

STATE OF NORTH CAROLINA  
COUNTY OF ANSON

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
20 DAG 01477

<p>Valley Proteins Inc. Petitioner,</p> <p>v.</p> <p>NC Department of Agriculture &amp; Consumer Services Respondent.</p>	<p><b>FINAL DECISION ORDER GRANTING SUMMARY JUDGMENT FOR RESPONDENT</b></p>
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THIS MATTER came before the undersigned for a video hearing on Respondent's Motion for Summary Judgment on October 30, 2020.

**APPEARANCES**

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BASED UPON careful consideration of the pleadings, filings, written submissions of the parties, arguments presenting at the video hearing, and the entire record in this proceeding, the undersigned finds as follows:

### **PARTIES**

1. Respondent is the North Carolina Department of Agriculture and Consumer Services, Veterinary Division, the State agency responsible for enforcing the provisions of Chapter 106, Article 14A of the North Carolina General Statutes, N.C. Gen. Stat. §§ 106-168.1 et seq., titled “Licensing and Regulation of Rendering Plants, Rendering Operations, and Waste Kitchen Grease Collection.”

2. Part of Respondent’s responsibilities under Article 14A include the licensing and regulation of rendering plants, rendering operations, and the collection of raw material, and ensuring the minimum standards for conducting rendering operations are met under N.C. Gen. Stat. § 106-168.8.

3. “‘Rendering operation’ means the processing of inedible whole or portion of animal or poultry carcasses and includes collection of such raw material for the purpose of processing.” N.C. Gen. Stat. § 106-168.1(4).

4. Petitioner Valley Proteins, Inc. is a corporation licensed by Respondent under Article 14A and conducts business as a rendering operator. Respondent operates rendering plants in the State and maintains a fleet of vehicles for the collection of raw material for processing.

### **PROCEDURAL HISTORY**

5. On March 30, 2020, Petitioner filed a Petition for a Contested Case Hearing with the North Carolina Office of Administrative Hearings.

6. On August 25, 2020, Petitioner filed a Motion in Limine and Request for Settlement Conference, arguing to exclude evidence and argument regarding any spill of raw material other than the January 14, 2020 spill, including complaints, warnings, notices, citations, or penalty assessments previously issued against Petitioner.

7. On August 28, 2020, Respondent filed its Response to the Motion in Limine.

8. On September 3, 2020, upon review of the parties’ written submissions and the record, Administrative Law Judge J Randall May denied Petitioner’s Motion in Limine.

9. On October 13, 2020, Respondent filed a Motion for Summary Judgment and Memorandum in Support of the Motion for Summary Judgment.

10. On October 23, 2020, Petitioner filed its Response in Opposition to Respondent's Motion for Summary Judgment.

11. On October 27, 2020, Respondent filed its Reply Memorandum in Support of Respondent's Motion for Summary Judgment.

12. On October 30, 2020, the parties appeared virtually for oral argument and hearing on Respondent's Motion for Summary Judgment before this court.

### **FINDINGS OF FACT**

13. On January 14, 2020, at about 9:20 p.m., Petitioner's tractor-trailer carrying chicken offal or other semi-liquid chicken parts traveled through downtown Wadesboro, North Carolina, and spilled its load on South Greene Street. (Resp't's Mot. Summ. J., Attach. 1 and Attach. 2.)

14. Without stopping or contacting emergency response personnel, Petitioner's tractor-trailer continued traveling away northbound on South Greene Street and turned left, westbound, onto U.S. Highway 74, where it was stopped by Sergeant Chad B. Haywood with the Wadesboro Police Department. (Resp't's Mot. Summ. J., Attach. 1 at ¶ 8 and Attach. 2 at ¶¶ 7-10.)

15. At the time of the traffic stop, there were raw material hanging from the top, back, and side of the rear of Petitioner's tractor-trailer. Petitioner's tractor-trailer had an opened top trailer, covered with a tarp. (Resp't's Mot. Summ. J., Attach. 1 at ¶¶ 8, 11-15 and Attach. 2 at ¶¶ 8, 11-13.)

