Since the allegation does not fall under an OSHA standard or the General Duty Clause, a written response to this letter is not required. We simply want you to investigate and, if needed, take corrective action to ensure employees are properly protected against COVID-19. The complainant has been furnished a copy of this letter. You should be aware that North Carolina General Statute 95-241 provides that "no person shall discriminate or take any retaliatory action against an employee because the employee in good faith does or threatens to file a claim or complaint, initiate any inquiry, investigation, inspection, proceeding or other action, or testify or provide information to any person with respect tothe Occupational Safety and Health Act of North Carolina."

If you have any questions about this letter, please contact me via email at John.Jaskolka@labor.nc.gov or by phone at 919-779-8570. Your personal support and interest in the safety and health of your employees are appreciated.

Sincerely,

A handwritten signature in cursive script, appearing to read "John Jaskolka for".

John Jaskolka
District Supervisor

EXHIBIT 9

Complaint of Occupational Safety or Health Hazards

North Carolina Department of Labor Occupational Safety and Health Division	Complaint Number 209659952	Optional Number 0722
---	--------------------------------------	--------------------------------

Employer Name

Mountaire Farms of North Carolina Corp

Site Location (Street, City, State, ZIP)

1101 E 3rd St

Siler City

NC 27344

Mailing Address (Street, City, State, ZIP)

PO Box 320

Siler City

NC 27344

Management Official

Telephone Number

Complaint Assigned To

H9336

SIC/NAICS

2015

311615

Hazard Description:

Sometimes there are up to 15 people in the shipping office (very small, closed in space) at a time. Cafeteria is not safe at all and workers elbow to elbow on production floor. Minimal safety precautions during the Coronavirus.

Hazard Location:

Inside facility

North Carolina Department of Labor

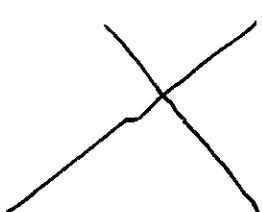
Occupational Safety and Health Division

Notice of Alleged Safety or Health Hazards

Wednesday 6/3/2020 13:24:41

Reporting ID	Complaint Number	Complaint Date/Time		Optional Number	City	County	Employer ID
0453710	209659952	04/10/2020	10:16 AM	0722	4200	037	

Establishment Name	Mountaire Farms of North Carolina Corp				Ownership A Private Sector		
Site Address	1101 E 3rd St Siler City, NC 27344			Site Phone	- -	Site Fax	- -
Mailing Address	PO Box 320 Siler City, NC 27344			Mailing Phone	- -	Mailing Fax	- -



	Phone		Fax	- -
	Method Received		Email	
			Supervisor(s) Assigned	
				H9336

Valid Complaint?	Formality	Intake	Send OSHA-7?	Primary SIC	Primary NAICS
Yes	Non-Formal	Jeffrey Mitchell	No	2015	311615
Complaint Classification	Health - Serious		Inspection Planned?	Priority	Close Complaint
			No		Yes

Hazard Description:

Sometimes there are up to 15 people in the shipping office (very small, closed in space) at a time. Cafeteria is not safe at all and workers elbow to elbow on production floor. Minimal safety precautions during the Coronavirus.

Hazard Location:

Inside facility

Send Letter	Type	Date Letter Sent	Date Response Due
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Receive Letter	Type	Date Received	Evaluation	Abatement Date
----------------	------	---------------	------------	----------------

Strategic Plan	
National Emphasis	
Local Emphasis	

Type	ID	Optional Information
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U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee

\$

Extra Services & Fees (check box, add fee as appropriate)

- | | | |
|--|----|-------|
| <input type="checkbox"/> Return Receipt (hardcopy) | \$ | _____ |
| <input type="checkbox"/> Return Receipt (electronic) | \$ | _____ |
| <input type="checkbox"/> Certified Mail Restricted Delivery | \$ | _____ |
| <input type="checkbox"/> Adult Signature Required | \$ | _____ |
| <input type="checkbox"/> Adult Signature Restricted Delivery | \$ | _____ |

Postmark
Here

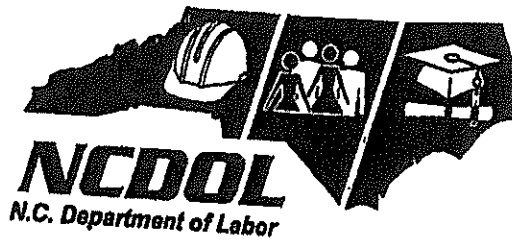
Postage _____

Complaint Number 209659952

Mountaire Farms of North Carolina Corp
PO Box 320
Siler City, NC 27344

4/23/20

7018 0360 0000 0960 8102
1605 1292 2671 5091



CHERIE BERRY
COMMISSIONER OF LABOR

April 23, 2020

OCCUPATIONAL SAFETY AND HEALTH DIVISION
RALEIGH FIELD OFFICE

Mountaire Farms of North Carolina Corp
PO Box 320
Siler City, NC 27344

Re: Complaint Number 209659952

Dear [REDACTED]

Recently the North Carolina Department of Labor Occupational Safety and Health Division received a complaint alleging health and/or safety hazards related to coronavirus disease 2019 (COVID-19), which is the illness caused by coronavirus, at your establishment at 1101 E 3rd St, Siler City, NC 27344.

The specific nature of the complaint is described in detail on the attached page.

Information about COVID-19, including guidance on preventing worker exposure and for preparing your workplace, can be found at the following locations:

- OSHA COVID-19 website – <https://www.osha.gov/SLTC/covid-19/>
- CDC COVID-19 website – <https://www.cdc.gov/coronavirus/2019-ncov/index.html>
- CDC info for healthcare workers – <https://www.cdc.gov/coronavirus/2019-nCoV/hcp/index.html>
- NC Division of Public Health website – <https://www.ncdhhs.gov/divisions/dph>
- NC's Stay at Home Order, including list of essential businesses - <https://files.nc.gov/governor/documents/files/EO121-Stay-at-Home-Order-3.pdf>

We have not determined whether the hazards, as alleged, exist at your workplace; and we are not conducting an inspection, at this time. However, since allegations of violations have been made, you should investigate the alleged conditions and make any necessary corrections or modifications. Within 7 working days of your receipt of this letter, please advise us, in writing, by certified mail, or submitting electronically of your finds and the action you have taken. Your response should be detailed stating specifically what action you have taken to correct each hazard. You should enclose any supporting documentation, such as monitoring results, equipment purchases, photographs etc.

The complainant has been advised of this preliminary response to the complaint and furnished a copy of this letter. An un-redacted employer response will be forwarded to the complainant. Please focus on providing documentation on the alleged conditions and do not include any comments or information about the person(s) that you believe filed the complaint. You should be aware that North Carolina General Statute 95-241 provides that "no person shall discriminate or take any retaliatory action against

an employee because the employee in good faith does or threatens to file a claim or complaint, initiate any inquiry, investigation, proceeding or other action, or testify or provide information to any person with respect to ... the Occupational Safety and Health Act of North Carolina."

This letter is not a citation nor is it a notification of proposed penalty, which according to the Occupational Safety and Health Act, may be issued only after an inspection or investigation of the workplace. If we do not receive a response from you within 7 working days of your receipt of this letter indicating that appropriate action has been taken or that no hazard exists and why, an inspection may be conducted.

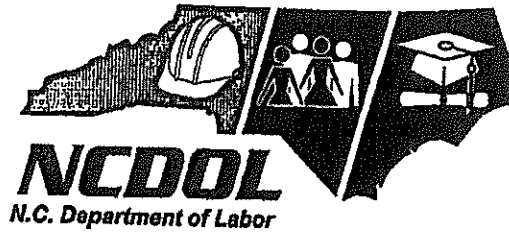
You are requested to post a copy of this letter and your response to it where it will be readily accessible for review by your employees. Please send your written response electronically to me at John.Jaskolka@labor.nc.gov, with a carbon copy to Charmaine.Burnett@labor.nc.gov. Supporting documentation, such as photos or safety policies, should be attached to the email if applicable.

If you have any questions about this letter, please contact me at 919-779-8570. Your personal support and interest in the safety and health of your employees are appreciated.

Sincerely,



John Jaskolka
District Supervisor



CHERIE BERRY
COMMISSIONER OF LABOR

OCCUPATIONAL SAFETY AND HEALTH DIVISION
RALEIGH FIELD OFFICE

April 23, 2020

X

Re: Complaint No. 209659952

Dear [REDACTED]

This letter is in response to your complaint concerning employee safety and/or health hazard(s) at Mountaire Farms of North Carolina Corp .

