

# Legal Aid of North Carolina, Inc.

## Farmworker Unit

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September 30, 2011

The Honorable David Michaels  
Assistant Secretary of Labor for Occupational Safety and Health  
200 Constitution Ave. N.W.  
Room S2315  
Washington, DC 20010

re: Complaint Against State Plan Administration (CASPA) Concerning North Carolina's  
OSHA Penalties and classification of OSHA violations

Dear Mr. Michaels:

The North Carolina Department of Labor (NCDOL) Occupational Safety and Health Division (OSHANC) has failed to provide protections to migrant and seasonal farmworkers, including poultry processing workers, that are as protective as the federal OSHA standards, in violation of 29 C.R.F. §1954.20. We request that your agency investigate this complaint and facilitate corrective action by OSHANC.

We base our complaint upon a review of a sample of investigations of both farm employers and poultry processing plants performed by OSHANC. Many of the investigations of temporary labor camps or field sanitation in our sample were in response to complaints filed by our clients or other farmworker advocates. Most of the investigations of poultry processing plants in our sample were programmed.

OSHANC frequently improperly classified violations of standards for temporary labor camps or field sanitation as non-serious in the sample. Sometimes similar violations of the same standard were classified as "serious" in one investigation but as "non-serious" in another. The same was true for poultry processing plant inspections.

OSHANC also routinely drastically reduces penalties for non-compliance with all standards to the extent that they have little or no deterrent effect upon the violators. Even when one employer deliberately impeded an investigation, he was given a deduction on penalties for his "cooperation."

We also believe that OSHANC's Agricultural Safety and Health Division (ASH) could deploy its resources in a different way that would achieve greater compliance with the standards OSHANC enforces and would alleviate the suffering of the many migrant

farmworkers in North Carolina who currently must jeopardize their health and well-being to work or have housing.

In the 2010 E-FAME report, your agency found that OSHANC did not classify as "serious" some violations that would have been classified as serious by federal OSHA and also classified a lower percentage of violations as serious than other state plan states of federal OSHA. The E-FAME report also indicates that OSHANC classified some violations as violations of low or medium gravity which federal OSHA would have classified as of high gravity. The sample for the E-FAME report did not appear to include either complaint-driven or programmed investigations focused on violations of the temporary labor camp or field sanitation standards. We believe, based upon the experience of our migrant farmworker clients and samples of OSHANC investigations of farms and poultry plants, that OSHANC classifies temporary labor camp or field sanitation violations as serious even less frequently than poultry plants or other industrial sites. Obviously, these are the standards OSHANC enforces which most affect migrant farmworkers.

North Carolina has its own Migrant Housing Act, enacted in 1989, which generally incorporates the federal standards for temporary labor camps found at 29 C.F.R. §1910.142. The Agricultural Safety and Health Bureau of OSHANC, headed by Regina Cullen, inspects temporary labor camps and investigates complaints about those camps and field sanitation. The division employs a number of Spanish-speaking investigators, some of whom are also certified OSHA inspectors. We have no complaints about the manner in which the ASH employees investigate complaints in camps and fields. It appears to us, however, that OSHANC has a shortage of Spanish-speaking investigators, especially since two of its largest special emphasis programs, construction and food manufacturing, focus on industries in which a large percentage of the workforce are Spanish-speaking. ASH staff are often called upon to assist with other OSHANC duties, thereby reducing their availability for post-occupancy investigations.

The vast majority of ASH's inspections of temporary labor camps for migrant agricultural workers are pre-occupancy inspections. A recent study by the Center for Worker Health at Wake Forest University School of Medicine points out that most camps in the mid-to-late season suffer from violations such as a lack of functioning bathroom or laundry facilities, overcrowding, rodent infestation/lack of proper trash disposal facilities, and no resident trained in first aid. Thus, a need for programmed inspections of temporary labor camps after they have been occupied for a while is apparent.

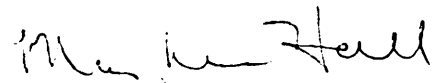
In reality, though, a disproportionate amount of OSHANC and ASH resources are devoted to pre-occupancy inspections of temporary labor camps expected to house temporary foreign agricultural (H-2A) workers, to the detriment of workers living in camps that are not licensed and or workers in camps that have deteriorated since being licensed. We understand that employers of H-2A workers cannot receive USDOL certification of their need for these workers without proof that their labor camps have been permitted and that therefore they clamor for prompt inspections. However, these

workers are a small percentage (about 10%) of the total farm workforce in North Carolina. By OSHANC's own estimate there are more labor camps whose owners and operators never apply for permits than those who do. In our experience, these unlicensed or uninspected camps present the most serious health and safety risks to workers. The researchers at Wake Forest University also determined that camps with H-2A workers are generally more in compliance with the standards. ASH has a "Gold Star" grower program in which labor camp operators whose facilities meet 100% of the standards at the time of the pre-occupancy inspection are permitted to self-inspect in the subsequent year, but this program has not been fully utilized to allow ASH to devote more resources to unlicensed camps or camps with post-occupancy problems.

From OSHANC's response to the E-FAME process, our views of the role of penalties are divergent. A frank analysis of the temporary labor camp standards leads to the inescapable conclusion that those standards fall far short of what many Americans would consider acceptable accommodations today, even for a weekend campground. In North Carolina, workers often reside in temporary labor camps for extended periods of six months or more. Fortunately, many licensed camps here exceed the standards. But, the standards require only 1 laundry tub for every 30 occupants, only 1 toilet, *portable toilet, or privy* for every 15 occupants of the same sex, only 1 cubic foot of refrigerator space per occupant, etc. So, in our view, when operators fall below these out-dated standards, when they are housing workers in conditions which would certainly be totally unacceptable for themselves and their families, robust penalties underline the message that OSHANC is serious about enforcing the standards. We believe robust penalties transmit that message not only to the employer or camp operator who is in violation, but also to his or her neighbors and competitors, producer associations, etc. In the end, robust penalties increase compliance making OSHANC's job of enforcement more manageable. Weak or inconsistent penalties, on the other hand, have the opposite effect.

On behalf of our clients, we respectfully request that you use your authority to ensure that the health and safety of migrant and seasonal farmworkers, including poultry plant processing workers, in North Carolina is protected to the full extent required by the Occupational Safety and Health Act. We would be pleased to meet with your staff and provide information to assist them in their investigation of this complaint.

Sincerely,



Mary Lee Hall