16. At all relevant times, Petitioner was licensed as a rendering operator and operates a rendering facility located at 656 Little Duncan Road, Wadesboro, North Carolina. Petitioner's tractor-trailer was traveling from South Carolina through Wadesboro and on its way to its rendering facility located at 656 Little Duncan Road when it spilled material. (Resp't's Mot. Summ. J., Attach. 3 at Interrog. 5 and Req. Admis. 1-2.)

17. In Petitioner's Prehearing Statement he adopted and incorporated Respondent's representation of facts.

18. The January 14, 2020 spills of raw material on South Greene Street were not the first spills by Petitioner. Respondent has previously warned Petitioner regarding its spills of raw material in a Notice of Warning dated January 30, 2019 and have previously issued Petitioner civil penalties for spills of raw material. Petitioner has in the past spilled raw material sometimes multiple times in a month, multiple times in a week, and two or three times in a day. (Resp't's Mot. Summ. J., Attach. 1 at ¶ 19; Pet'r's Resp. Opp'n, Ex. B.)

19. On January 31, 2020, Respondent issued Petitioner a \$5,000.00 civil penalty pursuant to N.C. Gen. Stat. § 106-168.16 for spilling raw material during transport and alleged violation of N.C. Gen. Stat. § 106-168.8(5).

BASED UPON this summary of the forgoing FINDINGS OF FACT, the undersigned makes the following:

## CONCLUSIONS OF LAW

20. All parties are properly before this court and jurisdiction and venue are proper. To the extent that the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels.

21. Pursuant to N.C. R. Civ. P. 56, “it is proper for a trial court to grant summary judgment for the moving party if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law.” Parish v. Hill, 350 N.C. 231, 236, 513 S.E.2d 547, 550 (1999); N.C. Gen. Stat. § 1A-1, Rule 56(c).

22. “When considering a motion for summary judgment, the trial judge must view the presented evidence in a light most favorable to the nonmoving party.” In re Will of Jones, 362 N.C. 569, 573, 669 S.E.2d 572, 576 (2008) (citation omitted). “If the movant demonstrates the absence of a genuine issue of material fact, the burden shifts to the nonmovant to present specific facts which establish the presence of a genuine factual dispute for trial.” Id.

23. “Unsupported allegations in the pleadings are insufficient to create a genuine issue as to a material fact where the moving adverse party supports his motion by competent evidentiary matter showing the facts to be contrary to that alleged in the pleadings.” Gudger v. Transitional Furniture, Inc., 30 N.C. App. 387, 389, 226 S.E.2d 835, 837 (1976) (citation omitted).

24. In this case, based upon careful consideration of all the evidence, affidavits, filings, and written submissions, there is no genuine dispute as to any material fact. Petitioner does not dispute Respondent’s Statement of the Facts under Respondent’s Memorandum in Support of Respondent’s Motion for Summary Judgment. See Petitioner’s Prehearing Statements, paragraph #2, June 23, 2020. Petitioner contends that, as a matter of law, it did not violate N.C. Gen. Stat. § 106-168.8(5).

25. N.C. Gen. Stat. § 106-168.8(5) states:

Vehicles used to transport raw material shall be so constructed as to prevent any drippings or seepings from such material from escaping from the truck. Such vehicles shall have body sides of sufficient height that no portion of any raw material transported therein shall be visible. All vehicles shall be provided with suitable top or covering to prevent the spread of disease by flies or other agents during the transportation of raw material.

26. The chicken offal or other semi-liquid chicken parts spilled by Petitioner and found hanging from Petitioner’s tractor-trailer on January 14, 2020 were raw material as defined by N.C. Gen. Stat. § 106-168.1(3).

27. First, Petitioner argues that the terms “vehicles” and “truck” as used under N.C. Gen. Stat. § 106-168.8(5) have different meanings and contend that the term “truck” does not apply to attached trailers and instead applies only to the truck-tractor portion of a tractor-trailer.

Petitioner argues that the spilled raw material originated from the attached trailer and the visible hanging raw material were also on the attached trailer and therefore it did not violate N.C. Gen. Stat. § 106-168.8(5).