We have sent a letter to the employer requesting that appropriate action be taken to correct the situation. Enclosed is a copy of that letter for your information.

As the letter indicates, the employer has been given 7 working days to correct the hazard(s). Please notify me if no correction and/or modification has been made within 7 working days. We have not revealed your identity to the employer.

The North Carolina Occupational Safety and Health Act provides that no person shall discharge or discriminate against any employee because that employee has filed a complaint.

Your continued interest in workplace safety and health is appreciated. If you have any questions, about this letter, please contact John Jaskolka at 919-779-8570.

Sincerely,

Charmaine Burnett per

John Jaskolka
District Supervisor

Enclosure(s)

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to: _____

Complaint Number 209659952

Montaire Farms of North Carolina Corp
PO Box 320
Siler City, NC 27344



9590 9402 4344 8190 0812 95

7018 0360 0000 2671 5091

COMPLETE THIS SECTION ON DELIVERY

- ☐ Agent
- ☐ Addressee

C. Date of Delivery

MAY 28 2020

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below ☐ No

MAY 4 2020

NCDOL-OSH COMPLIANCE

RALEIGH FIELD OFFICE

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Delivery Restricted Delivery
- ☐ Insured Mail Restricted Delivery (over \$500)
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Jaskolka, John

From: [REDACTED]
Sent: Monday, May 4, 2020 11:09 AM
To: Jaskolka, John
Cc: [REDACTED]
Subject: [External] Complaint 209659952 Response
Attachments: Complaint 209659952.pdf

CAUTION: External email. Do not click links or open attachments unless you verify. Send all suspicious email as an attachment to reportspam@TCL.com.

Good morning,

Please find our response to complaint 209659952 attached. If you have any questions please free to contact me. Thank you.



Siler City, NC
Moutaire Farms
Office: (919)-663-6660
Cell: (910)-674-7814



CONFIDENTIALITY NOTICE: The information contained in this email and any attachments is privileged and confidential and protected from disclosure. If you are not the intended recipient of this email or the attachments, do not read the message or read or open any attachment. Any disclosure, copying, distribution or use of this email or any attachment is strictly prohibited. If you are not the intended recipient, please immediately notify the sender and permanently delete the message from your system.



April 29, 2020

Mr. John Jaskolka
N.C. Department of Labor
Occupational Safety & Health
Compliance Bureau
1101 Mail Center
Raleigh, N.C. 27699-1101

Re: Complaint Number 209659952

Dear Mr. Jaskolka,

We received the letter of complaint concerning alleged health and safety hazards at our Siler City Processing Facility located at 1101 East 3rd St. Siler City N.C. 27344. The following represent our response to the three alleged hazards. While we appreciate the concerns expressed in the complaint with respect to COVID-19, we disagree with the allegations.

Hazard Location: Shipping Office

Hazard Description:

- 1. Sometimes there are up to 15 people in the shipping office (very small, closed in space) at a time.**

- **Contrary to the allegations in the complaint, there are only four employees that work in the office area and, there is a minimum of 6' between each office person. Traffic into and out of the office is controlled by management and, orders for loading can be obtained through a window located in the vestibule. There is no need for other personnel to enter the Shipping office area unless requested by management. We will reiterate to office staff the need to minimize the number of individuals in the office area at one time.**

(See picture A1, A2)

- 2. Cafeteria is not safe at all and workers elbow to elbow on production floor.**

- **With respect to both the cafeteria and production floor Mountaire has taken steps to segregate employees:**
 - **In the cafeteria there are dividers on each table segregating the sitting areas for each person as well as markings in the serving line to establish social distancing.**
 - **On the production lines Lexan and Plexiglass barriers have been installed between workstations on the lines as an added protection to employees. Employees are required to wear face coverings and shields have been added to bump caps as well.**

(See pictures A -3, A-4, A-5, A-6)

3. Minimal safety precautions during the Coronavirus

- With the Coronavirus pandemic multiple safety precautions have been developed and implemented to protect employees. We have given masks to all employees, visitors, and contractors, temperature screening occurs prior to entry as well as screening questions. Throughout the welfare areas there are adequate sanitizing wipes and hand sanitizing areas made available for use by our employees and visitors.

(See attachment A-7, A-8)

We will continue to monitor CDC, OSHA and North Carolina public health guidance as the outbreaks continues and implement additional protective measures if necessary and appropriate. If you have any questions regarding this response, please feel free to contact me at [REDACTED], thank you.