28. The North Carolina Supreme Court has held that legislative intent controls the meaning of a statute. Midrex Techs., Inc. v. N.C. Dep't of Revenue, 369 N.C. 250, 258, 794 S.E.2d 785, 792 (2016).

The intent of the General Assembly may be found first from the plain language of the statute, then from the legislative history, 'the spirit of the act and what the act seeks to accomplish.' If the language of a statute is clear, the court must implement the statute according to the plain meaning of its terms so long as it is reasonable to do so.

Id., 369 N.C. at 258, 794 S.E.2d at 792 (citation omitted).

Courts should "give effect to the words actually used in a statute" and should neither "delete words used" nor "insert words not used" in the relevant statutory language during the statutory construction process. "[U]ndefined words are accorded their plain meaning so long as it is reasonable to do so." In determining the plain meaning of undefined terms, "this Court has used 'standard, nonlegal dictionaries' as a guide." Finally, statutes should be construed so that the resulting construction "harmonizes with the underlying reason and purpose of the statute."

Id. (citations omitted).

29. N.C. Gen. Stat. § 106-168.8(5) does not allow the use of vehicles and trucks, including attached trailers, that fail to prevent the escape of raw material during transport.

30. Second, Petitioner argues that the facts and evidence do not support a finding that it violated N.C. Gen. Stat. § 106-168.8(5). Specifically, Petitioner contends that there was nothing wrong with the vehicle it used to transport raw material on January 14, 2020.

31. This tribunal finds persuasive Respondent's argument that, similar to the doctrine of *res ipsa loquitur* under tort law, the spilled raw material on South Greene Street and visible hanging raw material on Petitioner's vehicle is evidence that Petitioner's vehicle was not so constructed as to prevent the escape of raw material under N.C. Gen. Stat. § 106-168.8(5).

32. North Carolina courts have recognized the doctrine of *res ipsa loquitur* to mean:

[I]n its distinctive sense, permits negligence to be inferred from the physical cause of an accident, without the aid of circumstances pointing to the responsible human cause. Where this rule applies, evidence of the physical cause or causes of the accident is sufficient to carry the case to the jury on the bare question of negligence. But where the rule does not apply, the

plaintiff must prove circumstances tending to show some fault of omission or commission on the part of the defendant in addition to those which indicate the physical cause of the accident.

Diehl v. Koffer, 140 N.C. App. 375, 377, 536 S.E.2d 359, 362 (2000) (citation omitted).

Therefore, “ ‘[r]es ipsa loquitur (the thing speaks for itself) simply means that the facts of the occurrence itself warrant an inference of defendant's negligence, i.e., that they furnish circumstantial evidence of negligence where direct evidence of it may be lacking.’ ”

Id.

33. In this case, Petitioner was in control of its vehicle and was in charge of the vehicle's operation, including the amount of material it carried and the route in which it took. There was no evidence of any wrongdoing by other motorists such as any collisions that might have caused the spill. The fact that Petitioner's vehicle spilled raw material during ordinary driving conditions and traffic pattern is evidence that it did not use a vehicle “so constructed as to prevent any drippings or seepings from such material from escaping from the truck.” See N.C. Gen. Stat. § 106-168.8(5).

34. Based upon the uncontested facts of the case, that Petitioner spilled raw material first near 211 South Greene Street and then continued to spill near 101 South Greene Street, based on the visible raw material hanging from Petitioner's vehicle, and based on the record, filings, written submissions, affidavits, and arguments of the parties, Petitioner was in violation of N.C. Gen. Stat. § 106-168.8(5) on January 14, 2020 as a matter of law.

35. The finding that Petitioner failed to comply with N.C. Gen. Stat. § 106-168.8(5) is consistent with the purpose of the statute and legislative intent. Based on the language of N.C. Gen. Stat. § 106-168.8(5), the intent is to not have any spills or the escape of raw material during transport. The General Assembly in creating the minimum standards for conducting rendering operations under N.C. Gen. Stat. § 106-168.8(5) clearly intended for there to be no escape or spill of raw material during transport. Raw material, such as the chicken offal or semi-liquid chicken parts as transported by Petitioner on January 14, 2020, is offensive to sight and smell and is generally unpleasant.

36. Petitioner also contends that Respondent in assessing the \$5,000.00 civil penalty on January 31, 2020, acted arbitrarily and capriciously, and considered factors not authorized by the law. Specifically, Petitioner argues that Respondent is not allowed to consider prior record of noncompliance, did not account for actual costs and damages of the spills, and that the amount of the civil penalty assessment is excessive.

37. The relevant civil penalty statute, N.C. Gen. Stat. § 106-168.16 states:

The Commissioner may assess a civil penalty of not more than five thousand dollars (\$5,000) against any person who violates a provision of

this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation.

38. Pursuant to N.C. Gen. Stat. § 106-168.16, Respondent is required to consider “the degree and extent of harm caused by the violation” in determining the amount of the penalty.

39. The court finds that N.C. Gen. Stat. § 106-168.16 does not prohibit Respondent from considering prior records of compliance or noncompliance in determining the amount of civil penalty. There is no language under N.C. Gen. Stat. § 106-168.16 precluding the consideration of prior record of compliance or noncompliance. In fact, other civil penalty statutes specifically require agencies to consider prior record of compliance or noncompliance. See Chesapeake Microfilm, Inc., 111 N.C. App. at 740, 434 S.E.2d at 219. Should Petitioner’s argument be accepted, this would mean agencies with civil penalty statutes that do not specifically state that prior record of compliance or noncompliance can be considered would necessarily have to issue the same penalty for both a first offender and a repeated offender, leading to unjust results. Rather, N.C. Gen. Stat. § 106-168.16 allows respondent to consider an offender’s prior record of compliance and noncompliance in determining the “degree and extent of harm.”

40. Petitioner did not contest that it has previously spilled while transporting raw material. Respondent in this case properly considered the fact that Petitioner has repeatedly spilled raw material in the past, has been previously warned regarding the spills of raw material, and has been issued civil penalties for spills of raw material in determining the civil penalty amount. Petitioner further properly considered the events of January 14, 2020 and the impacts raw material spills have on the State, county and local governments, and the public.

41. Petitioner contends that N.C. Gen. Stat. § 106-168.16 is in derogation of Article IV, § 3 of the North Carolina Constitution. Petitioner argues that the General Assembly did not provide adequate guiding standards to Respondent under the civil penalty statute.

42. While some constitutional issues may be proper before this court, Petitioner’s facial challenge to the constitutionality of N.C. Gen. Stat. § 106-168.16 as written is not proper before this court.

43. N.C. Gen. Stat. § 1-267.1(a1) requires facial validity constitutional challenges to a statute to be brought before a Wake County Superior Court three-judge panel pursuant to N.C. Gen. Stat. § 1A-1, Rule 42(b)(4).

44. Additionally, Petitioner in its Petition for Contested Case Hearing raised a Double Jeopardy issue. However, the civil penalty matter before the court is a civil matter, not criminal. See Hudson v. United States, 522 U.S. 93, 98–99, 118 S. Ct. 488, 493, 139 L. Ed. 2d 450 (1997). The North Carolina General Assembly intended N.C. Gen. Stat. § 106-168.16 to be civil in nature as shown by its title, “Civil penalties.” Furthermore, there is no evidence of any prior criminal matter that would allow jeopardy to attach.

**FINAL DECISION**

BASED UPON the foregoing, Respondent's Motion for Summary Judgment is GRANTED as follows:

- a) The January 31, 2020 Civil Penalty Assessment for Petitioner's violation of N.C. Gen. Stat. § 106-168.8(5) on January 14, 2020 is AFFIRMED; and
- b) The amount of civil penalty was initially reduced from \$5,000.00 to \$2,500.00; however, after further review and giving due deference to the agency, it will remain at \$5,000.00.

**NOTICE OF APPEAL**

**This is a Final Decision** issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties as indicated by the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

**IT IS SO ORDERED.**

This the 21st day of December, 2020.



J Randall May  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service:

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This the 21st day of December, 2020.



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