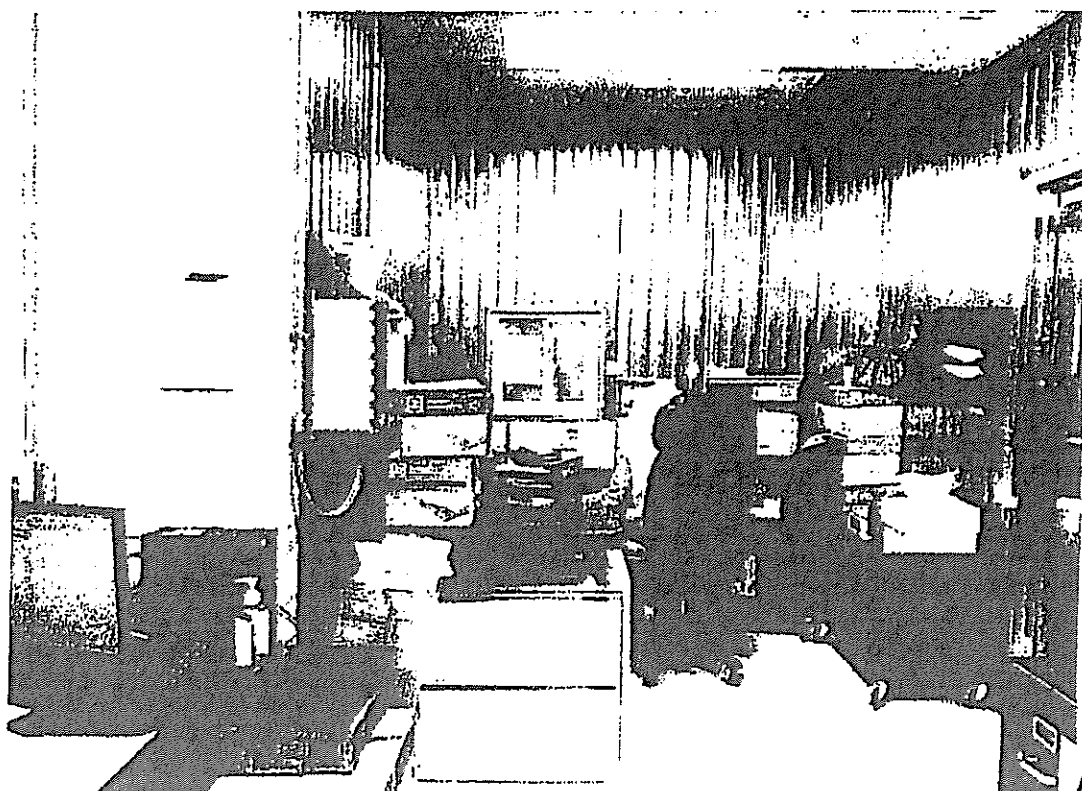
Sincerely,



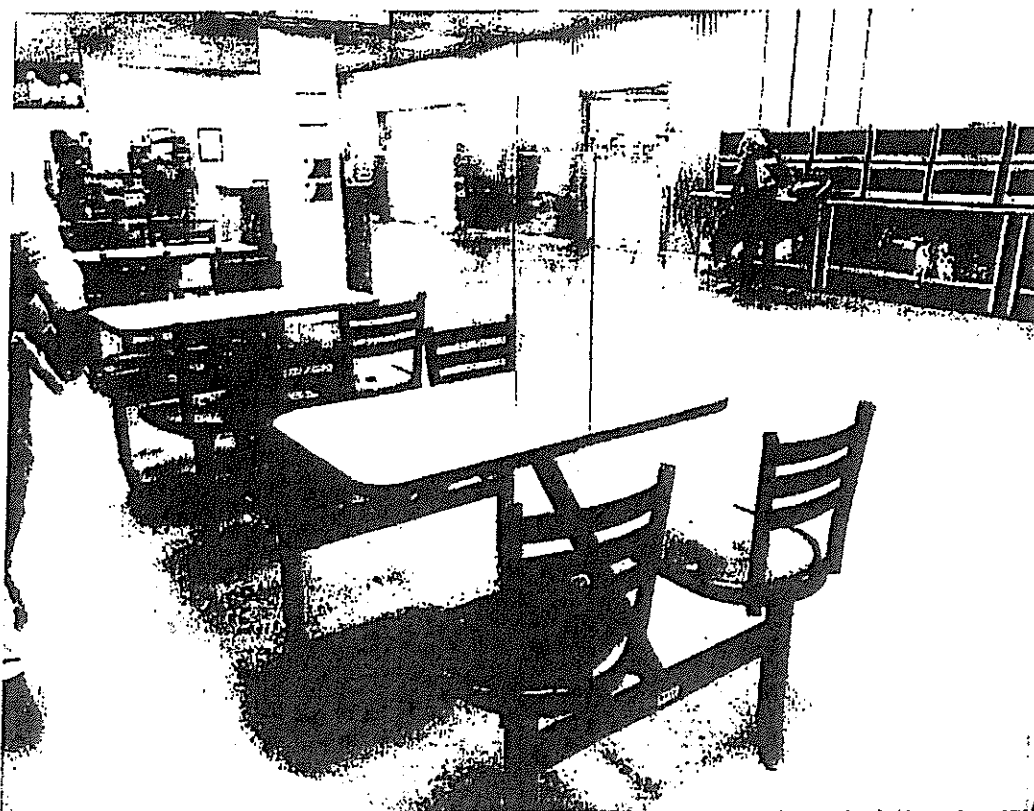
Mountaire Farms



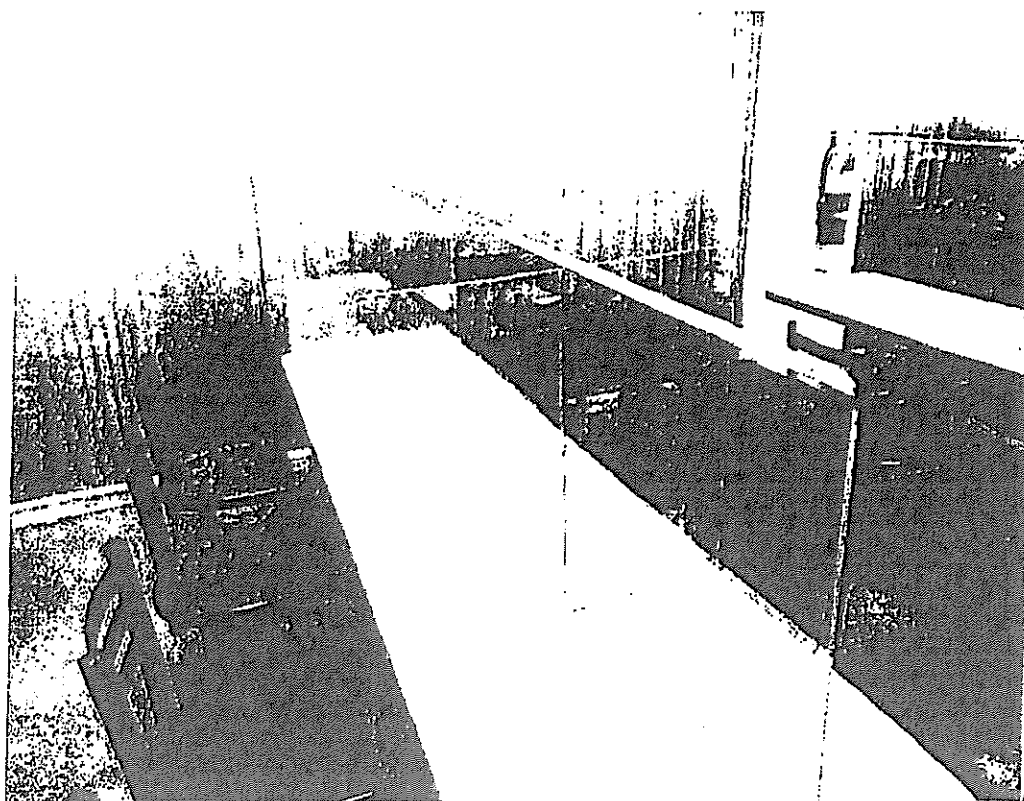
A-1



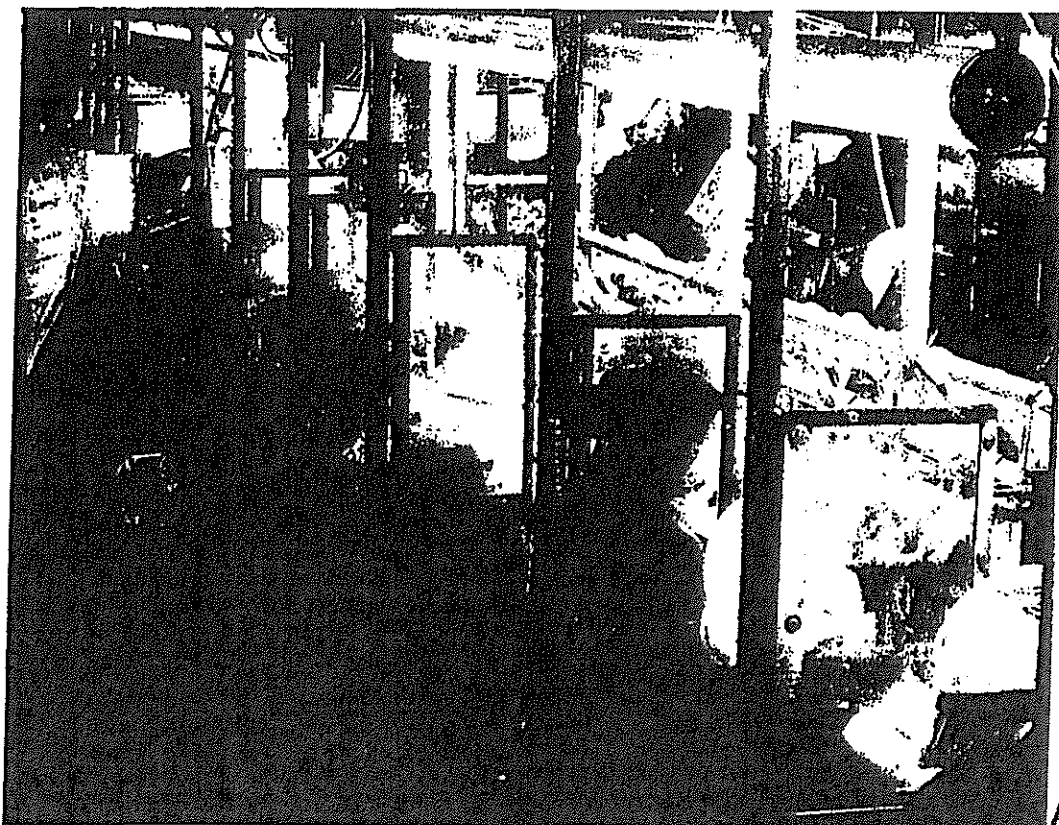
A-2



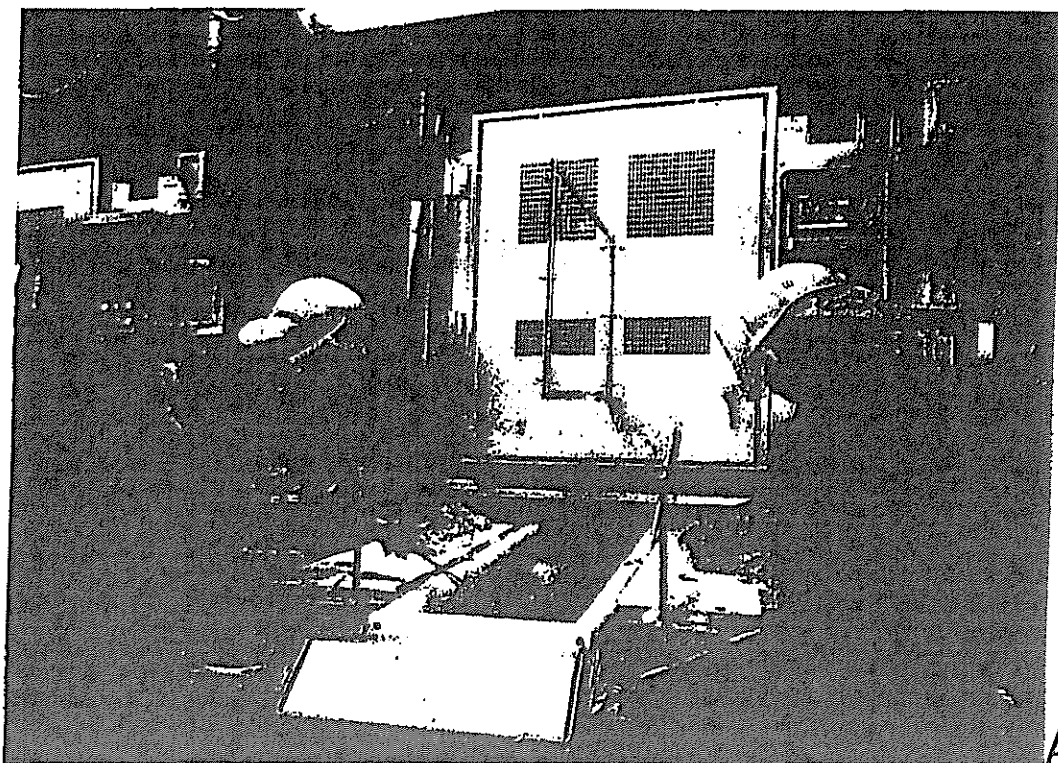
A-3



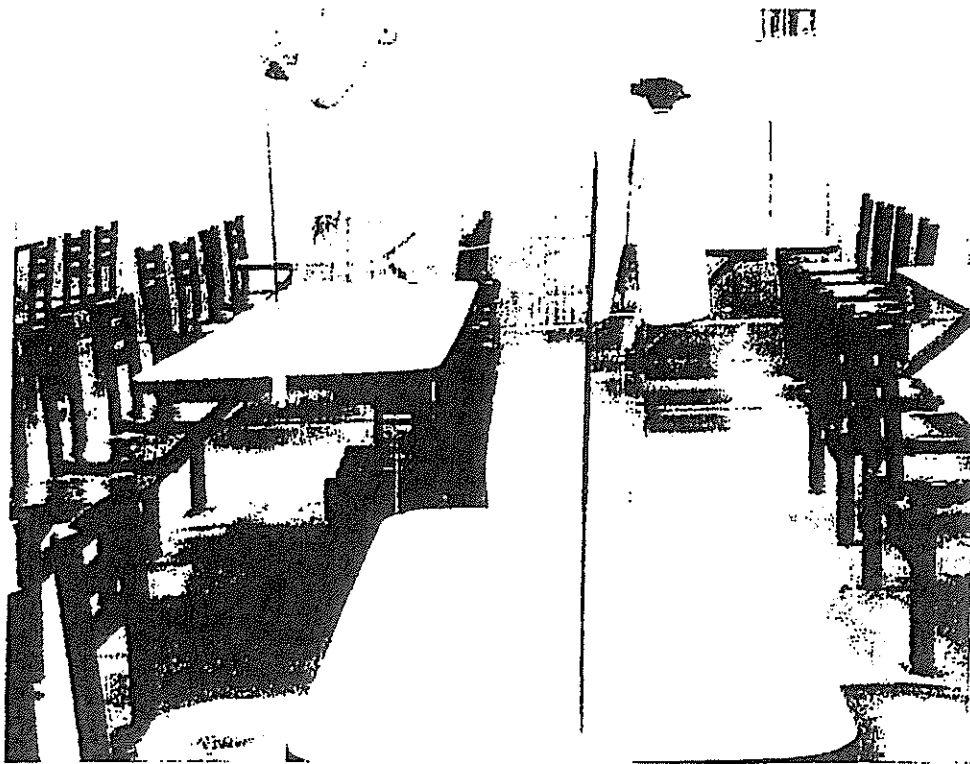
A-4



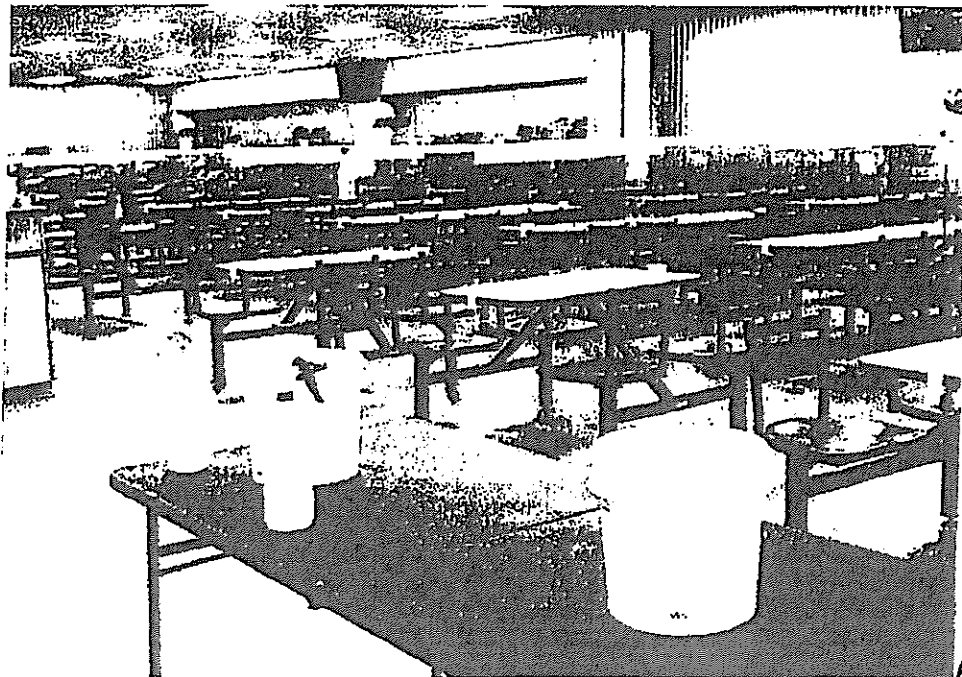
A-5



A-6



A-7



A-8



CHERIE BERRY
COMMISSIONER OF LABOR

OCCUPATIONAL SAFETY AND HEALTH DIVISION
RALEIGH FIELD OFFICE

May 6, 2020

Mountaire Farms of North Carolina Corp
PO Box 320
Siler City, NC 27344

Re: Complaint Number 209659952

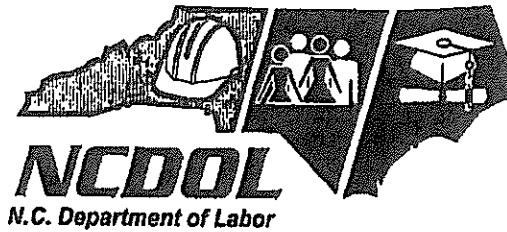
Dear [REDACTED]

Your letter received on May 4, 2020 concerning the above referenced complaint has been reviewed. Based on the information you have provided, OSHNC feels the case can be closed on the grounds that the alleged hazardous conditions have been corrected or no longer exist. This letter does not prohibit OSHNC from initiating an inspection of this complaint.

Your actions on behalf of safety and health in the workplace are appreciated.

Sincerely,

Caitlin Wood
John Jaskolka
District Supervisor



CHERIE BERRY
COMMISSIONER OF LABOR

OCCUPATIONAL SAFETY AND HEALTH DIVISION
RALEIGH FIELD OFFICE

May 6, 2020

Re: Complaint No. 209659952

Dear 

The North Carolina Department of Labor, Occupational Safety and Health Division (OSH) has conducted an investigation of Mountaire Farms of North Carolina Corp, addressing your complaint.

Based on the investigation, the OSH Division feels the case can be closed on the grounds that the hazardous conditions have been corrected (or no longer exist). The employer's response, if applicable, is enclosed.

If you do not agree the hazards you complained about have been satisfactorily addressed, please contact me at 919-779-8570 to discuss your concerns. If your concerns continue following our discussion, you may seek a further review by contacting Compliance Bureau Chief Nicole Brown in writing at the address below.

North Carolina Department of Labor
Occupational Safety and Health Division
1101 Mail Service Center
Raleigh, NC 27699

Your action on behalf of safety and health in the workplace is sincerely appreciated.

Sincerely,



John Jaskolka
District Supervisor

Establishment

Mountaire Farms of North Carolina Corp

Photo #

1

Complaint Date

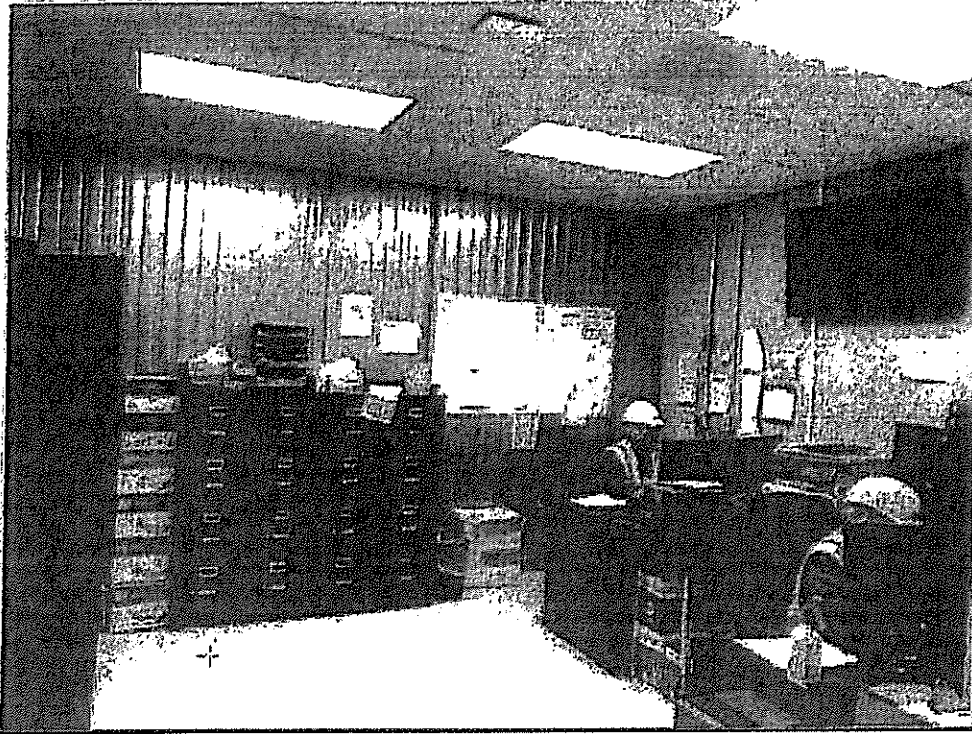
04/10/2020

CSHO ID

Complaint #

209659952

A1

☐ Original Size

Establishment

Mountaire Farms of North Carolina Corp

Photo #

2

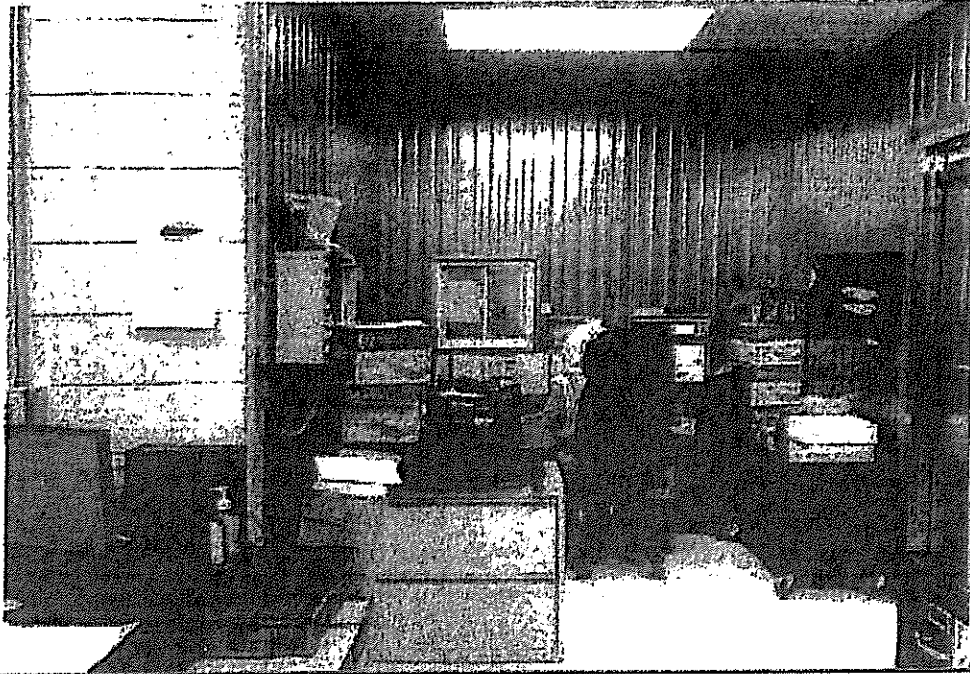
Complaint Date

04/10/2020

CSHO ID**Complaint #**

209659952

A2

 Original Size

Establishment

Mountaire Farms of North Carolina Corp

Photo #

3

Complaint Date

04/10/2020

CSHO ID

Complaint #

209659952

A3

☐ Original Size

Establishment

Mountaire Farms of North Carolina Corp

Photo #

4

Complaint Date

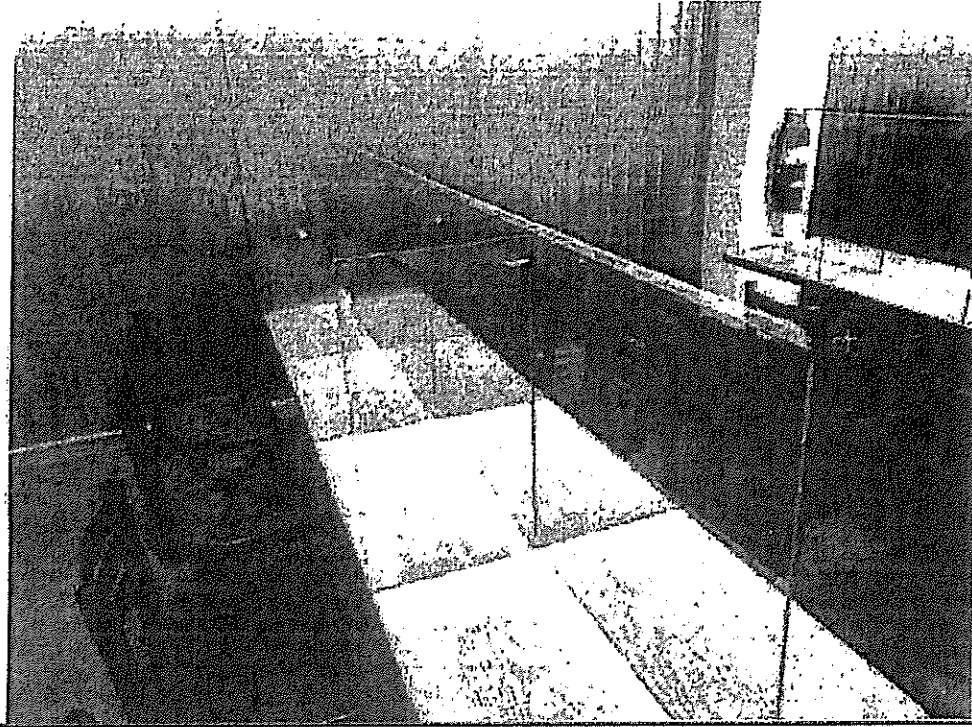
04/10/2020

CSHO ID

Complaint #

209659952

A4

☐ Original Size

Establishment**Mountaire Farms of North Carolina Corp****Photo #**

5

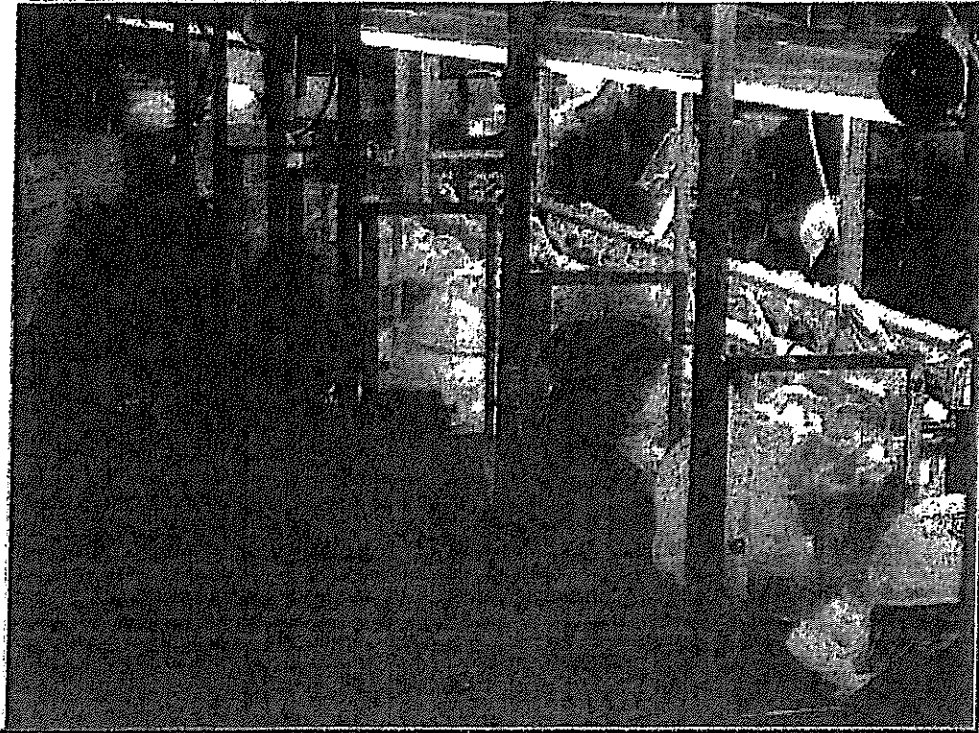
Complaint Date

04/10/2020

CSHO ID**Complaint #**

209659952

A5

☐ Original Size

Establishment

Mountaire Farms of North Carolina Corp

Photo #

6

Complaint Date

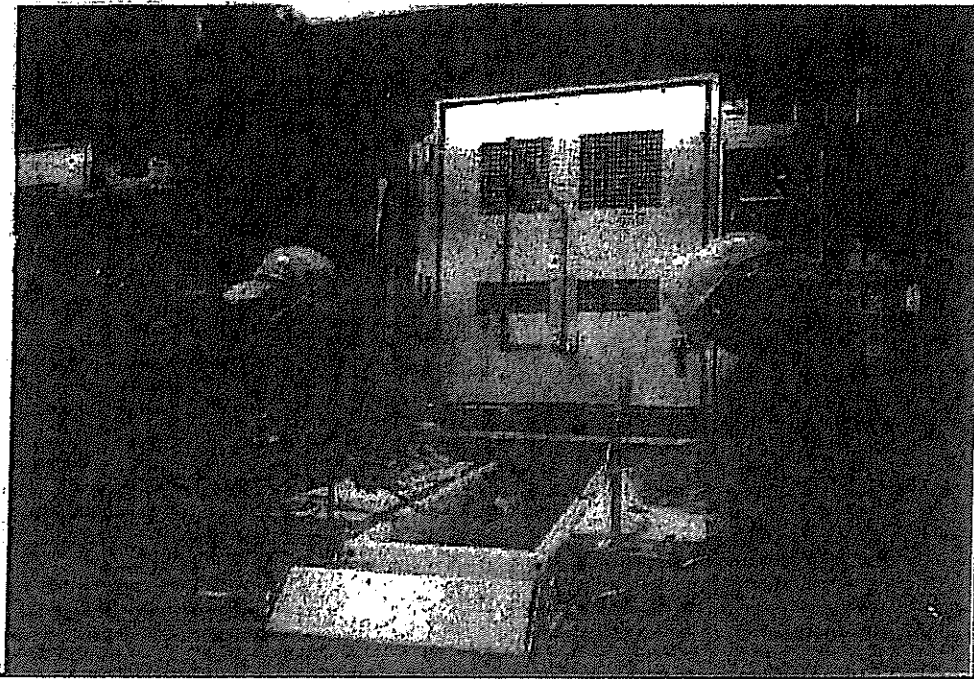
04/10/2020

CSHO ID

Complaint #

209659952

A6

 Original Size

Establishment

Mountaire Farms of North Carolina Corp

Photo #

7

Complaint Date

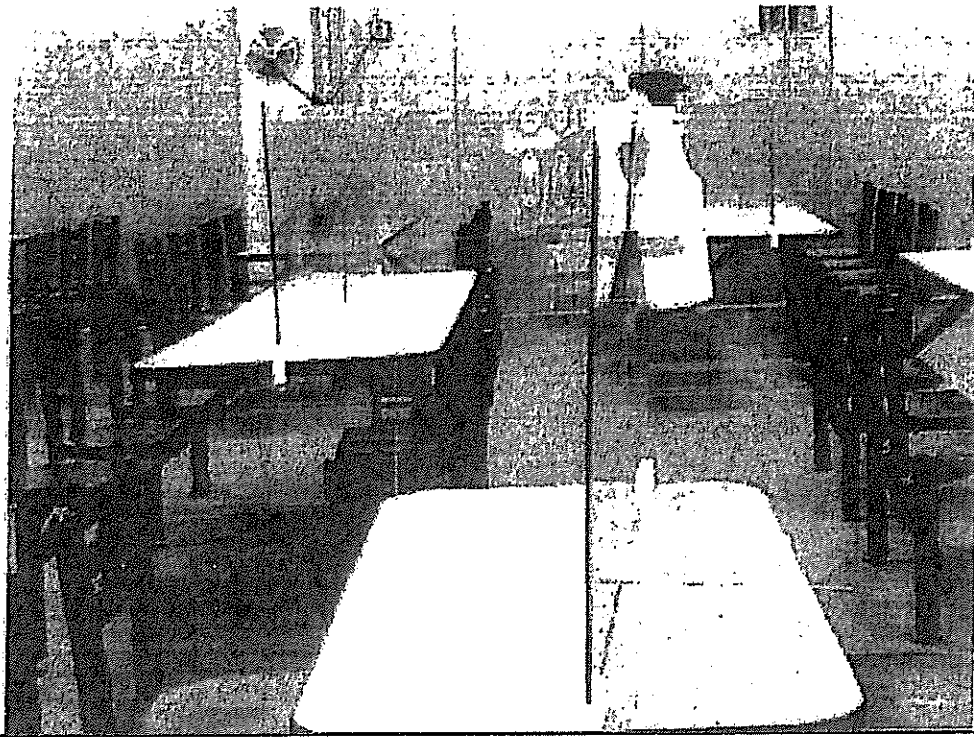
04/10/2020

CSHO ID

Complaint #

209659952

A7

☐ Original Size

Establishment

Mountaire Farms of North Carolina Corp

Photo #

8

Complaint Date

04/10/2020

CSHO ID

Complaint #

209659952

A8

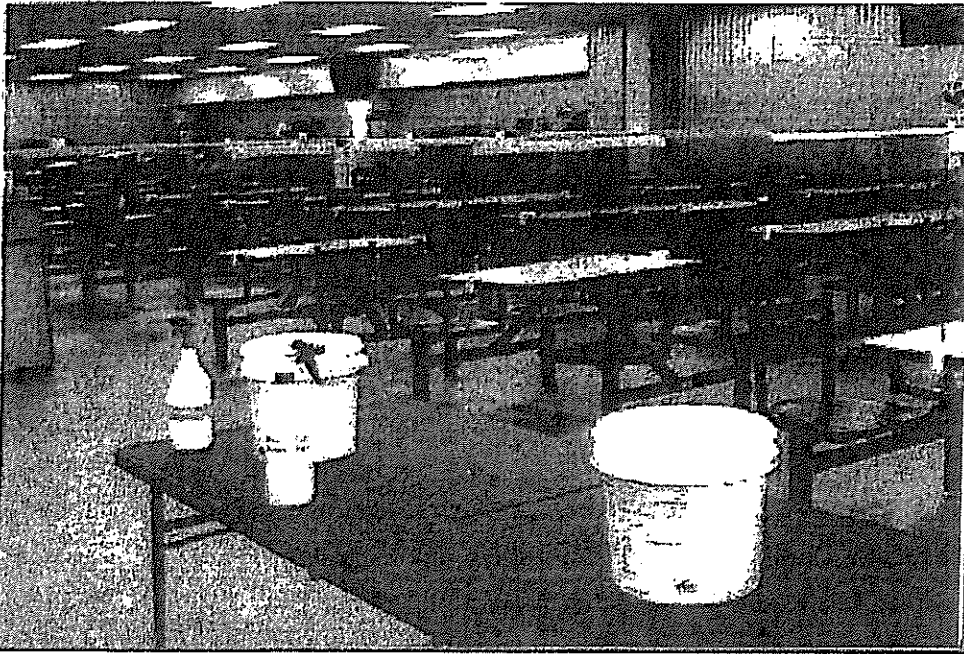
☐ Original Size

EXHIBIT 10

North Carolina Department of Labor
Occupational Safety and Health Division
Notice of Alleged Safety or Health Hazards

Tuesday 7/28/2020 10:31:34

Reporting ID	Complaint Number	Complaint Date/Time		Optional Number	City	County	Employer ID
0453710	209661800	04/27/2020	03:14 PM	0907	4200	037	

Establishment Name	Mountaire Farms of North Carolina Corp.				Ownership	A Private Sector	
Site Address	1100 East Third Street Siler City, NC 27344			Site Phone	919-663-1768	Site Fax	999-999-9999
Mailing Address	P.O. Box 320 Siler City, NC 27344			Mailing Phone	919-663-1768	Mailing Fax	999-999-9999

	2	Fax	- -
	Method Received		Telephone
			Supervisor(s) Assigned
			H9336

Valid Complaint?	Formality	Intake	Send OSHA-7?	Primary SIC	Primary NAICS
Yes	Non-Formal	Ric Schumann		2015	311615
Complaint Classification	Health - Serious		Inspection Planned?	Priority	Close Complaint
			No		Yes

Hazard Description:

The employer is not following the 6-foot social distancing rule for coronavirus. Workers are always in a crowd when working on the line, going to lunch and when removing smocks.

Hazard Location:

At the facility.

Send Letter	Type		Date Letter Sent	Date Response Due	
Receive Lette	Type		Date Received	Evaluation	Abatement Date
Strategic Plan					
National Emphasis					
Local Emphasis					
Type	ID	Optional Information			

Complaint of Occupational Safety or Health Hazards

North Carolina Department of Labor Occupational Safety and Health Division	Complaint Number 209661800	Optional Number 0907
---	--------------------------------------	--------------------------------

Employer Name

Mountaire Farms of North Carolina Corp.

Site Location (Street, City, State, ZIP)

1100 East Third Street

Siler City

NC 27344

Mailing Address (Street, City, State, ZIP)

P.O. Box 320

Siler City

NC 27344

Management Official

Telephone Number

919-663-1768

Complaint Assigned To

H9336

SIC/NAICS

2015

311615

Hazard Description:

The employer is not following the 6-foot social distancing rule for coronavirus. Workers are always in a crowd when working on the line, going to lunch and when removing smocks.

Hazard Location:

At the facility.



CHERIE BERRY
COMMISSIONER OF LABOR

OCCUPATIONAL SAFETY AND HEALTH DIVISION
RALEIGH FIELD OFFICE

May 1, 2020

[REDACTED]
Mountaire Farms of North Carolina Corp.
P.O. Box 320
Siler City, NC 27344

Re: Complaint Number 209661800

Dear [REDACTED]

Recently the North Carolina Department of Labor Occupational Safety and Health Division received a complaint alleging health and/or safety hazards related to **coronavirus disease 2019 (COVID-19)**, which is the illness caused by coronavirus, at your establishment at 1100 East Third Street, Siler City, NC 27344. The specific nature of the complaint is described in detail on the attached page.

Information about COVID-19, including guidance on preventing worker exposure and for preparing your workplace, can be found at the following locations:

- OSHA COVID-19 website – <https://www.osha.gov/SLTC/covid-19/>
- CDC COVID-19 website – <https://www.cdc.gov/coronavirus/2019-ncov/index.html>
- CDC info for healthcare workers – <https://www.cdc.gov/coronavirus/2019-nCoV/hcp/index.html>
- NC Division of Public Health website – <https://www.ncdhhs.gov/divisions/dph>
- NC's Stay at Home Order, including list of essential businesses - <https://files.nc.gov/governor/documents/files/EO121-Stay-at-Home-Order-3.pdf>

We have not determined whether the hazards, as alleged, exist at your workplace; and we are not conducting an inspection, at this time. However, since allegations of violations have been made, you should investigate the alleged conditions and make any necessary corrections or modifications. Within 7 working days of your receipt of this letter, please advise us, in writing, by certified mail, or submitting electronically of your finds and the action you have taken. Your response should be detailed stating specifically what action you have taken to correct each hazard. You should enclose any supporting documentation, such as monitoring results, equipment purchases, photographs etc.

The complainant has been advised of this preliminary response to the complaint and furnished a copy of this letter. An un-redacted employer response will be forwarded to the complainant. Please focus on providing documentation on the alleged conditions and do not include any comments or information about the person(s) that you believe filed the complaint. You should be aware that North Carolina General Statute 95-241 provides that "no person shall discriminate or take any retaliatory action against an employee because the employee in good faith does or threatens to file a claim or complaint, initiate any inquiry, investigation, proceeding or other action, or testify or provide information to any person with

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919-779-8570 • FAX: 919-420-7966


respect to ... the Occupational Safety and Health Act of North Carolina."

This letter is not a citation nor is it a notification of proposed penalty, which according to the Occupational Safety and Health Act, may be issued only after an inspection or investigation of the workplace. If we do not receive a response from you within 7 working days of your receipt of this letter indicating that appropriate action has been taken or that no hazard exists and why, an inspection may be conducted.

You are requested to post a copy of this letter and your response to it where it will be readily accessible for review by your employees. Please send your written response electronically to me at John.Jaskolka@labor.nc.gov, with a carbon copy to Charmaine.Burnett@labor.nc.gov. Supporting documentation, such as photos or safety policies, should be attached to the email if applicable.

If you have any questions about this letter, please contact me at 919-779-8570. Your personal support and interest in the safety and health of your employees are appreciated.

Sincerely,

A handwritten signature in cursive script, appearing to read "Donny Robertson for".

John Jaskolka
District Supervisor



CHERIE BERRY
COMMISSIONER OF LABOR

OCCUPATIONAL SAFETY AND HEALTH DIVISION
RALEIGH FIELD OFFICE

May 1, 2020

X

Re: Complaint No. 209661800

Dear [REDACTED]

This letter is in response to your complaint concerning employee safety and/or health hazard(s) at Mountaire Farms of North Carolina Corp. .

We have sent a letter to the employer requesting that appropriate action be taken to correct the situation. Enclosed is a copy of that letter for your information.

As the letter indicates, the employer has been given 7 working days to correct the hazard(s). Please notify me if no correction and/or modification has been made within 7 working days. We have not revealed your identity to the employer.

The North Carolina Occupational Safety and Health Act provides that no person shall discharge or discriminate against any employee because that employee has filed a complaint.

Your continued interest in workplace safety and health is appreciated. If you have any questions, about this letter, please contact John Jaskolka at 919-779-8570.

Sincerely,

John Jaskolka for

John Jaskolka
District Supervisor

Enclosure(s)



CHERIE BERRY
COMMISSIONER OF LABOR

OCCUPATIONAL SAFETY AND HEALTH DIVISION
RALEIGH FIELD OFFICE

May 1, 2020

[REDACTED]
Mountaire Farms of North Carolina Corp.
P.O. Box 320
Siler City, NC 27344

Re: Complaint Number 209661800

Dear [REDACTED]

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- CDC COVID-19 website – <https://www.cdc.gov/coronavirus/2019-ncov/index.html>
- CDC info for healthcare workers – <https://www.cdc.gov/coronavirus/2019-nCoV/hcp/index.html>
- NC Division of Public Health website – <https://www.ncdhhs.gov/divisions/dph>
- NC's Stay at Home Order, including list of essential businesses - <https://files.nc.gov/governor/documents/files/EO121-Stay-at-Home-Order-3.pdf>

We have not determined whether the hazards, as alleged, exist at your workplace; and we are not conducting an inspection, at this time. However, since allegations of violations have been made, you should investigate the alleged conditions and make any necessary corrections or modifications. Within 7 working days of your receipt of this letter, please advise us, in writing, by certified mail, or submitting electronically of your finds and the action you have taken. Your response should be detailed stating specifically what action you have taken to correct each hazard. You should enclose any supporting documentation, such as monitoring results, equipment purchases, photographs etc.

The complainant has been advised of this preliminary response to the complaint and furnished a copy of this letter. An un-redacted employer response will be forwarded to the complainant. Please focus on providing documentation on the alleged conditions and do not include any comments or information about the person(s) that you believe filed the complaint. You should be aware that North Carolina General Statute 95-241 provides that "no person shall discriminate or take any retaliatory action against an employee because the employee in good faith does or threatens to file a claim or complaint, initiate any inquiry, investigation, proceeding or other action, or testify or provide information to any person with

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If you have any questions about this letter, please contact me at 919-779-8570. Your personal support and interest in the safety and health of your employees are appreciated.

Sincerely,

A handwritten signature in cursive script, appearing to read "Donnie Robertson for".

John Jaskolka
District Supervisor

7018 0360 0000 2671 5152

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

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Certified Mail Fee

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Extra Services & Fees (check box, add fee as appropriate)

- | | |
|--|----------|
| <input type="checkbox"/> Return Receipt (hardcopy) | \$ _____ |
| <input type="checkbox"/> Return Receipt (electronic) | \$ _____ |
| <input type="checkbox"/> Certified Mail Restricted Delivery | \$ _____ |
| <input type="checkbox"/> Adult Signature Required | \$ _____ |
| <input type="checkbox"/> Adult Signature Restricted Delivery | \$ _____ |

4-30-2020 TR

Postmark
Here

Postage

209661800-Comp to ER

Attn: [REDACTED]

Mountaire Farms of North Carolina Corp
P.O. Box 320
Siler City, NC 27344

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

209661800-Comp to ER

Attn: [REDACTED]

Mountaire Farms of North Carolina Corp

P.O. Box 320

Siler City, NC 27344



9590 9402 4344 8190 0763 14

2. Article Number (Transfer from service label)

7018 0360 0000 2671 5152

COMPLETE THIS SECTION ON DELIVERY**A. Signature** [Signature]

Agent

Addressee

C. Date of Delivery

MAY 5-4-20

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

MAY 11 2020

NCDOL-OSH COMPLIANCE

RALEIGH FIELD OFFICE

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Mail
Mail Restricted Delivery
(00)

Jaskolka, John

From: [REDACTED]
Sent: Tuesday, May 12, 2020 8:37 AM
To: Jaskolka, John
Cc: [REDACTED]
Subject: [External] Complaint 209661800
Attachments: Complaint Response 209661800.pdf

CAUTION: External email. Do not click links or open attachments unless you verify. Send all suspicious email as an attachment to report.spam@nc.gov

Good morning,

Please find the response to complaint 209661800 attached, if you have any questions feel free to contact me. Thank you.

[REDACTED]
[REDACTED]
Siler City, NC
Mountaire Farms
Office: [REDACTED]
Cell: [REDACTED]



CONFIDENTIALITY NOTICE: The information contained in this email and any attachments is privileged and confidential and protected from disclosure. If you are not the intended recipient of this email or the attachments, do not read the message or read or open any attachment. Any disclosure, copying, distribution or use of this email or any attachment is strictly prohibited. If you are not the intended recipient, please immediately notify the sender and permanently delete the message from your system.



May 5, 2020

Mr. John Jaskolka
N.C. Department of Labor
Occupational Safety & Health
Compliance Bureau
1101 Mail Center
Raleigh, N.C. 27699-1101

Re: Complaint Number 209661800

Dear Mr. Jaskolka,

We received the letter of complaint concerning alleged health and safety hazards at our Siler City Processing Facility located at 1101 East 3rd St. Siler City N.C. 27344. The following represent our response to the three alleged hazards. While we appreciate the concerns expressed in the complaint with respect to COVID-19, we disagree with the allegations.

Hazard Location: At the Facility

Hazard Description:

The employer is not following the 6-foot social distancing rule for Coronavirus. Workers are in close quarters when working on the line, walking to lunch, and when removing smocks.

Response:

Mountaire has made many improvements to improve social distancing practices and continues to focus on this important aspect throughout the facility. Employees are encouraged to distance from others as well as wear masks prior to entering the facility.

With respect to both the cafeteria and production floor Mountaire has taken steps to segregate employees:

- In the cafeteria there are dividers on each table segregating the sitting areas for each person as well as markings in the serving line to establish social distancing.
- On the production lines, Lexan and Plexiglass barriers have been installed between workstations on the lines as an added protection to employees. Employees are required to wear face coverings and face shields have been added to bump caps as well.

While removing smocks employees dispose of them in a bin and continue moving through the area with face mask and face shields on. We are encouraging employees to keep moving and not congregate in these areas.

See Attachment A-1, A-2, A-3

We will continue to monitor CDC, OSHA and North Carolina public health guidance as the outbreak continues and implement additional protective measures if necessary and appropriate. If you have any

questions regarding this response, please feel free to contact me at
[REDACTED], thank you.

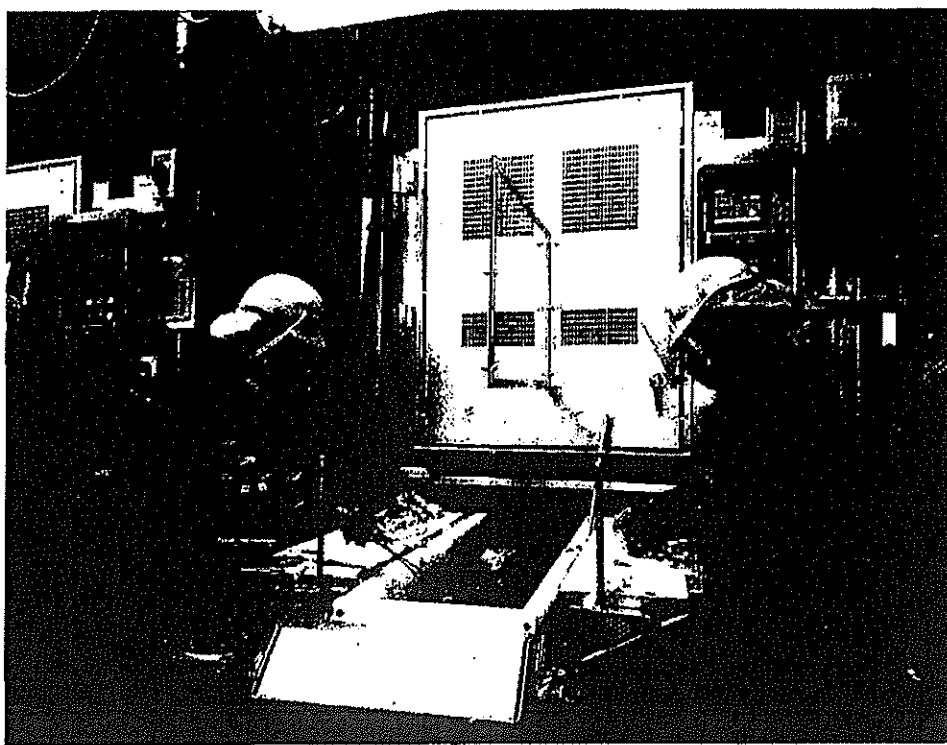
Sincerely,

A handwritten signature consisting of a large 'X' shape.

Mountaire Farms



A-1



A-2



A-3



CHERIE BERRY
COMMISSIONER OF LABOR

OCCUPATIONAL SAFETY AND HEALTH DIVISION
RALEIGH FIELD OFFICE

May 15, 2020

[REDACTED]
Mountaire Farms of North Carolina Corp.
P.O. Box 320
Siler City, NC 27344

Re: Complaint Number 209661800

Dear [REDACTED]

Your letter received on May 12, 2020 concerning the above referenced complaint has been reviewed. Based on the information you have provided, OSHNC feels the case can be closed on the grounds that the alleged hazardous conditions have been corrected or no longer exist. This letter does not prohibit OSHNC from initiating an inspection of this complaint.

Your actions on behalf of safety and health in the work place are appreciated.

Sincerely,

John Jaskolka for

John Jaskolka
District Supervisor



CHERIE BERRY
COMMISSIONER OF LABOR

OCCUPATIONAL SAFETY AND HEALTH DIVISION
RALEIGH FIELD OFFICE

May 15, 2020

X

Re: Complaint No. 209661800

Dear [REDACTED]

The North Carolina Department of Labor, Occupational Safety and Health Division (OSH) has conducted an investigation of Mountaire Farms of North Carolina Corp., addressing your complaint.

Based on the investigation, the OSH Division feels the case can be closed on the grounds that the hazardous conditions have been corrected (or no longer exist). The employer's response, if applicable, is enclosed.

If you do not agree the hazards you complained about have been satisfactorily addressed, please contact me at 919-779-8570 to discuss your concerns. If your concerns continue following our discussion, you may seek a further review by contacting Compliance Bureau Chief Nicole Brown in writing at the address below.

North Carolina Department of Labor
Occupational Safety and Health Division
1101 Mail Service Center
Raleigh, NC 27699

Your action on behalf of safety and health in the workplace is sincerely appreciated.

Sincerely,

John Jaskolka for

John Jaskolka
District Supervisor

